

Opinion No 1/2026

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**accompanying the Commission  
Evaluation Report on the  
application and impact of the  
OLAF Regulation**

**January 2026**

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## BACKGROUND

1. Article 19(1) of Regulation (EU, Euratom) No 883/2013 (the OLAF Regulation)<sup>1</sup> stipulates that, no later than 1 June 2026, the European Commission shall submit to the European Parliament and to the Council an evaluation report on the ‘*application and impact*’ of the OLAF Regulation, ‘*in particular as regards the effectiveness and efficiency of the cooperation between the Office and the EPPO*’. Article 19(1) also requires the report to be accompanied by an opinion of the Supervisory Committee (the Committee).
2. On 4 April 2024, OLAF informed the Committee that it had launched the evaluation of the OLAF Regulation in its capacity as the Commission service responsible for the development of anti-fraud policy.
3. The Committee notes that this evaluation takes place at a particularly opportune moment, because the protection of the European Union’s financial interests has regained momentum and features prominently on the EU’s political agenda.
4. This momentum builds on developments that have been achieved, most recently during the negotiations of the latest multiannual financial framework (MFF) in 2020. Those negotiations were conducted amid the economic downturn caused by the COVID-19 pandemic and resulted in the adoption of a key legislative instrument for the protection of the EU’s budget. The Rule of Law Conditionality Regulation<sup>2</sup> was designed to protect the EU’s financial interests and ensure the sound financial management of the budget in situations where breaches of the principles of the rule of law jeopardise EU funding. The Regulation links respect for the rule of law (one of the fundamental values enshrined in Article 2 of the Treaty on European Union) to access to EU funding and has thereby provided the EU with a powerful tool for safeguarding its budget in situations where existing instruments prove insufficient.
5. Building on this foundation, the current institutional context marks a new phase in the EU’s efforts to strengthen the protection of its financial interests. The need to reinforce the EU’s anti-fraud framework has become increasingly apparent as negotiations for the next MFF have advanced. The Commission has therefore set two parallel objectives: (i) to ensure an optimal and coherent use of resources within the anti-fraud architecture (AFA); and (ii) to safeguard the upcoming MFF against fraud, corruption and misuse of funds to the greatest extent possible. In line with these objectives the ongoing comprehensive review of the AFA has been included as a priority of the current Von der Leyen

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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. It has been amended by Regulation 2016/2030, OJ L 317, 23.11.2016, pp. 1-3, and by Regulation 2020/2023, OJ L 423, 28.12.2020, pp.49-73. The consolidated version of the Regulation is available here: [EUR-Lex – 02013R0883-20210117 – FR - EUR-Lex](#).

<sup>2</sup> Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, pp. 1–10, available at: [Regulation - 2020/2092 - EN - EUR-Lex](#).

Commission<sup>3</sup>, underscoring the renewed political commitment to enhance the EU's capacity to protect its budget.

6. In a recently published white paper on the review of the AFA, the Commission calls for greater clarity, enhanced cooperation and a more effective enforcement framework for anti-fraud actors<sup>4</sup>. In this context and alongside the amended OLAF Regulation, other legislative instruments concerning the European Public Prosecutor's Office (EPPO)<sup>5</sup>, Europol<sup>6</sup>, Eurojust<sup>7</sup> and the Protection of Financial Interests (PIF) Directive<sup>8</sup> are also being evaluated as part of a comprehensive effort to ensure that the EU's AFA and related legal instruments are fully aligned with the objectives of the next MFF. Taken together, these initiatives demonstrate a strategic and coordinated approach by the EU to enhance the integrity, effectiveness and resilience of its financial management and anti-fraud framework, thereby reinforcing the protection of EU taxpayers' resources and the EU's broader political and financial objectives.
7. It is worth recalling that the need for *'a more far-reaching process to modernise the framework of OLAF investigations'* as well as to address *'larger issues relating to the overall coherence of the EU anti-fraud legal framework beyond Regulation 883/2013'* was already identified when the OLAF Regulation was last evaluated<sup>9</sup>.
8. Against this background, the AFA's increasing complexity and fragmentation in recent years has made the need for such a comprehensive modernisation ever more pressing and widely perceived<sup>10</sup>. The current evaluation and review process can thus be seen as a timely

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<sup>3</sup> Mission Letter to Piotr Serafin, Commissioner-designate for Budget, Anti-fraud and Public Administration, Brussels, 17 September 2024, available at: [db369caa-19e7-4560-96e0-37dc2556f676\\_en](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0546).

<sup>4</sup> Commission Communication, White Paper for the Anti-fraud Architecture Review, COM(2025)546 final of 16 July 2025, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0546>.

<sup>5</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1, available at: [Regulation - 2017/1939 - EN - EPPO - EUR-Lex](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1939).

<sup>6</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53, available at: [Regulation - 2016/794 - EN - EUR-Lex](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0794).

<sup>7</sup> Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, OJ L 295, 21.11.2018, p. 138, available at: [Regulation - 2018/1727 - EN - EUR-Lex](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1727).

<sup>8</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29, available at: [Directive - 2017/1371 - EN - EUR-Lex](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1371).

<sup>9</sup> Report from the Commission to the European Parliament and the Council, Evaluation of the application of 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, COM(2017)589 final of 2 October 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0589>.

<sup>10</sup> See the study requested by the European Parliament's Committee on Budgetary Control (CONT), Eager, J. et al., *EU anti-fraud architecture – the role of EU-level players, how they cooperate and the challenges they face*, August 2024, available at: [EU anti-fraud architecture - Publications Office of the EU](https://publications.ec.europa.eu/en/publication-detail/publication-type/study/publication-format/pdf/123456789). See also European Court of Auditors Report No 1/2025, *What's next for EU finances?*, available at: [ECA Journal](https://eca.europa.eu/en/publication-detail/publication-type/report/publication-format/pdf/123456789).

and necessary response to the challenges highlighted during the previous evaluation, building on past lessons to strengthen the EU's anti-fraud capabilities.

9. These evaluation exercises and the review of the AFA are expected to culminate in a Commission communication on the outcome of the AFA review that may be accompanied by legislative proposals. The Commission's 2026 work programme sets out an ambitious timeline, anticipating legislative and non-legislative initiatives on the review of the AFA in the fourth quarter of 2026<sup>11</sup>.

## CHAPTER 1: METHODOLOGY

10. As already mentioned, Article 19(1) of the OLAF Regulation entrusts the Commission with the task of carrying out a complete evaluation, based on its institutional responsibility. Article 19(1) also requires the Committee to submit a separate, independent opinion to be attached to the Commission's evaluation report. It is therefore the Committee's task to provide an opinion based on its own unique experience<sup>12</sup>.
11. Under the OLAF Regulation, the Committee's main role is to safeguard OLAF's independence by regularly monitoring the implementation of OLAF's investigative function<sup>13</sup>. In particular, the Committee is to ensure that: (i) OLAF's investigations are free from undue external influence; and (ii) all relevant decisions of OLAF's Director-General are taken in compliance with the principles of legality and impartiality, and with respect for procedural guarantees and fundamental rights. The Committee's mandate further empowers it to submit opinions and, where appropriate, recommendations to OLAF's Director-General.
12. To carry out its monitoring tasks, subparagraph 6 of Article 15(1) provides that the Committee is '*granted access to all the information and documents it considers necessary*'. In practice, the working arrangements between OLAF and the Committee further detail: (i) the continuous flow of information to the Committee on OLAF's activity; and (ii) the Committee's direct access to certain parts of OLAF's Case Management System (OCM)<sup>14</sup>.
13. This direct access to parts of OLAF's OCM results from the amendments made by Regulation 2020/2023<sup>15</sup>. It enables the Committee to base its monitoring on concrete case files and thus ensures that its oversight is evidence-based. This is particularly relevant

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<sup>11</sup> COM(2025)870 final, Commission work programme 2026, *Europe's Independence Moment*, 21 October 2025, available at: [2026 Commission work programme and annexes - European Commission](#).

<sup>12</sup> See Note to the Chair of the Supervisory Committee by Commissioner Oettinger, 12 April 2017, Ares(2017)1947198.

<sup>13</sup> Article 15(1) of the OLAF Regulation.

<sup>14</sup> Working Arrangements between the European Anti-fraud Office (OLAF) and the OLAF Supervisory Committee, October 2021. Article 12 (Direct access to OCM): '[...] OLAF will provide the SC with direct electronic access to parts of OCM, as defined in Article 13 of these Arrangements [...]', available at: [Internal rules - Supervisory Committee of OLAF - European Union](#).

<sup>15</sup> Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations, OJ L 437, 28.12.2020, pp. 49–73, available at: [Regulation - 2020/2223 - EN - EUR-Lex](#).

for the Committee's opinions and recommendations. It ultimately strengthens the relevance, effectiveness and legitimacy of the Committee's supervisory function.

14. By virtue of its mandate and through its continuous monitoring, the Committee has a privileged viewpoint not only into OLAF's investigative operations, but also on how the core provisions of the OLAF Regulation are put into practice. Its direct insight allows the Committee to assess the impact of the Regulation's key provisions, to evaluate whether the objectives set out in the Regulation are being met and to reflect on their continued relevance.
15. Accordingly, the Committee **aims**, within the scope of its mandate, to assess the key aspects of the *application* and *impact* of the OLAF Regulation. The assessment will be conducted using a structured, evidence-based methodology. For the purpose of this opinion, the Committee understands the relevant concepts as follows.
16. **Application** refers to how the Regulation is implemented and applied in practice, using the following criteria.
  - *Regulatory compliance* – whether processes, procedures and decisions conform to the Regulation, internal rules and the principles of legality and proportionality and procedural guarantees.
  - *Cooperation compliance* – whether the cooperation obligations established by the Regulation are fulfilled consistently and effectively by OLAF, other anti-fraud actors and Member States.
  - *Consistency* – whether the Regulation is applied uniformly across sectors, cases, instruments of cooperation and time.
  - *Procedural efficiency* – whether the Regulation is applied in a manner that supports timely investigation and follow-up, without duplications and unnecessary administrative burden.

The Regulation formally requires an assessment of its application, but a proper evaluation must also take into consideration the point that certain issues may stem from the design of the Regulation itself. When shortcomings or inconsistencies are identified, the Committee therefore examines whether they arise from the way in which the Regulation is applied by the actors concerned or from structural shortcomings that are inherent in the Regulation (e.g. lack of *clarity* and *ambiguity*<sup>16</sup>, *internal*<sup>17</sup> and *external*<sup>18</sup> *coherence* and *proportionality*). This ensures that conclusions on application and impact are correctly attributed either to the behaviour of actors or to the design of the legal framework.

17. **Impact** refers to the Regulation's observable effects in practice, including the extent to which its objectives are achieved and any broader consequence for the protection of the

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<sup>16</sup> The Regulation's provisions are formulated in a way that is understandable, and actors can reasonably reach the same interpretation of the provision.

<sup>17</sup> The Regulation's provisions are consistent with each other.

<sup>18</sup> The Regulation is consistent with other relevant legislative instruments and policy objectives.

EU's financial interests and the functioning of the EU's AFA. The following criteria to assess the impact are used.

- *Effectiveness* – the extent to which the Regulation enables the achievement of its objectives (independent investigations, strengthened cooperation and protection of the EU's financial interests).
- *Systemic improvements* – contributions to better governance, prevention or administrative practices.
- *EU added value* – whether the Regulation enables results that Member States could not achieve on their own.

*Efficiency*<sup>19</sup> is one of the key criteria, but the Committee does not have the necessary quantitative data required for a full assessment of intervention costs and therefore does not systematically assess the Regulation on this basis.

18. For assessing the *effectiveness* and *efficiency* of **cooperation between OLAF and EPPO**, the Committee applies the standard effectiveness criterion (i.e. the extent to which the objective of their cooperation is achieved). That objective is to ensure coordinated, complementary and non-duplicated action in protecting the EU's financial interests through timely exchange of information, mutual support and the effective use of both administrative and criminal investigative tools.
19. The Committee focuses on *effectiveness* rather than *efficiency* because it does not have the quantitative data that would allow it to assess the costs of cooperation. Its impact assessment has the same focus for the same reason.
20. As for the **content** of the Opinion, the present analysis draws on formal opinions and recommendations previously formulated by the Committee, which are now presented in the context of a more comprehensive evaluation exercise. In addition, the Committee is taking this opportunity to state views and proposals that have not yet been formally presented and have only so far been expressed either in technical exchanges with OLAF or in internal discussions within the Committee.
21. The previously conducted monitoring on which the Committee bases its assessment provides a robust basis for a comprehensive and well-founded judgment. The Committee would nonetheless like to draw attention to the following three constraints on its evaluation. *First*, the Committee's assessment is limited by its mandate and does not cover every aspect of the Regulation. *Second*, for all matters where assessment is not based on direct evidence, the Committee relies on secondary information provided by OLAF. *Third*, it is inherently difficult to isolate the Regulation's impact on OLAF's performance and on the effectiveness of the EU's AFA from other influencing factors (e.g. cooperation modalities between stakeholders, national follow-up and resource conditions).
22. In line with international evaluation and oversight standards, the Committee's assessment will involve looking at the current formulation of the relevant provisions as well as

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<sup>19</sup> The extent to which the costs are proportional to the results.

suggesting (where improvements may be warranted) changes that would ultimately favour the future application and impact of the OLAF Regulation. These observations do not constitute recommendations, but they do constitute the Committee's clear and informed view of how the Regulation functions in practice, its current impact and the areas that may benefit from refinement.

23. As for its **structure**, the Opinion is divided into two main parts. *First*, it recalls and contextualises the key amendments to Regulation No 883/2013 that were made in 2016 and 2020 (Chapter 2). *Second*, it identifies weaknesses and shortcomings in the amended OLAF Regulation (considering both the recently amended and the non-amended provisions) and matches each with concrete suggestions on how to improve the specific provisions concerned (Chapter 3). Chapters 2 and 3 are followed by a section setting out conclusions.

## CHAPTER 2: THE LATEST KEY AMENDMENTS TO REGULATION NO 883/2013

24. OLAF was established by Commission Decision 1999/352/EC of 28 April 1999<sup>20</sup>. It has since operated within an evolving legal framework that reflects the EU's determination to safeguard its financial interests and strengthen the integrity of its administrative system. Its initial mandate was set out in that Commission Decision and in Regulation (EC) No 1073/1999<sup>21</sup>. It was later consolidated and modernised through Regulation (EU, Euratom) 883/2013<sup>22</sup>, which provided a clearer and more coherent statutory basis for OLAF's investigative activities.
25. This framework was further reinforced by (i) **Regulation 2016/2030**<sup>23</sup>, which enhanced the independence and functioning of the Supervisory Committee by entrusting its secretariat to the Commission; and by (ii) **Regulation 2020/2223**<sup>24</sup>, which aligned OLAF's operations with the EPPO's and introduced important procedural and operational improvements.
26. This chapter will therefore focus on these two amendments in 2016 and 2020, which marked a significant step in the evolution of OLAF's mandate.

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<sup>20</sup> Commission Decision 1999/352/EC, ECSC, Euratom, of 28 April 1999 establishing the European Anti-fraud Office (OLAF), OJ L 136, 31.5.1999 p. 20. This decision is still in force and is available at: [Decision - 1999/352 - EN - EUR-Lex](#).

<sup>21</sup> Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 136, 31.5.1999, p. 1. This regulation has been repealed. It is available at: [Regulation - 1073/1999 - EN - EUR-Lex](#).

<sup>22</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, available at: [Regulation - 883/2013 - EN - EUR-Lex](#).

<sup>23</sup> Regulation (EU, Euratom) 2016/2030 of the European Parliament and of the Council of 26 October 2016 amending Regulation (EU, Euratom) No 883/2013, as regards the secretariat of the Supervisory Committee of the European Anti-Fraud Office (OLAF), available at: [Regulation - 2016/2030 - EN - EUR-Lex](#).

<sup>24</sup> See footnote nr. 15.

## *2.1 The Secretariat and the Supervisory Committee*

27. Regulation 2016/2030 made the first significant amendments to Regulation No 883/2013. They concern the **Secretariat of the Supervisory Committee of OLAF**.
28. With a view to reinforcing the independent functioning of the Committee's Secretariat, the amendments introduced a new requirement that the Secretariat should be provided directly by the Commission and no longer by OLAF (Article 15(8) of the amended OLAF Regulation). Moreover, the budgetary appropriations for the Secretariat were transferred from OLAF's budget line and establishment plan to those of the Commission (Article 18). In line with this institutional reallocation, responsibility for managing the budgetary appropriations for the Supervisory Committee was transferred from OLAF to the Commission's Paymaster Office (PMO).
29. These amendments were in line with the views repeatedly expressed by the Committee in the years preceding their adoption, which sought to avoid any appearance that the members of the Committee might not be able to fulfil their mandate with full independence<sup>25</sup>. They also help to prevent possible conflicts of interest and to strengthen the Committee's legal and organisational independence, particularly regarding the management of its budget and Secretariat.
30. The Committee therefore considers that the 2016 amendments were an essential step towards ensuring its independent and effective functioning. These amendments have reinforced the institutional independence of the Secretariat's staff and in turn strengthened the Committee's own independence. They enhance both the internal coherence of the Regulation and the overall effectiveness of the Committee's mandate.
31. The Committee nevertheless considers that the specific arrangement put in place (namely attaching the Secretariat to the Commission's Office for the Payment of Individual Entitlements) raises questions of institutional relevance and functional coherence. The Secretariat's tasks do not align with the PMO's core mission, so the Committee reiterates the point that a more appropriate and functionally consistent organisational location for the Secretariat should be identified. In this regard, given the nature of the Secretariat's functions, a more suitable placement could be for example within the Commission's Legal Service or the Secretariat-General.
32. The 2020 amendment to the OLAF Regulation established the Controller of Procedural Guarantees. The Secretariat therefore now provides the necessary legal and administrative support to both the Committee and the Controller. With the necessary allocation of human resources, the Secretariat has proven effective in serving both entities while also ensuring the coherent application of its dual function as envisaged by the amended Regulation. However, the Committee recalls that this dual role may give rise to operational challenges if the Secretariat is not fully and appropriately staffed<sup>26</sup>.

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<sup>25</sup> Starting with the SC Annual Activity Report 2013, available at: [Opinions and reports - Supervisory Committee of OLAF - European Union](#).

<sup>26</sup> In 2022 and 2023, the Secretariat was seriously understaffed. This situation was all the more serious because it coincided with the establishment of the Controller in May 2022. However, these issues were resolved in 2024 and 2025.

33. Regarding the **Supervisory Committee** itself, Regulation 2020/2223 introduced a key amendment to end the longstanding discussions concerning the Committee's right to access information necessary for the exercise of its monitoring functions. Subparagraph 6 of Article 15(1) of the amended OLAF Regulation expressly provides that the Committee '*shall be granted access to all information and documents it considers necessary for the performance of its tasks [...]*'. This amendment was subsequently put into practice through the signature, in October 2021, of the new working arrangements between OLAF and the Supervisory Committee (the WA), which further clarified the practical implementation of the new provision. Article 12 of the WA explicitly guarantees the Committee's direct access to the OCM, thereby ensuring the Regulation's coherent and effective application.
34. The Committee's ability to determine autonomously what information it requires in order to carry out its monitoring functions is a long-awaited and very useful improvement. This development has significantly enhanced the overall effectiveness of the Committee's oversight role and has strengthened the internal coherence of the regulatory framework, ensuring that the Committee can fulfil its mandate in a manner consistent with the objectives and spirit of the amended Regulation.
35. The Committee and, to a lesser extent, its Secretariat, are covered in section 3.4 (*The Supervisory Committee's functioning*), which contains some suggestions for the further improvement and internal coherence of the amended OLAF Regulation.

## ***2.2 Coordination of OLAF-EPPO and OLAF's enhanced investigative powers***

36. 2017 was a pivotal moment in the evolution of the EU's anti-fraud framework. *First*, the Directive on the fight against fraud to the Union's financial interest by means of criminal law (the PIF Directive) was adopted. *Second*, the adoption of the Regulation establishing the European Public Prosecutor's Office (the **EPPO Regulation**) created the EU's first supranational prosecutorial authority.
37. OLAF had previously been the only EU-level body competent to investigate offences affecting the EU's financial interests. However, OLAF's mandate is limited to conducting administrative investigations and issuing recommendations to competent national and EU authorities. This institutional configuration generated several difficulties: (i) OLAF's investigative powers were sometimes insufficient to gather evidence of a criminal offence; and (ii) the follow-up to its judicial recommendations was often constrained by the limited admissibility of OLAF's final reports as evidence in criminal proceedings before national courts.
38. The EPPO's establishment was a major advance in the protection of the EU financial interests and, more broadly, in the process of EU integration. The EU is now equipped with a prosecutorial body with the authority to investigate, prosecute and bring to justice

criminal offences affecting the EU's financial interests (such as misuse of EU funds or cross-border VAT fraud) in the participating Member States<sup>27</sup>.

39. The creation of the EPPO necessarily required adjustments to OLAF's mandate and the introduction of clear provisions governing the coordination between the two offices. Ensuring that OLAF's legal framework was fully aligned with the EPPO's operational launch was therefore the main driver for amending the OLAF Regulation<sup>28</sup>. Consequently, the 2020 amendments established detailed rules regulating the interaction between OLAF and the EPPO, thereby ensuring coherent and effective cooperation between administrative and criminal investigations in the protection of the EU's financial interests.
40. The 2020 amendments introduced provisions clarifying OLAF's newly defined mandate vis-à-vis the EPPO. Like all EU institutions, bodies, offices or agencies (IBOAs), OLAF has a duty to report without undue delay to the EPPO any criminal conduct in respect of which EPPO could exercise its competence (Article 12c).
41. In addition to this reporting duty, OLAF may provide support to EPPO investigations (Article 12e) and is also empowered to conduct complementary investigations (Article 12f). In particular, the protection of the EU's financial interests may require OLAF to carry out a complementary administrative investigation in parallel with, or prior to, the conclusion of criminal proceedings initiated by the EPPO. Such complementary investigations aim to ascertain whether precautionary measures are necessary or whether financial, disciplinary or administrative action should be taken. They are particularly relevant when (i) recovering amounts due to the EU budget that are subject to specific time-barring rules, if the amounts at risk are very large; and (ii) preventing further expenditure through immediate administrative intervention<sup>29</sup>.
42. To ensure coordination and *non-duplication of investigations*, the 2020 amendments also introduced specific provisions addressing overlapping investigations. Article 12d enshrines OLAF's obligation to discontinue any ongoing investigation or refrain from initiating a new one if the EPPO has opened an investigation concerning the same facts, thereby ensuring both effectiveness and coherence in the protection of the EU's financial interests.
43. The 2020 amendments devoted substantial attention to defining and regulating the relationship between OLAF and the EPPO, but the reform was not limited to issues of coordination and complementarity. The legislator also identified the need to reinforce OLAF's capacity to carry out its administrative mandate independently and effectively within the evolving institutional landscape. Accordingly, alongside the provisions governing cooperation with the EPPO, the amendments introduced a series of measures

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<sup>27</sup> The EPPO was established through enhanced cooperation under Article 86(1) of the TFEU, so only those Member States that have chosen to participate are bound by its jurisdiction. OLAF operates in an administrative capacity throughout the EU and even beyond that, but the EPPO exercises prosecutorial powers solely within the participating Member States.

<sup>28</sup> See the explanatory memorandum accompanying the proposal for a regulation 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)338 final of 23 May 2018, available at: [EUR-Lex - 52018PC0338 - EN - EUR-Lex](#).

<sup>29</sup> Recital 9 of Regulation 2020/2223 and Article 12f of the amended OLAF Regulation.

to strengthen the effectiveness, consistency and operational relevance of OLAF's own investigations. Improving OLAF's ability to conduct investigations effectively and coherently across the Member States emerged as a central point. These measures constitute the second major pillar of the 2020 reform and are outlined below.

44. The effectiveness of OLAF investigations is linked to various provisions in the Regulation that cover the entire investigative cycle – from selection and opening of cases to the procedure and tools used during inquiries, and ultimately to the output of OLAF's investigations and follow-up by competent authorities. Therefore, and in order to enhance effectiveness, the legislator has revised several key provisions of the OLAF Regulation. These provisions are analysed throughout this chapter
45. For the purposes of this section, it is important to recall that a central aspect of 'enhancing the effectiveness of OLAF's investigative function' concerns the strengthening of OLAF's operational tools and powers, particularly during on-the-spot checks and inspections. Under its original pre-amendment framework, OLAF was dependent on its national counterparts (administrative or judicial bodies) and their powers under national law to access bank data<sup>30</sup>. This reliance often led to lengthy exchanges, divergences in cooperation among Member States and a clear risk of undermining the effectiveness of investigations. The 2020 amendments addressed these challenges by, inter alia, broadening OLAF's investigative powers and allowing OLAF to access bank account information directly as well as to access privately owned devices when they had been used for professional purposes<sup>31</sup>.
46. The Committee considers the strengthening of OLAF's investigative powers (as outlined above) to be both proportionate and necessary considering the overall mandate entrusted to OLAF. These reforms have, in the Committee's assessment, substantially enhanced the effectiveness of OLAF's investigative activities. The strengthening of OLAF investigative powers must nevertheless be accompanied by appropriate procedural guarantees and safeguards in order to ensure a balanced and legally coherent framework. These aspects are examined in detail below (see '3.2.2 Procedural guarantees').
47. Similarly, the coordination of mandates and operational interplay between OLAF and the EPPO is assessed in a forward-looking manner in Chapter 3 (see '3.2.3 OLAF-EPPO').

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<sup>30</sup> Commission staff working document, Evaluation of the application of 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, SWD(2017)332 final of 2 October 2017, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=SWD:2017:332:FIN&from=EN>.

<sup>31</sup> Recitals 25, 28 and 31 of Regulation 2020/2223 and Articles 3(5) and 4(2) of the amended OLAF Regulation.

### 2.3 *Progressive alignment of the rules for internal and external investigations*

48. When OLAF was established in 1999<sup>32</sup>, the rules governing its investigations were relatively general in nature and a clear distinction existed between the rules for internal and external investigations. However, subsequent amendments to the original legal framework have gradually introduced more detailed provisions and progressively aligned the rules for both types of investigations. This process culminated with the 2020 amendments.
49. This evolution first concerned **rules on procedural guarantees** afforded to persons concerned. In Regulation No 1073/1999, OLAF was simply required to conduct its investigations *‘with full respect for human rights and fundamental freedoms’*<sup>33</sup>. However, the limited reference to procedural guarantees in the Regulation only concerned persons involved in internal investigations<sup>34</sup> and the framework for external investigations was therefore left relatively underdeveloped.
50. Regulation No 883/2013 introduced more specific rules. Recital 23 of the amended OLAF Regulation states that *‘the procedural guarantees and fundamental rights of persons concerned and of witnesses should be respected without discrimination at all times and at all stages of both external and internal investigations’*. In addition, Article 9 of the Regulation codified and clarified procedural guarantees afforded to persons concerned in both internal and external investigations.
51. The trend of consolidation and alignment in the provision of procedural guarantees for all persons concerned, continued and culminated with the 2020 amendments, which established the position of Controller of Procedural Guarantees<sup>35</sup>.
52. The progressive alignment of the rules governing internal and external investigations is also reflected in some **provisions detailing the rules governing OLAF investigations** (as explained below).
53. Notably, the 2020 amendments clarified the legal regime applicable to **on-the-spot checks and inspections**. Where the economic operator concerned submits to an on-the-spot check and inspection, the procedure is **governed by EU law**<sup>36</sup>. National law only applies when the economic operator objects to an on-the-spot check and inspection<sup>37</sup>. This clarification makes OLAF’s investigative function consistent across the different Member States and further contributes to the harmonisation of the legal framework applicable to internal and external investigations. In practical terms, the

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<sup>32</sup> See Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (1999/352/EC, ECSC, Euratom); Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), available at: [Decision - 1999/352 - EN - EUR-Lex](#).

<sup>33</sup> Recital 10 of Regulation No 1073/1999.

<sup>34</sup> Article 4 of Regulation No 1073/1999 on ‘Internal investigations’.

<sup>35</sup> See section ‘2.5 A new Controller of Procedural Guarantees’ below.

<sup>36</sup> Recital 21 of Regulation 2020/2223, and Article 3(2) and 3(4) of the amended OLAF Regulation.

<sup>37</sup> The newly introduced provisions reflect the ruling in Judgment of the General Court of 3 May 2018, *Sigma Orionis SA v Commission*, T-48/16, ECLI:EU:T:2018:245, paragraphs 80 to 81.

amended provision establishes that neither inspections of EU premises nor on-the-spot checks of economic operators require a prior judicial warrant, provided that the inspected entity does not formally object to the inspection.

54. The introduction of the **duty to cooperate on the part of economic operators**<sup>38</sup> further enhanced the effectiveness of OLAF investigations by ensuring that both internal and external investigations are conducted consistently and coherently in the different Member States.
55. The Committee welcomes these amendments and considers them to be fully in line with the overarching objective of strengthening the effectiveness and operational relevance of OLAF investigations. However, the Committee also observes that there are still some disparities in the procedural treatment of internal and external investigations, indicating room for further improvement. With a view to possible future reforms, additional measures to improve the fairness and coherence of OLAF's investigative procedures are discussed in Chapter 3 (see '3.2.2. Procedural guarantees').

## 2.4 *A strengthened follow-up phase*

56. The rate of financial recovery of irregularly used resources has traditionally been considered unsatisfactory<sup>39</sup>. This situation has been impacted by several factors, including national-level inertia in protecting the EU's financial interests, the lack of a common legal framework and the lack of equivalence across the different Member States (particularly in criminal law).
57. Regulation No 883/2013 provided for the 'assimilation rule' of OLAF's findings into national proceedings. Under this rule, OLAF's final reports are admitted in national proceedings in the same way and under the same conditions as the administrative reports drawn up by national authorities. In practice, this requires OLAF to take national laws into account when drafting its reports and recommendations. However, this approach created practical challenges, especially in transnational investigations where differences in national legal systems can render OLAF's evidence inadmissible. Consequently, these complications have often led to insufficient follow-up on OLAF's findings.
58. The 2020 amendments were intended to improve the follow-up rate of OLAF's recommendations (as explained below in paragraphs 58 to 60).
59. A first key change to improve the overall enforcement gap was to raise the evidential value of OLAF's final reports in national administrative and judicial proceedings by introducing the '**principle of admissibility**'. Pursuant to this principle, under the amended OLAF Regulation OLAF's final reports now constitute admissible evidence in non-criminal judicial proceedings before national courts, as well as in administrative proceedings conducted in the Member States, in accordance with the amended Article 11(2). This principle ensures that OLAF's findings carry formal weight and can be directly considered by authorities, thereby reducing obstacles previously caused by differences in national legal systems. Furthermore, the principle of admissibility also

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<sup>38</sup> Recitals 24 and 27 of Regulation 2020/2223 and Article 3(3) of the amended OLAF Regulation.

<sup>39</sup> See European Court of Auditors, *Special Report 1/2019: Fighting fraud in EU spending: action needed*, p. 40, available at: [Special Report – Fighting fraud in EU spending: action needed](#).

applies at EU level, in both judicial and administrative proceedings, further reinforcing the uniform recognition of OLAF's reports across the EU.

60. The enhancements introduced by the principle of admissibility were further reinforced through substantial amendments of Article 11 (*Investigation report and action to be taken following investigations*) which clarified and strengthened the follow-up procedure. In its original form, Article 11 of Regulation No 883/2013 merely stated that final reports '*shall be sent*' to the competent national authority and that the latter, where requested, shall provide information on any action taken. The current wording of Article 11 (as amended by Regulation 2020/2223) now also states that competent national authorities '**shall take such action as the result of the external investigation warrant and shall report thereon to the Office within a time-limit [...]**'. The amendment of this provision has clearly strengthened the follow-up phase.
61. The principle of admissibility secured the formal recognition of OLAF's findings in judicial and administrative processes. However, the amended Article 11 goes further by requiring competent authorities to take concrete action on the basis of these findings, thereby reinforcing OLAF's overall investigative framework.
62. The Committee considers the introduction of the principle of admissibility of OLAF's final reports to be a significant step forward, particularly in addressing the historic lack of follow-up on judicial recommendations (a shortcoming identified by the Commission's evaluation of the OLAF Regulation as a major constraint on the relevance of OLAF's investigations in Member States<sup>40</sup>). These amendments enhance both the formal recognition and the enforceability of OLAF's reports, thus improving procedural efficiency and consistency of the follow-up mechanisms and strengthening the overall impact and relevance of OLAF's work at national and EU levels.
63. However, following the establishment of the EPPO, judicial recommendations are now issued less frequently<sup>41</sup>. Attention in the follow-up of OLAF's recommendations should therefore be given increasingly to financial recommendations, which are the largest category of recommendations issued by OLAF and which most clearly play a direct role in safeguarding the EU financial interests<sup>42</sup>.
64. This issue is examined in greater detail in Chapter 3, where a closer look at the provisions' application and impact is offered and proposals are made to improve both the

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<sup>40</sup> Commission staff working document, Evaluation of the application of 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, SWD(2017)332 final of 2 October 2017, p. 11, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=SWD:2017:332:FIN&from=EN>.

<sup>41</sup> OLAF continues to issue judicial recommendations to those EU Member States that have not joined the EPPO (i.e. Denmark, Ireland and Hungary) and to monitor the implementation of all judicial recommendations issued prior to the commencement of the EPPO and in which final decisions have not yet been made by the Member States concerned.

<sup>42</sup> In 2024, OLAF issued 188 financial recommendations, 60 administrative recommendations, 30 judicial recommendations and 23 disciplinary recommendations (source: OLAF Annual Report 2024, available at: [Annual OLAF reports - European Anti-Fraud Office - European Commission](#)).

effectiveness and relevance of the current legal framework (see ‘3.3 Value of OLAF recommendations and follow-up’).

## 2.5 *Internal and external controls: legality check and the new Controller of Procedural Guarantees*

65. As recalled above under section 2.3 *Progressive alignment of the rules for internal and external investigations*, Regulation No 883/2013 introduced a set of provisions to establish minimum standards for the protection of procedural guarantees and the fundamental rights of persons concerned.
66. Regulation No 883/213 introduced an obligation for OLAF to put in place an internal advisory and control system that includes a legality check (particularly on the closing phase of the investigations). This check aims to ensure that the entire investigation complies with procedural guarantees and fundamental rights and respects the principle of legality<sup>43</sup>.
67. The 2020 amendments complemented the provision by providing that ***‘the legality check shall be carried out by Office staff who are experts in law and investigative procedures. Their opinion shall be annexed to the final investigation report’***<sup>44</sup>.
68. Following this amendment, DG OLAF created a dedicated unit that reports directly to the directorate-general tasked with carrying out the legality check (the Review Team)<sup>45</sup>. The Committee welcomes this internal reorganisation of OLAF as a necessary step towards complying with the amended OLAF Regulation. The legislative framework could nevertheless be further amended to restore the internal coherence of the relevant provisions (see ‘3.2.3 The Review Team’s opinion on closure of OLAF’s investigations’).
69. Concerning **external control and oversight mechanisms**, the rather weak enforceability of the safeguards introduced into the OLAF Regulation prompted the legislator to propose amendments to strengthen the impact of such safeguards.
70. Indeed, until the 2020 amendments, the remedies available to people being investigated by OLAF and dissatisfied with OLAF’s investigative conduct were limited. *First*, persons concerned could address their complaints directly to OLAF, but this avenue did not provide an independent assessment of their query. *Second*, they could file a complaint with the European Ombudsman, who is competent to decide on instances of maladministration by any EU institution, body or agency. This mechanism, however, is not specifically designed to resolve a specific issue arising in an OLAF investigation and concerning procedural guarantees and fundamental rights. *Third*, they could pursue judicial action by triggering the non-contractual liability of the EU, but this remedy is available only under very strict conditions. Consequently, prior to the 2020 reforms, the protection of procedural guarantees in OLAF investigations was constrained by limited and largely indirect avenues for redress.

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<sup>43</sup> Article 17(7) of the OLAF Regulation.

<sup>44</sup> Article 17(7) of the amended OLAF Regulation.

<sup>45</sup> The legality check had previously been carried out by Unit 01 ‘Selection and Review’.

71. The 2020 amendments addressed this shortcoming by establishing **a specific complaints mechanism that provides every person concerned with the right to lodge a complaint with the newly established Controller of Procedural Guarantees**<sup>46</sup>. The Controller is an independent body, which is tasked with assessing complaints of alleged infringements of procedural guarantees and fundamental rights during OLAF investigations, with particular reference to the provisions set out in Article 9 of the amended OLAF Regulation.
72. Complaints are assessed through a structured adversarial procedure, which ensures that both OLAF and the person concerned can present their views. This procedure may result in an invitation to resolve the issue and can include non-binding recommendations to OLAF aimed at addressing the complaint. By introducing this independent mechanism, the 2020 amendments significantly strengthened the procedural safeguards available to individuals and entities under investigation, enhancing both the accountability and the credibility of OLAF's investigative processes.
73. The limited scope of the Controller's review nevertheless highlights a broader legal reality: administrative mechanisms can address certain procedural issues, but the ultimate assessment of the legality of OLAF's investigative acts falls within the judicial domain. OLAF's reports and recommendations do not by themselves produce legally binding effects, therefore they are treated as preparatory acts under EU law.
74. The Court of Justice of the European Union ('CJEU') has consistently held that, under Article 263 TFEU, only acts that have binding legal effects and that bring a distinct change in the legal position of the applicant can be challenged before the EU courts for annulment<sup>47</sup>. According to settled case law, OLAF's investigations have the value of preparatory acts. Accordingly, OLAF's findings can only be subject to review once the competent authority has adopted a final decision<sup>48</sup>.
75. This shows that, while the creation of the Controller was a significant step forward in protecting fundamental rights, it nevertheless remains just an administrative remedy that provides an *ex post* non-binding review under strict admissibility requirements. As such, it cannot replace effective judicial remedies for persons concerned who claim that their procedural guarantees and fundamental rights have been breached during an OLAF investigation.
76. However, the absence of legally binding effect of OLAF's final reports and recommendations does not diminish the potential intrusiveness of OLAF's investigations or the risk of fundamental rights' infringements. In this regard, some suggestions for further improvements to the current protection of procedural guarantees are discussed in detail below ('3.2.2. Procedural guarantees' and '3.4.2 The Supervisory Committee and the Controller').

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<sup>46</sup> See Articles 9a and 9b of the amended OLAF Regulation.

<sup>47</sup> Judgment of the Court of Justice of 11 November 1981, *IBM v Commission*, C-60/81, ECLI:EU:C:1981:264, paragraph 9.

<sup>48</sup> Order of the Court of Justice of 8 April 2003, *Gómez-Reino v Commission*, C-471/02, ECLI:EU:C:2003:210, paragraphs 61-65; judgment of the Court of first instance of 4 October 2006, *Tillack v Commission*, T-193/04, ECLI:EU:T:2006:292, paragraphs 69-70.

## CHAPTER 3: THE COMMITTEE'S VIEWS ON THE AMENDED REGULATION AND SUGGESTIONS FOR IMPROVEMENT

77. Regulation 2020/2223 introduced a set of targeted amendments to Regulation No 883/2013 that were based on the clearest findings emerging from the latest Commission evaluation<sup>49</sup>. These changes primarily focused on clarifying the respective roles of OLAF and the EPPO before the latter became operational, and on the need to enhance the effectiveness of OLAF investigations.
78. As discussed in Chapter 2, these amendments undeniably improved Regulation No 883/2013, particularly with regard to shortcomings that affect the effectiveness and procedural efficiency of investigations. Nearly five years after their adoption, it is now possible to assess how these changes have been applied in practice and to evaluate their real impact.
79. The Committee notes that some issues identified in the latest Commission evaluation report of the OLAF Regulation that were left unaddressed<sup>50</sup>. The Committee considers that several of these unresolved matters remain relevant but have not been tackled and therefore deserve full attention in the context of the current evaluation exercise.
80. This chapter therefore examines the remaining areas in the amended OLAF Regulation that should be further improved. **The observations in this chapter concern not only the provisions introduced through the 2016 and 2020 amendments, but also aspects of the Regulation that were left untouched by these amendments** (some of which essentially date back to OLAF's creation in 1999).
81. With a view to strategic foresight, this chapter formulates, insofar as possible, concrete suggestions for improvement<sup>51</sup>. In light of the Committee's monitoring experience, the suggestions set out in this chapter are expected to restore internal and external coherence and clarity. This would benefit both the application and impact of the Regulation,

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<sup>49</sup> See the explanatory memorandum accompanying the proposal for a regulation 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)338 final of 23 May 2018.

<sup>50</sup> See page 2 of the explanatory memorandum of the proposal for a regulation amending Regulation (EU, Euratom) No 883/2013: *'The 2013 changes brought clear improvements, as regards the conduct of investigations, cooperation with partners and the rights of persons concerned. At the same time, the evaluation highlighted shortcomings which impact on the effectiveness and efficiency of investigations. These findings relate to a wide range of areas including OLAF's investigative tools, the enforcement of OLAF powers, uniform conditions in the conduct of internal investigations, the conduct of digital forensic operations, divergences in the follow-up to OLAF recommendations, the duties of cooperation by Member States and Union institutions, bodies, offices and agencies, or the overall coherence of the legal framework.'*

<sup>51</sup> See page 159 of the Better Regulation toolbox, 'Tool #20. Strategic foresight for impact assessments and evaluations': *'Fitness checks and evaluations inform political priority setting, and contribute to strategic planning, as well as to the revision of existing legislation. While evaluations and fitness checks are ex post assessment of existing policies, their goal is **to provide input to future revisions of the policy instrument**, asking: is the intervention still relevant today and will it be relevant tomorrow? Evaluations and fitness checks should look beyond the current relevance and reflect on how the key evolutions, uncertainties and challenges of the future may affect the future relevance, coherence, and effectiveness of the policy area.'*, available at: [Better regulation: guidelines and toolbox](#).

particularly as regards regulatory and cooperation compliance, procedural efficiency and effectiveness.

82. As already shown in Chapter 2, each provision of the amended OLAF Regulation can be read as serving multiple purposes. The suggestions that follow are therefore closely interconnected. For the sake of clarity, they are grouped into four thematic areas. First, the *scope and boundaries* of OLAF investigations are tackled, covering issues typically emerging in the initial phase of investigations. Second, some important aspects characterising the *conduct* of OLAF investigations are treated. Third, observations and suggestions regarding the *value* of OLAF's reports and their *follow-up* are presented. Fourth, this chapter contains remarks and suggestions concerning the functioning of the Supervisory Committee.

### 3.1 *The boundaries of OLAF investigations*

83. The effectiveness of the EU's AFA depends not only on the strength of its institutions but also on the clarity with which their respective roles and responsibilities are defined. As OLAF continues to operate alongside a growing number of actors (particularly the EPPO), questions concerning the precise limits of its investigative powers have acquired renewed significance. This section examines these limits ('boundaries') with a view to assessing whether the current legal framework enables OLAF to fulfil its mandate effectively, independently and within a system where competences must be complementary and not competing. This section therefore identifies areas where further clarification, adjustment or reinforcement may be warranted in order to ensure the continuing effectiveness, procedural efficiency and relevance of OLAF's investigative function.
84. The notion of 'boundaries' of OLAF investigations encompasses several interrelated elements that frame OLAF's work and shape its contribution to the EU's AFA.
85. First, from an **institutional perspective**, defining the **boundaries of OLAF's mandate** is fundamental. A clearly articulated mandate facilitates OLAF's investigative function and prevents uncertainties regarding its competence vis-à-vis the other anti-fraud actors and IBOAs.
86. Second, from an **operational point of view**, another aspect that defines the boundaries of OLAF investigations is **OLAF's independence**. OLAF's operational independence remains a cornerstone of its ability to conduct impartial and credible investigations. The credibility of the EU's anti-fraud efforts rests on OLAF's continuing operational independence from external influence and institutional pressures. Only by preserving its institutional autonomy can OLAF act without fear or favour, thus ensuring that investigations serve one purpose alone: the protection of the EU's financial integrity.
87. Third and last, from the perspective of **procedural guarantees**, **boundaries play a crucial role in structuring individual investigations**. Clear procedural rules at every stage (from the opening of an investigation to the conduct of key investigative steps) ensure legal certainty and protect the rights of persons concerned.

88. This section will therefore include comments on (i) the delineation of OLAF's mandate; (ii) the mechanisms to protect OLAF's independence; and (iii) the framing of OLAF's investigations.

### 3.1.1 OLAF's mandate

89. The Committee has observed in its recent opinions<sup>52</sup> that the precise scope of OLAF's mandate is not consistently understood across all the EU's IBOAs. Divergent interpretations persist regarding OLAF's competence to investigate matters that do not fall within the strict category of fraud, corruption or other illegal activities affecting the EU's financial interests ('non-PIF matters').
90. These recurring discrepancies create legal and operational uncertainty regarding the extension of OLAF's mandate; undermine the effectiveness and consistency of OLAF's investigative function; and risk leading to inconsistent cooperation practices among the various IBOAs. The lack of a shared understanding of OLAF's remit therefore remains a structural issue that calls for action.
91. The Committee has already provided detailed clarification on the scope of OLAF's mandate and extensively substantiated its position in a recent opinion<sup>53</sup>. The Committee's opinion is that the current legal framework (as interpreted by the relevant jurisprudence) empowers OLAF to investigate not only PIF-related matters but also matters that go beyond the protection of the EU's financial interests and constitute (under Article 1(4) of the OLAF Regulation) '*a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions*'. This interpretation draws directly on the case law of the CJEU, most notably the *Dalli* case<sup>54</sup>.
92. In the *Dalli* case, the applicant claimed that the wording of Article 1(4) of the OLAF Regulation implied that an OLAF internal investigation into serious misconduct by an EU staff member could only be opened when this was necessary in order to protect the EU's financial interests. The Court rejected this interpretation, relying on Article 2(1) of Commission Decision 1999/352/EC (which established OLAF, is still in force and contains wording analogous to Article 1(4) of the OLAF Regulation). Article 2(1) of the Decision mentions internal investigations in both PIF and non-PIF matters but without using the words 'to that end', which are present in Article 1(4) of the amended OLAF Regulation. According to the Court, **such a 'slight difference in terminology'** between Article 1(4) of the OLAF Regulation and Article 2(1) of Commission Decision 1999/352/EC, **cannot call into question OLAF's competence to investigate non-PIF matters**. The Court concluded that '*the absence of an impact on the financial interests of the Union does not affect the possibility for OLAF to open an investigation*'<sup>55</sup>.

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<sup>52</sup> See SC Opinion No 4/2024, *OLAF's power to conduct internal investigations: the case of Members of EU institutions*; and SC Opinion No 1/2025, *OLAF's internal investigations of harassment within the EU institutions, bodies, offices and agencies (IBOAs)*.

<sup>53</sup> SC Opinion No 4/2024, *OLAF's power to conduct internal investigations: the case of Members of EU institutions*.

<sup>54</sup> Judgment of the Court of Justice of 25 February 2021, *Dalli v Commission*, C-615/19 P, ECLI:EU:C:2021:133.

<sup>55</sup> See paragraphs 36, 37 and 39 of Opinion No 4/2024.

93. The CJEU in *Dalli* made it unequivocally clear that OLAF's responsibility extends beyond the protection of the EU's financial interests to include all activities relating to safeguarding the EU's interests against any irregular conduct that is liable to result in administrative or criminal proceedings. The Committee considers that the Court's reasoning also confirms that the legal basis for this broader mandate is firmly anchored in the OLAF Regulation.
  
94. The IBOAs have nevertheless continued to interpret the wording of Article 1 of the amended OLAF Regulation differently, even after the *Dalli* ruling. As the Committee has consistently noted in its opinions, these differing views on the scope of OLAF's competence in non-PIF matters affect cooperation practices, delay investigative steps and weaken the uniform application of the rules governing the protection of the EU's interests. This may ultimately undermine the effectiveness, impact and consistency of OLAF's actions.
  
95. The Committee therefore considers that the wording of Article 1 could be clarified so as to remove any residual doubts among the IBOAs, Member States and all relevant stakeholders regarding the extension of OLAF's mandate. In line with the recommendations already expressed in its Opinion No 4/2024, the Committee recommends that a clearer and more coherent wording should be adopted, reflecting the *Dalli* ruling. For instance, a wording analogous to that of Article 2 of Commission Decision 1999/352/EC could eliminate ambiguities and enhance the clarity of Article 1 of the amended OLAF Regulation<sup>56</sup>.
  
96. The Committee further notes that the legislator has in other instances updated the legal framework to reflect the Court's jurisprudence, thereby aligning the applicable norms with established case law and ensuring they remain adapted to current needs. In this regard, the jurisprudence of the CJEU has often played a decisive role in clarifying the meaning and scope of provisions concerning OLAF investigations. This judicial guidance is particularly valuable given the nature of OLAF and the composite enforcement system underpinning the EU's anti-fraud efforts as provided for in Article 325 TFEU. The legislator has in the past incorporated elements of the EU courts' rulings in the amended OLAF Regulation (this was the case in, for instance, the *Sigma Orionis* ruling<sup>57</sup> and, indirectly, the *Taricco* ruling<sup>58</sup>).
  
97. The Committee also sees potential value in examining the **possibility of further extending OLAF's mandate to additional areas**. For example, the new Waste Shipment Regulation already contains provisions envisaging OLAF's involvement in

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<sup>56</sup> Article 2 (Tasks of the Office): '*The Office shall be responsible for carrying out internal administrative investigations intended: (a) to combat fraud, corruption and any other illegal activity adversely affecting the Community's financial interests, (b) to investigate serious facts linked to the performance of professional activities which may constitute a breach of obligations by officials and servants of the Communities likely to lead to disciplinary and, in appropriate cases, criminal proceedings or an analogous breach of obligations by Members of the institutions and bodies, heads of the bodies or members of staff of the institutions and bodies not subject to the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities.*'

<sup>57</sup> Judgment T-48/16 cited above. Article 3(2) and 3(6) of the amended OLAF Regulation.

<sup>58</sup> Judgment of the Court of Justice of 8 September 2015, *Taricco and others*, C-105/14, ECLI:EU:C:2015:555, where the Court clarified that VAT fraud falls within the scope of Article 325 TFEU and, as a result, affects EU's financial interest. See Articles 3(1) and 12(5) of the amended OLAF Regulation, which respectively clarify the point that OLAF can carry out on-the-spot checks and inspections in all areas of its mandate and that it can exchange information with the Eurofisc network.

complex cross-border cases of illicit waste shipments<sup>59</sup>. This approach is likely to be mirrored in other legislative instruments, reflecting growing recognition of OLAF's specialised expertise and its added value in tackling sophisticated, multijurisdictional cases. Beyond environmental matters, OLAF's investigative capabilities could provide significant support in other policy areas characterised by a cross-border dimension (e.g. food fraud, environmental crime or violations of EU restrictive measures). Expanding OLAF's remit in such areas would enhance the EU's capacity to respond to emerging challenges while also ensuring consistency and coherence across different enforcement frameworks.

98. To accommodate such an extension of OLAF's mandate and in the interest of an efficient use of resources, the reintroduction in the Regulation of a structured system for prioritising OLAF's investigations could be envisaged. Such a mechanism would allow OLAF to focus its efforts on cases where it has the greatest added value, balancing the demands of expanding competences with operational capacity. In this regard, valuable lessons could be drawn from the investigation policy priorities that were previously foreseen by the Regulation but abolished by the 2020 amendments. Prioritisation questions would be particularly critical when determining whether to open a case or whether to continue an ongoing investigation that had already lasted more than 24 months (on this last point, see '3.2.1 *The duration of investigations*'). This mechanism would ensure that resources are allocated efficiently and that OLAF's work remains effective and strategically relevant.

### 3.1.2 OLAF's operational independence

99. The fundamental requirement for an effective and credible investigative OLAF is for it to be independent. Article 15(1) of the amended OLAF Regulation underscores this principle as the primary objective of the Supervisory Committee, mandating it to *'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'*.
100. OLAF's independence is primarily embodied in **the post of the Director-General of OLAF** ('DG OLAF'). Article 17 of the amended OLAF Regulation sets out a unique appointment procedure for this post which (unlike the selection of any other director-general of the Commission) involves the European Parliament and the Council. This unique procedure underscores the importance of guaranteeing the autonomy of OLAF's leadership and, by extension, safeguarding OLAF's operational independence and credibility when conducting its investigations.
101. Article 17(6) currently allows certain functions of DG OLAF to be delegated *'to one or more members of the staff of the Office'*. The provision sets out the delegation framework and explicitly references the stages of investigation where delegation may apply – namely the opening of investigations (Article 5), the conduct of investigations (Article 7(2)), the completion of the investigation (Article 11(7)) and the transmission of information (Article 12(2)). However, the OLAF Regulation remains vague on the implementing

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<sup>59</sup> See recital 63 of Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006, available at: [Regulation - EU - 2024/1157 - EN - EUR-Lex](#).

procedures for delegation, including the specific criteria for selecting the staff members to whom powers may be delegated, their roles, seniority and management level. Moreover, the Regulation does not clearly define mechanisms to safeguard the independence of DG OLAF's decisions when powers are delegated. These gaps may raise concerns about accountability, transparency and the preservation of OLAF's operational independence, thus underscoring the urgent need for clearer procedural safeguards and guidance.

102. The Committee already raised similar concerns regarding the delegation of DG OLAF powers and the safeguarding of their independence in a previous opinion on the guidelines on investigative procedures (GIPs)<sup>60</sup>. The Committee nevertheless considers that **it is also appropriate and proportionate to address this important point at a legislative level, setting limits and conditions to the delegation of powers in line with administrative law principles.**
103. In the same vein, it would also be advisable for the Regulation to provide greater clarity on the position and responsibilities of the **Deputy Director-General**. In particular, the Regulation could allow the Deputy Director-General to assume responsibility for certain acts of DG OLAF under a defined framework. However, to safeguard OLAF's independence, any such delegation should be accompanied by a clear and structured appointment procedure, with a level of rigour comparable with that applied to DG OLAF. In the absence of such procedural safeguards, there could be a risk that the independence of actions taken by the Deputy Director-General might be perceived as less robust. This could in turn affect OLAF's operational autonomy and confidence in its investigative decisions. **Establishing a clear and structured framework for the appointment and responsibilities of the Deputy Director-General would therefore reinforce OLAF's institutional independence**, ensuring that all decisions (whether taken by DG OLAF or their deputy) remain fully insulated from external influence and preserve the integrity of OLAF's investigative mandate.
104. Another essential dimension of OLAF's operational independence lies in **OLAF's effective ability to conduct investigative activities without any undue political, administrative or institutional interference.**
105. The Committee considers it essential that DG OLAF should remain fully insulated from any political affiliation or influence. Ensuring that OLAF is not attached to or aligned with political parties is crucial to safeguarding its impartiality, reinforcing public trust and protecting the integrity of its investigative activities. Such political neutrality underpins OLAF's operational independence and is essential to carry out its mandate effectively.
106. The Committee also considers that situations in which IBOAs either do not allow OLAF to access their premises or withhold relevant information not only breach specific provisions of the OLAF Regulation but also pose a direct threat to OLAF's independence. In this respect, a clear and unambiguous legal framework is essential in order to minimise misunderstandings and ensure that OLAF can exercise its mandate without obstruction. The clarifications concerning OLAF's mandate would, as discussed

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<sup>60</sup> SC Opinion No 3/2024, *OLAF's Guidelines on investigation procedures* (Chapter I.2. 'Analysis of the decision-making process in investigations: independence of the OLAF Director-General').

above, help in limiting episodes of non-cooperation where the very question of OLAF's competence to investigate is at stake.

107. The Committee further considers that the Regulation could be amended to **reinforce the principles and practical mechanisms for loyal cooperation of IBOAs towards OLAF**, so as to avoid duplication of investigative efforts. At the same time, given the horizontal nature of OLAF's investigative mandate across institutions, the Regulation could **provide avenues to make cooperation with IBOAs enforceable and establish remedies against obstruction** – thereby ensuring that OLAF can fulfil its investigative responsibilities effectively.

### 3.1.3 OLAF's case selection and framing of investigations

108. The framing of OLAF's investigations is a critical intersection between operational independence, procedural efficiency and respect for procedural safeguards. OLAF must retain full discretion to act independently pursuant to its mandate, but it must also ensure that investigations are conducted efficiently and with due regard for the rights of the individuals and entities concerned. Striking the right balance is therefore essential for regulatory compliance purposes, ultimately strengthening both the credibility and legitimacy of OLAF's work.
109. The discretion to open cases (as provided in Article 5 of the amended OLAF Regulation) is a prime feature of OLAF's legal set-up and a fundamental element of its investigative autonomy. The Committee welcomes the internal guidelines that have been developed to guide staff in this crucial phase of case selection<sup>61</sup>. It also acknowledges that these tools provide structured guidance while also preserving OLAF's essential autonomy in deciding which matters to investigate.
110. The Committee nevertheless considers that such discretion would benefit from being exercised within a more clearly defined framework of legally binding provisions, which could be further developed.
111. In this regard, the reference in Article 5 to the existence of '**sufficient suspicion**' could benefit from further clarification. This is the primary criterion for initiating an OLAF investigation, so it would be advisable for the Regulation to provide guidance on what constitutes 'sufficient suspicion'. The Committee understands that the Regulation cannot set out in detail every single criterion to be applied when opening an investigation, but it considers that the Regulation could at least identify the key elements that OLAF should consider when assessing whether this threshold is met – thereby ensuring consistency, transparency and accountability in the opening of investigations. Clear reference to these essential elements would also reduce ambiguity and potential disputes regarding the legality or appropriateness of decisions to open investigations, thereby reinforcing both procedural fairness and public trust in OLAF's investigative mandate.
112. The **clear definition of the scope of an investigation** is equally important to the criterion of 'sufficient suspicion'. The Committee already emphasised this concept in Opinion No 3/2024<sup>62</sup>. Defining the boundaries of each case from the outset is essential

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<sup>61</sup> Internal guidelines span from the GIPs to other guidelines specific to case selection.

<sup>62</sup> SC Opinion No 3/2024, *OLAF's Guidelines on investigation procedures*.

in order to ensure that investigations are focused, proportionate and conducted in accordance with procedural safeguards.

113. The amended OLAF Regulation does not at present include explicit provisions on the ‘scope of the investigation’. It instead leaves this concept to be addressed only in the GIPs<sup>63</sup>.
114. The GIPs provide useful guidance, but their limited legal status can leave room for uncertainty regarding the formal boundaries of investigations. Embedding the principle of ‘**well-defined scope**’ directly within Article 5 of the Regulation would provide OLAF with a legally enforceable standard that reinforces procedural safeguards, ensures consistency across cases and ultimately strengthens the legitimacy of investigative decisions. Furthermore, such a formalisation would enhance OLAF’s effectiveness by focusing investigative activities, ensuring proportionality in resource allocation and providing external stakeholders with greater clarity and predictability regarding the parameters of OLAF’s mandate.
115. Moreover, consideration could be given to the possibility of reintroducing in Article 5 the reference to **investigation policy priorities**. Establishing such priorities would allow OLAF to focus its resources on cases where it can achieve the highest added value, ensuring that investigative efforts are both strategic and impactful. Clearly defined priorities would also provide guidance to staff in the case-selection phase, promoting consistency while safeguarding OLAF’s operational independence. This would also support the strategic allocation of resources, particularly in view of any potential expansion of OLAF’s mandate (see ‘3.1.1. OLAF’s mandate’).
116. Concentrating OLAF’s efforts on the areas of greatest relevance or risk would allow it to strengthen its effectiveness and maximise the added value of its investigative activities. Adopting clearly articulated priorities would also maintain transparency and accountability, demonstrating to stakeholders that case selection is guided by objective criteria and aligned with OLAF’s overarching goals.

## 3.2 *The conduct of OLAF investigations*

### 3.2.1 **The duration of investigations**

117. The obligation to conduct administrative procedures within a reasonable period of time is a general principle of EU law and part of the right to good administration enshrined in Article 41 of the Charter of Fundamental Rights (CFR)<sup>64</sup>. Article 41 guarantees that every person has the right to have their affairs handled impartially, fairly and within a reasonable time by the EU’s institutions, bodies, offices and agencies. In line with this principle, Article 7(5) of the amended OLAF Regulation provides that ‘*Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case*’.

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<sup>63</sup> Guidelines on Investigation Procedures for OLAF Staff of 11 November 2025 entering into force as of 1 January 2026 (Ares(2025)9710596). In particular, Article 21 of the GIPs (provisions on the scope of OLAF investigations) can also be found in Articles 2, 22, 28 and 36.

<sup>64</sup> Article 41(1) of the EU Charter of Fundamental Rights reads as follows: ‘*Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*’

118. This legal requirement ensures that OLAF investigations respect administrative fairness and are conducted efficiently, while also taking into consideration the complexity of the matter under investigation. OLAF is therefore obliged to conclude its investigations within a reasonable period of time, balancing thoroughness with the right of the parties involved to timely resolution. Moreover, the timeliness of OLAF's final reports is crucial for both the rate and quality of follow-up of its recommendations.
119. Article 15(1) of the OLAF Regulation explicitly entrusts the Supervisory Committee with the task of monitoring the duration of OLAF investigations<sup>65</sup>. Other provisions set out OLAF's obligation to report to the Supervisory Committee on the duration of investigations<sup>66</sup>. In line with the monitoring function entrusted to it, the Committee considers the duration of investigations to be an important indicator of the effectiveness of OLAF's action and has over the years paid particular attention to this subject<sup>67</sup>. In this context, the Committee considers that effective internal management and monitoring of the duration of investigations should be a key priority for OLAF, ensuring that the integrity of the investigative process is matched by procedural efficiency in achieving its objectives. It is noteworthy that OLAF's recently revised GIPs<sup>68</sup> expressly incorporate the requirement to conduct investigations within a reasonable time and impose on staff the duty to avoid unjustified periods of inactivity. This represents a positive development that is fully aligned with the Committee's longstanding recommendations.
120. The Committee understands that the OLAF Regulation cannot prescribe a specific time-limit for OLAF investigations because each investigation should be considered in the context of its specific circumstances (as consistently reflected in the jurisprudence of the CJEU<sup>69</sup>). Nonetheless, **the Regulation could be more explicit** in stating that OLAF is bound by the general principle of conducting its investigation **'within a reasonable time'**, thereby mirroring the fundamental right to good administration enshrined in Article 41 CFR. The recent insertion of this requirement into OLAF's GIPs demonstrates that OLAF already recognises the importance of this principle in practice.
121. More importantly, the Regulation could require OLAF to put in place a control system or specific procedural measures once an investigation exceeds a certain duration. The Committee recognises the efforts made by OLAF in recent years to strengthen its internal control mechanisms over the duration of investigations and acknowledges the provisions

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<sup>65</sup> Article 15(1): *'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** [...].'*

<sup>66</sup> Articles 7(8) and 17(5)d of the amended OLAF Regulation.

<sup>67</sup> See SC Opinion No 5/2021, *Analysis of OLAF's investigations lasting more than 36 months in 2019*; SC Opinion No 3/2024, *OLAF's Guidelines on investigation procedures*; and SC Annual activity Report 2024, section 2.6 *'monitoring the duration of OLAF's investigations'*, available at: [Opinions and reports - Supervisory Committee of OLAF - European Union](#).

<sup>68</sup> Article 4 of the GIPs (Ares(2025)9710596).

<sup>69</sup> Judgment of the General Court of 8 July 2008, *Franchet and Byk v Commission*, T-48/05, ECLI:EU:T:2008:257, paragraph 274; judgment of the General Court of 18 May 2017, *Panzeri v European Parliament*, T-166/16, ECLI:EU:T:2017:347, paragraph 104; judgment of the General Court of 29 June 2022, *LA International Cooperation Srl v Commission*, T-609/20, ECLI:EU:T:2022:407, paragraph 51.

introduced in Article 32(2) of the recently revised GIPs<sup>70</sup>. These developments are welcome and represent a concrete step towards improving the timeliness and efficiency of OLAF's investigative activities. However, the Committee considers that the formal existence of such an internal control system, which is essential for transparency and accountability, should be explicitly anchored in the OLAF Regulation itself in order to ensure its durability and legal certainty beyond internal procedural rules.

122. In this regard and by way of illustration of the type of measures that could be envisaged, the Regulation could require OLAF, after the current average threshold of 24 months indicated in the OLAF Annual Report, to take concrete steps to accelerate progress over and above reporting to the Committee. In addition, when serious obstacles are encountered during an investigation, the Regulation could require a **formal decision by DG OLAF on the way forward**. Such a decision would allow DG OLAF to assess whether to continue or to close the case (taking into consideration the obstacles or specific circumstances of the case) as well as the likelihood of successfully closing it with recommendations. Implementing these mechanisms would not only enhance procedural efficiency but also strengthen the practical implementation of the right to timely investigations.

### 3.2.2 Procedural guarantees

123. The respect of procedural guarantees in the conduct of OLAF investigations is a central element of regulatory compliance in OLAF's investigative activities. As OLAF's investigative powers have expanded and become more sophisticated, it has become more important to assess whether the existing safeguards in the OLAF Regulation adequately protect the fundamental rights of persons concerned. The introduction of the Controller of Procedural Guarantees in 2020 was a significant step forward, but several structural and operational aspects of the current framework continue to limit the full and effective exercise of procedural rights during OLAF investigations.
124. The credibility of OLAF's work ultimately depends on striking the right balance between the EU's interest in combating fraud and the need to respect the rights of individuals involved in investigations. Ensuring that such persons benefit from clear, accessible and enforceable procedural guarantees is therefore not only a matter of fundamental rights protection but also essential for the effectiveness and added value of OLAF's findings.
125. One may recall in this regard the longstanding issue of admissibility of OLAF's final reports as evidence in national judicial proceedings under Regulation No 883/2013. There is evidence that one of the factors affecting such admissibility was the level of protection of procedural safeguards in OLAF investigations<sup>71</sup>. As recalled above in section '2.4 *A strengthened follow-up phase*', Regulation 2020/2223 remedied this issue by introducing, in Article 11, the principle of admissibility of OLAF's final reports. The point

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<sup>70</sup> Article 32(2) of the revised GIPs requires OLAF's senior management to report regularly to DG OLAF on investigations that last more than 12 months, explaining the delay and the remedial measures taken or proposed in order to accelerate their progress, in accordance with Article 7(8) of the OLAF Regulation.

<sup>71</sup> Ligeti, K., *The protection of procedural rights of persons concerned by OLAF administrative investigations and the admissibility of OLAF Final Reports as criminal evidence*, In-depth analysis for the CONT Committee, July 2017, available at: [The protection of the procedural rights of persons concerned by OLAF administrative investigations and the admissibility of OLAF Final Reports as criminal evidence](#).

concerning the mutually reinforcing relationship between procedural guarantees and the effectiveness of OLAF investigations nevertheless remains valid under the amended Regulation. OLAF recommendations are not binding on the recipient competent authorities, so it may be argued that, the more rigorous the protection of procedural guarantees in OLAF investigations is, the more likely it is that the follow-up will unfold in reasonable time, with fewer duplications in the interest of procedural efficiency and a lower probability of appeals.

126. Moreover, the non-binding nature of OLAF's recommendations makes it particularly important, in the interest of legal certainty, to provide for clear procedural safeguards and guarantees by Regulation. Although the applicability of the CFR to OLAF is undisputed by virtue of Article 51 CFR, the CJEU has nonetheless clarified the limited applicability of certain CFR rights in the specific case of OLAF investigations.
127. For instance, Article 41(2)b CFR enshrines the right to access files as part of the right to good administration. However, the OLAF Regulation does not expressly set out the specific right of a person concerned in an OLAF investigation to access the file. On the contrary, the OLAF Regulation stresses the importance of the confidentiality of OLAF's investigations and clearly protects it. The CJEU has therefore held that, without prejudice to the right to be heard, OLAF is not obliged to grant access to the file to a person concerned. The CJEU based this ruling on (i) the non-binding nature of OLAF's final reports upon its addressees; and (ii) the fact that the decisions capable of producing a distinct change in the legal position of the person concerned are adopted not by OLAF but by the authority (the national authority or EU IBOAs) in charge of following up OLAF's recommendations<sup>72</sup>. This example therefore illustrates the importance of clearly stating, in the amended OLAF Regulation, the procedural guarantees and rights afforded to persons concerned.
128. In this context, the Committee considers that renewed attention should be given to procedural guarantees – both to (i) uphold the standards of good administration and fairness enshrined in the CFR; and (ii) to enhance the practical value (*effet utile*) of the safeguards already enshrined in the amended Regulation.
129. ***Identification as person concerned.*** The procedural framework established by the OLAF Regulation revolves primarily around the status of '***person concerned***' in an investigation. The criteria, timing and way an individual or entity is identified as a person concerned are therefore important because this qualification triggers the application of specific procedural safeguards. It is clear that the identification of a person as 'concerned' is not a merely descriptive step in the investigative process but a legal determination that marks the moment from which certain rights (e.g. the right to be informed of the opening of the investigation, the right not to self-incriminate and the right to submit observations) become applicable. Ensuring clarity, consistency and transparency in this identification is therefore essential to safeguarding fundamental rights and promoting the proper conduct of OLAF investigations.

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<sup>72</sup> See order of the Court of First Instance of 18 December 2003, *Gómez-Reino v Commission*, T-215/02, ECLI:EU:T:2003:352, paragraph 65. See also, more recently, judgment of the Court of Justice of 30 November 2023, *Sistem ecologica v Commission*, C-787/22 P and T-81/21, ECLI:EU:C:2023:940.

130. A person may be identified as a person concerned from the beginning of the investigation. In this case, this status is typically indicated in DG OLAF's opening decision. If, however, a person concerned is identified as such at a later stage (for instance, following the emergence of new evidence), the current regulatory framework does not require OLAF to formalise this change with a formal decision. This differs from other procedural developments during an investigation (such as extending the initial scope of an investigation or splitting a case) for which formal decisions are required.
131. The Committee *first* notes that identifying a person as a person concerned *de facto* amounts to extending the personal scope of an investigation. Indeed, expanding the personal scope entails formally bringing additional individuals or legal entities within the reach of the inquiry, thereby subjecting their conduct to examination and triggering the full set of procedural rights and obligations associated with that status. The Committee *second* recalls that, in the absence of a clear and timely formalisation, individuals might not be fully aware that they have acquired a status that grants them specific procedural rights within the investigation. Such uncertainty not only undermines the transparency and predictability that EU administrative action is required to uphold but also risks affecting the legality of OLAF's acts (because procedural guarantees can only be effectively exercised once a person is duly informed). The Committee therefore considers that **ensuring a formal identification of the person concerned by decision preceded by a legality check** is essential in order to enable the proper exercise of fundamental rights, to reinforce trust in OLAF's procedures and, ultimately, to safeguard the legality of investigative measures.
132. *The right to be assisted by a person of choice and the right to avoid self-incrimination.* A further issue relating to procedural guarantees concerns the differential treatment of persons concerned in internal and external investigations. As noted in Chapter 2<sup>73</sup>, Regulation No 883/2013 initiated a progressive alignment of the fundamental rights and procedural guarantees afforded to persons concerned in these two types of investigations. Despite this progress, certain procedural guarantees are still explicitly granted only in the context of external investigations and not in internal ones (and vice versa). These asymmetries appear justified in certain instances<sup>74</sup>. Nevertheless, most of these lack justification and should therefore be eliminated in order to ensure that procedural guarantees are applied uniformly and without discrimination.
133. A clear example of such divergence concerns the right to be assisted by a person of one's choice and the right to avoid self-incrimination. Article 3 of the amended OLAF Regulation, which governs external investigations, clearly provides for both these rights. By contrast, Article 4, which governs internal investigations, does not explicitly refer to them. Individuals subject to internal investigations are therefore placed in a less favourable position than persons concerned in an external investigation. This in practice means that, during an inspection of EU premises carried out under the amended OLAF Regulation in the context of an internal investigation, neither the right to assistance nor the right to avoid self-incrimination is formally recognised for persons concerned. OLAF

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<sup>73</sup> See section '2.3 Progressive alignment of the rules in internal and external investigations'.

<sup>74</sup> See, as a prime example, the provision on the language regime of interviews (Article 9(5) of the amended OLAF Regulation).

is therefore under no legal obligation to inform the persons concerned of the existence of these guarantees.

134. It is undisputed that OLAF can, under Article 4, conduct unannounced inspections of EU premises and that, in such situations, the presence of the person concerned as well as the taking of statements is not obligatory. Nonetheless, where such interactions do take place, there is no convincing rationale for subjecting EU officials or other servants to a less protective regime than that applied to economic operators in comparable circumstances. The nature of the investigative context does not justify any limitation of their rights.
135. For reasons of internal coherence and fairness, **Article 4 should clearly provide for the right to be assisted by a person of choice and the right to avoid self-incrimination.** This would also contribute to the overall legitimacy and trustworthiness of OLAF's operations.
136. ***The 'right to be informed' of being a person concerned.*** Another significant procedural guarantee that is currently afforded inconsistently to persons concerned in internal and external investigations is the right of a person concerned to be informed of their status. According to Article 9(3) *'as soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings falling within the remit of a national judicial authority'*. However, this provision only refers to internal investigations. The Regulation does not expressly extend the right of a person concerned in an external investigation to be informed.
137. Reasoning by analogy, the CJEU has held that the right of defence requires this information to be given to persons concerned not only in internal but also in external investigations<sup>75</sup>. Moreover, the General Court has also clarified that this guarantee should apply not only to natural persons concerned but also to legal persons concerned in external investigations<sup>76</sup>. These interpretations recognise that the right to be informed is a fundamental precondition for the meaningful exercise of the right of defence, irrespective of the investigative context. By recognising this right across both procedural settings, the CJEU has ensured a more consistent and rights-compliant application of the existing legal framework.
138. The Committee considers that an upcoming revision of the OLAF Regulation would be a timely opportunity to translate this jurisprudence into binding legislative provisions, thereby eliminating lingering ambiguities and ensuring internal coherence in the Regulation. **Incorporating this right explicitly within the text of the Regulation would provide legal certainty and predictability and would facilitate uniform application.**

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<sup>75</sup> Judgment of the General Court of 20 July 2016, *Oikonomopoulos v Commission*, T-483/13, ECLI:EU:T:2016:421, paragraphs 229-231.

<sup>76</sup> Judgment of the General Court of 29 June 2022, *LA International Cooperation Srl v Commission*, T-609/20, ECLI:EU:T:2022:407, paragraphs 22-23.

139. This amendment should apply without prejudice to OLAF's ability to defer such information where necessary, as already foreseen in Article 9(3). The Regulation must continue to require that OLAF, when conducting both internal and external investigations, balances two competing imperatives. On the one hand, it must inform individuals that they have become persons concerned, so that they can exercise their defence rights effectively. On the other hand, it must preserve the integrity, confidentiality and procedural efficiency of the investigation. Article 9(3) rightly allows OLAF to postpone notifications where immediate disclosure could jeopardise the investigative process or interfere with parallel proceedings under national judicial authorities. Incorporating the right to be informed across all types of investigations should therefore be accompanied by a clear acknowledgement of this balancing exercise, ensuring that fundamental rights are upheld without compromising OLAF's mandate to conduct investigations.
140. ***The right to be informed of the closure of an investigation.*** Article 11(7) obliges OLAF to inform the person concerned of the closure of the investigation only if OLAF has found no evidence against them. The Committee considers that the Regulation should be modified so that this obligation applies independently of whether the investigation has been closed with or without findings.
141. OLAF should therefore inform the person concerned of the closure of an investigation against them in all circumstances – unless there are exceptional reasons not to inform the person concerned (such as a risk of impairing the follow-up to the recommendations).
142. The Committee has already expressed this position in the past<sup>77</sup>. The relevance of informing persons concerned of the closure of an investigation has been further reinforced by the 2020 amendments to the OLAF Regulation. The Committee notes that the notification of closure of the investigation is not merely a matter of good administrative practice but is an essential procedural safeguard. **Timely communication ensures that persons concerned are made aware that the investigative phase has been concluded and enables them to exercise their right to file a complaint with the Controller of Procedural Guarantees**, thereby ensuring that potential breaches of their rights during the investigation can be examined. By facilitating access to the complaints mechanism, the obligation to inform persons concerned of the closure ensures internal coherence of the Regulation's provisions, and directly contributes to the overall accountability of OLAF's investigations.

### 3.2.3 Review Team's opinion on closure of OLAF's investigations

143. Throughout the course of an OLAF investigation, an internal advisory and control system provided in Article 17(7) of the amended OLAF Regulation ensures (i) compliance of the activities undertaken by OLAF during its investigation with the principles of legality, necessity and proportionality; (ii) the respect of procedural guarantees and fundamental rights; and (iii) the correct application of EU and national law.
144. This independent internal legality and control mechanism is currently assigned to a team of legal experts within OLAF (the Review Team), which is directly responsible to

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<sup>77</sup> See SC Opinion No 5/2021, *Analysis of OLAF's investigations lasting more than 36 months in 2019*, Recommendation 6.

DG OLAF. The Review Team thus serves as a fundamental safeguard, ensuring that OLAF's investigations are carried out in full compliance with the applicable procedural rules and standards, thereby underpinning the legality of DG OLAF's decisions.

145. In the final phase of an OLAF investigation, the Review Team examines the final case report and the proposed recommendations and submits an opinion to DG OLAF. This opinion provides an objective *ex post* evaluation that is distinct from the management's oversight function and on the basis of which DG OLAF takes their decision. The opinion may contain confidential information for internal use only (such as elements relating to human resources, managerial considerations or other sensitive aspects, which are not meant for dissemination outside OLAF).
146. The Committee considers that the requirement introduced by the 2020 amendments for the opinion on closing of the Review Team to be attached to the final case report (where the latter is transmitted to the recipients) may present certain challenges affecting the usefulness of that opinion, particularly as regards the continuity of investigations<sup>78</sup>. The external circulation of such a document could lead to assessments which are more limited in scope with a view to protecting the equally important aspect of confidentiality of internal matters. This might in turn reduce the added value of the opinion for the internal legality check purposes for which it was originally conceived.
147. **The Committee therefore suggests reconsidering the last sentence of Article 17(7) of the amended OLAF Regulation with a view to ensuring that the Review Team's opinion remains an internal document and that, where appropriate, only its conclusions are communicated to external recipients.** This would improve the Review Team's ability to fulfil its role as an independent safeguard, providing the DG OLAF with a reliable and meaningful appraisal of the lawfulness, proportionality and procedural integrity of the investigative activities.

### 3.2.4 OLAF-EPPO cooperation

148. The Committee has closely and continuously monitored the cooperation between OLAF and the EPPO since the latter's establishment. This is testified by previous opinions, which have examined in detail the working arrangements between the two bodies as well as the conduct of complementary investigations<sup>79</sup>. Through this sustained monitoring, the Committee has consistently sought to ensure that OLAF's cooperation with the EPPO is carried out effectively, coherently and in full respect of OLAF's mandate.
149. The issue of OLAF's reporting obligations towards the EPPO is key to their institutional relationship. A Committee opinion that is currently under preparation will address this comprehensively<sup>80</sup>.
150. The 2020 amendments introduced the provisions detailing the relationship between OLAF and the EPPO into the OLAF Regulation. The Committee considers that these

<sup>78</sup> See SC Annual Activity Report 2024, paragraphs 93 and 94.

<sup>79</sup> See SC Opinion No 2/2021, *Working arrangements between OLAF and EPPO*; SC Opinion No 1/2024, *Complementary investigations of OLAF and the EPPO*, complemented by the annual follow-up exercise, see SC Annual Activity Report 2024, section 2.1.

<sup>80</sup> The Committee is expected to adopt its opinion during the first half of 2026.

provisions are drafted in detail with the clear aim of allowing smooth collaboration. However, the Committee's monitoring, which is focused on the practical implementation of these provisions, has identified some improvements that would be both possible and desirable.

151. The Regulation contains broadly framed concepts that OLAF and the EPPO might interpret differently. A key example can be found in Article 12(c)(1) and (3) of the amended OLAF Regulation ('Reporting criminal conduct to the EPPO'): '1. The Office **shall submit a report to the EPPO without undue delay** on any criminal conduct in respect of which the EPPO could exercise its competence [...]. 3. The Office shall **not** be bound to report to the EPPO **manifestly unsubstantiated allegations**'.
152. In the absence of internal guidelines, interpretative preambles to the Regulation, case law or any other interpretative instrument, the concept of 'manifestly unsubstantiated allegation' remains inherently ambiguous and susceptible to diverging interpretations. Leaving the concept undefined poses a significant risk, given the inherently different nature and mandates of OLAF and the EPPO. OLAF is an administrative investigative body that operates according to principles of administrative law. By contrast, the EPPO is a public prosecutor authority and is governed by the procedural and evidentiary principles of criminal law. The term in Article 12c(3), '*manifestly unsubstantiated allegations*', may therefore be interpreted and applied differently depending on the institutional perspective, potentially resulting in inconsistencies in how information is assessed and/or sent to EPPO.
153. To mitigate such risks and to ensure uniformity and legal certainty, the Committee considers it necessary to provide clear guidance in the Regulation on the interpretation of the concept of '*manifestly unsubstantiated allegations*' in Article 12c(3). The Regulation would thereby contain a standard that would be consistently applicable in all cases, thereby also ensuring consistency between legislative instruments.
154. The Committee further reiterates the point that both administrative and criminal tools are necessary for the protection of the EU's financial interests. It is undisputed that OLAF's investigative mandate has been partially redefined following the establishment of the EPPO, but the Committee stresses the point that OLAF's centrality within the EU's AFA remains clear. Clarifying reporting obligations and coordination mechanisms would ensure that the complementary roles of OLAF and the EPPO could be fully applied and achieve the desired impact.
155. *First*, as a matter of fact, it is true that both OLAF and the EPPO are competent to conduct investigations in PIF-related matters. This does not, however, equate to duplication. Indeed, **OLAF has a unique and irreplaceable mandate** because (i) it covers all Member States; (ii) it is competent for all type of irregularities that are not necessarily linked to criminal conduct; (iii) its mandate also covers non-PIF matters in

internal investigations; and (iv) it can even involve third countries when EU financial interests are at stake<sup>81</sup>.

156. *Second*, from the **recovery** perspective, administrative tools can be more efficient and less costly and cumbersome than criminal instruments<sup>82</sup>.
157. *Third*, from the **institutional perspective**, the two offices are clearly distinguished. OLAF is a centralised investigative body in the form of a Commission department, whereas the EPPO is a body established via enhanced cooperation under Article 86(1) TFEU. This further element makes OLAF particularly well-suited to protect the EU's financial interests, especially in the context of enlargement. The enlargement process gained new momentum between 2023 and 2024, so it is appropriate to consider the potential accession of new Member States in the current evaluation exercise. It may take some time for such new Member States to join the EPPO, so it would be particularly crucial to rely on OLAF, which is part of the *acquis* that they will already have accepted when acceding to the EU.
158. In conclusion, the legislator's choice on the OLAF-EPPO bilateral relations as established in the EPPO Regulation and echoed in the amended OLAF Regulation should be restated. At the same time (as illustrated above), it is a strategic imperative to achieve real complementarity by protecting both the relevance and the operational independence of OLAF.
159. The Committee further recognises that enabling OLAF to fully deliver on its mandate requires the relevant legal frameworks to be coherent and aligned. This would allow smooth and effective cooperation with other anti-fraud actors (especially the EPPO, as a privileged partner).
160. The above-formulated suggestion would reduce ambiguities, minimise non-cooperation and streamline collaborative efforts. This would ultimately serve the overarching goal of more effectively safeguarding the EU's financial interests, thereby reinforcing trust in the integrity of EU institutions.

### 3.3 *Value of OLAF recommendations and follow-up*

161. The value of OLAF recommendations and the follow-up rate by competent authorities (IBOAs and national authorities) are aspects which are widely considered as essential

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<sup>81</sup> The EPPO was established through enhanced cooperation, so it can exercise its prosecutorial powers only within those EU Member States that have chosen to participate. The EPPO therefore has no competence to investigate or prosecute offences that have been committed exclusively in third countries or in non-participating EU Member States.

<sup>82</sup> European Court of Auditors, Special Report No 1/2019: *Fighting fraud in EU spending: Action needed*, paragraph 111. The understanding that administrative tools can achieve the result faster informs Article 12f ('Complementary investigations') of the amended OLAF Regulation: '1. Where the EPPO is conducting an investigation and the Director-General, in duly justified cases, considers that an investigation by the Office should also be opened in accordance with the mandate of the Office **with a view to facilitating the adoption of precautionary measures or of financial, disciplinary or administrative action**, the Office shall inform the EPPO in writing, specifying the nature and purpose of the investigation.'

when assessing and reflecting upon the functioning and impact of OLAF's investigative function.

162. In this respect, certain distinctive features of OLAF's legal framework have remained unchanged throughout the 26 years of OLAF's activity. They continue to shape its investigative approach and mandate.
163. *First, OLAF is entrusted with a very broad mandate*, even when one considers only PIF matters. Indeed, the EU's financial interest encompasses expenditures, revenues and assets covered by the EU budget and the IBOAs' budgets. This means that OLAF can investigate a wide array of policy areas that have been entrusted to different 'competent authorities' (e.g. customs, agricultural funds, structural funds and external aid). Such authorities could be both IBOAs and national authorities.
164. *Second, OLAF's recommendations (regardless of whether they are judicial, administrative, financial or disciplinary) have no legally binding value*. It is therefore for the competent IBOAs or national authorities to decide whether they wish to implement them. OLAF has no powers of direct enforcement and does not have the power to take legal action if its recommendations are not implemented. Moreover, the implementation of OLAF's recommendations may involve additional procedures that can extend the time between the identification of the suspected fraud and the actual recovery/prevention of losses, potentially leading to duplication of efforts as well as making the outcome more uncertain.
165. The issue of the legal value of OLAF's output has long been debated in the past, mostly in the context of efforts to enhance the follow-up of OLAF's recommendations<sup>83</sup>. However, no substantive changes have so far been made to this set-up. This is largely due to the complex implications of altering the legal value of OLAF's output. These include potential impacts on (i) the balance of powers between OLAF and competent authorities; and (ii) the broader procedural and institutional framework governing OLAF's investigations.
166. The Committee recognises that altering the legal value of OLAF's output would entail considerable legal, procedural and institutional complexities, and would therefore require careful reflection. With regard to financial recommendations, however, one possibility might be to more strongly involve OLAF in the recovery of funds in order to strengthen its independence in fulfilling its mandate and the effectiveness of its activities.
167. The above-outlined characteristics of OLAF's legal framework (i.e. the non-binding nature of its recommendations and its limited direct enforcement powers) might result in fragmentation and inefficiencies during the process of 'protection of the EU financial interests', spanning from detection to recovery.

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<sup>83</sup> See SC Opinion No 2/2017 *accompanying the Commission Evaluation report on the application of the OLAF Regulation*. See also point 17 of ECA Opinion No 8/2018 on the Commission's proposal of 23 May 2018 on amending OLAF Regulation (EU, Euratom) No 883/2013 as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations, available at: [Opinion No 8/2018 on the Commission's proposal of 23 May 2018 on amending OLAF Regulation 883/2013 as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations | European Court of Auditors](#).

168. Both the Supervisory Committee and the European Court of Auditors have consistently highlighted the shortcomings and challenges that are particularly associated with the follow-up to OLAF recommendations<sup>84</sup>. Legislative initiatives have sought to address these shortcomings in response. The establishment of the EPPO has to some extent mitigated the lack of follow-up of judicial recommendations by providing a dedicated prosecutorial mechanism. Simultaneously, the 2020 amendments to the OLAF Regulation introduced specific provisions to improve the follow-up rate for administrative recommendations, reinforcing the framework for cooperation with national and EU authorities and ultimately seeking to enhance the impact of OLAF's investigative work<sup>85</sup>.
169. In addition to the legislative changes, developments in OLAF's internal organisation have further helped streamline the process of monitoring and follow-up. In June 2021, the Monitoring and Reporting Unit was created within OLAF. This is responsible for monitoring the follow-up in coordination with the investigative units. Moreover, monitoring activity in partnership with DG BUDG and annual reporting to the Commission's Corporate Management Board was established<sup>86</sup>. In 2024, a new monitoring tool was introduced that allows the Commission's spending services to directly encode their progress in implementing recommendations throughout the year, thus simplifying the exchange of data with OLAF.
170. On the basis of OLAF's reporting, the Committee notes that OLAF's newly implemented monitoring procedure is fully aligned with the Committee's previous recommendations. This is an important step forward in light of the impact of OLAF's financial recommendations – the most numerous and measurable ones – that resulted in the recovery or prevention of spending of EUR 600 million in 2024<sup>87</sup>.
171. The Committee would nevertheless like to make the following suggestions with a view to further enhancing OLAF's impact.
172. *First*, the Committee considers that **the mechanisms currently enshrined in Article 11 of the OLAF Regulation should be reinforced**. In this context, OLAF's internal practices in monitoring the follow-up are a substantial advance, especially with regard to IBOAs. To build on this progress, it would be advisable to ensure that such procedures are mirrored in the Regulation as far as possible. This would provide a clear legal basis that reflects the demonstrated effectiveness of OLAF's procedures.
173. For example, subparagraph 2 of Article 11(5) establishes that, where judicial recommendations following an internal investigation are issued, OLAF can request the national competent authorities to justify non-implementation. Extending this 'comply or explain approach' to all OLAF's recommendations and all recipient authorities would strengthen their value and improve the follow-up rate. This suggestion appears

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<sup>84</sup> SC Opinion No 1/2021, *OLAF's recommendations not followed by relevant authorities*; European Court of Auditors, Special report No 1/2019.

<sup>85</sup> As seen above under '2.3 Progressive alignment of the rules applicable to internal and external investigations' and '2.4 A strengthened follow-up phase'.

<sup>86</sup> OLAF's acting Director-General informed the Committee that this reporting was strengthened in October 2025, establishing that the reporting takes place twice a year.

<sup>87</sup> See OLAF Annual Activity Report 2024.

particularly timely because, following the establishment of the EPPO, the comparative relevance of financial, administrative and disciplinary recommendations has increased vis-à-vis judicial ones.

174. *Second*, the Committee considers that **the role of anti-fraud coordination services (AFCOS) could be extended to encompass the OLAF recommendation follow-up phase**. Article 12a requires the Member States to designate the AFCOS. Their role is framed in a rather general way and their specific competences and powers are left to the Member States' discretion. The provision nevertheless clarifies their key objective of facilitating effective cooperation and exchange of information with OLAF. The Committee considers that Article 12a could be amended to explicitly provide that the AFCOS ensure assistance to OLAF in following recommendations addressed to national competent authorities.

### 3.4 *The Supervisory Committee's functioning*

#### 3.4.1 **Members' independence and the Committee's role**

175. The members of the Committee are bound by a **general obligation to be impartial and always act in full independence**, respecting the dignity and public trust of their office. The independence requirement is enshrined in different provisions of the OLAF Regulation and the Committee's internal rules.
176. Article 15(2) of the amended OLAF Regulation requires all the members of the Committee to comply with the independence requirement. Article 15(7) specifies that, when carrying out their duties, the members of the Committee must neither seek nor take instructions from any government, institution, body, office or agency. Article 15(8) requires the Secretariat to act independently from the Commission and states that its officials must not take instructions from any government or any institution, body, office or agency.
177. The Code of Conduct of the members of the Committee<sup>88</sup> and Article 4(2) of the Rules of Procedure<sup>89</sup> reiterate, in line with the case law of the CJEU<sup>90</sup>, the requirement of independence of the Committee's members by prohibiting them from dealing with a matter in which they have any direct or indirect personal interest that would impair their independence (particularly family and financial interests).
178. To give full effect to the principles of independence and impartiality of all its activities, the Committee checks for, at the beginning of each plenary session, the existence of any conflict of interest of its members (regardless of whether it is ad hoc, persistent or regular<sup>91</sup>). It has put in place mechanisms that guide the disclosure, examination and

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<sup>88</sup> Available at: [https://supervisory-committee-olaf.europa.eu/document/download/beeead6c-5134-4351-b234-ecba9344208\\_en?filename=Code%20of%20Conduct.pdf](https://supervisory-committee-olaf.europa.eu/document/download/beeead6c-5134-4351-b234-ecba9344208_en?filename=Code%20of%20Conduct.pdf).

<sup>89</sup> Available at: [https://supervisory-committee-olaf.europa.eu/document/download/00e96b41-acd5-478a-8ee5-0295aba0b870\\_en?filename=01.09.2021\\_Rules%20of%20Procedure\\_EN.pdf](https://supervisory-committee-olaf.europa.eu/document/download/00e96b41-acd5-478a-8ee5-0295aba0b870_en?filename=01.09.2021_Rules%20of%20Procedure_EN.pdf).

<sup>90</sup> See judgment of the Court of Justice of 21 October 2021, *Parliament v UZ*, C-894/19 P, ECLI:EU:C:2021:863, paragraphs 53 and 54, and cited case law.

<sup>91</sup> An 'ad hoc' conflict of interest is a conflict of interest relating to one or more items on a plenary session's agenda. 'Persistent' implies a situation that is continuing without stopping. 'Regular' refers to situations that occur at consistent intervals or follow a pattern or repeated routine.

management of such situations so as to not impair the Committee's independence as a collegial body.

179. The Committee can mitigate ad hoc conflicts itself, but it is for the appointing institutions to take appropriate steps when regular and persistent conflicts of interest arise. The Committee is convinced that it would be useful for the legal framework to clarify the procedure for situations where a **persistent or regular conflict of interest** arises (whether due to a change in a member's professional or personal situation or other relevant circumstances). **Clarifying that such situations fall expressly within the scope of Article 15(5) of the amended OLAF Regulation would ensure a formal, consistent and predictable approach** to addressing situations that could otherwise compromise the Commission's reputation and effective functioning.
180. As for the **monitoring role of the Committee**, subparagraph 6 of Article 15(1) of the amended OLAF Regulation states that *'the Supervisory Committee shall be granted access to all the information and documents it considers necessary for the performance of its tasks, including reports and recommendations on closed investigations and cases dismissed, without however interfering with the conduct of investigations in progress and with due regard to the requirements of confidentiality and data protection'*.
181. Regulation 2020/2223 introduced this key subparagraph. It marked a decisive turning point, ending the longstanding discussions concerning the Committee's right to access information necessary for the exercise of its monitoring functions and enabling the Committee to fulfil its mandate in an evidence-based manner and with the level of independence commensurate with the objectives and spirit of the amended Regulation.
182. As previously mentioned, the provision in subparagraph 6 of Article 15(1) has been detailed in Article 12 of the Working Arrangements between the Supervisory Committee and OLAF, on the Committee's direct electronic access to parts of the OCM. The system of direct electronic access has proven to be a reliable and efficient tool for the Committee's monitoring activities, ensuring the necessary transparency while fully safeguarding the confidentiality and the independence of OLAF's investigations. These changes undoubtedly enhanced the Committee's monitoring role and fostered mutual trust and respect between the Committee and OLAF. Building on the current arrangements and to ensure that this high level of cooperation is preserved, **the Committee considers it both proportionate and justified for the Regulation itself to expressly provide for direct electronic access to the relevant parts of the OCM.**
183. Embedding this practice in the legal framework would not only formalise a method that has proven successful but would also offer a clear and enduring basis for continuing transparency and cooperation between the Committee and OLAF.

#### **3.4.2 The Supervisory Committee and the Controller**

184. The Committee acknowledges the importance of the Controller of Procedural Guarantees in independently assessing complaints and providing targeted solutions to instances of non-compliance with procedural guarantees.
185. It is worth recalling that both the Committee's and the Controller's mandates cover procedural guarantees.

186. Article 9b (*‘Complaints mechanism’*) provides that *‘1. A person concerned shall be entitled to lodge a complaint with the Controller regarding the **Office’s compliance with the procedural guarantees** referred to in Article 9, as well as on the grounds of an infringement of the rules applicable to investigations by the Office, **in particular infringements of procedural requirements and fundamental rights.** [...]’*
187. Article 15 (*‘Supervisory Committee’*) stipulates that *‘1. 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.**’*
188. This parallel coverage of procedural guarantees does not give rise to an overlap of competences. The two roles can and should be seen as complementary. The Controller is entrusted with examining individual complaints submitted by persons concerned and addressing potential breaches on a case-by-case basis. By contrast, the Committee’s mandate relates to systemic matters and derives from its regular and independent monitoring of cases on its own initiative. The Committee’s role is therefore different from the Controller’s, as it focuses on overarching patterns, structural issues and the consistent application of procedural safeguards in OLAF’s investigative activity.
189. The link between the two entities with regard to procedural guarantees is provided by Article 9a(9), which sets out that *‘The Controller shall report to the Supervisory Committee on **any systemic issue arising out of his or her recommendations.**’*
190. The Committee nevertheless notes that the Controller has not yet issued any recommendations<sup>92</sup> and that recommendations do not necessarily reveal systemic issues.
191. To ensure that the complementarity between the Controller and the Committee is fully achieved, **it would be advisable for the Controller to report to the Supervisory Committee on any systemic issue identified at any stage of the complaint-handling process.** Article 9a(9) could be amended accordingly, so that the Controller brings to the Committee’s attention any systemic issue arising from the exercise of their mandate, irrespective of whether a recommendation has been issued.
192. Following the establishment of the Controller, the Secretariat, which is provided by the Commission, is shared between the Committee and the Controller. The Committee reiterates the importance of a fully staffed Secretariat. It further notes that Article 9a(3) of the amended OLAF Regulation states that *‘the Commission shall allocate to the Supervisory Committee the personnel and financial means necessary for the Controller’*. However, the Committee notes that the Secretariat also serves the Supervisory Committee, and that Article 15 should therefore be amended to ensure that appropriate personnel and financial resources *necessary for the Committee* are also ensured. This would strengthen internal coherence between the two provisions and remove any ambiguity, thereby ensuring the proper functioning of both bodies.

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<sup>92</sup> See the Annual Activity Reports of the Controller of Procedural Guarantees for 2022, 2023 and 2024, available at: [Annual activity reports and opinions - Controller of procedural guarantees](#).

## CONCLUSION

193. The Committee considers that the successive amendments to Regulation No 883/2013 have significantly strengthened its legal framework (as shown in Chapter 2).
194. Nevertheless, as explained in Chapter 3, the Committee has identified weaknesses and limitations in the amended OLAF Regulation that could be addressed. The proposed suggestions would enhance the Regulation's clarity and coherence, foster its consistent application to all relevant actors and ensure its positive impact<sup>93</sup>.
195. Considering these observations and following the evaluation process, the Committee considers that a review of the OLAF Regulation under Article 19(2) would be both opportune and necessary. The Committee is confident that its concrete suggestions will constitute valuable input for the Commission in drafting any future legislative proposal and the co-legislators in negotiating the legislative text.
196. The Committee wishes to express its appreciation for OLAF's sincere cooperation throughout the evaluation process. This began in April 2024 and has enabled the Committee to keep itself fully informed on the different steps of the evaluation process.
197. The Committee will closely follow the upcoming developments concerning the AFA review (particularly developments relating to OLAF's role and the future evolution of the OLAF Regulation) and stands ready to engage with the Commission and other stakeholders as appropriate.

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<sup>93</sup> Page 10 of Commission staff working document, *Better Regulation Guidelines*, SWD(2021)305 final of 3 November 2021, available at: [https://commission.europa.eu/system/files/2021-11/swd2021\\_305\\_en.pdf](https://commission.europa.eu/system/files/2021-11/swd2021_305_en.pdf).

## ANNEX – LIST OF ABBREVIATIONS

AFA.....	Anti-fraud architecture
AFCOS.....	Anti-fraud coordination services
CFR.....	Charter of Fundamental Rights of the European Union
CJEU.....	Court of Justice of the European Union
DG OLAF.....	Director-General of OLAF
EPPO.....	European Public Prosecutor’s Office
GIPs.....	Guidelines on investigation procedures for OLAF’s staff
IBOAs.....	EU institutions, bodies, offices or agencies
MPF.....	Multiannual financial framework
OCM.....	OLAF’s case management system
OLAF.....	European Anti-fraud Office
OLAF Regulation.....	Regulation (No) 883/2013
Amended OLAF Regulation.....	Regulation No 883/2013 as subsequently amended
PIF.....	Protection of financial interests
SC.....	Supervisory Committee of OLAF
TEU.....	Treaty on European Union
TFEU.....	Treaty on the Functioning of the European Union
WA.....	Working arrangements between OLAF and the Supervisory Committee