



OLAF Supervisory Committee

Opinion No. 1/2008

“Prima facie Non-Cases”

Brussels, 28 March 2008



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1. At its meeting of 18/19 September 2007, the OLAF Supervisory Committee decided to analyse how OLAF treats so-called prima facie non-cases.
2. In order to focus greater attention and resources on the more important cases referred to it, in 2004, OLAF introduced a simplified procedure for “prima facie non-cases”, which are defined as “... information is received which clearly and unequivocally does not fall within the competence of OLAF”¹. This would apply, for example to a complaint from a citizen of a third country that he was being wrongfully taxed by his local taxation authority. The procedure, set out in the OLAF Manual, as above, avoids the need for OLAF to open a formal investigation and conduct an assessment, only to close the case a short time later.
3. Between 2003 and 2007, OLAF handled 894 prima facie non-cases. The Supervisory Committee selected a random but representative sample of 212 prima facie non-cases, taking care to ensure that the sample included cases involving all operational directorates and investigation departments of OLAF. The Supervisory Committee noted that very few of the prima facie non-cases related to customs matters, cigarette importation and VAT. After clarification of a number of data protection issues, OLAF gave the Supervisory Committee unrestricted access to all the cases sampled.

¹ OLAF, Operational Manual, S.76: "Prima Facie Non-Cases": Where information is received which clearly and unequivocally does not fall within the competence of OLAF, then the responsible Head of Unit may propose not to refer the information for assessment. The Head of Unit must complete a Prima Facie Non-Case form (Annex2, Form 19), which must be countersigned by Director B and returned to the Archives for registration, together with the initial information. A CMS record will be opened, but the case will appear on the CMS as closed."



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4. The findings of the Supervisory Committee's analysis can be summarised as follows –

4.1. In general, the Supervisory Committee found that OLAF applies the rules on prima facie non-cases correctly. In particular, the procedure is appropriately applied in the following cases:

- Information from anonymous sources;
- Information supplied by trouble -makers;
- Information relating to disputes between private individuals;
- Information regarding national programmes totally unrelated to European Union finances;
- Information regarding the implementation of a Community policy or programme; such cases frequently arise in connection with the common agricultural policy or structural policy.

In the last-mentioned cases, OLAF is obliged to identify the project concerned and investigate the case with the assistance of the competent national authority/ies and/or DG AGRI or DG REGIO. If the suspicions are not substantiated, the cases are also closed on the grounds that they are prima facie non -cases.

OLAF could equally file these cases as 'non -cases'. However, the PFNC procedure has the advantage of requiring neither evaluation nor consultation of the OLAF Board thus enabling a simplified procedure leading to the same conclusion, i.e. closure of the case.

- Where OLAF has declined an invitation from the Commission's disciplinary authority (IDOC) to take up a case of suspected misconduct.

The Supervisory Committee found that the prima facie non -case procedure allowed OLAF to close all these cases quickly without imposing an excessive drain on administrative and investigative resources.

4.2. The prima facie non-case procedure is sometimes applied in situations not covered by the definition set out in the OLAF Manual. Two examples:

- * An anonymous caller contacts OLAF on the freephone service alleging irregularities concerning the use of European funds and leaving a phone number. OLAF makes a number of attempts to obtain further information from the caller, but this proves impossible; either the number does not exist or the caller is not available. In such circumstances, the "sufficiently serious suspicions" necessary, under the ruling of the European Court of Justice relating to the launch of an investigation cannot be established. OLAF therefore closes the case, in the view of the Supervisory Committee, quite rightly. However, it is not certain that the case "clearly and unequivocally" falls outside the competence of OLAF.



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- * In some cases, OLAF conducts an initial investigation which establishes in the light of the results of the investigation that it is a prima facie non -case.

The Supervisory Committee takes the view that OLAF is to be praised for not being overly hasty in closing investigations as prima facie non -cases and that the background facts are initially established prior to the case being closed.

- * The Supervisory Committee also found that in none of the cases examined did OLAF use the prima facie non-case procedure to “bury” cases which should have been fully investigated.

Conclusion

The representative random sample that the Supervisory Committee has examined has demonstrated that the prima facie non -case procedure enables OLAF to close prima facie non -cases quickly and without excessive bureaucracy. OLAF takes due care when applying this procedure. The Supervisory Committee found no case in its random sample where another procedure, in particular, a full investigation, would have been appropriate.