



OLAF Supervisory Committee

Opinion No 3/03

concerning the proposals made by the Institutions
to extend the role of the Supervisory Committee

Luxembourg, 22 October 2003

The Supervisory Committee has been invited to submit its opinion on the request made by several Institutions to look into extending its role to improve the system for ensuring that OLAF complies with the law and respects human rights when conducting its investigations, in accordance with the objectives set out in the tenth recital of Regulation (EC) No 1073/99.¹

The Committee firstly points out that, when approached on this matter, it supported the Parliament and Commission's objective of trying to find a coherent solution to the problem of respect for human rights in connection with the creation of a European Prosecutor responsible for PFI. It again stresses the importance it attaches to achieving this objective.

Because the Committee has monitored investigations, it has been able to gauge the extent of the problem, and has already made a number of recommendations to improve the application of the existing rules and set up procedures and structures to ensure that they are applied. In relation to its role in this field, it points out that the final clause of Article 11(7) of Regulation (EC) No 1073/99, which requires that "the Director shall inform the committee of cases requiring information to be forwarded to the judicial authorities of a Member State" has not yet been properly implemented.

The Committee again draws the Institutions' attention to the fact that it must have the means to fulfil its mission, both with regard to the application of Regulation (EC) No 1073/99, which requires information to be made available to it, and with regard to its administrative and budgetary status, which must allow it to function.

¹ (10) Whereas these investigations must be conducted in accordance with the Treaty and in particular with the Protocol on the privileges and immunities of the European Communities, while respecting the Staff Regulations of officials and the conditions of employment of other servants of the European Communities (hereinafter referred to as "the Staff Regulations"), and with full respect for human rights and fundamental freedoms, in particular the principle of fairness, for the right of persons involved to express their views on the facts concerning them and for the principle that the conclusions of an investigation may be based solely on elements which have evidential value; whereas to that end the institutions, bodies, offices and agencies must lay down the terms and conditions under which such internal investigations are conducted; whereas consequently the Staff Regulations should be amended in order to lay down the rights and obligations of officials and other servants as regards internal investigations.

To examine the capacity of OLAF's current structure to achieve the objectives set by the legislator, especially with regard to respect for human rights, the management review of operational functions that the Supervisory Committee envisages must be conducted under the Committee's control, which must include both the recruitment of experts and the performance of their duties, with logistic support from the Court of Auditors.

But the most difficult problem is how to incorporate its recommendations regarding the development of real rules of procedure and the creation of a body responsible for examining complaints made by the persons concerned, as the body would need to be completely independent to perform such a task, and it also would need to be available on a near-permanent basis.

With regard to the first requirement, the Committee believes that its current status as a group outside the framework of the European Institutions consisting of "independent outside persons who possess the qualifications required for appointment in their respective countries to senior posts" ensures the independence it needs to fulfil its mission with regard to OLAF. It therefore does not consider that there is any need to alter this status to make it an Institution with fixed internal rules.

However, its status as an outside body does not give the members of the Supervisory Committee the availability that would be necessary if its powers were extended to cover the examination of complaints. The Committee therefore proposes the creation of a special advocate to support it in the performance of its new tasks. As part of the Committee's Secretariat, the advocate would review the Committee's opinions on complaints put before the Director of OLAF under Article 14 of Regulation (EC) No 1073/99 and questions put to him spontaneously by persons under investigation. The Committee and the Office would draw up a memorandum of understanding setting out the principle governing the nature of cooperation between this special advocate and OLAF.