

NON-CONFIDENTIAL VERSION



Opinion No 3/2026

**OLAF's reporting duty
concerning criminal conduct
within the European Public
Prosecutor Office's competence**

June 2026

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1. INTRODUCTION

1. Since its creation in 1999, when the Commission adopted Decision 1999/352 establishing the European Anti-Fraud Office (“OLAF”) within its own services with responsibility for conducting administrative fraud investigations¹, OLAF has been an essential pillar of the European Union’s anti-fraud architecture. It conducts administrative investigations that may lead to financial, administrative, disciplinary and judicial recommendations. Parliament and the Council subsequently enacted Regulation No 1073/1999 to regulate investigations conducted by OLAF². In 2013, Regulation No 883/2013³ (‘the OLAF Regulation’) repealed the 1999 Regulation and made substantial revisions to the legal framework governing OLAF investigations.
2. The Supervisory Committee of OLAF (‘Committee’) was established to strengthen and guarantee OLAF’s independence by regularly monitoring its investigative function and by assisting its Director-General (‘D-G’) in the discharge of their responsibilities⁴. To that end, the Committee addresses opinions and recommendations to the OLAF’s D-G. The Committee is the only body entitled to monitor OLAF’s investigative function. Its role is therefore to ensure that no undue pressure affects OLAF’s independence in the opening, conducting and closing of an investigation, that the procedural guarantees of persons involved are ensured and that investigations are conducted properly and within a reasonable timeframe.
3. The subsequent creation of the European Prosecutor’s Office (‘EPPO’) in 2017 by Regulation 2017/1939⁵ (‘EPPO Regulation’) marked a fundamental development in the fight against crimes affecting the EU’s budget. This initiative brought significant changes to the European Union’s anti-fraud architecture, including the mandate of OLAF. The new framework confirms that by nature OLAF is an administrative body conducting administrative investigations. Concurrently, the EPPO was given the power to carry out criminal investigations and bring indictments related to criminal offences affecting the EU’s financial interests, within the meaning of Directive 2017/1371⁶ (the PIF Directive), in the 24 participating Member States (the ‘EPPO zone’). As the EU’s first supranational public prosecution office, the EPPO operates as a fully independent single office across all participating EU countries and combines European and national law-enforcement efforts. The EPPO is composed of two levels: the central level and the decentralised (national) level which consists of the European Delegated Prosecutors (‘EDPs’) in the 24

¹ 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), OJ L 136, 31.5.1999, p. 20, as last amended by Commission Decision (EU) 2015/2418 of 18 December 2015, OJ L 333, 19.12.2015, p. 148.

² 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.

³ 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, as amended by Regulation 2020/2023, OJ L 423, 28.12.2020 p. 49.

⁴ According to Article 15(1) of the OLAF Regulation, the Supervisory Committee’s role is to ‘regularly monitor the implementation by OLAF of its investigative function, in order to reinforce OLAF’s independence in the proper exercise of the competences conferred upon it by the OLAF Regulation’.

⁵ 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.

⁶ 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).

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participating EU Member States. The EPPO's power to investigate and prosecute is exercised by the EDPs at the national level. The EDPs operate with complete independence from their national authorities, while the central level supervises the investigations and prosecutions carried out by the EDPs.

4. As OLAF's and EPPO's common goal is to preserve the integrity of the EU budget, in December 2020, the EU legislator adopted Regulation 2020/2223⁷, amending the OLAF Regulation 'as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations.
5. Under the current legal framework, OLAF and EPPO have complementary roles in protecting the EU's financial interests. In particular, the amended OLAF Regulation provides that both the EPPO and OLAF should establish and maintain a close cooperation aimed at ensuring the complementarity of their respective mandates and coordination of their actions. For the EU legislator, 'the relationship between OLAF and the EPPO should be such as to contribute to ensuring that all means are used to protect the financial interests of the Union'⁸.
6. To put this cooperation into practice, the amended OLAF Regulation sets out clear rules to govern interaction between OLAF and the EPPO. Central to this framework is the principle of non-duplication of investigations⁹ which prevents OLAF from opening or continuing an investigation if the EPPO is already investigating the same facts. Instead, OLAF is empowered to support the EPPO's criminal investigations or carry out complementary inquiries where appropriate¹⁰. This approach helps to make investigations as efficient as possible and ensures that resources are used effectively, avoiding overlap and confusion.
7. Furthermore, the OLAF Regulation¹¹ also specifically obliged OLAF to promptly report any suspected criminal offences falling within the EPPO's mandate, fostering timely information exchange and close coordination. This requirement guarantees that both bodies remain aligned in their efforts to safeguard the EU's financial interests.
8. The Committee has consistently shown considerable interest in evaluating the effects of the EPPO Regulation and the revised OLAF Regulation on OLAF's investigative operations, as well as examining the practical execution of OLAF's cooperation with the EPPO. The Committee regards the proper functioning of cooperation mechanisms between OLAF and the EPPO as key for ensuring that OLAF can exercise its mandate effectively. Accordingly, monitoring the efficient and consistent application of these collaborative processes also falls within the Committee's mandate and is part of its work programme.

⁷ Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations (OJ L 437, 28.12.2020, p. 49).

⁸ Recital 4 of Regulation 2020/2223.

⁹ Article 12d of OLAF Regulation.

¹⁰ Articles 12e and 12f of the OLAF Regulation.

¹¹ Article 12c OLAF Regulation.

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9. Reflecting this priority, in February 2024 the Committee issued its first dedicated opinion on complementary investigations carried out by OLAF¹². In its conclusions, the Committee commended both the EPPO and OLAF for their constructive engagement in making this mechanism operational. Given the evolving nature of complementary investigations, the Committee continued to monitor in 2024 the complementary investigations conducted by OLAF and how its recommendations had been implemented. In its Annual Activity Report of 2024¹³ the Committee provided further insights into the conduct of such investigations and their role as an essential tool in the cooperation between OLAF and the EPPO.
10. To complement the analyses previously conducted, the Committee intends to focus this opinion on OLAF's duty to report suspected criminal conduct to the EPPO. This obligation, like OLAF's duty to discontinue or complement investigations in cases falling under the EPPO's competence, has a direct impact on OLAF's investigative functions. By monitoring the implementation of this reporting duty, the Committee aims to assess compliance with the relevant legal provisions and preserve OLAF's investigative independence. The analysis focuses on verifying: (i) the way OLAF collects, handles, and analyses all relevant information before deciding whether to report a case to the EPPO; (ii) that OLAF's decisions are taken impartially and without undue delay and that no external interference affects the conduct of OLAF's investigatory functions; and (iii) that OLAF's actions are fully in line with the applicable legal framework.
11. On 16 May 2025¹⁴, the Committee received a letter from the Commissioner for Budget, Anti-Fraud and Public Administration, requesting an opinion on OLAF's obligation to report to the EPPO. The Committee considered the request and integrated this matter into its annual work plan.
12. The Committee recalls that, as stated in Article 15(1) of the OLAF Regulation, its role is to *regularly monitor the implementation by OLAF of its investigative function, in order to reinforce OLAF's independence in the proper exercise of the competences conferred upon it by the OLAF Regulation*. In that regard, it is important to underline that the members of the Committee carry out their role with complete independence¹⁵ and, in doing so, they neither seek nor receive instructions from any government or EU IBOAs.

2. METHODOLOGY OF THE OPINION

13. Having decided to issue an opinion regarding OLAF's reporting duty of cases falling within the EPPO's criminal competence, the Committee requested information from OLAF on the concrete implementation of this duty throughout 2024. OLAF's D-G provided the requested information on 14 July 2025¹⁶, including copies of several internal documents related to the implementation of this duty¹⁷.

¹² Opinion No 1/2024 of 16 April 2024 'Complementary Investigations of OLAF and the EPPO' available at https://supervisory-committee-olaf.europa.eu/supervisory-committee-olaf/opinions-and-reports_en.

¹³ See Point 2.1. of the SC Annual Activity Report of 2024, available at https://supervisory-committee-olaf.europa.eu/supervisory-committee-olaf/opinions-and-reports_en.

¹⁴ [CONFIDENTIAL].

¹⁵ See Article 15(2) and (7) of the OLAF Regulation.

¹⁶ [CONFIDENTIAL].

¹⁷ [CONFIDENTIAL].

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14. Pursuant to Article 8 of the working arrangements between OLAF and the Committee ('WA')¹⁸, OLAF's D-G also provided the Committee with a list of cases (including dismissal decisions) in which information was transmitted to the EPPO during 2024¹⁹. From this list it emerges that there were in total 67 cases that OLAF transmitted to the EPPO during 2024:
- i. 44 dismissed cases due to EPPO competence (category i);
 - ii. 9 closed cases initially transmitted to EPPO but not taken over by EPPO (category ii);
 - iii. 14 cases discontinued due to EPPO competence (category iii).
15. Regarding category i. the Committee selected a sample of 25 dismissal decisions and related Selection Unit opinions. Regarding category ii. and iii. the Committee decided to analyse all cases and OLAF provided full access to the relevant case files in line with Articles 12 and 13 of the WA²⁰.
16. In addition, the Committee requested²¹, and was provided by OLAF²², with:
- iv. the list of 209²³ OLAF closed investigations in 2024 not reported to the EPPO (category iv).
17. Concerning category iv, the Committee resolved to analyse a selected sample of 20 out of 209 OLAF closed cases not reported to the EPPO for the purposes of the present opinion. The cases were selected based on the following criteria: a) cases in which the EPPO requested information related to OLAF's case following the closure of OLAF's investigation; b) cases which concerned matters related to the RRF. To ensure an adequate representation of all investigative units the Committee selected at least two cases for each of OLAF's investigative units²⁴. The Committee decided not to include in its analysis complementary investigations closed in 2024²⁵ since *firstly*, the Committee has previously already issued an opinion on complementary investigations²⁶ and, *secondly*, to allow for the sample of 20 closed cases analysed to focus on instances in which the EPPO was unaware

¹⁸ Pursuant to the working arrangements between OLAF and the Committee, signed on 21 October 2021, OLAF provides the Committee at the beginning of the year with a table with the OCM reference of cases (including dismissal decisions) in which information was transmitted to national judicial authorities or to the EPPO in the previous calendar year. available at: https://supervisory-committee-olaf.europa.eu/supervisory-committee-olaf/legal-framework_en.

¹⁹ [CONFIDENTIAL].

²⁰ Article 12 and 13 of the WA sets out the principles under which OLAF provides access to its OCM together with Article 14 and 15 of the Supervisory Committee internal rules of procedures.

²¹ [CONFIDENTIAL].

²² [CONFIDENTIAL].

²³ [CONFIDENTIAL].

²⁴ [CONFIDENTIAL].

²⁵ [CONFIDENTIAL].

²⁶ See the Committee's opinion No 1/2024 – Complementary investigations of OLAF and the EPPO, of 16.4.2024. Available at https://supervisory-committee-olaf.europa.eu/supervisory-committee-olaf/opinions-and-reports_en.

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of OLAF's investigations. OLAF provided full access to the relevant case files in line with Articles 12 and 13 of the WA²⁷.

18. The table below displays the overall view of the four categories of cases analysed by the Committee and the number of cases analysed in each category.

Categories of cases	Number of cases analysed	Number of total cases
i. Dismissed cases due to EPPO competence	25	44
ii. Closed investigations initially transmitted to EPPO but not taken over by the EPPO	9	9
iii. Discontinued investigations due to the EPPO competence	14	14
iv. Cases closed by OLAF which were not reported to the EPPO	20	209

19. The Committee thoroughly analysed all the relevant information considering the OLAF Regulation and the legal framework applicable to OLAF investigations. It also took account of OLAF's agreements with third parties, the case law of the EU Courts, the EU Charter of Fundamental Rights ('the Charter')²⁸, and the administrative arrangements in place between OLAF, EPPO and the relevant IBOAs when the investigations were conducted.

20. The Committee sent OLAF additional requests for clarification regarding specific cases to better understand how OLAF carries out its reporting obligation to the EPPO in practice²⁹. Finally, the Committee and its Secretariat also held operational meetings with OLAF to clarify the information provided and discuss OLAF's implementation of its reporting duty to the EPPO³⁰.

²⁷ Article 13(1) a of the WA between OLAF and the Supervisory Committee.

²⁸ The Charter of Fundamental rights of the European Union, also available at: <https://eur-lex.europa.eu/legal-content/EN/TEXT/HTML/?uri=CELEX%3A12012P%2FTXT>.

²⁹ [CONFIDENTIAL].

³⁰ The Secretariat and the rapporteur held operational meetings with OLAF's staff on 17.11.2025, 12.2.2026 and 16.3.2026 concerning OLAF's implementation of its reporting duty to the EPPO as well as seeking to clarify questions linked to specific cases that were analysed by the Committee for the purposes of this opinion.

21. In performing its monitoring activities, the Committee focuses exclusively on closed investigations and does not interfere in the conduct of investigations in progress.
22. The opinion is divided into three main parts. *First*, it provides an overview of the legal framework and mechanisms governing OLAF's reporting obligations to the EPPO; *Second*, it reviews the selected OLAF cases to assess how this reporting duty is implemented in practice and how the applicable framework is applied in concrete situations. *Third*, it formulates conclusions based on a horizontal assessment of all cases reviewed and puts forward targeted recommendations aimed at improving the effectiveness, clarity, and practical application of OLAF's reporting duty.

3. OLAF'S DUTY TO REPORT CASES TO THE EPPO

3.1. Legal Framework

23. The amended OLAF Regulation³¹ provides that OLAF and the EPPO are to establish and maintain a **close relationship** based on the principle of **sincere cooperation**³².
24. The level of cooperation envisaged between OLAF and the EPPO is reflected in their respective Regulations. The EPPO Regulation provides in Article 24(1) that: 'The institutions, bodies, offices and agencies of the Union and the authorities of the Member States competent under applicable national law shall without undue delay report to the EPPO any criminal conduct in respect of which it could exercise its competence (...)'. Moreover, the EPPO Regulation sets out in Article 101 that '[W]here the EPPO conducts a criminal investigation in accordance with this Regulation, OLAF shall not open any parallel administrative investigation into the same facts.'
25. Likewise, the amended OLAF Regulation sets out in **Article 12c the general legal framework applicable to OLAF's reporting duty:**

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 in accordance with Chapter IV of Regulation (EU) 2017/1939. The report shall be sent without undue delay before or during an investigation of the Office.

2. The report referred to in paragraph 1 shall contain, as a minimum, a description of the facts, including an assessment of the damage caused or likely to be caused, the possible legal qualification and any available information about potential victims, suspects or other persons involved.

3. The Office shall not be bound to report to the EPPO manifestly unsubstantiated allegations.

4. Where the information received by the Office does not include the elements set out in paragraph 2 of this Article, and there is no ongoing investigation of the Office, the Office may conduct a preliminary evaluation of the allegations. The evaluation shall be carried out without delay and in any case within two months of

³¹ See Article 1(4)(a) of the OLAF Regulation.

³² See, Recital 4 of Regulation 2020/2223. See also Article 101 of the EPPO Regulation, according to which the EPPO 'shall establish and maintain a close relationship with OLAF based on mutual cooperation within their respective mandates and on information exchange. The relationship shall aim in particular to ensure that all available means are used to protect the Union's financial interests through the complementarity and support by OLAF to the EPPO'.

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receipt of the information. *In the course of that evaluation, Article 6 and Article 8(2) shall apply. Following this preliminary evaluation, the Office shall report to the EPPO any criminal conduct as referred to in paragraph 1 of this Article.*

5. Where the criminal conduct referred to in paragraph 1 of this Article comes to light during an investigation by the Office, and the EPPO opens an investigation following the report referred to in that paragraph, the Office shall not continue its investigation into the same facts other than in accordance with Article 12e or 12f. (...).

6. The institutions, bodies, offices and agencies may request the Office to conduct a preliminary evaluation of allegations reported to them. *For the purposes of those requests, paragraphs 1 to 4 shall apply mutatis mutandis. The Office shall inform the institution, body, office or agency concerned of the results of the preliminary evaluation, unless providing such information could jeopardise an investigation conducted by the Office or by the EPPO.*

26. To prevent duplication of investigations Article 12d of the OLAF Regulation provides that *the Director-General [of OLAF] shall discontinue an ongoing investigation and shall not open a new investigation (...) where the EPPO is conducting an investigation into the same facts. The Director-General shall inform the EPPO about each decision to discontinue taken on such grounds.*
27. It emerges from the combined reading of Articles 12c and 12d of the OLAF Regulation that the current legal framework lays down two distinct obligations for OLAF regarding its cooperation with the EPPO. *Firstly*, OLAF has a positive obligation to report to the EPPO ‘without undue delay’ on any criminal conduct in respect of which the EPPO could exercise its competence; *Secondly*, OLAF has a negative obligation to refrain from opening a new investigation or continuing an ongoing investigation when it becomes aware that the EPPO is conducting an investigation into the same facts.
28. To facilitate this cooperation further, Article 12g(2) of the OLAF Regulation as well as Article 101(5) of the EPPO Regulation grant OLAF indirect access to information held in the EPPO’s case management system. As a result, the case management systems of OLAF and of the EPPO may be mutually and reciprocally accessed for the purpose of identifying whether information available to the EPPO or OLAF matches information held in the other’s case management system³³. Collectively, these provisions establish a legal framework designed to foster complementarity and facilitate mutual support between OLAF and the EPPO.
29. Alongside the provisions contained in the OLAF and EPPO Regulations, both organisations have established internal rules to concretely define the procedures for cooperation pertaining to OLAF’s reporting obligations to the EPPO. Within this framework, the Guidelines on Investigation Procedures for OLAF Staff (‘GIPs’) relevant to the cases addressed in this opinion³⁴ outline the internal procedures to be observed. Specifically, these encompass procedures for the initial case analysis phase (Article 5 under

³³ See Point 4.6 of the WA between OLAF and the EPPO, dated 5 July 2021, available at: https://www.eppo.europa.eu/sites/default/files/2021-07/Working_arrangement_EPPO_OLAF.pdf.

³⁴ See Guidelines on Investigation Procedures for OLAF Staff, of 11 October 2021, available publicly at https://anti-fraud.ec.europa.eu/system/files/2021-10/gip_2021_en.pdf.

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the Chapter *Selection*)³⁵ as well as those governing reporting to the EPPO during ongoing investigations (Article 15 under the Chapter *Investigations, Coordination and support cases*)³⁶.

30. OLAF has recently adopted its revised Guidelines on Investigation Procedures for OLAF Staff ('new GIPs')³⁷, effective from 1 January 2026. Although these new GIPs are not applicable to the cases analysed in this opinion, they remain relevant insofar as they showcase the evolution of OLAF's internal rules on mechanisms of cooperation regarding OLAF's reporting duty to the EPPO. In particular, the new GIPs set out provisions relevant to OLAF's selection process³⁸ and investigative conduct³⁹ that are broadly consistent with those of the previous guidelines, including rules relating to the assessment of the EPPO's competence, the verification in the EPPO's case management system and decision to report to the EPPO and dismiss or discontinue a case.
31. Moreover, OLAF and the EPPO have agreed on working arrangements (WA)⁴⁰ to further detail operational cooperation: Point 4 defines the procedures for the *Exchange of Information*⁴¹ between the two bodies; Point 5 sets out the rules for *Mutual Reporting and Transmission of Potential Cases*⁴².
32. Building on the legal framework outlined above, it is essential to examine how OLAF implements its reporting duty to the EPPO in practice. The Committee's analysis draws on OLAF's internal procedural rules and the WA with the EPPO, and is structured around four main operational contexts:
 - **Reporting during the case selection phase:** when OLAF identifies facts that may constitute criminal conduct while opening a new investigation (see **Section 3.2**);
 - **Reporting during ongoing investigations:** when OLAF becomes aware of criminal conduct falling under EPPO's competence during the course of an investigation (see **Section 3.3**);
 - **Defining reportable conduct** – including the notion of 'criminal conduct' subject to reporting and 'manifestly unsubstantiated allegations' which are excluded from the reporting obligation (see **Section 3.4**);
 - **Preliminary evaluations at the request of IBOAs:** examining OLAF's role in assessing potential allegations before reporting to the EPPO (see **Section 3.5**).
33. This structure allows for a comprehensive assessment of OLAF's operational practices in fulfilling its reporting obligations.

³⁵ See in particular Articles 5.2; 5.4; 5.7 and 5.10 of the GIPs.

³⁶ See in particular Articles 15.5; 15.6 and 15.7 of the GIPs.

³⁷ See Guidelines on Investigation Procedures for OLAF Staff, of 1 January 2026, available publicly at https://anti-fraud.ec.europa.eu/guidelines-investigations-olaf-staff_en.

³⁸ See *Section 2.2. Selection process* in particular Articles 17.2; 17.5; 17.6; 17.7; 17.8; 18.4 and 18.5 of the New GIPs and *Section 2.3. Information duties* in particular Articles 19.3 and 19.4 of the New GIPs.

³⁹ See *Section 3.4. Conduct of investigations* in particular Articles 40 and 41 of the New GIPs.

⁴⁰ Working Arrangement between OLAF and the EPPO, dated 5 July 2021, available at: https://www.eppo.europa.eu/sites/default/files/2021-07/Working_arrangement_EPPO_OLAF.pdf.

⁴¹ See in particular Points 4.5 and 4.6 of the WA between OLAF and the EPPO.

⁴² See in particular Points 5.1.1; 5.1.2; 5.1.3 and 5.1.4 of the WA between OLAF and the EPPO.

3.2. OLAF's duty to report to the EPPO during the selection process

34. According to Article 5(1) of the OLAF Regulation the 'the Director-General may open an investigation when there is a sufficient suspicion, which may be based on information provided by any third party or on anonymous information, that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union (...).'
35. The authority of OLAF's D-G to open an investigation is subject to the obligation set out in Article 12d of the OLAF Regulation which stipulates that OLAF shall not open a new investigation if the EPPO is already investigating the same facts.
36. Chapter I of the GIPs⁴³ outlines the procedural steps OLAF must follow in deciding whether to open an investigation. The selection process comprises three distinct steps: (i) evaluation of OLAF's competence to act; (ii) evaluation of the existence of sufficient suspicion for the opening of an OLAF investigation; (iii) evaluation of whether it is appropriate for OLAF to act.
37. The selection of a potential new case involves as a first step an evaluation of OLAF's *competence to act*. When OLAF's Operations and Investigations Selection Unit ('Selection Unit') receives information with possible investigative interests, it must begin by checking the EPPO's case management system to see if the EPPO is conducting an investigation into the **same facts**⁴⁴. This verification is done through a **hit/no-hit system** (H/NH) with the aim of identifying whether the facts referenced in the allegations have already been subject to investigations by the EPPO. To this end, the Selection Unit should run queries with the **names, entities and projects involved** to verify whether there is a match between the facts cited in the allegations and those addressed in EPPO investigations⁴⁵.
38. Whenever such an overlap is established and further clarifications from the EPPO are needed, the Selection Unit requests additional information from the EPPO, before finalising the selection⁴⁶. The EPPO then has 15 working days to reply to the request pursuant to Point 4.5. of the WA between OLAF and the EPPO.
39. Following its assessment, the Selection Unit provides an opinion to OLAF's D-G on whether to open or dismiss a case, which also evaluates the possibility of reporting to the EPPO on criminal conduct falling within its competence⁴⁷. The Selection Unit's evaluation of reporting to the EPPO should contain an analysis of the EPPO's ability to exercise its competence⁴⁸. This analysis should cover the EPPO's material, territorial, temporal and personal competence as set out in the EPPO Regulation⁴⁹. OLAF explained that, since November 2022, the opinions should consistently include explicit analyses of the EPPO's material, temporal, territorial, and personal competence, even in cases where OLAF decides not to report the matter to the EPPO. Additionally, OLAF emphasised that this

⁴³ Articles 1 to 7 of the GIPs. See the equivalent provisions in Chapter II 'Selection', specifically, Articles 13 to 19 of the new GIPs.

⁴⁴ Article 12d(1), second paragraph of the OLAF Regulation, Article 5.2 of the GIPs (See the equivalent provision in Article 17.2 of the new GIPs) as well as Points 4.5 and 5.1.1. of the WA between OLAF and the EPPO.

⁴⁵ [CONFIDENTIAL].

⁴⁶ Article 5.2 of the GIPs. See also the equivalent provision in Article 17.2 of the new GIPs.

⁴⁷ Article 5.4 of the GIPs.

⁴⁸ Article 12c(1) of the OLAF Regulation which refers to Chapter IV of the EPPO Regulation.

⁴⁹ Articles 22 and 23 of the EPPO Regulation.

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revised methodology is now reflected in Article 18.4 of the new GIPs⁵⁰. This matter will be further examined by the Committee in its findings and conclusions (see **Section 5**). Moreover, OLAF explained that it provided dedicated sessions to its staff on the assessment of the EPPO's competence at the selection stage in the context of training for the new GIPs⁵¹.

40. In instances where the Selection Unit identifies potential criminal conduct, falling within the material, territorial, temporal and personal scope of the EPPO, it prepares a proposal to dismiss the selection case and report the information to the EPPO within two months of receipt of the information⁵².
41. Based on the opinion of the Selection Unit, the D-G decides whether to: open an investigation, pursuant to Article 5(1) of the OLAF Regulation; dismiss the case in accordance with Article 12d(1) of the OLAF Regulation; and report the information to the EPPO pursuant to Article 12c(1) of the OLAF Regulation as well as Article 6(1) of the GIPs.
42. In the latter case, the Selection Unit prepares the relevant report to the EPPO (the EPPO Crime Report - 'ECR'). Pursuant to Article 12c(2) of the OLAF Regulation, the ECR must contain at least a description of the facts, including an assessment of the damage caused or likely to be caused, the possible legal qualification and any information available about potential victims, suspects and any other involved persons⁵³. In order to strengthen the consistency and quality of reporting the new GIPs⁵⁴ require the ECR to undergo a 'quality check' carried out at this stage by the Head of the Selection Unit. This quality check consists of a formal verification aimed at ensuring that the report form has been properly and correctly filled in. In particular, the Selection Unit verifies that all mandatory sections of the ECR have been completed, that the relevant information has been inserted in the appropriate fields, and that the description of the facts and accompanying data are presented in a clear and structured manner. Finally, in accordance with Point 5.1.2 of the WA between OLAF and the EPPO, once OLAF has reported to the EPPO, the EPPO must inform OLAF of its decision to open or not an investigation within five working days of the adoption of the decision. Neither the WA nor the OLAF Regulation provide for a deadline for the EPPO to take such a decision.
43. The procedure outlined above shows that the Selection Unit plays a crucial role in assessing *prima facie* the facts that may constitute criminal conduct subject to mandatory reporting to EPPO. This occurs when preparing the opinion based on which the D-G OLAF decides whether to open an OLAF investigation or dismiss the selection case⁵⁵. It is therefore important for the Committee to clarify the parameters guiding the Selection Unit's assessment process.

⁵⁰ [CONFIDENTIAL].

⁵¹ [CONFIDENTIAL].

⁵² Article 12c(4) of the OLAF Regulation and Article 5.7 of the GIPs. See also the equivalent provision in Article 17.5 of the new GIPs.

⁵³ See also Article 5.7 of the GIPs. See also the equivalent provision in Article 17.5 of the new GIPs.

⁵⁴ See Article 17.5 of the new GIPs. In the interest of completeness, the Committee notes that in Article 5.7 of the previous GIPs the quality check of the ECR was performed at the selection stage by OLAF's Operational Coordination and Liaison Office Unit.

⁵⁵ Article 5.5 of the GIPs. See also the equivalent provision in Article 18.1 of the new GIPs.

44. According to OLAF's internal rules regarding case selection⁵⁶, the case selector assigned to the case within OLAF's Selection Unit must carry out the legal assessment of the allegations, aiming to establish whether the misconduct, wrongdoing or illegal activity in question falls within EPPO's competence to act. When OLAF carries out the legal assessment regarding a potential EPPO competence, it considers the following as relevant legal frameworks: the EPPO Regulation, the PIF Directive⁵⁷ and, where necessary, the national criminal law transposing the PIF Directive. The case selector will then clarify whether the reported facts fall within EPPO's competence and, if affirmative, whether, in light of the collected information, including verifications in EPPO's case management system and supplementary exchange of information with EPPO, OLAF has to refrain from opening an investigation because of its non-duplication obligation in relation to the EPPO⁵⁸.
45. Pursuant to Article 12c(1) of the OLAF Regulation, OLAF is obliged to submit its report to the EPPO *without undue delay*⁵⁹. This requirement ensures that potential criminal conduct is communicated promptly, in line with the principle of effective cooperation. Furthermore, Article 12c(4) stipulates that, when OLAF receives information lacking essential elements – such as a description of the facts, an assessment of the damage caused or likely to be caused, and the possible legal qualification - OLAF *may conduct a preliminary evaluation of the allegations. The evaluation shall be carried out without delay and in any case within two months of receipt of the information.* This provision thus allows OLAF to assess allegations before reporting them to the EPPO when the above elements are absent⁶⁰.

3.3. OLAF's reporting duty during the course of an investigation

46. Pursuant to Article 12c(1) of the OLAF Regulation, OLAF has a continuous obligation to report to the EPPO facts that may constitute a 'criminal matter', whenever it becomes aware of these facts, including after the opening of an OLAF investigation. In accordance with Article 12c(5) of the OLAF Regulation, once such facts are identified, OLAF must take concrete steps to avoid duplication of investigative efforts. Specifically, following OLAF's reporting of a potential criminal conduct, once the EPPO informs OLAF that it opened or it had an already ongoing criminal investigation into the same facts, OLAF is obliged either to discontinue its ongoing administrative investigation or to formally inform the EPPO, in line with Article 12 f) of the OLAF Regulation, about its intention to open a complementary investigation 'with a view to facilitating the adoption of precautionary measure of financial, disciplinary or administrative action'. EPPO may object to the opening of such investigation or to the performance of certain acts pertaining the investigation. These obligations emphasise the need for effective coordination, ensuring that investigations are conducted efficiently and that resources are optimally utilised to protect the EU's financial interests.
47. In this context, OLAF's GIPs establish the procedural steps for fulfilling OLAF's reporting obligations when criminal elements are identified during an ongoing investigation. In such

⁵⁶ [CONFIDENTIAL].

⁵⁷ 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.*

⁵⁸ [CONFIDENTIAL].

⁵⁹ Similarly, Article 24(1) of the EPPO regulation states that the IBOAs and 'the authorities of the Member States competent under applicable national law shall without undue delay report to the EPPO'.

⁶⁰ [CONFIDENTIAL].

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instances, the investigation units must verify, through the EPPO's case management system, whether the EPPO is addressing the same facts. To facilitate effective coordination and avoid duplication of efforts, the investigation unit, where necessary, must also request additional information from the EPPO⁶¹.

48. Furthermore, if the investigation unit finds potential criminal conduct within EPPO's remit, it must prepare the ECR without delay following the same requirements examined above for reporting at the selection stage⁶². When drafting an ECR during the investigation phase, the new GIPs lay down a similar 'quality check' to ensure consistency and quality⁶³. At this stage of the procedure, the quality check is carried out by the Review Team⁶⁴.
49. The new GIPs establish a different methodology, according to which when OLAF receives information indicating that the EPPO might be conducting a criminal investigation into the same facts as an ongoing OLAF investigation, it must carry out a H/NH verification to confirm this information⁶⁵. By contrast, in instances where, during an investigation, OLAF identifies potential criminal conduct falling within the competence of EPPO, it shall directly prepare an ECR and report the matter to the EPPO without delay and without first carrying out a H/NH verification⁶⁶.
50. In such instances and pending the EPPO decision on whether to open or not a criminal investigation the new GIPs lay down that OLAF shall not conduct investigative activities⁶⁷. OLAF clarified to the Committee that it adheres to this approach on the basis that it reflects the underlying spirit and intent of the OLAF Regulation, namely, to avoid any risk of prejudicing or undermining potential future judicial actions or prosecutorial decisions that may be taken by the EPPO. Where the EPPO initiates a criminal investigation, OLAF's D-G will, pursuant to Article 12d(1) of the OLAF Regulation, discontinue the ongoing investigation and inform the EPPO of the discontinuation.
51. Finally, if OLAF's investigation unit concludes that the ongoing investigation has a broader scope than the facts falling within the EPPO's competence, it may request OLAF's D-G to split the investigation. This would result in the closure of the part related to the EPPO's mandate, while allowing OLAF to continue examining the remaining facts outside EPPO's

⁶¹ See Article 15.5 of the GIPs.

⁶² See Article 15.7 of the GIPs.

In addition, the requirements of the report to the EPPO during an ongoing investigation are the same as for the reporting in the initial case selection and correspond to 'a description of the facts, including an assessment of the damage caused or likely to be caused, the possible legal qualification and any available information about potential victims, suspects or other persons involved' pursuant to Article 12c(2) of the OLAF Regulation and Article 5.7 of the GIP. See also the equivalent provision in Article 17.5 of the new GIPs.

⁶³ Article 41.1 of the new GIPs provides that during the investigation phase the 'EPPO Crime shall undergo a quality check to ensure its consistency and quality in line with OLAF's reporting obligations towards the EPPO'. In the interest of completeness, the Committee notes that according to Article 17.5 of the previous GIPs the quality check of the ECR was performed at the investigative stage by OLAF's Operational Coordination and Liaison Office Unit.

⁶⁴ The Review team consists of an internal unit within OLAF. Its role is provided for in Article 2.2 of the new GIPs: the Review team is responsible for 'carrying out legality checks and final review instances when provided by [the GIPs] as part of an internal advisory and control procedure, within the meaning of Article 17(7) of the OLAF Regulation'.

⁶⁵ See Article 40.1 of the new GIPs.

⁶⁶ See Article 41.1 of the new GIPs.

⁶⁷ See Article 41.3 of the new GIPs.

remit⁶⁸. Alternatively, if the EPPO has opened or is conducting an investigation on the same facts, OLAF's investigation unit may propose the launch of a complementary investigation. This type of investigation would support the adoption of precautionary measures or of financial, disciplinary or administrative action⁶⁹. To this end, the investigation unit prepares a proposal to the EPPO⁷⁰. If the EPPO does not object to the complementary investigation or requests OLAF to continue an investigation in support of its investigation, the investigation unit submits a request to reclassify the case either as a complementary investigation or as an investigation in support of the EPPO⁷¹.

3.4. The notions of 'criminal conduct' and 'manifestly unsubstantiated allegations'

52. To accurately assess OLAF's reporting duty to the EPPO, it is necessary to examine the notion of 'criminal conduct' within the meaning of Article 12(c) of the OLAF Regulation. This provision directly associates the notion with Chapter IV of the EPPO Regulation, which outlines the EPPO's material, territorial and personal competence to conduct investigations⁷².
53. A proper understanding of OLAF's duty to report to the EPPO requires a clear delineation of the EPPO's material competence, particularly in relation to the types of conduct which, if detected by OLAF, are to be considered of a criminal nature and therefore subject to mandatory reporting. Article 22 of the EPPO Regulation identifies three categories of offences falling within the EPPO's investigative remit: ***firstly***, criminal offences affecting the financial interests of the Union, as defined in the PIF Directive and implemented under national law⁷³; ***secondly***, offences, as implemented by national law, related to participation in a criminal organisation, if the focus of the criminal activity of such an organisation is to commit a PIF offence⁷⁴ and; ***thirdly***, any other criminal activity that is 'inextricably linked' to a PIF offence⁷⁵.
54. The criminal offences affecting the financial interests of the Union include **fraud affecting the financial interests of the Union**, as provided for in Article 3 of the PIF Directive. In this regard the PIF Directive makes a distinction between (i) fraud in respect of expenditure

⁶⁸ Article 15.6 of the GIPs. See also the equivalent provision in Article 23.1 c) of the new GIPs.

⁶⁹ Article 12f(1) of the OLAF Regulation as well as Article 15.8 of the GIPs. See also similar provisions in Articles 42.1 and 42.3 of the new GIPs.

⁷⁰ Article 15.8 of the GIPs. See also similar provision in Article 42.3 of the new GIPs.

Additionally, the request for the opening of a complementary investigation, pursuant to Article 5.9 of the GIPs, must contain the subject matter of the investigation, the justification for the complementary investigation, the investigation activities planned and a possible timeframe for the investigation. See Article 17.8 of the new GIPs which also sets out the elements required for the request for the opening of a complementary investigation.

⁷¹ Article 12f(1), paragraph 3, of the OLAF Regulation as well as Article 15.9 of the GIPs. See also similar provisions in Articles 25.1; 42.1 and 42.3 of the new GIPs.

⁷² Article 23 of the EPPO Regulation sets out that the EPPO has territorial and personal competence where the offences set out in Article 22: (a) were committed in whole or in part within the territory of one or several Member States; (b) were committed by a national of a Member State, provided that a Member State has jurisdiction for such offences when committed outside its territory, or (c) were committed outside the territories referred to in point (a) by a person who was subject to the Staff Regulations or to the Conditions of Employment, at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory.

⁷³ Article 22(1) of the EPPO Regulation.

⁷⁴ Article 22(2) of the EPPO Regulation.

⁷⁵ Article 22(3) of the EPPO Regulation.

which covers fraud in respect of non-procurement related expenditure⁷⁶ as well as fraud regarding procurement related expenditure⁷⁷ and; (ii) fraud in respect of revenue which includes fraud concerning revenue other than revenue arising from VAT own resources⁷⁸ and fraud regarding revenue arising from VAT own resources⁷⁹ provided that the offence is related to the territory of two or more Member States and entails total damage of at least EUR 10 000 000⁸⁰. Moreover, Article 4 of the PIF Directive defines the following as criminal offences affecting the financial interests of the Union, **money laundering involving property derived from PIF offences**⁸¹; **corruption** (active and passive)⁸² of public officials⁸³; and **misappropriation by a public official**⁸⁴.

55. The **offences**, as implemented by national law, **relating to participation in a criminal organisation**⁸⁵ whose focus is to commit a PIF offence, are equally set out in Article 22(2) of the EPPO Regulation thus falling under the material competence of the EPPO. Such offences may include, for example, acts of membership in, or the organisation and leadership of, criminal groups established with the purpose of committing PIF-related crimes⁸⁶.
56. Pursuant to Article 22(3) of the EPPO Regulation, the EPPO also has competence for any **other criminal offence that is ‘inextricably linked’ to criminal conduct of a PIF offence**. The determination of whether an offence meets this criterion requires reference to the relevant case law of the Court of Justice of the European Union, particularly in the context of the *ne bis in idem* principle. According to established jurisprudence, the decisive factor is the identity of the material facts, understood as a set of concrete circumstances that are inextricably connected in time and space⁸⁷. Lastly, according to Article 25(3)(a) of the EPPO Regulation, the EPPO cannot exercise its competence in ‘inextricably linked’ offences in instances where the maximum sanction provided for by national law for the PIF offence is equal to or less severe than the maximum sanction for an ‘inextricably linked’ offence unless the latter offence has been instrumental to commit the PIF offence.
57. Having outlined the categories of offences falling within the material competence of the EPPO, it is important to clarify that the existence of such competence does not automatically entail its exercise in every case. Pursuant to Article 25(2) of the EPPO Regulation, the EPPO must not exercise its competence in cases where the alleged offence is likely to cause damage to the financial interests of the Union below the threshold of

⁷⁶ Article 3(2)(a) of the PIF Directive.

⁷⁷ Article 3(2)(b) of the PIF Directive.

⁷⁸ Article 3(2)(c) of the PIF Directive.

⁷⁹ Article 3(2)(d) of the PIF Directive.

⁸⁰ Article 22(1) of the EPPO Regulation.

⁸¹ Article 4(1) of the PIF Directive.

⁸² Article 4(2) of the PIF Directive.

⁸³ ‘Public official’ as defined in Article 4(4) of the PIF Directive.

⁸⁴ Misappropriation by a public official shall be understood as the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended (Article 4(3) of the PIF Directive).

⁸⁵ As defined in Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime *OJ L 300, 11.11.2008, p. 42*.

⁸⁶ See Recital 57 of the EPPO Regulation.

⁸⁷ See Recital 54 of the EPPO Regulation. See, for example the recent Judgment of the Court of Justice of 30 January 2025, C-205/23, Engie Romania, ECLI:EU:C:2025:43, para. 58.

EUR 10 000. Exceptions to this limitation are provided where: (i) the case has repercussions at Union level⁸⁸; or (ii) the suspect is an EU official or other EU servant.

3.5. Preliminary evaluation carried out by OLAF at the request of IBOAs

58. OLAF has a hybrid institutional nature, functioning both as an independent investigative body and as a service of the European Commission, depending on the specific tasks it performs. On the one hand, OLAF is empowered by the Commission Decision 1999/352⁸⁹ and the OLAF Regulation⁹⁰ to carry out autonomous investigative functions in full independence from the Commission and other IBOAs. On the other hand, OLAF also undertakes responsibilities in its capacity as a regular Commission service. These include, for instance, the development of anti-fraud policy and coordination of information flows between the Commission and the EPPO⁹¹.
59. OLAF's dual nature is also reflected in its reporting duty to the EPPO. On the one hand, OLAF is obliged to report a criminal conduct to the EPPO when it becomes aware of the allegations within its autonomous investigative function, pursuant to Article 12c(1) of the OLAF Regulation, as detailed above. On the other hand, OLAF could be tasked with reporting to allegations to the EPPO regarding criminal conduct that have been transmitted by IBOAs, in its capacity as a Commission service⁹².
60. Pursuant to Article 24(1) and recital 49 of the EPPO Regulation, IBOAs must report without delay to the EPPO any criminal conduct in respect of which it could exercise its competence. In order to fulfil this obligation, Recital 51 of the EPPO stipulates that IBOAs should 'follow the existing reporting procedures and have in place efficient mechanisms for a preliminary evaluation of allegations reported to them'. The IBOAs can also make 'use of [OLAF] to that end.'
61. Similarly, Article 12c(6) of the OLAF Regulation provides that **IBOAs may ask OLAF 'to conduct a preliminary evaluation of allegations reported to them'**. The OLAF Regulation further provides that OLAF's 'preliminary evaluation' of allegations reported by IBOAs should: *firstly*, be conducted in the same framework applicable to the 'preliminary evaluation' when OLAF reports potential criminal conduct to the EPPO in its capacity as an independent body⁹³ and; *secondly* OLAF should inform the IBOA concerned of the

⁸⁸ According to Recital 59 of the EPPO Regulation 'a case should be considered to have repercussions at Union level, inter alia, where a criminal offence has a transnational nature and scale, where such an offence involves a criminal organisation, or where the specific type of offence could pose a serious threat to the Union's financial interests or the Union institutions' credit and Union citizens' confidence'.

⁸⁹ 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), OJ L 136, 31.5.1999, p. 20, as last amended by Commission Decision (EU) 2015/2418 of 18 December 2015, OJ L 333, 19.12.2015, p. 148.

⁹⁰ 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, as amended by Regulation 2020/2023, OJ L 423, 28.12.2020 p. 49.

⁹¹ [CONFIDENTIAL].

⁹² See Article 24(1) and Recital 51 of the EPPO Regulation.

⁹³ Article 12c(6) states that Article 12c(1) to (4) shall apply *mutatis mutanda* when OLAF conducts a preliminary evaluation in the context of a report stemming from an IBOA as a Commission service. Furthermore, according to Article 5.10 of the GIPs, when an IBOA requests OLAF a preliminary evaluation of allegations reported to it, the report to the EPPO may be prepared by OLAF after the preliminary evaluation, by the same means available during the selection process. See also the equivalent provision in Article 17.6 of the new GIPs.

results of the preliminary evaluation, unless providing such information could jeopardise an investigation conducted by OLAF or by the EPPO.

62. It follows from the above that, when conducting a ‘preliminary evaluation’ under Article 12c(6) of the OLAF Regulation to determine whether a case should be reported to the EPPO, OLAF carries out a *prima facie* analysis in an **independent manner**. OLAF does not receive instructions from other Commission services or IBOAs that may influence its evaluation⁹⁴. Nevertheless, it is important to note that the ‘preliminary evaluation’ does not constitute an investigation within the meaning of the OLAF Regulation. Rather it is a preliminary assessment of whether the information should be reported to the EPPO and whether the report contains all the necessary elements⁹⁵.
63. During a preliminary evaluation conducted by OLAF at the request of an IBOA for transmission to the EPPO, OLAF can access relevant databases⁹⁶ and request additional information to the Commission service or other IBOAs⁹⁷ concerned. This process ensures that the report to be transmitted to the EPPO is complete and accurate⁹⁸.
64. Finally, in instances where OLAF concludes, following the ‘preliminary evaluation’, that the matter does not fall within EPPO’s competence, it must inform the concerned IBOAs of its assessment. However, the IBOAs are not bound by OLAF’s evaluation. They retain the right to conduct their own preliminary evaluation and, pursuant to Article 24(1) of the EPPO Regulation, are obliged to transmit all relevant information to the EPPO if they reach a different conclusion and determine that the case involves criminal conduct within the EPPO’s remit⁹⁹.

4. ANALYSIS OF OLAF CASES 2024

65. As described previously¹⁰⁰, the analysis carried out by the Committee focused on a sample of four distinct categories of OLAF cases reported and closed in 2024:
 - **Dismissed cases due to EPPO competence:** This category corresponds to cases where OLAF identified potential criminal conduct during the selection stage. OLAF reported the matter to the EPPO and subsequently dismissed the case without opening an investigation (see **Section 4.1**);
 - **Closed investigations initially transmitted to EPPO but not taken over by the latter:** This category corresponds to cases where OLAF did not identify potential criminal conduct during the selection stage and decided to open an investigation. However, during the investigation OLAF uncovered potential criminal elements and reported the matter to the EPPO. Following analysis of the case, the EPPO decided not to open a criminal investigation and, as a result, OLAF continued its investigation until completion (with or without adopting recommendations). (see **Section 4.2**);

⁹⁴ [CONFIDENTIAL].

⁹⁵ [CONFIDENTIAL].

⁹⁶ Article 6 of the OLAF Regulation.

⁹⁷ Article 8(2) of the OLAF Regulation.

⁹⁸ [CONFIDENTIAL].

⁹⁹ [CONFIDENTIAL].

¹⁰⁰ See in detail Chapter 2 ‘Methodology of the opinion’.

- **Discontinued investigations due to EPPO competence:** This category corresponds to cases where OLAF did not identify potential criminal conduct during the selection stage and decided to open an investigation. However, during the investigation, potential criminal conduct emerged. OLAF subsequently transmitted the case to the EPPO. Following the analysis of the case, the EPPO decided to open a criminal investigation on the same facts and OLAF discontinued its ongoing administrative investigation to comply with its obligation not to duplicate investigations¹⁰¹. (see **Section 4.3**);
- **Cases closed by OLAF which were not reported to the EPPO:** This category corresponds to cases where OLAF did not identify potential criminal conduct during the selection stage or during the investigation. Consequently, OLAF opened and carried out its investigation without reporting the case to the EPPO. OLAF finally closed these cases (with or without adopting recommendations) (see **Section 4.4**).

66. This structure allows for a detailed assessment of OLAF's cases given their unique characteristics and provides an overview of the fulfilment of OLAF's reporting obligation in each category of cases. Following the analysis of all individual categories the Committee will then present its findings and conclusions (see **Section 5**).

4.1 Dismissed cases due to EPPO competence

67. Regarding the first category of cases, OLAF provided to Committee with the total of 44 cases dismissed due to the EPPO competence in 2024. The Committee decided to select 25 cases to be examined¹⁰².

68. The present section will thus focus on the 25 selected cases dismissed by OLAF in 2024¹⁰³. Given that in dismissed cases OLAF does not formally open an investigation, the analysis of this category of cases will therefore focus on the specific criteria linked to OLAF's decision to report the case to the EPPO during the selection stage. In particular, the Committee examined: (i) types of criminal offences under the EPPO Regulation and PIF Directive identified by OLAF at this stage of the procedure; (ii) whether OLAF carried out a H/NH verification in the EPPO's case management system during the selection stage. Finally, the duration of the selection stage (iii) was also analysed.

69. Regarding the **type of criminal offences**, OLAF's duty to report encompasses several types of criminal conduct set out in the EPPO Regulation and PIF Directive, specifically: fraud; money laundering; corruption; misappropriation by public officials; offences relating to participation in a criminal organisation and offences 'inextricably linked' to a PIF offence (see above Section 3.4). Furthermore, OLAF may identify multiple types of criminal conduct in each individual case.

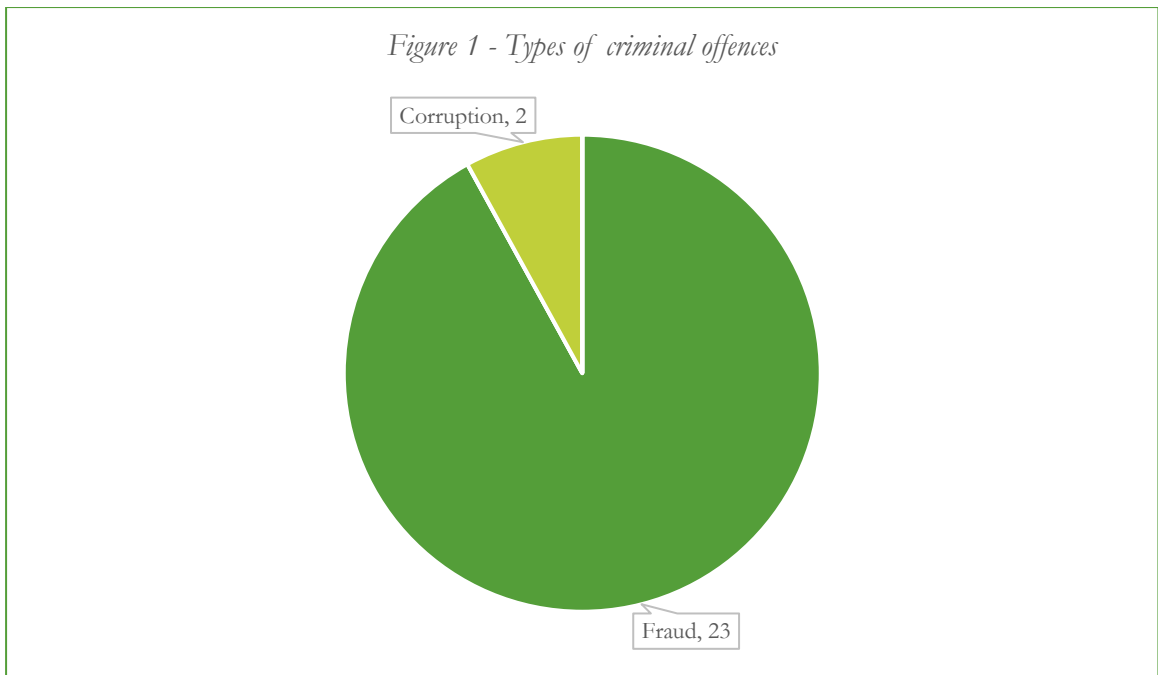
70. In this context, *Figure 1* below details the types of criminal conduct identified by OLAF in the sample of 25 dismissed cases¹⁰⁴:

¹⁰¹ Article 12d(1) of the OLAF Regulation.

¹⁰² [CONFIDENTIAL].

¹⁰³ [CONFIDENTIAL].

¹⁰⁴ [CONFIDENTIAL].



71. The analysis indicates that the cases dismissed during the selection stage were solely related to suspicions of corruption and especially of fraud¹⁰⁵ which were reported to the EPPO. Additionally, it should be noted that in one dismissed case¹⁰⁶, OLAF’s dismissal opinion appeared to affirm the existence of fraud as well as the ‘misappropriation of EU funds’¹⁰⁷.
72. Concerning **OLAF’s H/NH verification** in the EPPO case management system during the selection stage, the assessment highlighted that in four cases¹⁰⁸ (out of the 25 sampled ones) OLAF carried out a H/NH verification in the EPPO case management system. Conversely, in 21 cases¹⁰⁹ OLAF did not carry out a verification¹¹⁰ before dismissing the case and reporting it to the EPPO.
73. Having observed that most dismissed cases were reported to the EPPO without carrying out a H/NH verification in the EPPO’s case management system the Committee requested OLAF to provide clarifications on this matter¹¹¹. OLAF explained that when it decides to dismiss a case without opening its own investigation and reporting the case to the EPPO at the selection stage, it does not carry out a H/NH verification. OLAF clarified that since it does not plan to take any further actions and has already concluded that there is a

¹⁰⁵ The conduct of ‘fraud’ is understood as line with Article 3 of the PIF Directive, including, in Article 3(2)(a) and (b), fraud in respect of expenditure which covers fraud in respect of non-procurement related expenditure as well as fraud regarding procurement related expenditure. It further includes fraud according to Article 3(2)(c) and (d) in respect of fraud in revenue which includes fraud concerning revenue other than revenue arising from VAT own resources and fraud regarding revenue arising from VAT own resources (See Section 3.4.).

¹⁰⁶ [CONFIDENTIAL].

¹⁰⁷ [CONFIDENTIAL].

¹⁰⁸ [CONFIDENTIAL].

¹⁰⁹ [CONFIDENTIAL].

¹¹⁰ [CONFIDENTIAL].

¹¹¹ [CONFIDENTIAL].

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potential criminal conduct falling within the EPPO's competence, there is no need to carry out a H/NH verification¹¹².

74. Among the four cases where OLAF carried out a H/NH verification, in two cases OLAF did not find a match in the EPPO case management system¹¹³. In two other cases OLAF found a positive match, indicating that the EPPO had opened or was considering opening a criminal investigation into the same facts¹¹⁴.
75. Finally, it should be recalled concerning the **duration of the selection stage** that Article 5.7 of the GIPs¹¹⁵ provides that after the Selection Unit 'identifies potential criminal conduct in respect of which the EPPO could exercise its competence, it prepares a proposal to dismiss the selection case and report the information to the EPPO, within two months from receipt of the information'. From the sample of 25 dismissed cases selected, it appears that in nine cases the duration of the selection stage was longer than the stipulated two months¹¹⁶, with the longest selection lasting five months and 22 days¹¹⁷. Nevertheless, in most dismissed cases (16 cases) the selection stage was carried out within the two-month time frame¹¹⁸ with the shortest selection lasting nine days¹¹⁹. The average duration of the selection stage for the sample of 25 cases dismissed in 2024 reported to the EPPO was one month and 29 days.

4.2 Closed investigations initially transmitted to EPPO but not taken over by the EPPO

76. The second category of cases analysed by the Committee concerns cases where OLAF did not identify potential criminal conduct during the selection stage and decided to open an investigation. However, after the opening of the investigation OLAF uncovered potential criminal elements and reported the matter to the EPPO, suspending its own investigation. Following the reporting of the case, the EPPO decided not to open a criminal investigation and, as a result, OLAF resumed its investigation until its completion. In 2024, OLAF closed nine of those cases¹²⁰ all of which were analysed by the Committee.
77. The present section will thus focus, among others, on: (i) the analysis carried out by OLAF at the selection stage; (ii) the types of criminal offences identified under the EPPO Regulation and the PIF Directive; (iii) the duration of the OLAF investigation; (iv) the moment OLAF identified criminal elements in the course of the investigation and reported to the EPPO and; (v) the EPPO's decision not to open an investigation.
78. Concerning **the selection stage**, the Committee's analysis indicates that the majority of investigations were initiated by OLAF before the EPPO became fully operational in July 2021, with one case opening shortly after the EPPO began operating¹²¹. As a result, at the selection stage OLAF could neither have identified nor reported suspected criminal

¹¹² [CONFIDENTIAL].

¹¹³ [CONFIDENTIAL].

¹¹⁴ [CONFIDENTIAL].

¹¹⁵ See also the equivalent provision in Article 17.5 of the new GIPs.

¹¹⁶ [CONFIDENTIAL].

¹¹⁷ [CONFIDENTIAL].

¹¹⁸ [CONFIDENTIAL].

¹¹⁹ [CONFIDENTIAL].

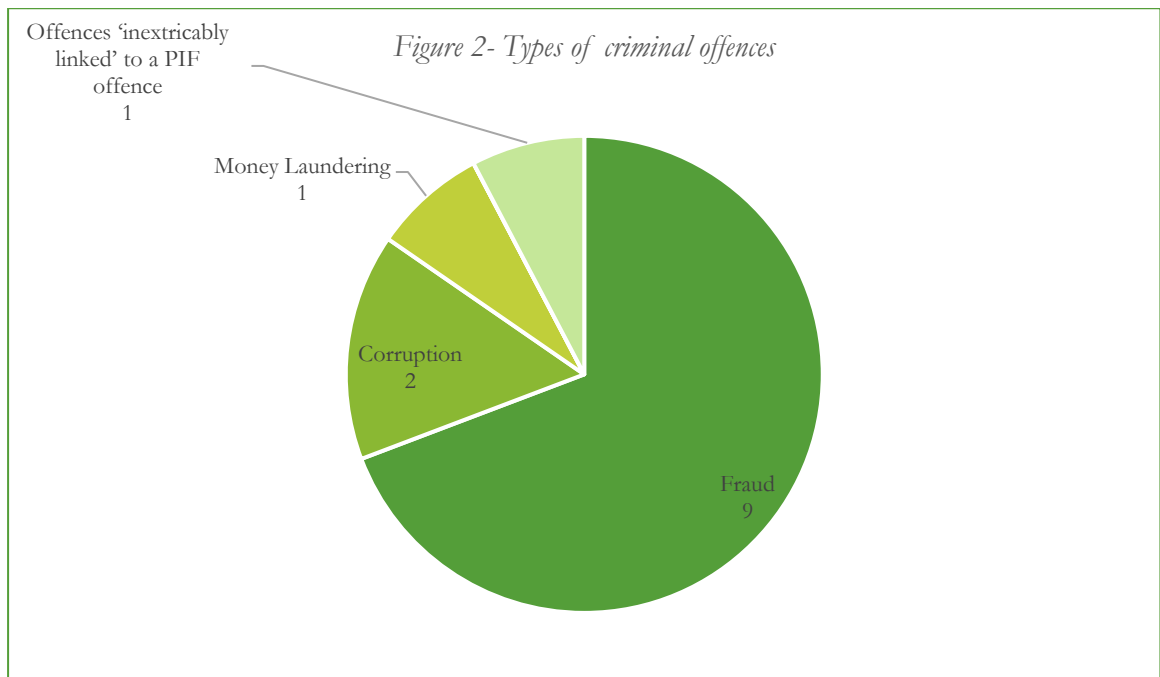
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conduct to the EPPO since the reporting mechanism was not yet operational or was at an early phase of operation. In addition, since the reporting obligation and cooperation with the EPPO was not yet fully established at that time, OLAF was also unable to conduct a H/NH verification within the EPPO's case management system.

79. Regarding the **type of criminal offences** reported by OLAF to the EPPO, as recalled above (see above Section 3.4) OLAF's duty to report potential criminal conduct encompasses several types of criminal conduct set out in the EPPO Regulation and PIF Directive. OLAF may also identify multiple different types of criminal conduct in each individual case. *Figure 2* below contains the types of criminal conduct reported by OLAF in the nine closed cases analysed under this section.



80. In all nine reported cases OLAF identified the potential existence of fraud. Additionally, in three cases OLAF reported fraud conjointly with other types of offences¹²².
81. Concerning the overall **duration of the investigation**, the analysis carried out by the Committee pointed out that in three cases¹²³ OLAF formally suspended the ongoing investigation in OCM after reporting the case to the EPPO while it awaited the EPPO's decision to open a criminal investigation. By contrast, in the remaining six cases¹²⁴ OLAF did not formally suspend its investigation after reporting the case to the EPPO. The Committee requested OLAF to provide clarifications on this matter¹²⁵.
82. OLAF explained that after the EPPO became fully operational in July 2021, OLAF decided to halt all cases while it assessed the need for ongoing investigations to be reported to the newly operational EPPO¹²⁶. OLAF further described that even though the investigations were in practice suspended, at the time, the OCM did not include a functionality allowing

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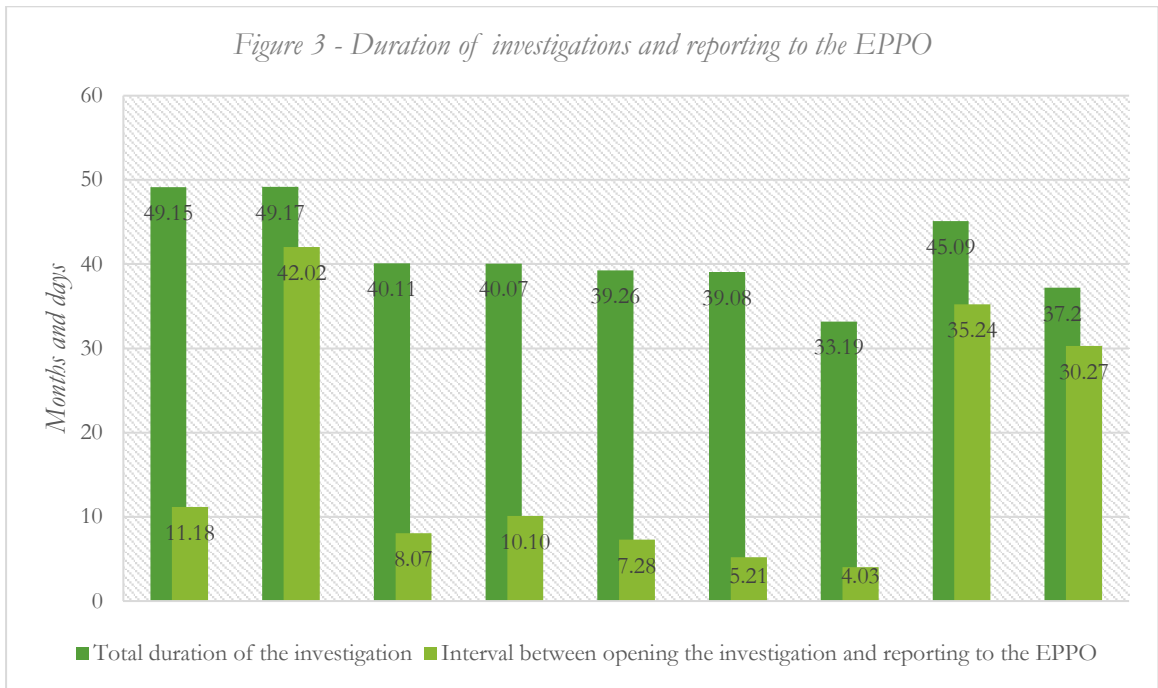
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OLAF to formally suspend cases in OCM before reporting them to the EPPO. This is why it is not visible in the system. OLAF explained that as cooperation developed with the EPPO, OLAF introduced a new mechanism in OCM requiring that cases be formally suspended before they can be reported to the EPPO¹²⁷. This system is currently in place and applies to all cases reported to the EPPO¹²⁸. Furthermore, OLAF clarified that even though it had not formally suspended these six cases in OCM¹²⁹ they were nevertheless *de facto* frozen after they were reported to the EPPO. In this context, OLAF emphasised that it did not carry out any investigative activities after reporting the cases while it awaited the EPPO’s decision to open a criminal investigation¹³⁰. Thanks to its privileged access to OLAF case files, the Committee can confirm that OLAF did not carry out any investigative activity after reporting the cases to EPPO and while waiting for EPPO to take a decision¹³¹.

83. *Figure 3* below displays the total duration of the nine investigations¹³², as well as the interval between opening the investigation and reporting the suspected criminal conduct to the EPPO.



84. The analysis shows that out of the nine closed cases, in six instances OLAF identified the criminal element and reported the case immediately or shortly after the EPPO became operational in July 2021¹³³ (cases 45, 47, 48, 49, 50 and 51 in *Figure 3*). Conversely, in three

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¹²⁸ In this sense, Article 41.3 of the new GIPs provides that: ‘Where the report is transmitted to the EPPO, investigation activities shall not be conducted by OLAF until the EPPO takes a decision whether to open a criminal investigation (...)’.

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cases OLAF identified the criminal element and reported the matter to the EPPO at a later stage during its investigation (cases 46, 52 and 53 *in Figure 3*).

85. With respect to the three cases¹³⁴ reported to the EPPO at a later stage of OLAF's investigation, the Committee considered it pertinent to assess the timing of OLAF's identification of suspected criminal elements in relation to when these cases were formally reported to the EPPO. The Committee notes that, based on a review of the case files and information provided by OLAF¹³⁵, it was unable to determine the exact point at which OLAF identified the criminal elements subsequently reported to the EPPO in two instances¹³⁶. Conversely, in the third case it emerges from OCM that OLAF uncovered the elements of criminal conduct after carrying out a specific investigative activity¹³⁷ and reported the suspected criminal offence approximate 15 months after this activity. The Committee requested further clarification¹³⁸. OLAF explained that in this instance, the analysis of evidence collected during the specific gathering activity took approximately 11 months. Upon conclusion of the analysis, OLAF prepared the ECR and submitted it to the EPPO three months later¹³⁹.
86. Finally, concerning **the EPPO's decisions not to open an investigation**, the Committee notes that neither the EPPO nor OLAF Regulations impose a duty for EPPO to provide reasons when it decides not to open a criminal investigation following a report by OLAF. Nevertheless, the Committee observed that in six reported cases which were not taken over, the EPPO provided OLAF with explanations of its decisions not to open a criminal investigation¹⁴⁰. By contrast, in three cases the EPPO provided OLAF only with a general explanation that the criteria for exercising its competence were not met and/or that there were insufficient grounds to believe that an offence falling within its competence had been committed¹⁴¹.
87. In this context, the Committee noted that the EDPs'¹⁴² replies to OLAF's reports displayed a high level of heterogeneity. In some instances, EDPs opted not to open a criminal investigation as they considered the case was not yet mature for criminal prosecution¹⁴³. On one occasion, an EDP stated that it should not be excluded that when OLAF concludes its investigation and adopts a final report a new ECR may be submitted to the EPPO¹⁴⁴. The Committee requested OLAF to provide clarifications on this matter¹⁴⁵. OLAF explained that the feedback received from the EPPO differs greatly: some EDPs wish to

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¹⁴² As explained above, the Committee recalls that the EPPO is composed of two levels: the central level and the decentralised (national) level which consists of national prosecutors which act as European Delegated Prosecutors ('EDPs') in the 24 participating EU Member States.

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receive the ECRs at the earliest stage, even before any criminal suspicion arises, while others prefer to receive only reports with clear indications of criminal activity¹⁴⁶.

4.3 Discontinued investigations due to EPPO competence

88. Regarding the third category of cases, OLAF provided the Committee, pursuant to Article 8 of the WA, with a list of all cases reported to the EPPO in 2024. It emerged from this list that OLAF had discontinued a total of 14 cases due to EPPO's competence in 2024¹⁴⁷.
89. The Committee decided to review the case files of all 14 investigations discontinued by OLAF during 2024. At the outset, it should be noted that these cases concern allegations for which OLAF did not, at the selection stage, identify potential criminal conduct requiring referral to the EPPO but it considered that there were sufficient suspicions to open its own investigation. However, during the investigation a potential criminal element emerged, and OLAF transmitted the cases to the EPPO. In these cases, the EPPO initiated criminal investigations into the suspected offences and as a result OLAF dismissed its own investigation.
90. In this section, the Committee will first focus on: (i) the analysis carried out by OLAF at the selection stage. Particular attention is paid to the opinion of the Selection Unit, based on which the D-G of OLAF decides whether to open or to dismiss a case; (ii) OLAF's H/NH verification in the EPPO's case management system; and (iii) OLAF's request to the EPPO to open a complementary investigation. Subsequently the Committee will examine the investigation stage and the circumstances in which OLAF reported the allegations to the EPPO and discontinued its own investigation.
91. As regard **the selection stage**, the Committee's analysis shows that one case¹⁴⁸ was opened by OLAF before the EPPO became fully operational in July 2021. Consequently, at the selection stage, OLAF could neither identify nor report suspected criminal conduct to the EPPO, as the relevant reporting mechanism was not yet operational. Furthermore, the Committee's analysis indicates that two cases¹⁴⁹ resulted from the splitting of prior OLAF investigations. Accordingly, no formal selection stage took place in those cases, since the relevant facts/allegations emerged from previous investigations and the opening decisions were embodied in the D-G of OLAF's decision to split the cases.
92. In eight cases¹⁵⁰ OLAF did not identify during the selection stage criminal elements. In these cases, OLAF found that there were *no tangible factual elements indicating criminal offences on which the EPPO could exercise its competence* or that, considering the information available, the EPPO lacked competence since *there was no element indicating criminal conduct falling within the competence of the EPPO*.
93. The Committee's analysis further showed that, in one case¹⁵¹, at the selection stage OLAF identified that the allegations could theoretically amount to the use of false or inexact

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documents potentially falling within the EPPO's competence; however, at that stage, OLAF considered that it lacked sufficient factual elements¹⁵². Following a request for clarifications by the Committee, OLAF confirmed that it opened the investigation to verify the authenticity and legitimacy of the suspected documents. OLAF confirmed that if documents were found to be irregular, such irregularities would constitute a criminal offence, thereby requiring OLAF to report the case to the EPPO¹⁵³. Similarly, in another case¹⁵⁴ at the selection stage, OLAF found that the irregularities identified in documents linked to the allegations constituted *insufficient evidence indicating fraud within the meaning of the PIF Directive in respect of which the EPPO could exercise its competences*. OLAF concluded that the allegations required further verification. Had OLAF's investigation confirmed the allegations and identified elements of criminal conduct, the case would have been reported to the EPPO¹⁵⁵.

94. Finally, in another case¹⁵⁶ the Committee observed that during the selection stage OLAF had considered that the allegations could potentially amount to misappropriation of EU funds under the PIF Directive. However, OLAF concluded that *the supporting elements were not sufficient to substantiate potential criminal conduct* and that there were *no tangible factual elements indicating criminal offences in which EPPO could exercise its competence*.
95. Following a request for clarification regarding OLAF's procedure for analysing allegations at the selection stage¹⁵⁷, the Committee understands that OLAF adopts a 'pragmatic approach' at that stage, in light of the specific constraints inherent in the selection process, namely: the two month timeframe for carrying out the case selection, the resources allocated to that task, and, most importantly, the information available to OLAF at the time of the selection assessment. OLAF explained that, in certain cases, the Selection Unit may identify a hypothesis that, if subsequently confirmed during the investigation, could potentially amount to criminal conduct reportable to the EPPO. However, OLAF emphasised that, in such cases, the information in its possession at the time of the selection assessment was not sufficient to substantiate the selector's hypothesis and, therefore, to trigger the obligation to report the case to the EPPO.
96. Regarding **OLAF's H/NH verification** in the EPPO case management system during the selection stage¹⁵⁸, the analysis of the Committee shows that, in 10 cases¹⁵⁹, OLAF carried out a H/NH verification in the EPPO case management system. Conversely, in four instances¹⁶⁰ OLAF did not perform such a verification prior to opening its investigation.
97. In the four cases in which OLAF did not carry out a H/NH verification, the Committee examined the specific circumstances that led OLAF not to perform such a verification before opening its investigation. In one case¹⁶¹ the Committee observed that, at the time

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of the selection stage, the EPPO was not yet fully established and, therefore, OLAF could not have carried out a H/NH verification. In two cases¹⁶² the Committee observed that those cases stemmed from previous investigations with a broader scope in which OLAF decided to split the investigations. In one of those cases¹⁶³, the investigation was split, and a new case was opened with the specific purpose of reporting the suspected allegations to the EPPO while continuing to investigate those parts of the allegations that involved only administrative irregularities. By contrast, in the other case¹⁶⁴, OLAF split the investigation with the aim of concluding its administrative inquiries concerning allegations relating to one Member State, while continuing its investigation into allegations concerning other Member States. During that split investigation, OLAF uncovered criminal elements and carried out a H/NH verification while preparing the ECR to report the case to the EPPO.

98. Finally, in the remaining case¹⁶⁵ the Committee was unable to establish the reasons why OLAF had not carried out a H/NH verification at the selection stage and therefore asked OLAF to clarify the matter¹⁶⁶. OLAF explained that in this case it did not suspect any criminal conduct falling within the EPPO's competence. OLAF clarified that it does not carry out a H/NH verification in cases where the EPPO would not be competent¹⁶⁷. Furthermore, OLAF stated that a H/NH verification is carried out in cases where OLAF intends to open an administrative investigation into potential irregularities, and where the facts could *'theoretically fall under the EPPO competence if they were of criminal nature'*¹⁶⁸. Accordingly, OLAF carries out a H/NH verification when, at the selection stage, there is no suspicion of criminal conduct, but it cannot be excluded that criminal suspicions may emerge at the investigation stage¹⁶⁹.
99. As recalled above (see Section 3.3)¹⁷⁰ in duly justified cases, OLAF may also **request the EPPO to open a complementary investigation in parallel with the EPPO's criminal investigation**¹⁷¹. The Committee observed that in the 14 investigations analysed OLAF did not open complementary investigations. It emerges from the case files that, in certain instances¹⁷², following informal exchanges between OLAF and the competent EDP, OLAF was informed that the EPPO would not be favourable to a complementary investigation and OLAF subsequently refrained from formally requesting the opening of a complementary investigation. The Committee asked OLAF to clarify this matter¹⁷³.
100. OLAF explained that its practice of informing EPPO about the planned opening of a complementary investigation to the EPPO at the investigation stage has evolved over time. At the beginning of the cooperation with the EPPO, OLAF followed a three-step approach. Firstly, OLAF reported the case by submitting the ECR, secondly it engaged in

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¹⁷⁰ Article 12f(1) of the OLAF Regulation as well as Article 15.8 of the GIPs. See also similar provisions in Articles 42.1 and 42.3 of the new GIPs.

¹⁷¹ See Article 12(f) (1) of the OLAF Regulation.

¹⁷² [CONFIDENTIAL].

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informal discussions with the EPPO and thirdly, it formally informed the EPPO of the planned opening of a complementary investigation. OLAF clarified that this approach was intended to favour direct contacts between OLAF's investigative units and the different EDPs. Moreover, these informal discussions proved useful to clarify and discuss the merits of the cases. OLAF further explained that more recently, in the interests of time and efficiency, its investigative units either submit proposals for the opening of a complementary investigation directly to the EPPO or include such proposals as an annex to the ECR, or alternatively in the transmission letter accompanying the ECR. According to OLAF, the aim of current practice is to ensure that, at the time the ECRs are transmitted, the EPPO is also informed of OLAF's interest in carrying out a potential complementary investigation¹⁷⁴. In this context, the Committee notes that in the past it has emphasised the importance of OLAF keeping proper records and formalise the regular exchanges between the EDPs and OLAF. In this regard, the Committee recalled its previous opinion 1/2024 that the use of the agreed forms and templates, as set out in the WA, should be mandatory, particularly in the event of a proposal to open a complementary investigation and EPPO's agreement or objection to it¹⁷⁵.

101. After analysing the selection stage, the Committee also took a closer look at the investigation stage and observed that the cases under review were discontinued by OLAF under different circumstances which require separate examination, namely: a) Cases autonomously reported by OLAF to the EPPO and: b) Cases in which the EPPO requested the case file from OLAF.

a) Cases autonomously reported by OLAF to the EPPO

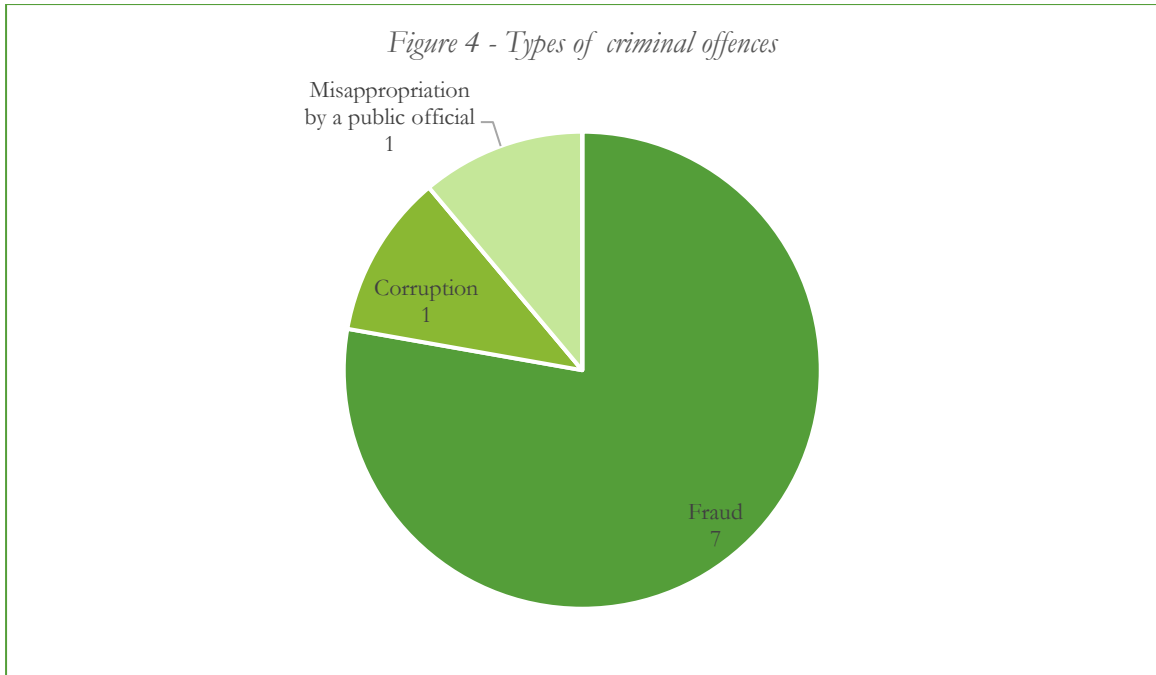
102. The Committee observed that in nine¹⁷⁶ of the 14 discontinued cases, OLAF uncovered criminal elements during the investigation and subsequently autonomously reported the matter to the EPPO by submitting an ECR. Following the report, EPPO decided to open a criminal investigation into the matter, leading OLAF to discontinue its own investigation. The analysis of these cases will therefore focus on: (i) the types of criminal offences reported by OLAF under the EPPO Regulation and the PIF directive; (ii) the duration of the investigation and (iii) the moment at which OLAF identified the criminal element and reported its suspicions to the EPPO.

103. Concerning the **type of criminal offences** reported by OLAF to the EPPO it should be recalled that OLAF's duty to report potential criminal conduct encompasses several categories of offences laid down in the EPPO Regulation and PIF Directive, (see above Section 3.4). *Figure 4* below sets out the types of criminal conduct involved in the nine discontinued cases in 2024 autonomously reported by OLAF, and in respect of which the EPPO subsequently opened a criminal investigation.

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¹⁷⁵ See para. 84 of the Committee's Opinion No 1/2024 – Complementary investigations of OLAF and the EPPO, of 16.4.2024. Available at https://supervisory-committee-olaf.europa.eu/supervisory-committee-olaf/opinions-and-reports_en.

¹⁷⁶ [CONFIDENTIAL].



104. The analysis highlights that, in seven cases, OLAF reported offences related to fraud¹⁷⁷ to the EPPO (i.e. VAT and customs fraud related to goods from third countries linked to irregular transport and/or import documents¹⁷⁸; fraud related to double employment in which a service provider was illicitly working simultaneously for the EU and an external party¹⁷⁹; expenditure fraud in EU projects through falsified timesheets;¹⁸⁰ and fraud in public procurement in which the beneficiary failed to disclose information to the entity managing EU funds)¹⁸¹. Furthermore, one reported case concerned the misappropriation of funds by an EU representative suspected of having engaged in procurement irregularities¹⁸². Lastly, another reported case related to acts of corruption (both active and passive) involving an individual suspected of having received illicit compensation to facilitate the award of EU funds in tender procedures¹⁸³.

105. In addition to the criminal offences reported to the EPPO listed in *Figure 4* above it should also be mentioned that in two instances¹⁸⁴, OLAF informed the EPPO that the reported criminal allegations could also constitute different criminal offences. In one case¹⁸⁵, although OLAF formally reported only the potential existence of misappropriation, the ECR submitted to the EPPO included additional information for the EPPO: namely that the suspected conduct could potentially also qualify as fraud in procurement¹⁸⁶. Similarly, in another case¹⁸⁷, although OLAF only formally reported the potential existence

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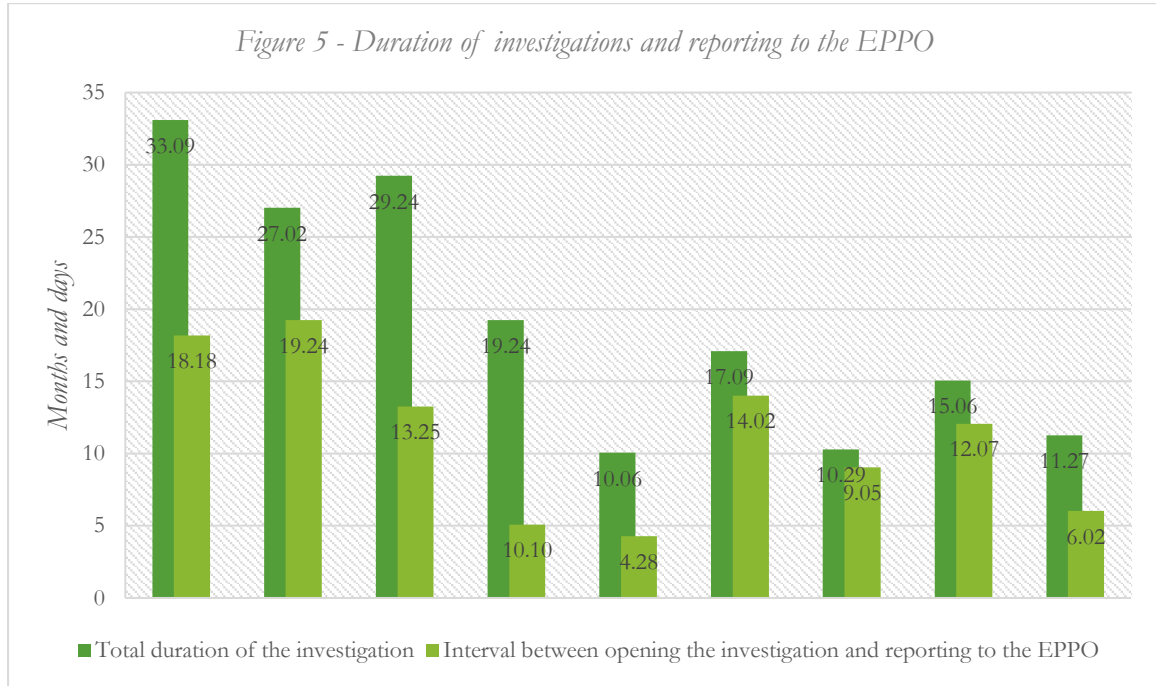
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of corruption in the ECR, it also informed the EPPO that the allegations could potentially qualify as fraud in procurement¹⁸⁸.

106. Regarding the overall **duration of the investigation**, *Figure 5* below displays the total duration of the investigations¹⁸⁹ of these nine cases which were discontinued by OLAF. The graphic displays the time interval between OLAF opening the investigation and the reporting of the suspected criminal conduct to the EPPO.



107. It should be recalled that the ‘total duration of the investigation’ displayed in the graphic includes the interval in which the investigations were formally suspended before OLAF reported the case to the EPPO and pending the EPPO’s decision to open a criminal investigation. After OLAF received the EPPO’s decision to open a criminal investigation the analysis showed that in seven cases¹⁹⁰ the discontinuation was immediate (within one to three months) and in two cases¹⁹¹ OLAF required a longer period to discontinue its investigation. In one case this longer interval was due to OLAF compiling existing documents to transmit them to the competent EDP as it had been requested¹⁹². In the remaining case, the longer interval was justified by the EPPO’s request for additional time to consider whether a complementary investigation was appropriate and for OLAF to provide additional materials, OLAF compiled the materials and transmitted them to the competent EDP¹⁹³. In any event, it emerges from the case files that in all cases the investigative activities remained suspended after OLAF received the EPPO’s decisions¹⁹⁴.

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108. To assess whether OLAF reported those allegations ‘without undue delay’ the Committee deemed it appropriate to examine the timing of OLAF’s **identification of the suspected criminal elements in these nine cases and the moment in which OLAF effectively reported those cases to the EPPO.**
109. Based on its examination of the case files, the Committee was able, in four cases¹⁹⁵, to establish the exact moment at which OLAF identified the criminal elements which were later reported to the EPPO. In one case¹⁹⁶ OLAF identified potential criminal elements following investigative activities carried out at two different points in time (over a period of seven months) and reported the case to the EPPO five months later¹⁹⁷. In two cases¹⁹⁸ it emerges from the case file that OLAF identified potential criminal elements within the first year of investigations¹⁹⁹ and reported the cases to the EPPO either within one²⁰⁰ or two months²⁰¹ thereafter. Lastly, in one instance²⁰², OLAF likewise identified potential criminal elements following an investigative activity in the first year of investigation and reported the case after three months²⁰³.
110. By contrast, in two cases²⁰⁴, the Committee was unable to establish, based on the examination of the case files and the information provided by OLAF²⁰⁵, the exact moment during the investigation in which OLAF identified the criminal elements reported to the EPPO.
111. In one case²⁰⁶ it emerged from the Committee’s analysis that, during the first year of the investigation²⁰⁷, OLAF obtained information attesting to the illegitimate nature of the documents linked to the initial allegations and reported the case to the EPPO 10 months later²⁰⁸.
112. In another case²⁰⁹, OLAF’s investigation concerned an alleged fraud for double employment. Specifically, a service provider was illicitly working simultaneously for the EU and an external party. OLAF explained to the Committee that it became aware of the potential criminal element following a specific investigative activity carried out in the first year of the investigation²¹⁰. OLAF reported the case six months after having conducted such investigative activity²¹¹ and discontinued the case immediately after being informed

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by the EPPO that it had decided to open a criminal investigation (within one month)²¹². In the spirit of completeness, the Committee notes that, in the first year of the investigation, one month prior to the investigative activity in question, OLAF had already considered the hypothesis that the allegations could correspond to a criminal offence of double employment under the criminal law of the relevant Member State²¹³. At that stage, however, as explained by OLAF, it did not consider that there were sufficient elements corroborating such hypothesis. Finally, the Committee notes that, in the 12-month report received from OLAF, submitted two months before the case was reported to the EPPO, there was no reference to criminal elements nor to the potential reporting of the case to the EPPO²¹⁴. The Committee recalls the importance for OLAF of ensuring accuracy in its reporting to the Committee and updating the information provided therein on a regular basis.

113. Finally in the last case²¹⁵ the Committee notes that the investigation emerged from splitting a previous case²¹⁶ in which OLAF had carried out a specific investigative activity²¹⁷. The case analysed by the Committee²¹⁸ concerned fraud in evasion of VAT and customs duties through the undervaluation of goods imported from third countries and focused on a specific Member State²¹⁹. OLAF explained that possible criminal elements were identified five months after the creation of this case²²⁰. OLAF reported the case to the EPPO within one month²²¹ of having assessed the criminal elements in the present case and discontinued it immediately after being informed by the EPPO that it had decided to open a criminal investigation (within one month)²²².

114. OLAF also explained to the Committee that *there was no suspicion of undervaluation during and after [the investigative activity]²²³* carried out in the previous case. This information, however, seems to be inconsistent with the information contained in the case file, which suggests that the criminal elements were uncovered as a result of the activity carried out by OLAF in the previous investigation²²⁴. This seems to be confirmed by the D-G decision to split the case²²⁵ and the ECR submitted to the EPPO²²⁶ which mentions the data collected in the investigative activity of the previous case as linked to the fraud reported to the EPPO.

b) Cases in which the EPPO requested the case file from OLAF

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115. The Committee observes that in five²²⁷ of the 14 cases discontinued in 2024, OLAF did not formally identify a criminal offence and/or report the case to the EPPO, neither in the selection nor in the investigation phase²²⁸. The analysis shows that, in two instances, OLAF became aware of the fact that the EPPO was investigating the same facts and consequently discontinued its investigation, transmitting the case files to the EPPO²²⁹. Conversely, in the remaining three cases, the EPPO became aware that OLAF was investigating the same facts and asked OLAF to transmit the case files and discontinue its investigation²³⁰.
116. The Committee noted that, in these cases, it is not possible to assess either the types of criminal offences reported to the EPPO or the point in time at which OLAF identified the criminal elements, as OLAF did not formally identify a reportable criminal offence. As a result, the Committee focused its assessment on the individual circumstances surrounding the discontinuation of the five cases concerned.
117. In one case²³¹ it emerges from OCM that about 3.5 years after OLAF had opened its investigation²³², the EPPO carried out a H/NH verification in OLAF's case management system and found a match. Subsequently the EDP requested a meeting with OLAF to discuss the case to check whether there were overlapping aspects in the two investigations²³³. Following this meeting the EPPO asked OLAF to transmit the case file and discontinue its investigation. OLAF implemented the EPPO's request and discontinued its case immediately afterwards (within one month of the request)²³⁴. In another case²³⁵ it results from OCM that OLAF performed several H/NH verifications but did not find a match; only one year after OLAF opened the investigation, it received information from the AFCOS of the relevant Member State that the EPPO had possibly opened a criminal investigation into the same facts²³⁶. From the case file it emerges that OLAF performed a new H/NH verification which also did not find a match, subsequently OLAF, on its own initiative, held a meeting with the EPPO²³⁷. Following this meeting it was confirmed that the EPPO had an opened investigation into facts that pertained to the OLAF's investigation. Immediately after the meeting (one month after), OLAF discontinued its investigation²³⁸. In a third case²³⁹ the Committee noted that OLAF had already carried out an assessment of EPPO's competence in a previous case and decided to split the previous case for the purpose of reporting the allegations involving criminal elements to the EPPO²⁴⁰. OLAF explained that during the investigation it was regularly in contact with national authorities, which in turn liaised with the EDP. OLAF was informed by the national authorities that they had reported the allegations investigated by OLAF to

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the EPPO and that the EPPO had already opened a case on the same facts. To avoid duplication of reporting, as EPPO had already been informed by the national authorities, OLAF decided not to report to the EPPO and discontinued the investigation 1.5 years after its opening²⁴¹.

118. In a fourth case²⁴² it emerges from OCM that OLAF had already considered during the selection stage OLAF that the allegations could potentially amount to misappropriation of EU funds under the PIF Directive. However, at that stage OLAF concluded that ‘the supporting elements were not sufficient to substantiate potential criminal conduct’ and that there were ‘no tangible factual elements indicating criminal offences in which EPPO could exercise its competence’²⁴³. Approximately one year after the case was opened²⁴⁴ the EPPO asked OLAF to transmit the case file and discontinue its investigation. Immediately after this request (within one month) OLAF reported the case to the EPPO and discontinued its investigation²⁴⁵.

119. In the last case²⁴⁶ it results from OCM that, at the beginning of the investigation, OLAF considered the hypothesis that the allegations might amount to breaches of the criminal codes of several Member States²⁴⁷. However, OLAF explained that at that stage it did not have concrete elements to support this hypothesis. Two years after the investigation was opened, the competent EDP, after being informed by the national authorities of the ongoing OLAF investigation, contacted OLAF and held a meeting to discuss the case²⁴⁸. Two months after the EDP informed OLAF that it had decided to open a criminal investigation into the matter and requesting that OLAF discontinue its investigation²⁴⁹. OLAF subsequently transmitted the case files to the EPPO and discontinued the case immediately after (within one month)²⁵⁰. The Committee requested OLAF to provide clarification. OLAF explained ‘that for the case to be reported to the EPPO, substantiated allegations are necessary, and OLAF needed to conduct certain activities for that purpose. When the EPPO reached out to OLAF, OLAF was in the process of examining the evidence, collected and assessing possible reporting of the case to the EPPO’²⁵¹.

4.4 Closed OLAF investigations not reported to the EPPO

120. At the request of the Committee, OLAF provided a list of its closed investigations in 2024 that were not reported to the EPPO. These cases concern allegations where OLAF did not, at the selection stage, identify a potential criminal conduct reportable to the EPPO but considered that there were sufficient suspicions to open its own investigation. During the investigation stage, OLAF did not uncover any criminal conduct potentially reportable to the EPPO either and consequently completed the inquiries and closed the cases²⁵². Out

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of a total of 209 such cases, the Committee selected a sample of 20 cases for review; for the purpose of the analysis, access to the relative case files was granted²⁵³ (See **Section 2** above).

121. In this section, the Committee will first focus on: (i) the analysis carried out by OLAF at the selection stage. Particular attention is paid to the opinion of the Selection Unit based on which the D-G of OLAF decided to open the cases; and (ii) OLAF's H/NH verification in the EPPO's case management system. Subsequently the Committee will examine OLAF's activities during the investigation stage.
122. As regards **the selection stage**, the Committee's analysis shows that one case²⁵⁴ was opened by OLAF before the EPPO became fully operational in July 2021. Consequently, at the selection stage OLAF could neither identify nor report suspected criminal conduct to the EPPO, as the relevant reporting mechanism was not yet operational. Furthermore, the Committee's analysis indicates that two cases²⁵⁵ resulted from splitting previous OLAF investigations²⁵⁶. Accordingly, no formal selection stage took place in those cases, since the relevant facts/allegations emerged from previous investigations and the opening decisions were embodied in the D-G of OLAF's decision to split the cases.
123. In 10 cases²⁵⁷ OLAF did not identify potential or hypothetical criminal elements during the selection stage. In these cases, OLAF found that there were *no tangible factual elements indicating criminal offences on which the EPPO could exercise its competence* and that, considering the information available, the EPPO lacked competence since *there was no element indicating criminal conduct falling within the competence of the EPPO*. Furthermore, in three other cases OLAF found that the EPPO was not territorially competent²⁵⁸. In two instances OLAF concluded that the facts pertained to the territory of third countries and/or entities established in third countries²⁵⁹ while in another instance OLAF found that the allegations received concerned a Member State not part of the EPPO agreement²⁶⁰.
124. The Committee's analysis further showed that, in one case²⁶¹, at the selection stage, OLAF identified that the allegations related to suspicions of fraudulent activities and that, depending on the findings of its investigation, reporting to the EPPO was not excluded. However, at that stage, OLAF considered that *the criminal conduct of the suspects cannot be established yet*²⁶². In another case²⁶³ OLAF found that the initial allegations of potential corruption could not be excluded²⁶⁴. In this case, however, OLAF concluded that *at this stage, there are no elements indicating criminal conduct that could trigger the EPPO's competence*. Following a request for clarifications by the Committee²⁶⁵, OLAF explained that *the*

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*allegations of corruption could not be confirmed on the basis of the information available at the selection stage. Consequently, the opening opinion did not include the allegations of corruption in the scope of the OLAF investigation to be opened. Pursuant to Article 12c(3) of the OLAF Regulation, the Office is not bound to report to the EPPO manifestly unsubstantiated allegation*²⁶⁶.

125. The Committee observes that an allegation which cannot be confirmed at the selection stage should not correspond to ‘manifestly unsubstantiated allegations’ within the meaning of Article 12c(3) of the OLAF Regulation. This matter will be addressed by the Committee in its findings and conclusions (See **Section 5**).
126. In another case²⁶⁷ the Committee observed that during the selection stage OLAF had considered that the allegations concerning illegitimate documents, if corroborated, could potentially amount to fraud under the PIF Directive²⁶⁸. However, OLAF concluded that *the case should not be reported to the EPPO since on the basis of the elements available at the selection stage, it is considered that more elements need to be gathered first*. Following the Committee's request for clarification²⁶⁹, OLAF explained that during the selection stage **it was unable to establish any suspicion** of submission of incorrect documents. The information originated from the national authorities of a Member State that ‘had made an unverified assumption, which – **if proven correct** - would have given rise to the suspicion of fraud in the sense of the PIF Directive²⁷⁰.
127. Finally, in the last case²⁷¹, the Committee observed that during the selection stage OLAF considered that the allegations fell outside the EPPO’s competence, as the suspected facts had no potential financial impact on the EU as required by the EPPO Regulation²⁷².
128. Regarding **OLAF’s H/NH verification** in the EPPO’s case management system during the selection stage²⁷³, the analysis of the Committee shows that, in eight cases²⁷⁴, OLAF carried out a H/NH verification in the EPPO’s case management system. Conversely, in **12 instances**²⁷⁵ **OLAF did not perform such a verification before opening its investigation**.
129. In the 12 cases in which OLAF did not carry out a H/NH verification, the Committee examined the specific circumstances that led OLAF not to perform the verification before opening its investigation. In one case²⁷⁶ the Committee observed that, at the time of the selection stage, the EPPO was not yet fully established and therefore OLAF could not have carried out a H/NH verification. In two cases²⁷⁷ the Committee observed that those cases stemmed from previous investigations with a broader scope, in which OLAF decided to split the investigations. OLAF split the two investigations with the aim of concluding

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its administrative inquiries concerning allegations relating to one EU-funded project²⁷⁸ and one Member State²⁷⁹, while continuing its investigation into allegations concerning other EU projects and Member States²⁸⁰. Additionally, in three other cases²⁸¹ the Committee observed that the allegations concerned the facts that occurred in third countries and/or entities established in third countries²⁸² as well as a Member State not part of the EPPO agreement²⁸³ and therefore OLAF did not carry out a H/NH verification.

130. In the remaining six cases²⁸⁴ **the Committee was unable to establish the exact reasons why OLAF had not carried out a H/NH verification** at the selection stage and therefore asked OLAF to clarify the matter²⁸⁵. In four cases²⁸⁶ OLAF explained that, at the selection stage, it had not carried out a H/NH verification **since it had not identified any concrete contract, individual, economic operator and/or beneficiary on which to carry out a H/NH verification**²⁸⁷. The Committee examined the cases in question and found that in two cases²⁸⁸ OLAF indeed lacked the information on concrete economic operators and/or beneficiaries necessary for a H/NH verification. Conversely, in two other cases²⁸⁹ OLAF's explanation seems inconsistent with the information contained in the case file, which indicates that at the selection stage OLAF had identified specific individuals and/or contracts.

131. Regarding the last two cases²⁹⁰, the Committee observed that OLAF did not carry out a H/NH verification since it found that the EPPO would not be competent²⁹¹. As mentioned above (see Section 4.3) in OLAF's view, a H/NH verification is only carried out in cases where OLAF intends to open an administrative investigation into potential irregularities, and where the facts could *theoretically fall under the EPPO competence if they were of criminal nature*²⁹².

132. Finally, following the complete examination of the case files of the sample of 20 cases, the Committee noted that no H/NH verification was carried out in any of the cases assigned to one specific OLAF investigative unit²⁹³ at either the selection stage or during the investigation.

133. After analysing the selection stage, the Committee also took a closer look at the investigation phase and observed that in certain instances contact were maintained between

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OLAF and the EPPO during and/or after OLAF's investigation. These interactions with the EPPO require a separate examination, specifically: a) Cases closed without contact with the EPPO and b) Cases closed in which OLAF maintained contact with the EPPO.

a) Cases closed without contact with the EPPO

134. The Committee observed that in 12²⁹⁴ of the sample of 20 closed cases, OLAF carried out its investigation and closed the cases **without maintaining contact with the EPPO**. It should be recalled that in these cases **OLAF did not formally identify a criminal offence and/or report the case to the EPPO, neither in the selection nor in the investigation phase**.
135. The Committee notes that, in these cases, it is not possible to assess either the types of criminal offences reported to the EPPO or the point in time at which OLAF identified the criminal elements, as OLAF did not formally identify a reportable criminal offence. As a result, the **Committee focused its assessment on the procedural steps/actions undertaken by OLAF during the investigations of the 12 cases concerned**.
136. In nine cases²⁹⁵ OLAF carried out its administrative investigation without identifying criminal elements. The cases were closed without contact with the EPPO, in some instances with recommendations and in others without.
137. The Committee's analysis further showed that in one case²⁹⁶, pertaining to allegations of imported counterfeit goods into the EU from a third country and possibly evading VAT or custom duties, OLAF emphasised the need to identify 'who is part of the criminal group' at the outset of the investigation²⁹⁷. Following the Committee's request for clarification²⁹⁸, OLAF explained that the investigation aimed first at establishing the origin of the products, which was unclear from the initial allegations. During the investigation OLAF was unable to establish the origin of the suspected goods. OLAF also explained that no duties are applied to counterfeit goods on import, as they are destroyed when seized. Since the case referred to counterfeit goods and no import duties or VAT were evaded, the case was closed. OLAF emphasised that in these circumstances no element could have been reported to the EPPO²⁹⁹.
138. In another case³⁰⁰ the Committee observed that at the beginning of the investigation OLAF considered that the allegations could potentially amount to a breach of the criminal code of the relevant Member State³⁰¹. The case concerned suspected inflation of personnel costs by the company beneficiary of EU funds. The Committee requested clarification³⁰². OLAF explained that it could not identify, at any moment during the investigation, any substantiated evidence leading to potential criminal acts. While early on in the investigation OLAF may have considered that one of the potential findings could have resulted in a

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criminal offence, the evidence collected demonstrated only the existence of irregularities. Therefore, this case was not reported to the EPPO. OLAF also noted that the plan it sets out at the start of investigations contains only a hypothesis for the direction the investigation should take and that no conclusions can be drawn based on the information contained in its initial plan³⁰³.

139. Finally, the last case³⁰⁴ concerns allegations of imported counterfeit goods into the EU from a third country marketed evading VAT or customs. The case was initially opened as a coordination case³⁰⁵ and subsequently reclassified by OLAF as an investigation case³⁰⁶. The Committee notes that it results from OCM that at the beginning of the case OLAF considered that the allegations could potentially amount to breaches of the criminal code of one Member State³⁰⁷. Subsequently, after OLAF's case was reclassified as an investigation, OLAF received information from the authorities of another Member State that the allegations could amount to criminal offences under its criminal code³⁰⁸. Additionally, during the investigation OLAF held a meeting with the authorities of the second Member State, in which it indicated that it intended to carry out an investigative activity in the territory of a third country from where the counterfeit products were being imported into the EU, to ascertain the involvement of the suspected companies established in the Member State in the suspected criminal activities³⁰⁹. The Committee asked OLAF for clarification³¹⁰.

140. OLAF explained that it did not report the case to the EPPO as there was never sufficient suspicion of any PIF offence, namely, **evasion of custom duties or VAT fraud**. Concerning the potential breach of the criminal codes of the Member States, OLAF stated that it was in contact with the relevant national authorities throughout the case and suspicions of criminal activities in the EU did not arise at any moment. Only a breach of counterfeiting was established in a third country, which falls outside the EPPO's competence. OLAF mentioned that the investigative activity carried out in the third country pertained to suspected criminal activities in third countries. OLAF emphasised that, since the investigative activity and the overall investigation did not establish any facts on the evasion of duties, VAT fraud or money laundering, there was no reason to inform the EPPO of the outcome of the investigation³¹¹.

b) Cases closed in which OLAF maintained contact with the EPPO

141. The Committee observes that in eight³¹² of the 20 cases closed in 2024, although OLAF did not formally identify a criminal offence falling under the competence of the EPPO or report the case to the EPPO, it maintained informal contact with the latter during and/or after the closure of the investigations. The analysis shows that:

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- in one instance, OLAF informed the EPPO of its ongoing investigation without reporting the case³¹³;
- in two cases, the EPPO was informed of OLAF's ongoing investigation by the national authorities of Member States³¹⁴;
- in the remaining five cases, after OLAF had closed its investigation, the EPPO became aware that OLAF had a closed case on the same facts³¹⁵ or linked to the same entities³¹⁶ being investigated by the EPPO and requested that OLAF transmit the case files.

142. The Committee recalls that in these cases it is also not possible to assess the types of criminal offences reported to the EPPO, as OLAF did not formally identify a reportable criminal offence. **As a result, the Committee focused its assessment on the procedural steps/actions undertaken by OLAF during the investigations, as well as the interaction OLAF maintained with the EPPO during and after the investigations.**

143. The Committee's analysis showed that in one case³¹⁷, concerning allegations of imported goods from a third country with a suspected false origin to evade anti-dumping duties, while OLAF's investigation was ongoing the EPPO had three open investigations into the same facts (suspected origin of the imported goods), conducted by three EDPs in two Member States. The EPPO investigations were opened following reporting from the national authorities of these Member States³¹⁸. After learning of OLAF's investigation, the EDPs contacted OLAF and held several meetings and exchanges both during and after the closure of OLAF's investigation. It further emerges from the case file that following the closure of the investigation, OLAF provided the EDPs with the final case report and the report of the investigative activities carried out and concluding that it found no evidence of irregularities³¹⁹. Subsequently, the EDPs dismissed their investigations due to lack of evidence³²⁰. It has emerged from OCM that one of the EDPs stated that OLAF had refused to support the EPPO investigation³²¹. The Committee asked OLAF for clarification³²².

144. OLAF explained that the EPPO and OLAF cases had different scopes. OLAF's case covered the entire trade in the suspected goods from the third country to the EU without specifying any exporters or importers. In contrast, the EPPO's criminal investigation focused on importers in specific countries. OLAF noted that OLAF and EPPO held numerous meetings to ensure coordination. Regarding the EPPO's request for assistance, OLAF clarified that the EDP asked OLAF to request administrative assistance from the third country's authorities and then to transmit this information to the EPPO. This request for support was not compliant with the limitations set by the Regulation on mutual

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administrative cooperation on customs matters³²³, which does not allow the use of administrative cooperation tools in ongoing criminal investigations. Consequently, the support request had to be declined³²⁴.

145. Another case³²⁵ concerned allegations of imported goods from a third country with a suspected false document of origin to evade anti-dumping duties. During OLAF's investigation, the national authorities, which were in contact with OLAF, reported the case to the EPPO³²⁶. After learning of OLAF's investigation, the competent EDP contacted OLAF and held a meeting with OLAF, informing OLAF that it had opened a criminal investigation³²⁷. OLAF informed the EDP of the status of its investigation, mentioning that it had not reported the matter to the EPPO due to a lack of indications of criminal conduct and stating that the next formal step would be sending a H/NH request to establish the existence of an overlap with the EPPO investigation³²⁸. In the interval, OLAF continued its investigation and carried out investigative activity concluding that there was no evidence of a falsified origin to evade anti-dumping duties³²⁹. Following the closure of the investigation, OLAF provided the EDP with the final case report³³⁰. Subsequently, the EDP dismissed its investigation due to lack of evidence³³¹. The Committee asked OLAF for clarification³³².
146. OLAF explained that if it had established that the origins of the goods had been falsified to circumvent anti-dumping duties, it would have suspended its case and proposed to conduct a complementary investigation, since the EPPO had already opened a criminal investigation. OLAF emphasised that when it held a meeting with the EDP it was agreed that OLAF would carry out its scheduled investigative activity and the course of action regarding the case would be discussed afterwards. Furthermore, OLAF clarified that regarding *the scope of the facts/allegations of OLAF's investigation and the EPPO's investigation as well as on possible overlap of both investigations, the suspicion that led to the opening of the criminal investigation by the EPPO was established by the [national authorities] with no information to OLAF and based on an incorrect understanding of the rules*. OLAF stated that the meeting with the EDP was the appropriate occasion to establish a possible overlap between the two investigations³³³.
147. In another case³³⁴ also regarding allegations of imported goods from a third country with a suspected false origin to evade anti-dumping duties, the case file shows that during the investigation OLAF informally contacted the EDP in one Member State regarding the

³²³ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, (OJ L 082 22.3.1997, p. 1).

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possibility of investigating the allegations³³⁵, the EDP requested additional documents which OLAF provided³³⁶. Additionally, OLAF also informally contacted the national authorities in another Member State which liaised with the relevant EDP for a ‘possible criminal case’³³⁷ in that Member State. The national authorities indicated that the EDP would be willing to open a criminal investigation and therefore OLAF should not carry out investigative activities in that Member State. They also requested that additional documents be provided to the EDP, which OLAF provided³³⁸. The EDP opened a criminal investigation and, as a result, OLAF informed that it had halted its investigative activities related to the suspected entity established in that Member State³³⁹. After closing its investigation OLAF transmitted its final case report to the two EDPs³⁴⁰. The Committee asked OLAF for clarification³⁴¹.

148. OLAF explained that, at the start of the investigation the allegations pertained to the territory of two Member States, which at the time were not part of the EPPO agreement. However, during the investigation, links were uncovered to suspected fraudulent activities in two Member States that are part of the EPPO agreement. OLAF emphasised that it made a considerable effort to ensure that prosecutors from all the Member States involved received information of relevance for their respective investigations. Furthermore, regarding the specific contacts maintained with one EDP, OLAF clarified that the informal contact it maintained was intended to help coordinate meetings between the EDP and prosecutors in the Member State that was not part of the EPPO agreement. Concerning the contact with another EDP through the national authorities, OLAF explained that it did not report the allegations through an ECR since it would have been redundant: the EDP and national authorities were already inquiring into the matter. Finally, OLAF noted that it did not suspend its investigation, as it was focused on the allegations concerning the two Member States not part of the EPPO agreement and disregarded activities outside these Member States³⁴².

149. In one case³⁴³, concerning allegations regarding a Member State that is not part of the EPPO agreement, the case file shows that after OLAF had closed its investigation it held a meeting with the EPPO regarding OLAF investigations in this Member State³⁴⁴. Subsequently the EPPO requested that OLAF provide the final case report and information on ongoing OLAF cases in this Member State³⁴⁵. OLAF did this.³⁴⁶ Finally, the case file also shows that the EPPO opened an investigation into the allegations that took place in the Member State that is not part of the EPPO agreement³⁴⁷. Following a

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request for clarification by the Committee³⁴⁸, OLAF confirmed that the EPPO had opened a criminal investigation into these allegations in this Member State, not part of the EPPO agreement but explained that it had no information on the reasoning or substance of the EPPO's decision³⁴⁹.

150. In a different case³⁵⁰ the case file shows that during the investigation the case was split, and a new case was opened specifically for reporting some of the suspected allegations to the EPPO, while continuing to investigate those parts of the allegations that involved only administrative irregularities³⁵¹. OLAF became aware of the criminal elements which it reported to the EPPO in the new, split case during the investigative activity carried out in this case³⁵². It results from OCM that OLAF split the case and reported the allegation to the EPPO 22 months after having carried out the investigative activity in which it uncovered the criminal elements, OLAF explained this interval was due to the large number of documents and data collected and the time required to assess them³⁵³. Following the closure of the case, and after the EPPO became aware of the present case through the ECR submitted in the new split case, the EPPO asked OLAF to transmit case documents, which OLAF did³⁵⁴. The EPPO asked OLAF the reasons behind OLAF's decision not to report the allegations in the present case and whether the allegations could not justify an EPPO investigation for the potential criminal offence of misappropriation³⁵⁵. OLAF replied that it had reported the allegations which it considered to amount to criminal offences through the new split case and had continued the present case regarding the allegation in which it had only identified administrative irregularities. OLAF also stated that its investigation *did not identify any particular case in which [the suspects] may have diverted funds into their own patrimony (considering this is the behaviour considered to be misappropriation)*³⁵⁶. The Committee asked OLAF for clarification³⁵⁷.

151. OLAF *firstly* explained that this specific case was extremely complex and incorporated a large number of documents as evidence. All the elements were assessed, and after an internal discussion OLAF decided that only one part of the case might constitute potential criminal acts suitable for reporting to the EPPO. *Secondly*, concerning OLAF's reply to the EPPO regarding potential 'misappropriation' requiring the suspected party to divert funds to his/her "patrimony", OLAF stated that according to the PIF Directive misappropriation may consist of not spending the funds at stake in the way that they had to be spent. OLAF considered at the time of the investigation that this was not the case, because the funds were spent on the intended purpose (the EU projects in question), but in breach of the procedures set out in the contractual framework³⁵⁸.

152. The Committee notes that the notion of misappropriation provided by OLAF to its request for clarification is inconsistent with OLAF's reply to the EPPO. The Committee

³⁴⁸ [CONFIDENTIAL].

³⁴⁹ [CONFIDENTIAL].

³⁵⁰ [CONFIDENTIAL].

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³⁵⁴ [CONFIDENTIAL].

³⁵⁵ [CONFIDENTIAL].

³⁵⁶ [CONFIDENTIAL].

³⁵⁷ [CONFIDENTIAL].

³⁵⁸ [CONFIDENTIAL].

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recalls that both the OLAF Regulation³⁵⁹ and the EPPO Regulation³⁶⁰ require OLAF to analyse potential criminal offences reportable to the EPPO according to the definitions set out in the PIF Directive. This matter will be addressed by the Committee in its findings and conclusions (see **Section 5**).

153. In another case³⁶¹ concerning suspicions of misconduct linked to an EU official, the Committee noted that, at the beginning of the investigation, OLAF set out one of the allegations being investigated as *[w]hether the [EU Official] personally benefited from the conclusion of the [specific contract] since he joined the [board of the external beneficiary], following his departure from the [IBOA]*³⁶². After OLAF closed its investigation the EPPO launched a H/NH verification in OLAF's case management system and found a match regarding the present case³⁶³. Subsequently, the EPPO asked OLAF to transmit the case file, and OLAF did³⁶⁴. It further emerges from the case file that the EPPO's request concerned potential corruption³⁶⁵. Following a request for clarification by the Committee³⁶⁶, OLAF explained that it does not have specific information as to how the EPPO learned about the allegations concerning the EU official but noted that the allegations were made public. OLAF further explained that *OLAF's reporting obligation needs to be seen in the light of the elements available in OLAF's file at a specific moment in time. OLAF cannot report based on elements, which are not available to OLAF even though other sources might have more evidence on a case than OLAF*³⁶⁷.

154. In another case³⁶⁸ regarding suspicions of misconduct by an EU official, during the investigation OLAF carried out investigative activity during the investigation, thereby gaining additional information and documents on the initial allegations. As a result of this investigative activity OLAF decided to expand the scope of the investigation and found that there could be possible judicial implications concerning the crimes of bribery and corruption under the criminal code of one Member State, and further examined the prescription periods of the potential types of criminal conduct³⁶⁹. OLAF found that irregularities were committed by the EU official and concluded its investigation with a disciplinary recommendation³⁷⁰. In the final case report, OLAF stated that the allegations could amount to breaches of the criminal code of the relevant Member States but found that the prescription periods of the criminal offences would have already elapsed and that there was no impact on the EU's financial interests³⁷¹. After OLAF had closed the case, the EPPO became aware, through unspecified sources, of the allegations and OLAF's investigation and carried out a H/NH verification in OLAF's case management system where it found a positive match³⁷². The case file shows that EPPO had opened a criminal

³⁵⁹ See Article 12c(1) of the OLAF Regulation.

³⁶⁰ See Article 22(1) of the EPPO Regulation.

³⁶¹ [CONFIDENTIAL].

³⁶² [CONFIDENTIAL].

³⁶³ [CONFIDENTIAL].

³⁶⁴ [CONFIDENTIAL].

³⁶⁵ [CONFIDENTIAL].

³⁶⁶ [CONFIDENTIAL].

³⁶⁷ [CONFIDENTIAL].

³⁶⁸ [CONFIDENTIAL].

³⁶⁹ [CONFIDENTIAL].

³⁷⁰ [CONFIDENTIAL].

³⁷¹ [CONFIDENTIAL].

³⁷² [CONFIDENTIAL].

investigation³⁷³. Subsequently the EPPO contacted OLAF to request the case file and additional documents which OLAF transmitted³⁷⁴. The Committee asked OLAF for clarification³⁷⁵.

155. OLAF explained that when it extended the scope of the investigation, it did so with the aim of investigating the facts that emerged from the investigative activity related to a period not covered by the initial scope of the case and that, prima facie, could have pointed to potential criminal offences. It was in this context that OLAF referenced the applicable prescription period of the criminal offences. OLAF noted that the investigation after the scope of the investigation was extended failed to substantiate suspicions of criminal conduct³⁷⁶.

156. In another case³⁷⁷ also concerning suspicions of misconduct linked to EU officials, the case file shows that following its investigation, OLAF concluded that the allegations of misconduct and irregularities could not be substantiated³⁷⁸. It emerges from OCM that in the final case report OLAF classified the allegations as corresponding to the offence of ‘misappropriation of EU funds’³⁷⁹, a reportable criminal offence under the PIF Directive. After OLAF closed its investigation the EPPO launched a H/NH verification in OLAF’s case management system and found a match regarding the present case³⁸⁰. Subsequently, the EPPO asked OLAF to transmit the case file, which OLAF did³⁸¹. The case file shows that the investigation conducted by the EPPO concerns the same EU official and allegations related to OLAF’s investigation³⁸². Following a request for clarification by the Committee³⁸³, OLAF explained that the offence of ‘misappropriation of EU funds’ is included in the final case report, based on the initial allegations received by OLAF, not based on the conclusions of the investigation. Therefore, the category ‘misappropriation of EU funds’ was selected, since the initial allegations pointed to potential misuse of the EU funds. These allegations were not corroborated by the investigation, however³⁸⁴.

5. FINDINGS AND CONCLUSIONS

157. Following the analysis of the four categories of cases outlined above, the Committee presents its findings regarding the implementation by OLAF of its reporting duty to the EPPO. They are based on a horizontal assessment that encompasses all cases reviewed and considers the entire lifecycle of each case, from its opening to its closure. On this basis, the Committee also formulates its conclusions.

³⁷³ [CONFIDENTIAL].

³⁷⁴ [CONFIDENTIAL].

³⁷⁵ [CONFIDENTIAL].

³⁷⁶ [CONFIDENTIAL].

³⁷⁷ [CONFIDENTIAL].

³⁷⁸ [CONFIDENTIAL].

³⁷⁹ [CONFIDENTIAL].

³⁸⁰ [CONFIDENTIAL].

³⁸¹ [CONFIDENTIAL].

³⁸² [CONFIDENTIAL].

³⁸³ [CONFIDENTIAL].

³⁸⁴ [CONFIDENTIAL].

*5.1 Analysis of the EPPO's competence at the selection stage***Findings**

158. At the outset, the Committee observes a lack of consistency in the level of detail provided in the Selection Unit's opinions concerning OLAF's evaluation of the EPPO's competence. The analysis of the cases reviewed³⁸⁵ shows that the reasoning underpinning these opinions varies considerably. In 15 cases³⁸⁶, the assessment is developed in a comprehensive manner, explicitly addressing the different dimensions of the EPPO's competence, namely its material, temporal, territorial, and personal scope. However, in 12 cases³⁸⁷, the examination is more limited, with only partial or succinct examination of these elements.
159. The Committee requested clarification from OLAF on this inconsistency. OLAF explained that, in the initial stages of its cooperation with the EPPO, the level of detail in the Selection Unit's assessments varied, because the practices and mechanisms to be used in cooperation had not yet been fully established. OLAF further clarified that this cooperation has since matured, and a consistent methodology is now uniformly employed in all opinions issued by the Selection Unit when assessing the EPPO's competence. Since November 2022, this methodology encompasses an evaluation of the EPPO's material, temporal, territorial, and personal competence, including in cases where OLAF ultimately decides not to report the matter to the EPPO³⁸⁸.
160. The Committee was able to verify the clarification provided by OLAF. However, its review indicates that, in seven cases³⁸⁹, **even after November 2022, OLAF did not carry out a comprehensive assessment of the EPPO's competence.** While the EPPO's competence was assessed during the selection this assessment did not consistently address all relevant aspects, namely material, temporal, territorial, and personal competence as provided for in the EPPO Regulation. This suggests that, despite the introduction of a more structured methodology, its application has not yet been entirely uniform across all cases.

Conclusions

161. The Committee considers that, at the selection stage, OLAF should strive to analyse all four elements of the EPPO's competence i.e. material, temporal, territorial, and personal in every instance to ensure a robust and well-founded assessment from the outset of a case. **The Committee notes that even in instances where a preliminary assessment indicates that one or more of these elements may not be engaged, this should not exempt OLAF from the need to analyse the remaining aspects. On the contrary, considerations of completeness call for each element to be examined individually and in sufficient detail, with links to the factual allegations as they emerge at the selection stage.** Only through such a comprehensive and systematically structured

³⁸⁵ [CONFIDENTIAL].

³⁸⁶ [CONFIDENTIAL].

³⁸⁷ [CONFIDENTIAL].

³⁸⁸ [CONFIDENTIAL].

³⁸⁹ [CONFIDENTIAL].

assessment, anchored in the factual allegations available at the selection stage, can the Director-General adopt a fully informed and legally sound decision.

162. The Committee further notes that the new GIPs adopted by OLAF, which are applicable from 1 January 2026, codify this approach by expressly providing that when assessing the EPPO's competence at the selection stage, due consideration is to be given to EPPO's material, territorial, temporal and personal competence³⁹⁰. The Committee welcomes the introduction of this provision and considers that its strict application is key to ensuring consistency, transparency, and legal certainty in OLAF's assessment practices.

Recommendation 1: Analysis of the EPPO's competence at the selection stage

The Committee invites OLAF to ensure through its internal tools and procedures that, at the selection stage, a consistent and complete assessment of all the elements of the EPPO's competence is carried out in all cases, in line with Article 18.4 of the revised GIPs.

5.2 The notion of 'manifestly unsubstantiated allegations'

Findings

163. In assessing the practical implementation of OLAF's reporting duty to the EPPO, the Committee focused on how OLAF applies in practice the provision of Article 12c(3) of the OLAF Regulation. Under this provision, OLAF is not bound to report 'manifestly unsubstantiated allegations'. In this regard, **the Committee notes that neither the OLAF Regulation, the EPPO Regulation, the WA between OLAF and the EPPO nor OLAF's internal procedural framework³⁹¹ appears to offer a formal definition or clear operational guidance on the scope of this concept.**
164. The Committee's case analysis showed that from the OCM case files it is not clear in which instances cases were dismissed or not reported to the EPPO on the basis that they were considered 'manifestly unsubstantiated'.
165. The case review and the clarifications provided by OLAF point to divergent approaches. In seven cases³⁹², OLAF seems to acknowledge that allegations could 'theoretically' amount to criminal offences, yet it refrained from reporting them to the EPPO due to insufficient supporting evidence at the selection stage, opting instead to open an investigation to corroborate or disprove the allegations. By contrast, in another case, OLAF explained that potential criminal allegations that could not be confirmed at the selection stage were excluded from the scope of the investigation since they constituted 'manifestly unsubstantiated allegations'³⁹³. This variation in treatment indicates an inconsistency in the interpretation and application of the concept.

³⁹⁰ [CONFIDENTIAL].

³⁹¹ [CONFIDENTIAL].

³⁹² [CONFIDENTIAL].

³⁹³ [CONFIDENTIAL].

166. **The Committee therefore finds that OLAF’s interpretation and/or understanding of the notion of ‘manifestly unsubstantiated allegations’ is not applied consistently and uniformly across cases**, which may affect both the predictability of decision-making and the consistency of its reporting practices vis-à-vis the EPPO.
167. The analysis of interactions between EDPs and OLAF also revealed that in six cases³⁹⁴, EDPs declined to initiate criminal investigations on the grounds that the cases had not yet reached sufficient maturity for prosecution, lacked elements/substance³⁹⁵ or concluding that there were no reasonable grounds to believe that an offence had been committed³⁹⁶, suggesting a cautious or evidence-threshold-driven approach. However, in one case³⁹⁷ the EDP indicated its openness to reconsidering a case upon receipt of OLAF’s final report, implying that initial refusals are not necessarily definitive, but contingent on further evidentiary development. This variability is further underscored by OLAF’s view that feedback from the EPPO seems to be divergent: while some EDPs favour early transmission of ECRs, even in the absence of concrete criminal suspicion, others prefer to engage only when clear indicators of criminal conduct are identified. Collectively, these findings seem to indicate a heterogeneous approach, which may affect the timeliness, predictability, and overall effectiveness of cooperation between OLAF and the EPPO.

Conclusions

168. The Committee recalls that Article 12c(3) of the OLAF Regulation, which provides that OLAF is not bound to report ‘manifestly unsubstantiated allegations’, is intended to prevent the transmission of clearly baseless or frivolous information to the EPPO, thereby enhancing reporting efficiency. At the same time, the Committee observes that the absence of any legal or administrative definition or operational guidance on the scope of this concept may create a degree of uncertainty in its practical application, particularly when determining the threshold at which an allegation can be considered manifestly unsubstantiated.
169. In this regard, the Committee emphasises that, notwithstanding OLAF’s discretion not to report such allegations, the decision as to whether an offence falls within the EPPO’s competence ultimately rests with the EPPO itself. It follows that Article 12c(3) cannot be relied upon to withhold notification of cases that may potentially fall within that competence³⁹⁸.
170. The Committee further takes the view that the notion of ‘manifestly unsubstantiated allegations’ should be understood in objective terms. By its nature, this notion refers to situations in which the absence of any factual basis is already apparent at the selection stage. It reflects a finding that the allegation is clearly unsupported from the outset, rather than a judgment call based on the weight or sufficiency of evidence.
171. The Committee considers that OLAF’s obligation not to report such ‘manifestly unsubstantiated allegations’ to the EPPO should be interpreted primarily as a safeguard aimed at preserving the quality and credibility of the information transmitted to the EPPO.

³⁹⁴ [CONFIDENTIAL].

³⁹⁵ [CONFIDENTIAL].

³⁹⁶ [CONFIDENTIAL]. See Article 40.1 b) of the Internal Rules of Procedure of the European Public Prosecutor’s Office, available at <https://www.eppo.europa.eu/en/about/legal-framework>.

³⁹⁷ [CONFIDENTIAL].

³⁹⁸ [CONFIDENTIAL].

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Its purpose is to prevent the transmission of complaints that are patently devoid of any factual foundation, thereby avoiding unnecessary administrative burden and ensuring that investigative resources are directed towards credible matters. However, this safeguard must be applied in a narrow and restrictive manner.

172. **In the Committee's view, this standard should not be interpreted as requiring that allegations be substantiated or confirmed at the selection stage as a precondition for reporting.** Such an interpretation would risk creating an ambiguity between 'manifestly unsubstantiated' allegations and those allegations that are merely unverified or unconfirmed at an early stage. It would also set an excessively high threshold, potentially undermine the proper functioning of the reporting mechanism and limiting the effective transmission of relevant information to the EPPO.
173. In light of these considerations, the Committee considers that OLAF should adopt a cautious and balanced approach in the application of Article 12c(3) of the OLAF Regulation. It should not refrain from reporting allegations solely on the basis that they remain unverified or incomplete at the selection stage. Rather, the assessment should focus on whether the information already available contains sufficient indications of potential criminal conduct to justify reporting to the EPPO, even where further investigative steps will be necessary to substantiate or clarify the facts. Such an approach ensures that the provision retains its intended filtering function, excluding plainly unfounded claims, while avoiding the premature exclusion of matters that may be relevant for criminal assessment.
174. **The Committee therefore concludes that,** considering the potential negative impact on the flow of information between OLAF and the EPPO and on OLAF's reporting obligations - and **given the absence of a clear definition or operational guidance on the notion of 'manifestly unsubstantiated allegations' - OLAF should exercise particular caution and avoid interpreting this concept too broadly.**
175. The Committee has already expressed its view that to ensure uniformity and legal certainty, it would be necessary to provide clear guidance in the OLAF Regulation on the interpretation of the concept of 'manifestly unsubstantiated allegations' so that it contains a standard that would be consistently applicable in all cases³⁹⁹. **The ongoing evaluation and forthcoming revision of the OLAF Regulation could be an appropriate moment to clarify the notion of 'manifestly unsubstantiated allegations',** laying down a clear distinction between 'manifestly unsubstantiated' non-reportable allegations and allegations which are simply not yet sufficiently supported by evidence. This clarification would offer guidance to both OLAF and the EPPO on the appropriate evidentiary threshold required for reporting, while striking a balance between OLAF's reporting duty and the continuation of its investigative function to protect the EU's financial interests.

³⁹⁹ See opinion No 1/2026 accompanying the Commission Evaluation Report on the application and impact of the OLAF Regulation, on 21.1.2026, paragraph 153, available at https://supervisory-committee-olaf.europa.eu/supervisory-committee-olaf/opinions-and-reports_en.

Recommendation 2: The notion of ‘manifestly unsubstantiated allegations’

In the absence of a clear legal or administrative definition of ‘manifestly unsubstantiated allegations’, and while noting that the current regulatory framework would benefit from further clarification in this respect, the Committee invites OLAF to endeavour to establish, in cooperation with the EPPO, a common understanding and/or shared guiding principles, accepted by both bodies, for the assessment and/or categorisation of ‘manifestly unsubstantiated allegations’ that do not require reporting.

5.3 OLAF’s ‘preliminary evaluation’ at the request of IBOAs**Findings**

176. The Committee examined the practical application of the ‘preliminary evaluation’ mechanism provided for in Article 12c(4) and Article 12c(6) of the OLAF Regulation, with a particular focus on how and when such evaluations are carried out in practice.
177. The case analysis showed that it was not possible to determine when OLAF autonomously conducts ‘preliminary evaluations’ of allegations within the meaning of Article 12c(4) of the OLAF Regulation prior to reporting them to the EPPO. Likewise, it was also not possible to clearly identify in which instances OLAF carries out such evaluations at the request of IBOAs pursuant to Article 12c(6) of the OLAF Regulation⁴⁰⁰.
178. The cases files reviewed also do not indicate whether OLAF received information from IBOAs under Article 5(2) of the OLAF Regulation nor whether an explicit request was made by IBOAs for OLAF to undertake a preliminary evaluation under Article 12c(6) of the OLAF Regulation⁴⁰¹. This lack of traceability makes it difficult to distinguish the different legal bases and procedural contexts in which preliminary evaluations may occur. The Committee asked OLAF for clarification⁴⁰².
179. OLAF explained that all incoming information is subject to a uniform assessment process based on common criteria and procedures, regardless of the source of information or the reporting framework under which it is transmitted⁴⁰³. While the internal processes in OCM do not specifically refer to ‘preliminary evaluation’ within the meaning of Article 12c(4), OLAF indicated that such evaluations are in practice carried out systematically for all new incoming allegations. The same approach applies to requests by IBOAs under Article 12c(6). In practice, OLAF explained that the Selection Unit conducts preliminary evaluations of all incoming information, without differentiating between sources. No distinct procedural track or workflow is applied. OLAF further noted that IBOAs do not explicitly mention Article 12c(6) when transmitting allegations to OLAF⁴⁰⁴.
180. **The Committee therefore finds that OLAF uses a single standardised procedure for all information received, whereby a ‘preliminary evaluation’ is conducted for**

⁴⁰⁰ [CONFIDENTIAL].

⁴⁰¹ [CONFIDENTIAL].

⁴⁰² [CONFIDENTIAL].

⁴⁰³ [CONFIDENTIAL].

⁴⁰⁴ [CONFIDENTIAL].

every new allegation, irrespective of its origin or whether it is accompanied by an explicit request under Article 12c(6).

Conclusions

181. The Committee notes that while OLAF's practice of applying a single procedure to all information received may help ensure that incoming allegations are handled consistently, it may not fully reflect the framework established by the legislator under the OLAF Regulation. In this respect, the Regulation appears to provide for differentiated procedural avenues. In particular, Article 12c(6) envisages a specific channel allowing IBOAs to request 'preliminary evaluations', thereby distinguishing them from other external sources, which do not have the ability to formally request such an assessment.
182. However, as already noted in the Committee's findings, the case files examined do not indicate that IBOAs make explicit use of the possibility to request a 'preliminary evaluation' through a differentiated channel, as envisaged under Article 12c(6). In practice, IBOAs appear to transmit information without invoking this specific procedural prerogative.
183. At the same time, the Committee acknowledges that Article 12c(4) allows OLAF to carry out preliminary evaluations on its own initiative in respect of all allegations received, and to report to the EPPO where indications of criminal conduct arise. This provision seems to provide a legal basis for OLAF's practice of systematically assessing all incoming information under a single procedural framework, irrespective of its origin.
184. In light of the ambiguity surrounding the interaction between Article 12c(4) and Article 12c(6), the **Committee considers that, on the basis of the cases analysed, it is not in a position to reach a definitive conclusion as to whether OLAF's use of a single unified procedure for all incoming information is fully appropriate or consistent with the existing legal framework.**
185. The Committee nevertheless observes that, while a single point of entry and assessment may offer practical advantages in terms of coherence, traceability, and administrative efficiency, **it ultimately falls to the legislator to clarify whether this approach aligns with the intended design of the OLAF Regulation,** or whether a clearer separation of procedural channels should be maintained, particularly in relation to IBOAs.

5.4 OLAF's H/NH verification in the EPPO's case management

Findings

186. The Committee examined OLAF's practice concerning the verification of 'Hit/No-hit' (N/NH) results in the EPPO's case management system, with a particular focus on how and at what stage such verifications are carried, both out during the selection stage and in the context of open investigations. The analysis of files showed that the H/NH verification in EPPO's case management system is neither automated nor immediate, but rather a manual process carried out by the EPPO in its own case management system, at the request of OLAF. **The Committee observed that it may take several days or, in some cases, several weeks to obtain the outcome of this verification.**
187. Based on the files reviewed, as well as OLAF's clarifications, **the Committee found that OLAF does not perform a H/NH verification in instances where, at the selection**

stage, it decides not to open its own investigation but instead dismisses the case and reports it to the EPPO⁴⁰⁵.

188. By contrast, in cases where OLAF decides to open its own investigation, its practice appears more nuanced. OLAF indicated that it would only perform a H/NH verification at the selection stage when the allegations could *theoretically fall under the EPPO competence if they were of a criminal nature*⁴⁰⁶. According to OLAF such verification is undertaken in cases where no suspicion of criminal conduct is identified at the selection stage, but where the possibility of criminal indications emerging during the investigation cannot be excluded⁴⁰⁷.

189. However, the case analysis reveals that this approach is not applied consistently in practice. In certain instances⁴⁰⁸, OLAF carries out a H/NH verification at the selection stage prior to opening its own investigation, even when it considers that the EPPO is not competent, as a precautionary measure aimed at avoiding parallel investigations. Conversely, in other instances, no such verification is conducted, with OLAF simply stating that the EPPO would not, in any event, be competent⁴⁰⁹.

190. The Committee finds that OLAF's practice concerning H/NH verifications at the selection stage, particularly in cases where it decides to open an investigation, lacks a clearly defined or consistently applied standard.

191. The Committee also noted, for instance, that no H/NH verification was carried out in any of the cases closed in 2024 not reported to the EPPO and assigned to one specific OLAF unit⁴¹⁰, either at the selection stage or investigation.

192. The Committee further identified cases in which OLAF was conducting its own investigation into irregularities while the EPPO was simultaneously carrying out a criminal investigation, with neither entity aware of the other's activities⁴¹¹. The new GIPs⁴¹² address this issue by introducing a compulsory H/NH verification in situations where OLAF becomes aware, through any source, that the EPPO may be conducting a criminal investigation into the same facts. This provision is intended to ensure coordination once such situations become known. However, it does not fully prevent the risk of overlap, as situations may still arise in which OLAF is unaware of an EPPO investigation and continues its own inquiries independently, potentially conducting intrusive investigative measures. To mitigate the risk of OLAF's investigative activities jeopardising ongoing EPPO criminal investigations, the Committee notes that a preventive H/NH verification or notification to the EPPO by OLAF could be envisioned before performing on-the-spot checks. The Committee observes that OLAF has already followed this approach in one of the cases analysed⁴¹³.

⁴⁰⁵ [CONFIDENTIAL].

⁴⁰⁶ [CONFIDENTIAL].

⁴⁰⁷ [CONFIDENTIAL].

⁴⁰⁸ [CONFIDENTIAL].

⁴⁰⁹ [CONFIDENTIAL].

⁴¹⁰ [CONFIDENTIAL].

⁴¹¹ [CONFIDENTIAL].

⁴¹² See Article 40.1 of the new GIPs.

⁴¹³ [CONFIDENTIAL].

Conclusions

193. The Committee notes that, given that H/NH verification is a manual procedure which may take several days or weeks, OLAF's practice of not carrying out such verification in cases it intends to dismiss the case at the selection stage and report to the EPPO appears to be an appropriate administrative approach, allowing efficient use of OLAF's resources. In such cases, **where OLAF has already decided to report the case to the EPPO, the Committee considers that performing a H/NH verification would be redundant and could lead to unnecessary delays in reporting while awaiting the outcome of the verification.**
194. Differently, the Committee notes that when OLAF decides to open an investigation, there are internal inconsistencies in its use of the H/NH verification. OLAF's reasoning is that it does not perform a H/NH verification when no suspicion of criminal conduct exists at the selection stage, while at the same time it anticipates the potential emergence of such suspicions during the investigation. **This blurs the distinction between the absence of suspicion and the mere possibility of its future development. As a result, it remains unclear how these elements are reconciled within a coherent and workable threshold for deciding whether to carry out a H/NH verification.**
195. **The Committee further takes the view that the criterion relied upon by OLAF, namely that the allegations *theoretically fall under the EPPO competence if they were of a criminal nature*, is formulated in overly abstract terms.** Such a standard does not readily lend itself to concrete or uniform application, as it lacks clearly identifiable parameters capable of guiding OLAF in deciding, in a consistent manner across cases, whether a H/NH verification should be carried out. As the Committee's findings already note, the use of this broad criterion appears to have contributed to divergent practices in the performance of H/NH verifications at the selection stage.

Recommendation 3: OLAF's H/NH verification in the EPPO's case management

The Committee invites OLAF to:

- (i) pursue, in dialogue with the EPPO, arrangements on how OLAF: a) can obtain more efficiently information on ongoing cases to mitigate the risk of parallel investigations jeopardizing outcomes and b) to simplify and accelerate the procedure for H/NH verifications.

Given its current absence of sufficient insight into ongoing EPPO cases, the Committee invites OLAF to:

- (ii) conduct systematically, a H/NH verification before OLAF decides to open an investigation, including in cases where it considers that the EPPO would not be competent.
- (iii) modify its internal procedures and consider adopting the practise of carrying out a preventive H/NH verification or notifying in advance the EPPO about the on-the-spot checks, which may affect any ongoing EPPO criminal investigation.

5.5 Timing of OLAF's reporting during the investigation

Findings

196. The Committee took a closer look at OLAF's assessment of potential criminal conduct identified in the course of its investigations. As a first step, the analysis focused on the timing of OLAF's reporting of such conduct to the EPPO, with a view to evaluating whether the transmission of information occurred in a timely and appropriate manner once the criminal elements emerged.
197. The Committee notes that, in some of the cases reviewed⁴¹⁴, the documentation available in OCM did not allow the exact point in time at which OLAF may have identified indications of criminal conduct to be determined with full certainty.
198. In those cases where it was possible to determine it with full certainty, **the Committee found that OLAF generally acted without undue delay. Once the criminal elements had been identified, OLAF proceeded to suspend its investigation within a short timeframe and reported the cases expeditiously to the EPPO⁴¹⁵** in accordance with its obligations.
199. However, the assessment also **identified three cases⁴¹⁶** in which longer timeframes were observed. These **mainly concerned situations where criminal elements were uncovered as a result of specific investigative activities⁴¹⁷, often involving the collection and analysis of a large volume of documents and information.** In such cases, **OLAF required several months and/or year to process the material and report the criminal elements identified to the EPPO.**
200. These cases illustrate the operational challenges associated with processing complex and extensive evidentiary material, which may have an impact on the timeliness of reporting criminal elements.

Conclusions

201. The Committee notes that the OLAF Regulation provides that OLAF should report cases to the EPPO 'without undue delay'. Furthermore, when OLAF receives information lacking essential elements it may carry out a 'preliminary evaluation', which should not exceed two months. The Committee emphasises that both the duty to report 'without undue delay' and the time-limit applicable to 'preliminary evaluation' are relevant to potential criminal allegations uncovered in the course of ongoing investigations.
202. While the notions of 'undue delay' and 'preliminary evaluation' are broad, the Committee recalls that Regulation 2023/2223 amending the OLAF Regulation underlined the need to carry out such evaluations in a timely manner, specifying that OLAF 'should conduct such an evaluation expeditiously and by means which do not risk jeopardising a possible future criminal investigation'⁴¹⁸.

⁴¹⁴ [CONFIDENTIAL].

⁴¹⁵ [CONFIDENTIAL].

⁴¹⁶ [CONFIDENTIAL].

⁴¹⁷ [CONFIDENTIAL].

⁴¹⁸ See Recital 7 of Regulation 2023/2223.

203. The Committee acknowledges that the moment OLAF collects information may differ from the moment in which OLAF identifies criminal elements reportable to the EPPO. In this sense the Committee also recognises the complexity inherent in detecting, delineating and analysing criminal allegations emerging in the course of investigative activities prior to reporting them to the EPPO.
204. The Committee nevertheless considers that OLAF should take further steps to ensure that the reporting of criminal conduct to the EPPO is not disproportionately delayed as a result of extensive document processing or internal assessments, so that the EPPO's ability to assess its competence in a timely manner is not adversely affected.

Recommendation 4: Timing of OLAF's reporting during the investigation

The Committee invites OLAF to implement appropriate administrative measures to expedite the processing of potential criminal elements identified during investigative activities, in particular where extensive documentary material is involved, so as to avoid disproportionate delays in reporting allegations to the EPPO and to ensure that the EPPO's ability to assess its competence in a timely manner is not adversely affected.

5.6 Assessment of a potential criminal conduct during the investigation

Findings

205. As regards the material assessment of a potential criminal conduct carried out by OLAF during the investigation stage, the Committee's analysis sought to understand how, and to what extent, OLAF evaluates the potential criminal dimension of the facts under examination prior to any formal transmission to the EPPO.
206. **The Committee found that, in a number of cases, OLAF undertakes a legal analysis of the allegations at an early stage of the investigation, often when defining its investigative strategy and planning its activities. In some instances, this analysis includes a hypothetical qualification of what type of criminal offences the alleged conduct constitutes, as well as the identification of the relevant criminal provisions that may have been breached, should the investigation corroborate the initial hypothesis⁴¹⁹.** This indicates that, at least in some cases, OLAF integrates a forward-looking assessment of potential criminal implications into its investigative planning.
207. The analysis of the case files further showed that **the depth of the analysis of potential criminal conduct uncovered during the investigation varies from case to case.** In one instance, OLAF's analysis merely indicates that the elements uncovered during the investigation may amount to a criminal conduct, without further specification⁴²⁰. In two instances, OLAF specifies that the uncovered elements may correspond to a specific type of offence (fraud, corruption etc.)⁴²¹. Finally, in four other cases, OLAF's analysis is more detailed, including references to the national criminal provisions that may hypothetically

⁴¹⁹ [CONFIDENTIAL].

⁴²⁰ [CONFIDENTIAL].

⁴²¹ [CONFIDENTIAL].

have been breached⁴²². This may include considerations relating to the constituent elements of the offence and, in one case, an assessment of the applicable prescription period of the hypothetical criminal conduct⁴²³.

208. Overall, the Committee's findings point to differentiated practice within OLAF, whereby the extent and depth of the material assessment of potential criminal conduct is not uniform but depends on the specific circumstances and characteristics of each case.

Conclusions

209. The Committee notes that a significant challenge for OLAF in identifying 'criminal conduct' within the material scope of the EPPO - and thus subject to reporting - lies in distinguishing criminal offences from administrative irregularities. Moreover, OLAF's reporting obligations may be affected by the need to assess in individual cases whether the EPPO can 'exercise its competence'⁴²⁴. Article 25(2) and (3) of the EPPO Regulation set out conditions for the EPPO to exercise its competence. In particular, OLAF may not always be able to determine, during an ongoing investigation, whether the EUR 10 000 threshold required for the EPPO's competence will be met. Moreover, the application of broad concepts such as offences with 'repercussions at Union level' and conduct 'instrumental to PIF offences' further complicate OLAF's assessment of the EPPO's potential ability to exercise its competence.

210. The Committee considers that these inherent difficulties may be compounded by the varying depth of OLAF's legal analysis of potential criminal conduct uncovered during the investigation. The Committee notes, by way of example, that in one case OLAF's reply to the EPPO inquiry as to whether allegations could amount to 'misappropriation' appeared not to align with the definition set out in the PIF Directive⁴²⁵. Conversely, in another instance, OLAF engaged in a particularly detailed analysis, including complex elements such as the prescription period of the potential criminal offences under different national laws⁴²⁶.

211. **The Committee considers that, when assessing the potential competence of the EPPO in the course of investigations, OLAF should adopt a consistent approach to the legal qualification of the conduct. Such qualification should, as a rule, remain at a general level and be limited to identifying the possible criminal nature of the facts. The detailed assessment of complex or legally uncertain elements constituting a criminal offence should be left to the EPPO and, where appropriate, to the competent judicial authorities.** The Committee notes that elements such as the examination of applicable prescription periods of potential criminal offences exceeds the scope of the evaluation OLAF is mandated to carry out under the OLAF Regulation and should remain within the remit of the EPPO or other competent judicial authorities.

212. The Committee further considers that OLAF should exercise caution in applying the EUR 10 000 threshold when assessing the EPPO's competence and should avoid an interpretation that could unduly limit the reporting of cases where the financial impact may

⁴²² [CONFIDENTIAL].

⁴²³ [CONFIDENTIAL].

⁴²⁴ [CONFIDENTIAL].

⁴²⁵ [CONFIDENTIAL].

⁴²⁶ [CONFIDENTIAL].

still be unclear. The Committee observes that in one case⁴²⁷, concerning an EU official, OLAF concluded that it was not required to report the matter since no financial impact to the EU had been identified. The Committee recalls that pursuant to Article 25(2) of the EPPO Regulation the EPPO may also exercise its competence in cases that do not meet the financial threshold but concern EU officials and/or entail ‘repercussions at Union level’. Against this background, the Committee underlines that OLAF’s assessment should ensure that the application of these provisions does not inhibit the reporting of potentially criminal cases to the EPPO.

Recommendation 5: Assessment of potential criminal conduct during the investigation

In instances where potential criminal conduct is uncovered during the investigation the Committee invites OLAF to:

- (i) clarify and formalise its internal approach to the legal assessment of potential criminal conduct, in order to ensure that the level of analysis is consistent, proportionate and operational, while remaining within OLAF’s mandate. To this purpose, OLAF is invited to document in OCM regularly, at least once per year, : (a) whether or not a potential criminal element was identified; (b) the moment or date on which the criminal element was uncovered; (c) the source/origin of the criminal elements and; (d) a general analysis of the criminal conduct based exclusively on the provisions of the PIF Directive and the EPPO Regulation.
- (ii) adopt a consistent approach to legal qualification, limiting it, as a rule, to identifying the possible criminal nature of the facts and avoiding detailed assessments of complex legally uncertain elements (such as prescription periods), which should be left to the EPPO and/or competent judicial authorities.
- (iii) adopt a consistent approach in applying the EUR 10 000 threshold to ensure that uncertainty as to the financial impact does not unduly restrict reporting. OLAF should take due account of scenarios in which the EPPO may exercise competence notwithstanding the threshold (including EU officials and/or ‘repercussions at Union level’).

5.7 Impact of OLAF’s reporting to the EPPO

Findings

213. Following the reporting of information to the EPPO during an OLAF investigation, the handling of the investigation by OLAF enters a distinct phase with practical implications for the continuity and effectiveness of administrative investigations. The Committee has examined this post-reporting phase with a view to assessing whether current practices ensure procedural efficiency as well as effective cooperation between OLAF and the EPPO.

214. OLAF explained that, where reporting to the EPPO takes place at the selection stage, the case is immediately dismissed. Where reporting occurs during the investigation phase,

⁴²⁷ [CONFIDENTIAL].

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OLAF has adopted the practice of suspending its investigations. In such instances, the investigation remains suspended pending the EPPO's decision on whether it will exercise its competence. While this approach reflects a cautious respect for the EPPO's exclusive competence in criminal matters, it may also result in periods of inactivity, particularly in the absence of a clear timeline governing the EPPO's decision.

215. **The Committee found that in five cases, OLAF was informed by the EPPO's decision to open a criminal investigation several months after the initial reporting of the allegations⁴²⁸.**

Conclusions

216. The Committee observes that the OLAF Regulation requires OLAF to refrain from opening, or to discontinue, its investigations when the EPPO has opened a criminal investigation into the same facts, in order to avoid parallel investigations. However, the OLAF Regulation does not impose an obligation on OLAF to suspend its investigations pending the EPPO's decision to exercise its competence.
217. **The Committee notes that the current regulatory framework does not establish a fixed deadline within which the EPPO is required to decide whether to exercise its competence.** The WA merely requires the EPPO to inform OLAF of its decision within five days once such a decision has been taken. The Committee notes that **the EPPO may take also several months to decide whether to open a criminal investigation.** It may be detrimental to OLAF's own investigation to keep it suspended for this period.
218. **The Committee considers that the current practice of systematically suspending investigations following the reporting of a case may not be warranted. The ongoing revision of the OLAF Regulation could provide an opportunity to strike an appropriate balance between, on the one hand, avoiding parallel investigations by OLAF and the EPPO and, on the other hand, preserving OLAF's ability to continue conducting its administrative investigations in a timely, autonomous and effective manner, without jeopardising potential future criminal proceedings.** Pending future modifications to the legal framework, the current generalised approach to suspension may prevent OLAF from effectively exercising its investigative functions effectively during a potentially lengthy period in which the EPPO has not yet decided whether to open an investigation. This may weaken OLAF's capacity to advance its administrative inquiries and maintain investigative momentum. As a result, rather than ensuring complementarity between administrative and criminal responses, the practice may inadvertently undermine the effectiveness of OLAF's own intervention.

⁴²⁸[CONFIDENTIAL].

Recommendation 6: Impact of OLAF's reporting to the EPPO

The Committee invites OLAF to reassess its practise of systematically suspending administrative investigations upon reporting cases to the EPPO, bearing in mind that:

- (i) the OLAF Regulation does not impose an obligation on OLAF to suspend its administrative investigations before reporting a case to the EPPO during the investigation phase
- (ii) a response from the EPPO may in practice require a significant amount of time.

ANNEX I – LIST OF ABBREVIATIONS

AFCOS	Anti-Fraud Coordination Service
D-G	Director-General
ECR	EPPO Crime Report
EDP	European Delegated Prosecutor
EPPO	European Public Prosecutor’s Office
GIPs	Guidelines on Investigation Procedures for OLAF’s staff
IBOAs	EU institutions, bodies, offices or agencies
New GIPs	New Guidelines on Investigation Procedures for OLAF’s staff
OCM	OLAF Content Management System
OLAF	European Anti-fraud Office
WA	Working Arrangements