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OLAF Supervisory Committee

**Opinion No 3/2010**

**on the Reflection Paper**  
**on the Reform of the European Antifraud Office (OLAF)**

Brussels, 23 September 2010



## Introduction

The Supervisory Committee (SC) thanks the Commission for the Reflection Paper (henceforth RP) of 6th July, 2010 and supports its wish to relaunch the reform of Regulation (EC) No 1073/1999.

The SC would like to stress the importance of defining new ambitions for the European Antifraud Office (OLAF) and the necessity to reform it in the context of the dramatic changes in the area of European public financing in the last two years. The financial crisis has prompted the European institutions and the Commission in particular, to adopt measures to increase financial resources in certain sectors. This policy must be accompanied now by measures to monitor the commitment and use of European public expenditure. European citizens must be certain that OLAF has the necessary means to combat any increase in fraud, corruption or any other illegal activity likely to undermine the EU's financial interests.

The SC notes that the consolidation of the anti-fraud legislation into a single legal framework will be considered at a later stage and be linked to the debates on the creation of a European Public Prosecutor's Office.

The SC takes note of the proposal to enhance inter-institutional dialogue and considers that it could represent an instrument to ensure broad political support for OLAF's fight against fraud. However, this dialogue cannot imply political guidance of investigations. As guardian of OLAF's independence, the SC is prepared to take the lead in the organisation of this dialogue.

The SC notes that the RP lays emphasis on questions relating to governance of OLAF and agrees with the necessity to find remedies in order to improve OLAF's efficiency and reduce the duration of procedures. Nevertheless, such remedies cannot only consist of changes to organisational structure and the SC regrets that the RP does not make any proposals with regard to the competence of OLAF in investigations both internal and external. In this context, the SC would like to stress the new opportunities opened up by article 325 TFEU which calls for an "effective and equivalent protection in the Member States and all the Union's institutions, bodies, offices and agencies."

The SC emphasizes that the planned reform should, under no circumstances, reduce OLAF's operational independence. It maintains strongly that the current institutional architecture must be retained: integration of OLAF into the Commission, independence of the Director General in his/her investigative function and the monitoring of OLAF's independence by a SC composed of experts from outside the institutions are all essential features which must be preserved. On the other hand, the SC is concerned that the proposal to create a Review Adviser could increase the administrative burden on OLAF and could undermine the essential functions of the SC. The status of this new body is unclear.



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Whilst the SC appreciates the will expressed by all EU institutions to strengthen its role, it nevertheless wishes to stress that the proposal as set out in the RP, whereby the SC would receive only statistical data in order to carry out its work, would deprive it of any means to exercise appropriate monitoring of OLAF. It is essential that the SC has full access to case files in order to safeguard OLAF's independence by monitoring the efficiency and effectiveness of its investigatory procedures.

In the context of the reform process, the SC also warns of the risk of "over-regulation", which would deprive OLAF of the necessary room for manoeuvre in its work. Moreover, any additional legal obligation in the regulation could, at a later stage, give rise to judicial review. The SC shares the concerns raised by the Commission with regard to the length of investigations and the necessity to better ensure the protection of fundamental rights. As explored below, the SC considers that it is the responsibility of the leadership of OLAF to manage investigations in such a way that swift handling and full respect of procedural rights are maintained and guaranteed, while the SC plays a monitoring role in this regard. The SC also considers that the next Director General of OLAF should be consulted on this reform.

The present document is a contribution from the SC to the debate. It takes into account the inter-institutional discussions which have already taken place and aims to express the SC's views on the main points of the RP. Based on an analysis of how the efficiency of investigations could be improved (part I), it will make proposals regarding the organisational aspects of OLAF (part II).



## **1. STRENGTHENING THE EFFICIENCY OF OLAF'S INVESTIGATIVE FUNCTION**

### **1.1. Reinforcing OLAF's powers of investigation**

The SC considers it essential to the reform that provisions concerning external and internal investigations be reinforced. The three institutions have made alternative proposals to deal with this key matter which should be carefully studied.

In particular, further clarification is required regarding OLAF's powers to carry out on-the-spot checks and inspections as provided by Regulation 2185/96 in cases of fraud, corruption or illegal activities linked to contracts, grant agreements and decisions concerning EU funding.

The SC favours a clear definition of OLAF's powers at each stage of its investigations. The progress made in the Reform outlining the details of these stages is noteworthy but could be further improved:

- Explicit reference should be made to intelligence analysis.
- Regarding the "opening of investigations" the SC would welcome a differentiation between internal and external investigations.
- In order to allow OLAF to concentrate on the most serious cases, a "de minimis" policy should be included in the future Regulation.
- The "investigation procedure" stage requires a more structured legal approach and the related provisions could be revisited.

The SC also points out that Article 325 TFEU provides an effective and equivalent level of protection of the EU's financial interests in all Member States and all the EU's institutions, bodies, offices and agencies. Furthermore, contrary to former Article 280 TEC, Article 325 TFEU no longer excludes the adoption of measures that concern the application of national criminal law or the national administration of justice. The new options made available by the Lisbon Treaty should be used to introduce provisions which would allow enhancement and improvement in cooperation between OLAF and the national judicial authorities. For example, in order to better ensure the equivalent level of protection of financial interests within the entire EU, consideration should be given to further assess the legal value of OLAF evidences within the EU. Moreover the new Regulation should guarantee, with regard to internal investigations, that the same procedures apply to all institutions, bodies, offices and agencies.



## **1.2. Duration of investigations**

The SC has regularly stressed the excessive duration of investigations and welcomes all measures which could improve the situation.

The SC considers that direct control of the duration of investigations should first be carried out internally by those primarily responsible i.e. OLAF management and the Director General. The SC should regularly monitor this aspect of OLAF's activities and support the control of OLAF's Director General over deadlines.

Overall, the SC agrees with the mechanisms proposed by the RP with regard to the regular transmission of information at the various stages of the procedure. This transmission is of the utmost importance for the SC to ensure the respect of OLAF's independence by excluding external interference in the impartial conduct of investigations and ensuring that delays do not prevent the intended result of an investigation, for example, by running up against any time barring issues.

The SC also welcomes the introduction of a deadline for the assessment period and considers that, as a general rule, this first part of the investigation should also fall within its monitoring responsibilities, thus providing an added guarantee of OLAF's operational independence with regard to the opening of investigations.

In this regard, the Regulation should provide for transmission to the SC of the following information:

- 1) Reports on investigations which have not been closed in 12 months (including the assessment period); the report will explain why the investigation has not been concluded and estimate the timeframe needed for its completion. Sufficient follow-up mechanisms should be ensured.
- 2) For cases lasting more than 30 months, OLAF shall submit every 6 months an overall progress report on the investigations to the SC containing the measures taken to close the cases.
- 3) Statistical reports on OLAF's operational activities, including performance indicators based on qualitative parameters, which can be used by the SC as an additional tool for its monitoring.

## **1.3. Strengthening defence rights**

The RP rightly outlines the need to strengthen the monitoring of OLAF's investigations, in particular with regard to the respect of fundamental rights and procedural guarantees. In this regard, the SC considers that, on the one hand, the rules governing OLAF's investigations should



be clarified concerning defence rights and, on the other, the accountability of OLAF should be increased with regard to the internal procedures in place for the implementation of these rights.

### *1.3.1. Clarifying the rules*

The SC welcomes the will of the institutions to clarify the rights and obligations of persons under investigation, the rights and obligations of OLAF, the institutions and the Member States before, during and after an investigation.

The SC will make further proposals in its forthcoming opinion on this subject.

### *1.3.2. Enhancing the procedures*

The SC considers that it is **first and foremost the responsibility of the Director-General of OLAF and of the management team to decide whether or not to open an investigation and to ensure the respect of the fundamental rights of persons under investigation.**

It falls within the remit of the Director General of OLAF to put in place adequate internal controls and monitoring mechanisms. **In this regard the SC wishes to express its serious concerns with regard to the creation of a Review Adviser.**

The SC considers the status and competence of the Review Adviser to be unclear. As an official designated by OLAF DG, he/she cannot be independent. In addition, the creation of a Review Adviser could raise the following problems:

- a shift in the institutional balance of OLAF since the addition of a Review Adviser could both impede the role of the SC whilst at the same time depriving it of access to essential information for its monitoring role;
- a risk of increased delays in already over-lengthy investigations;
- a significant risk of loss of ownership and responsibility for OLAF management team of the control of respect of fundamental rights;
- duplication of other existing mechanisms (the Ombudsman, the *a posteriori* judicial review etc.);
- potential additional cost to the EU budget.



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Bearing in mind the importance of ensuring appropriate respect for fundamental rights within OLAF, the SC is prepared to consider the creation of the role of a Complaints Officer who would analyze complaints against OLAF and advise OLAF's Director General in this regard. Such a function exists in many national administrations and OLAF could follow some already existing best practices. A "review panel" as proposed in the RP could also be a possibility. **In any event, the creation of this function should not overlap with the powers and responsibilities of the SC** and the SC should in all cases be notified of all complaints.

Whilst the SC appreciates the Commission's desire to put in place independent and external control mechanisms, it nevertheless believes that within the general architecture governing the organization of OLAF, the SC is the only body which meets this requirement. Therefore, the SC suggests that its role in the monitoring of procedures, particularly with regard to the respect for fundamental rights and with regard to delays in investigations, should be strengthened in the following way:

- the Regulation could provide that the SC would deliver, on an annual basis (possibly in the framework of its annual report), an analysis of OLAF's compliance with respect for fundamental rights in its investigations. This report would be based on the information sent to the SC by OLAF concerning the actions it has taken to ensure full respect for fundamental rights and on the SC's own monitoring activities.
- Where necessary and in exceptional circumstances, the Director General could invite the SC to carry out special checks when serious shortcomings are brought to his/her attention during an investigation. The results of this checking would be disclosed only to the Director General of OLAF.

### **1.4. Cooperation between OLAF and the institutions, bodies, offices and agencies on its investigative function**

The SC favours clarification within the Regulation of those rights and obligations which apply to OLAF and the institutions in the context of the fight against fraud. This is of particular importance as the Commission could be held responsible for OLAF's activities.

#### *1.4.1. Information to the institutions and bodies concerned*

OLAF has a duty to communicate to the institutions, bodies, offices and agencies as soon as possible, at the beginning of its investigations, any necessary information concerning fraudulent behaviour by persons subject to the statutes, persons working for an institution or a delegation. Such an obligation to inform the institution could also be considered to apply to economic operators receiving grants or contracts paid directly or indirectly out of the EU budget. Communication of this information could be subject to confidentiality measures to protect the investigation. These communications aim at allowing the institution to manage as far as possible the financial and administrative consequences of such behaviour in order to limit the financial consequences. In the course of an investigation, OLAF could still communicate additional



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information which would be useful for the institution concerned. At the conclusion of its investigations, OLAF communicates to the institution concerned its findings and recommendations.

The SC welcomes the idea of enlarging its role with regard to the supervision of exchange of information between OLAF and the institutions as set out in the RP. In order to allow the SC to play this role, OLAF should notify the SC on a regular basis (every three or six months for example) as to what information has been transmitted to the institutions in open cases. At the same time, the SC should also be alerted of any cases where appropriate confidentiality has been ignored.

OLAF should also set up a regular reporting system to the SC for cases where an institution, body, office or agency has failed to act on OLAF's recommendations. OLAF should also transmit all final reports on investigations and on closure of follow-up and an annual report summarising the follow-up given by the administrative authorities and the judicial authorities of the Member States and, if necessary, of the third countries to the transmissions they receive.

### *1.4.2 Access by OLAF to information held by EU institutions, offices, bodies and agencies*

Since its creation, OLAF has encountered difficulties in obtaining access to information from certain institutions and, in particular, access to certain databases. It causes problems for the intelligence aspect of OLAF's activities. The SC considers that further attention should be given to this issue which could create real threats to OLAF's independence.

OLAF should systematically send to the SC any information concerning delays in reporting or the failure to report fraud cases, as well as failure by an institution, body, office or agency, to provide access to information held by them.

## **1.5. Cooperation between OLAF and the Member States**

The SC endorses the reinforcement of cooperation by imposing on the MS the obligation to assist and support OLAF in the conduct of investigations, to send any document that could be useful to an investigation and to report to OLAF on the action taken following receipt of its investigation report. The SC welcomes the regular reporting on the progress made by the MS authorities to OLAF and OLAF should systematically inform the SC of cases where there is a lack of cooperation from MS authorities.

The SC is conscious that OLAF has often encountered difficulties relating to the identification of competent contact persons to assist with its investigators in the MS (e.g. on-the-spot checks on direct expenditure) and confirms the need for every MS to name appropriate contact points for OLAF within their national administrations.





MS should inform OLAF of the particulars of the national contact persons for OLAF. It is for OLAF to inform and, where appropriate and depending on OLAF's capacities, train the staff of those national administrations in order to promote better understanding of EU procedures and OLAF's needs. This will create a better synergy between services and make OLAF's investigations more effective. It should be remembered that, given its limited resources, OLAF cannot handle all the fraud cases brought to its notice and therefore it should be possible for some of them to be transferred to national administrations, taking account in particular of the thresholds put in place by OLAF for the opening of investigations in the fields concerned.

### **1.6. Cooperation between OLAF and EUROJUST, EUROPOL, international organisations and third countries**

OLAF should have the legal means, under the general umbrella of the Commission, to conclude cooperation agreements with agencies, Member State administrations, third country services and international organisations in order to accelerate its proceedings and make the fight against fraud more effective.

Clauses providing for checks by the Commission (or institution, body, office or agency concerned) and OLAF must be included in all financing contracts even when the EU budget is not the sole financing body.

### **1.7. Enhancing the statute and role of OLAF management**

#### *1.7.1. Status, nomination and powers of OLAF Director General*

As previously stated in the current opinion, the SC believes that the best way to improve the functioning of OLAF is to grant its Director General sufficient powers and authority to ensure the efficient functioning of investigations together with full respect for fundamental rights. This can only be achieved if the Director General of OLAF is granted on the one hand full membership of the Commission's senior staff and, on the other, broader autonomy, functional independence and responsibility.

#### ➤ Title:

The SC therefore proposes that the current title of OLAF's Director be replaced by the title of Director General which would place him or her at the same hierarchical level as his/her peers in the other Directorates-General.

#### ➤ Term of mandate:

The SC is in favour of a non-renewable mandate in order to reinforce the OLAF Director General's independence.



➤ Appointment procedure:

The SC considers that the appointment procedure currently set out in the Regulation should be retained.

The SC agrees with the EP with regard to the necessity of avoiding delays in the appointment procedure. Given that the SC is thoroughly versed in the functioning and needs of OLAF, the binding nature of the SC's opinion on the candidates should be retained. The SC's knowledge is unique and valuable when it comes to appointing a new Director General; its involvement is an important element ensuring the independence of the Director General.

➤ Intervention by OLAF in proceedings before national judicial authorities:

The SC considers that the potential involvement of OLAF in proceedings before national judicial authorities, as a recognised investigative expert, as is already the case in some Member States, should be possible in all EU countries. It would increase the visibility of OLAF and ensure that national judicial authorities have a better understanding of the results of its investigations.

➤ Intervention by the Director General in proceedings before the European Court of Justice (ECJ):

The procedure laid down in Article 12(3) must be retained. OLAF does not have *locus standi* and cannot therefore participate in EU court proceedings. However, where an OLAF investigation or the results of an investigation are challenged before a EU court, it would be important to ensure that the Court is properly informed, and to allow OLAF to put forward its arguments or statements of grounds, at the preliminary stage of the proceedings and during the hearing before the ECJ.

*1.7.2. Nomination and status of OLAF senior management*

The Regulation should provide for specific rules ensuring the continuity of OLAF's activities, in case of the absence or unavailability of the Director General. These rules should also ensure that in such cases the operational independence of OLAF is preserved and that there is some degree of interinstitutional consensus behind the procedure for the replacement of the Director General.

Such replacement may take place by allowing, in accordance with the applicable rules for delegation within the Commission, the Director General to delegate powers whilst taking into account OLAF's particular profile, namely independence in the investigative function and the necessity to have some degree of interinstitutional consensus. It is also possible to provide for a specific position of deputy Director General, whose appointment procedure would, to some extent, be comparable with that of the appointment of the Director General. This would ensure



independence and respect the involvement of the three institutions, whilst taking into account the opinion of the Director General to avoid any possible conflicts between them.

## **2. POLITICAL GOVERNANCE AND DIALOGUE WITH THE INSTITUTIONS: REINFORCEMENT OF INDEPENDENCE**

### **2.1. Interinstitutional dialogue**

The SC could agree to the introduction of a regular interinstitutional dialogue covering the fight against fraud and corruption. The SC believes that this could be the occasion to **reach a strong political consensus regarding the protection of the financial interests of the EU and that such regular exchanges could support OLAF's activities. In any case, the SC considers that this dialogue should under no circumstances be an occasion to undermine the operational independence of OLAF. It is for this reason that, as principal guardian of OLAF's independence, the SC proposes to manage this dialogue.**

It should allow the institutions to meet regularly at the invitation of the SC and to debate the priorities in the fight against fraud. It should replace neither the existing bilateral relations between DG OLAF and the institutions nor those between the SC and the institutions.

### **2.2. The Supervisory Committee**

The SC welcomes the statement that all the European institutions agree that the SC plays an important role and that its powers must be strengthened.

#### *2.2.1. The role of the SC*

It approves the statement of the RP to the effect that the SC must be given additional tasks. Given its experience, the SC considers that its role is to ensure respect for OLAF's independence by monitoring OLAF's operational activities, the effectiveness of its work, compliance with investigation rules and with fundamental rights and thus provide support to the Director General of OLAF.

The SC will issue opinions at its own initiative or at the request of the OLAF DG concerning, in particular, the length and effectiveness of investigations, procedural guarantees and compliance with pre-established standardised criteria concerning the initiation of or refusal to initiate an investigation, or concerning operational instructions, in particular those set out in the OLAF Manual.

The Supervisory Committee is aware, and confirms, that it must not interfere in ongoing investigations. However, should it identify in a case report or file a serious or potentially serious



procedural irregularity or malpractice likely to have negative implications for OLAF and/or the European institutions, the SC Chairman must inform the OLAF DG immediately.

### *2.2.2. Composition and appointment procedure*

The SC agrees with the idea of appointing and renewing its members in stages to ensure the continuity of its work and to preserve expertise.

### *2.2.3. The SC's resources*

- Transmission of Information by OLAF to the SC and access to data

**The SC is extremely concerned** with regard to the views expressed in the RP concerning access by the SC to documents, in particular the idea of confining access to "statistical data". There appears to be a contradiction in the RP which considers that the role of the SC should be enhanced, while at the same time limiting its access to information. As a result the SC would be unable to exercise effective control over OLAF's activities. **The proposal as expressed in the RP would deprive the SC of its main task and tool for action: to maintain OLAF's independence through the regular monitoring of its investigations.**

Limiting the SC's access to data, as proposed in the RP, appears to be motivated partly by the fear that the SC would interfere in OLAF's conduct of investigations and partly by the requirements set out in data protection legislation. On the first point, the SC would like to stress that **no such interference has occurred during its mandate** and that it has always strictly fulfilled its obligations in this regard. Regarding data protection, the SC agrees in general with the idea of access on a "need to know" basis. It nevertheless considers that it would be unable to perform its monitoring function if it were deprived of access to the appropriate information.

This monitoring function cannot be performed on the basis of statistics alone. The SC regularly receives statistics supplied by OLAF which can support its analysis but would under no circumstances be sufficient to allow the SC to fulfil its tasks. Effective monitoring can only be carried out on the basis of examination of documents forming part of the investigation.

This monitoring is a guarantee of the independent conduct of investigations and also for the persons involved (in particular as regards the length of investigations and the potential protection of their fundamental rights) and for the European institutions. Regular monitoring by the SC of the implementation of the investigative function guarantees the OLAF's independence and the respect for the fundamental rights of persons involved. Moreover, given the intention of the European institutions to establish an interinstitutional dialogue on the functioning of OLAF and the fight against fraud, a dialogue which could be chaired by the SC, there is a contradiction in asking it for its opinion while at the same time depriving it of all means of forming an opinion.



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The SC therefore considers that the future Regulation should clarify the rules of access to information relevant to monitoring of investigations.

The new Regulation should specify more clearly the type of information to be transmitted to the SC:

- In addition to the reports and information described in points 1.2, 1.4 and 1.5, OLAF should transmit to the SC all cases intended for transmission to national judicial authorities and all cases where it is suspected that a criminal offence may have been committed but which are not transmitted due to time-barring restrictions under the applicable national legislation.
- The SC should also have access, upon written request, to any case-files, giving reasons where appropriate.

➤ Secretariat Services

Support services for the SC Secretariat are provided by OLAF and the members of the secretariat are appointed by the Appointing Authority in agreement with the SC. The secretariat should be adequately staffed to allow it to perform all the tasks entrusted to it.



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**Annex to the SC opinion on the reflection paper on the reform of OLAF**

*This paper is based on the opinion of the SC and summarises the SC's response to the questions put forward in annex 1 of the RP.*

	<b>MAIN POINTS OF THE REFLECTION PAPER</b>	<b>POSITION OF THE SC</b>
1.	<b>Governance and dialogue with the institutions</b>  <i>(see point 2.1 of the SC's opinion)</i>	<i>Type of dialogue and participants</i> <ul style="list-style-type: none"><li>➤ The SC could agree with the introduction of an inter-institutional dialogue, <b>providing that it does not, under any circumstances, interfere with OLAF's operational independence.</b></li><li>➤ This dialogue should allow a strong political consensus to be reached in order to support OLAF's activities.</li><li>➤ <b>As the guardian of OLAF's independence, the SC should manage the dialogue.</b></li></ul>
		<i>Content of the dialogue</i> <p>The dialogue should allow for a debate on priorities in the fight against fraud and should replace neither the existing bilateral relations between DG OLAF and the institutions nor those between the SC and the institutions.</p>
2.	<b>Role of the SC</b>  <i>(see points 1.2, 1.3, 2.2 of the SC's opinion)</i>	<i>2.1 Responsibilities of the Members</i> <ul style="list-style-type: none"><li>➤ The SC considers that its role is to ensure respect of OLAF's independence by monitoring OLAF's operational activities, the effectiveness of its work, compliance with investigation rules and with fundamental rights and thus provide support to the Director General of OLAF.</li><li>➤ The SC should issue opinions on its own initiative or at the request of the DG.</li><li>➤ The Supervisory Committee should not interfere in ongoing investigations. However, should it identify in a file a serious procedural irregularity, the SC Chairman must inform the OLAF DG.</li></ul>



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		<p>2.2 <i>The term of the mandate</i></p> <ul style="list-style-type: none"><li>➤ The SC favours a partial renewal of its Members, in order to ensure the continuity of its work and to preserve expertise.</li></ul>
		<p>2.3 <i>Resources (new issue)</i></p> <ul style="list-style-type: none"><li>➤ The SC is concerned regarding the proposal to confine its access to statistical data, which would deprive the SC of its main task and tool of action.</li><li>➤ Clear rules should be defined concerning transmission of information by OLAF to the SC and the SC's access to data.</li><li>➤ OLAF should send regular reports to the SC (<i>see points 1.2, 1.4., 1.5 of the SC's opinion</i>).</li><li>➤ The SC's Secretariat should be adequately staffed.</li></ul>
3.	<b>The appointment and status of the DG of OLAF</b>	<p>3.1 <i>OLAF DG Appointment procedure (see point 1.7.1 of the SC's opinion)</i></p> <p>The Director General must exercise sufficient powers and authority to ensure the efficient functioning of investigations together with full respect for fundamental rights; he/she should be therefore granted, on the one hand, full membership of the Commission's senior staff and, on the other, broader autonomy, functional independence and responsibility.</p> <ul style="list-style-type: none"><li>➤ <i>Status (new issue)</i>: the DG must have the same hierarchical level and thus the same title as his/her peers in the other Directorates-General of the EC.</li><li>➤ <i>Term of mandate</i>: the SC is in favour of a non renewable mandate.</li><li>➤ <i>Accelerating the appointment procedure</i>: the current appointment procedure should be kept. The binding nature of the SC's opinion on the candidates should be retained, as a guarantee of the independence of the DG.</li></ul>



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		<p>➤ <i>Ensuring continuity: deputising rules (see point 1.7.2 of the SC's opinion)</i></p> <ul style="list-style-type: none"><li>- specific rules should be provided in the Regulation, ensuring the continuity of OLAF's activities, in case of the absence or unavailability of the Director General, providing that the operational independence of OLAF is preserved and that there is some degree of interinstitutional consensus behind the procedure for the replacement of the Director General.</li></ul>
		<p><b>3.2 Powers of the DG</b></p> <p>➤ <i>Intervention of the DG before the ECJ: (see point 1.7.1 of the SC's opinion)</i></p> <ul style="list-style-type: none"><li>• The procedure laid down in Article 12(3) must be retained.</li><li>• Wherever an OLAF investigation is challenged before a EU court, OLAF should be able to present its arguments before the ECJ.</li></ul> <p>➤ <i>Intervention of the DG before national courts: (see point 1.7.1 of the SC's opinion)</i></p> <p>OLAF's intervention, as a recognised investigative expert, should be possible in all Member States.</p>
4.	<p><b>Procedural guarantees of persons concerned by investigations</b></p> <p><i>(see point 1.3.1. of the SC's opinion)</i></p>	<p>➤ The rules governing OLAF's investigations with regard to the rights and obligations of persons under investigation, the rights and obligations of OLAF, the institutions and the Member States should be clarified in the Regulation.</p> <p>➤ The SC will make further proposals in its forthcoming opinion on this subject.</p>





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5.	<b>Checks on legality</b> <i>(see point 1.3.2 of the SC's opinion)</i>	<ul style="list-style-type: none"><li>➤ The decision whether or not to open an investigation, as well as the control of the respect of fundamental rights and procedural guarantees are first and foremost the <b>responsibilities of the Director-General</b> of OLAF and of the management team.</li><li>➤ The SC has <b>serious concerns with regard to the creation of a Review Adviser</b> (see arguments in point 1.3.2).</li><li>➤ The DG could put in place adequate internal controls and monitoring mechanisms such as a "Complaints Officer" or "Review Panel", which should not overlap with the powers and responsibilities of the SC. All complaints should be notified to the SC.</li><li>➤ In order to ensure independent control, the SC could:<ul style="list-style-type: none"><li>(i) deliver, on an annual basis, an analysis of OLAF's compliance with the rules regarding respect of fundamental rights in its investigations</li><li>(ii) where necessary and in exceptional circumstances, at the request of the Director General, the SC could carry out special checks on possible shortcomings during an investigation.</li></ul></li></ul>
6.	<b>Reinforced cooperation with EU institutions and bodies and increased efficiency of the investigations</b> <i>(see points 1.1, 1.2 and 1.4 of the SC's opinion)</i>	<p><i>Reinforcing OLAF's powers of investigation (new issue)(see point 1.1 of the SC's opinion)</i></p> <ul style="list-style-type: none"><li>➤ Provisions concerning external and internal investigations should be reinforced.</li><li>➤ A clear definition of OLAF's powers at each stage of its investigations is needed (addition of an explicit reference to intelligence analysis, clarification of internal and external investigations with regard to their opening...).</li><li>➤ The new options made available by the Lisbon Treaty (article 325) could be used for the introduction of provisions allowing enhancement of and improvement in cooperation between OLAF and the national judicial authorities.</li><li>➤ Uniform procedures should be applicable to all institutions, bodies, offices and agencies with regard to internal investigations.</li></ul>



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	<p><i>Information to the institutions and bodies concerned (see point 1.4 of the SC's opinion)</i></p> <ul style="list-style-type: none"><li>➤ The SC welcomes the idea to monitor the exchange of information between OLAF and the institutions on the basis of regular reports from OLAF, in full respect of confidentiality of the investigations.</li><li>➤ OLAF should regularly report to the SC on cases where an institution, body, office or agency has failed to act on OLAF's recommendations.</li></ul> <p><i>Access by OLAF to information held by EU institutions and bodies (see point 1.4 of the SC's opinion)</i></p> <ul style="list-style-type: none"><li>➤ Appropriate measures should be taken to allow OLAF to have access to information held by all EU institutions, bodies, offices and agencies.</li><li>➤ OLAF should inform the SC of all cases where delays in reporting fraud cases or failure to report them have occurred, as well as cases where institutions refused OLAF's access to the information.</li></ul> <p><i>Duration of investigations (see point 1.2 of the SC's opinion)</i></p> <ul style="list-style-type: none"><li>➤ The regular monitoring of the duration of investigations should be carried out by the OLAF DG and the management team.</li><li>➤ The SC should regularly monitor this aspect of OLAF's activities and support the control of OLAF's Director General over deadlines.</li><li>➤ The SC agrees in general terms with those proposals made by the RP.</li><li>➤ Regular transmission of information to the SC at the various stages of the procedure should take place (see point 1.2).</li><li>➤ The SC welcomes the introduction of deadlines for the assessment period, which should be also part of the SC's monitoring.</li></ul>
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OLAF Supervisory Committee

7.	<b>Reinforced cooperation with the Member States competent authorities</b>  (see points 1.1, 1.4 and 1.5 of the SC's opinion)	<i>Follow-up of OLAF cases</i>  (see points 1.4 and 1.5 of the SC's opinion)
		<i>Cases having no or only minor financial impact</i>  The SC agrees with the proposals of the RP (the codification of the principle of the <i>de minimis</i> policy, transmission of "minor" cases to IDOC or other similar bodies). (see point 1.1 of the SC's opinion)
		<i>Need for reinforced cooperation (new point)</i> <ul style="list-style-type: none"><li>➤ The obligation to assist and support OLAF's activities should be reinforced (see point 1.5 of the SC's opinion).</li><li>➤ OLAF should systematically inform the SC of cases where there is a lack of cooperation from Member States authorities.</li><li>➤ The Regulation should provide that Member States install and name the appropriate contact points for OLAF in the national administrations.</li></ul>
8.	<b>Agreements with EUROPOL and EUROJUST, international organisations and third countries</b>  (see point 1.6 of the SC's opinion)	<ul style="list-style-type: none"><li>➤ OLAF should have the legal means to conclude, under the umbrella of the EC, cooperation agreements in order to accelerate its proceedings and make the fight against fraud more effective.</li><li>➤ Clauses providing for checks by the Commission (or institution, body, office or agency concerned) and OLAF must be included in all financing contracts.</li></ul>