

SUPERVISORY COMMITTEE



Opinion No 1/2024

**Complementary investigations
of OLAF and the EPPO**

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INTRODUCTION

1. Since 1999, the European Anti-Fraud Office (OLAF) has been the main pillar of the European Union's anti-fraud architecture, conducting administrative investigations that may lead to financial, administrative, disciplinary, and judicial recommendations. The creation of the European Public Prosecutor's Office (EPPO) under Regulation 2017/1939¹ marked a fundamental development in the fight against crimes affecting the EU's budget. It brought significant changes to the EU's anti-fraud architecture, including the mandate of OLAF. It maintained OLAF as an administrative body conducting administrative investigations, leaving the EPPO to focus on criminal investigations into fraud, corruption and other criminal offences affecting the EU's financial interests.
2. Under the current legal framework, OLAF and EPPO have complementary roles in protecting the EU's financial interests. Therefore, the EU legislator made it clear that both the EPPO and OLAF should establish and maintain a close cooperation aimed at ensuring the complementarity of their respective mandates and avoiding duplication. Thus, the EPPO Regulation provides that the EPPO may request OLAF, in accordance with OLAF's mandate, 'to support or complement' the EPPO's activities, including by conducting administrative investigations. The subsequently amended OLAF Regulation² labelled these administrative investigations as 'complementary investigations' and provided a specific legal framework for OLAF to conduct them and cooperate with the EPPO³.
3. The Supervisory Committee sought to have a better understanding of how the new legal framework set out in the EPPO Regulation and the amended OLAF Regulation has so far affected OLAF's own investigative activities, and more generally, how OLAF's cooperation with the EPPO takes place. Therefore, on 19 July 2023, the Committee asked the Director-General of OLAF to provide it with a list of all the complementary investigations opened by OLAF since the adoption of the EPPO Regulation. The Committee also asked OLAF to provide meaningful information on the subject matter and handling of those investigations. This would enable the Committee to have a better and a more comprehensive understanding of the overall framework within which OLAF conducts complementary investigations.
4. On 14 August 2023, the Director-General of OLAF forwarded the Committee the list of all complementary investigations opened by OLAF since June 2021 – the date when the EPPO became operational – and further information. This information explained in more detail the procedure applied by OLAF regarding the conduct of such investigations (61 complementary investigations opened and 4 OLAF proposals objected to by the EPPO). In early December 2023, OLAF informed the Committee that, by the end of November 2023, it had opened 70 complementary investigations in total.

¹ 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).

² 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).

³ Regulation 2020/2223, op.cit. Article 12f of the Regulation also provides that OLAF may propose to the EPPO the opening of a complementary investigation; see below, Chapter I, 'Legal Framework'.

5. On the basis of that information, the Committee decided at the plenary of 20 September 2023 to issue an Opinion. This aimed to examine closer: (i) how OLAF has applied the relevant legal provisions on complementary investigations so far; (ii) the kind of challenges and problems encountered by OLAF in its cooperation with the EPPO; and (iii) the solutions that were found and/or practices agreed between the two parties to make this new form of cooperation work.
6. This Opinion is based on 70 complementary investigations conducted by OLAF (from June 2021 to November 2023) and focuses, in particular, on the closed complementary investigations. Its aim is to give an insight into complementary investigations and a first-hand assessment of whether they, as a new form of cooperation between OLAF and the EPPO, fulfil their envisaged role as an additional important tool for the effective protection of the EU's financial interests and the fight against fraud.
7. The Committee is aware that the notion of complementary investigations is bound to evolve further, reflecting the ongoing experience gained by OLAF in this area. Therefore, the Committee intends to revisit this topic when more complementary investigations are carried out by OLAF. The aim is to provide, for the future forthcoming revision of both the EPPO and OLAF Regulations⁴, a further insight into conducting complementary investigations and their role as an important lever in the cooperation between the two main pillars of the EU's anti-fraud architecture.
8. Finally, the Committee recalls that, as Article 15(1) of the OLAF Regulation states, 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 in complete independence⁵ and, in doing so, they neither seek nor receive instructions from any government, EU institution, body, office or agency.

1. LEGAL FRAMEWORK

9. To strengthen the means available for combating fraud, while respecting the principle of each institution's internal organisational autonomy, in 1999 the Commission adopted Decision 1999/352 establishing OLAF among its own departments with responsibility for conducting administrative fraud investigations⁶. As a next step, Parliament and Council adopted Regulation No 1073/1999 to regulate the investigations conducted by OLAF⁷. That Regulation was repealed by Regulation No 883/2013, and the legal

⁴ See Article 19 of the OLAF Regulation.

⁵ See Article 15(2) and (7) of the OLAF Regulation.

⁶ 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).

⁷ 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).

framework applied to OLAF investigations was significantly revised (‘the OLAF Regulation’)⁸.

10. In 2017, Council Regulation 2017/1939⁹ substantially strengthened the means available to the EU to protect its financial interests by means of criminal law. It established the EPPO as a key priority in the EU’s criminal justice and anti-fraud policy. The Regulation conferred on the EPPO 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 2017/1371 (the PIF Directive)¹⁰, in the 22 participating Member States.
11. 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 2020/2223, amending the OLAF Regulation ‘as regards cooperation with the European Public Prosecutor’s Office and the effectiveness of the European Anti-Fraud Office investigations’¹¹. In particular, the amended OLAF Regulation provides that OLAF and the EPPO should establish and maintain a **close relationship** based on the principle of **sincere cooperation** and aim to ensure the complementarity of their respective mandates and the coordination of their action. 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’¹².
12. To date, OLAF remains an administrative body conducting administrative investigations, which may lead to financial, administrative, disciplinary, and judicial recommendations. Although OLAF does not have prosecutorial powers, it has many investigative tools at its disposal, including the authority to conduct ‘on-the-spot checks’ and to interview witnesses and persons concerned. On the other hand, as the EU’s first supranational public prosecution office, the EPPO, whose jurisdiction covers 22 of the 27 EU countries, focuses on criminal investigations to establish the criminal responsibility of people involved in fraud, corruption or other criminal offences affecting the EU’s financial interests falling under its competence. The EPPO’s power to investigate and prosecute is exercised by the European Delegated Prosecutors (EPDs) appointed by the participating Member States¹³.
13. Given the EPPO and OLAF’s common objectives and potential overlap in aspects of their work, the EPPO Regulation expressly directs the EPPO to ‘establish and maintain a close relationship with OLAF based on mutual cooperation within their respective

⁸ 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).

⁹ See footnote 1.

¹⁰ 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).

¹¹ 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).

¹² Recital 4 of Regulation 2020/2223.

¹³ Article 5 of the EPPO Regulation.

mandates and on information exchange. The relationship shall aim in particular to ensure that all available means are used to protect the [European] Union's financial interests through the complementarity and support by OLAF to the EPPO'¹⁴.

14. The envisaged level of cooperation between the EPPO and OLAF is further reflected in the EPPO Regulation. This provides that the EPPO 'may request OLAF to support or complement EPPO's activities, in particular by: (a) providing information, analyses (including forensic analyses), expertise and operational support; (b) facilitating coordination of specific actions of the competent national administrative authorities and bodies of the Union; (c) conducting administrative investigations'¹⁵.
15. Likewise, reflecting the provisions of the EPPO Regulation, the amended OLAF Regulation directs OLAF to work with the EPPO 'to ensure the highest level of protection of the financial interests of the Union through synergies between [the EPPO and OLAF] while ensuring close cooperation, information exchange, complementarity and the avoidance of duplication'¹⁶.
16. Like the EPPO Regulation, the amended OLAF Regulation also provides that, in certain cases, the protection of the EU's financial interests may require that OLAF carry out a **complementary administrative investigation** *before the conclusion of criminal proceedings initiated by the EPPO*. This aims to ascertain whether precautionary measures are necessary or whether financial, disciplinary, or administrative action should be taken. Such a complementary investigation may be appropriate, among other things, to recover amounts due to the EU budget that are subject to specific time-barring rules, where the amounts at risk are very high or where there is the need to avoid further expenditure in risk situations through administrative measures'¹⁷.
17. Article 12f of the OLAF Regulation, entitled 'Complementary investigations', states that:

1. *where the EPPO is conducting an investigation and the Director-General, in duly justified cases, considers that an investigation by the Office should also be opened in accordance with the mandate of the Office with a view to facilitating the adoption of precautionary measures or of financial, disciplinary or administrative action, the Office shall inform the EPPO in writing, specifying the nature and purpose of the investigation.*

After receipt of such information and within a time limit to be set in accordance with Article 12g, the EPPO may object to the opening of an investigation or to the performance of certain acts pertaining to the investigation. Where the EPPO objects to the opening of an investigation or to the performance of certain acts pertaining to an investigation, it shall notify the Office without undue delay when the grounds for the objection cease to apply.

In the event that the EPPO does not object within the time limit to be set in accordance with Article 12g, the Office may open an investigation, which it shall conduct in consultation with the EPPO on an ongoing basis. If the EPPO subsequently objects, the Office shall suspend or discontinue its investigation, or refrain from performing certain acts pertaining to the investigation.

¹⁴ See Article 101 of the EPPO Regulation. The EPPO Regulation also directs the EPPO to establish and maintain close relationships with Eurojust and Europol, among other entities (Articles 100 and 102, respectively).

¹⁵ Article 101(3) of the EPPO Regulation.

¹⁶ See recital 3 of Regulation 2020/2223.

¹⁷ Recital 9 of Regulation 2020/2223 and Article 12f of the OLAF Regulation.

18. As far as the cooperation between OLAF and the EPPO is concerned, it is important to distinguish between the *support* that OLAF may be asked to provide to the EPPO and a *complementary investigation* that OLAF may conduct.

19. According to Article 12e of the OLAF Regulation (“The Office’s support to the EPPO”):

1. *In the course of an investigation by the EPPO, and at the request of the EPPO in accordance with Article 101(3) of Regulation (EU) 2017/1939, the Office shall, in accordance with its mandate, support or complement the EPPO’s activity, in particular by:*

a. *providing information, analyses (including forensic analyses), expertise and operational support;*

b. *facilitating coordination of specific actions of the competent national administrative authorities and bodies of the Union;*

c. *conducting administrative investigations.*

20. The main difference between support activities (a and b) and complementary (administrative) investigations (c) is that, within the framework of a support case, **OLAF does not conduct any of the investigative activities** that require the Director-General’s written authorisation referred to in Article 7(2) of the OLAF Regulation¹⁸. On the contrary, a complementary investigation is conducted **under OLAF’s mandate** and in accordance with the procedures applicable to the conduct of OLAF investigations.

21. The amended OLAF Regulation further directs OLAF to agree on working arrangements with the EPPO to facilitate the exchange of information and complementary investigations¹⁹.

22. To that end, on 5 July 2021, the EPPO and OLAF signed a working arrangement (the ‘Working Arrangement’). It focuses on the parties’ mutual exchange of information, the use of templates for mutual reporting and transmission of potential cases, and specific practical aspects of supporting activities and complementary investigations carried out by OLAF²⁰.

23. Under point 6.2 of the Working Arrangement, a complementary investigation should aim at facilitating the collection of relevant information **for the adoption of precautionary measures or the conduct of financial, disciplinary or administrative measures**. This may include cases in which:

- *the statute of limitations applicable to the criminal offence investigated by the EPPO poses a concrete risk for the effective recovery;*

¹⁸ The kind of support provided by OLAF to the EPPO is further defined in point 6.1 of the Working Arrangement (see paragraph 22) signed by both offices. Support activities carried out by OLAF may concern, in particular, providing the EPPO with information and expertise on EU programmes, conducting operational analysis (including forensic activities on data acquired by the EPPO or OLAF in the course of their investigations), operational support of any kind (such as participation of OLAF staff in the EPPO investigations as experts or advisers), coordination of specific activities of national administrative authorities and EU bodies, and any other act which OLAF may perform in accordance with its mandate.

¹⁹ Article 12g of the OLAF Regulation.

²⁰ Working Arrangement between OLAF and EPPO, https://anti-fraud.ec.europa.eu/system/files/2021-09/working_arrangement_olaf_eppo_en_9cb679e4cb.pdf.

- *time-barring recovery is imminent;*
 - *there is a need to take administrative precautionary measures pending the EPPO's criminal investigation;*
 - *by virtue of the possible damage deriving from the criminal offence, there is a very substantial financial risk to the EU budget;*
 - *there are reasonable grounds to believe that recommendations could be issued for disciplinary or administrative measures to be taken, including recommendations to the Early Detection and Exclusion System (EDES) panel;²¹*
 - *there is evidence of non-fraudulent irregularity.*
24. Point 6.2.2 of the Working Arrangement requires that, when the EPPO has opened a criminal investigation, a proposal by OLAF to carry out a complementary investigation **must be in writing and should contain:**
- a. a description of the subject matter of the investigation;
 - b. a description of the reasons that justify the complementary investigation;
 - c. a description, in so far as possible, of the physical persons or legal entities involved, the investigative measures OLAF proposes to use in the complementary investigation and a possible timeframe for the investigation.
25. Based on Article 12f of the OLAF Regulation and point 6.2.2 of the Working Arrangement mentioned above, OLAF adopted a specific template for a note, entitled *Proposal to the EPPO for a complementary investigation*. The template is to be used by OLAF investigators whenever OLAF decides to propose opening a complementary investigation to the EPPO. The template instructs OLAF staff to fill in a number of specific boxes that cover the three points (a)-(c) mentioned above. It also includes additional boxes to be filled in on the *Envisaged activities* to be carried out by OLAF and the *Expected result* (namely the adoption of precautionary measures or disciplinary, financial and/or administrative recommendations)²².
26. Article 12g of the OLAF Regulation, read in conjunction with Article 12f(1), left it to the parties to agree the time limits for answering each other's requests. Therefore, point 6.2.3 of the Working Arrangement has set the time limit for the EPPO to agree or object to OLAF opening an investigation or carrying out certain investigative acts to 20 working days.
27. Point 6.2.5 of the Working Arrangement specifies that, should the EPPO object to the opening of a complementary investigation, it must then provide OLAF reasons for doing so.

²¹ The Commission's EDES database lists persons or entities excluded from contracts financed by the EU budget, among other things, on the grounds of significant deficiencies in complying with their main contractual obligations, fraud, corruption, or other misconduct, see Article 131 of the Financial Regulation 2018/1046 (OJ L 193, 30.1.2018, p. 1).

²² The note template is an internal document only available in OLAF's intranet ([Cooperation between OLAF and the EPPO \(europa.eu\)](#)).

28. Complementary investigations are not criminal investigations. The EPPO, through the EDPs, needs to determine the constituent elements of a criminal offence by reference to the directive on the protection of the EU's financial interest and the applicable criminal laws of the EDP's country. However, OLAF only needs to determine an (administrative) irregularity of the applicable EU rules with a view to issuing, among other things, a financial recommendation for the EU to recover the funds irregularly 'spent'²³. Therefore, if a complementary investigation cannot be a substitute for a criminal investigation carried out by the EPPO, it can, however, lead to adopting precautionary measures or issuing a financial recovery order before the relevant criminal investigation by the EPPO is completed.
29. Finally, as shown in the description of the applicable legal framework, what sets a complementary investigation apart from any other administrative investigation conducted by OLAF is the close and regular cooperation and consultation that the OLAF Regulation imposes on both OLAF and the EPPO²⁴.

2. OLAF COMPLEMENTARY INVESTIGATIONS

2.1 Background

30. As a preliminary remark, whenever OLAF supports or complements the EPPO's activities under Article 101(3) of the EPPO Regulation and Article 12e of the OLAF Regulation, it must do so in 'accordance with its mandate'. Therefore, it is of paramount importance that the two parties recognise that whatever the degree and closeness of their cooperation, when opening and conducting a complementary investigation, OLAF should be able to act in full independence and without any external interference. Preserving and protecting OLAF's independence in this regard strengthens the value of OLAF's contribution to the EPPO's investigations.
31. That said, one should also bear in mind that OLAF's independence when conducting complementary investigations under its own mandate is not absolute. It is subject to the principle of sincere cooperation²⁵, which underpins the entire framework of its relationship and cooperation with the EPPO. The degree of independence enjoyed by OLAF is therefore partly curtailed by the fact that, if following the opening of a complementary investigation, the EPPO subsequently objects to it or to OLAF carrying

²³ Under Article 11.1 of the OLAF Regulation, the report drawn up by OLAF on the completion of an investigation 'shall, where appropriate, be accompanied by recommendations of the Director-General on action to be taken. Those recommendations shall, where appropriate, indicate any disciplinary, administrative, financial, or judicial action to be taken by the institutions, bodies, offices, and agencies and by the competent authorities of the Member States concerned, and shall specify in particular the estimated amounts to be recovered, as well as the preliminary classification in law of the facts established'.

²⁴ Article 12f(1) of the OLAF Regulation.

²⁵ See Article 4(3) of the Treaty on European Union and recital 69 of the EPPO Regulation.

out certain investigative acts, OLAF must then ‘suspend or discontinue its investigation, or refrain from performing certain acts pertaining to the investigation’²⁶.

32. As mentioned above, at the request of the Committee (see paragraphs 3 and 4), OLAF forwarded it in August 2023 a first list of 65 complementary investigations that have been proposed since 2021 (61 investigations opened and 4 proposals objected to by the EPPO). The Committee obtained access to these cases through its own access to OLAF’s case management system (OCM). In December 2023, OLAF informed the Committee that, by the end of November, the number of complementary investigations opened had increased from 61 to 70, and the number of proposals objected to by the EPPO was the same (4).
33. The complementary investigations in question (70) were opened either at the proposal of OLAF (46 cases) or the EPPO (24 cases).

Table 1: Complementary investigation opened between June 2021 and November 2023

Complementary investigation proposals	2021	2022	2023	Total
OLAF proposals	17	24	5	46
EPPO proposals	2	16	6	24

34. Out of the 70 complementary investigations opened, by November 2023, OLAF had finalised almost two thirds of them (42 cases). As already mentioned, the EPPO objected to four OLAF proposals to open a complementary investigation.

Table 2. Status of all complementary investigation proposals made by OLAF

Status of complementary investigation	Closed	Ongoing	Refused by EPPO
OLAF proposals	35	11	4
EPPO proposals	7	17	
Total	42	28	4

35. The number of complementary investigations opened by OLAF by EPPO-participating Member State are listed in the table below.

²⁶ Article 12f(1) of the OLAF Regulation.

Table 3: Complementary investigations opened by OLAF by EPPO-participating Member State

Proposed by [redacted]	Complementary investigations opened since June 2021		
	OLAF	EPPO	TOTAL
Country 1	1		1
Country 2	11	2	13
Country 3	6		6
Country 4	1		1
Country 5	1	1	2
Country 6	5		5
Country 7	1		1
Country 8	7	1	8
Country 9	2	2	4
Country 10	7	1	8
Country 11	1		1
Country 12	1		1
Country 13		1	1
Country 14	1	16	17
Country 15	1		1
Total	46	24	70

2.2 Analysis

36. As mentioned in paragraph 34, of the 70 complementary investigations opened so far by OLAF, 42 were already completed by November 2023 and 28 were ongoing. The EPPO objected to four OLAF proposals to open a complementary investigation.
37. The Committee had access to all 70 cases. For its analysis, the Committee focused mainly on the 42 closed investigations and on the four cases where the EPPO objected to OLAF’s proposals to open a complementary investigation. The Committee is mindful of its mandate and of ensuring that in ‘regularly [monitoring] the implementation by the Office of its investigative function,’ it should do so ‘without however interfering with the conduct of investigations in progress’ (Article 15 of the OLAF Regulation).
38. The Committee looked into the nature and degree of cooperation between the EDPs concerned and OLAF investigators, from the moment OLAF or the EPPO made a proposal to open a complementary investigation up to its closure. It also examined the regular flow of information between both parties during that process, compliance with the applicable rules and the provisions of the Working Arrangement agreed between OLAF and the EPPO, and the duration of the complementary investigations completed by OLAF. In addition, it looked into the effectiveness of the investigations carried out by OLAF in terms of the financial recommendations and other recommendations issued by it and the investigations’ average duration (less than a year).

OLAF's proposals to open complementary investigations

39. Under the applicable rules²⁷, whenever OLAF considers that a complementary investigation is duly justified, it should **inform** the EPPO of its intention by **submitting a written request** specifying the nature and purpose of that investigation. To that end, as mentioned in paragraphs 24 and 25, OLAF uses a standard note template that contains a description of:
- a. the nature of the investigation (proposed scope and description of the natural and legal persons involved);
 - b. the purpose of the investigation (reasons justifying the complementary investigation, the envisaged investigative activities, the expected timeframe and the expected results).
40. The Committee analysed the complementary investigations at hand and had discussions with the Director-General of OLAF and his staff. What emerged is that, in practice, any request in writing informing the EPPO of OLAF's proposal to open a complementary investigation is preceded beforehand by an exchange of information and/or informal bilateral meetings between the EDP of the country concerned and OLAF's investigators.
41. Both the EPPO and the OLAF Regulations are based on the principle that, without close and sincere cooperation, neither OLAF nor the EPPO would be in a position to ensure that all available means are effectively used to protect the EU's financial interests through the complementarity of their respective mandates.
42. However, OLAF's independence could be undermined if, based on informal exchanges of views and meetings with the EPPO during which the latter objects to OLAF's intention to open a complementary investigation, OLAF then decides not to 'inform the EPPO in writing' of its intention to open a complementary investigation. In such a case, there would be no formal trace of the EPPO's position and the reasons for objecting to OLAF's proposal to open a complementary investigation²⁸.
43. The Committee considers it therefore of utmost importance that OLAF always makes a formal written proposal to open a complementary investigation (using the forms and templates agreed with the EPPO), even when the EPPO has already informally informed OLAF that it would object to such a proposal. This not only ensures OLAF's independence and its compliance with the principle of transparency but also the effectiveness of the Committee's monitoring tasks of OLAF's investigative function.

²⁷ Article 12f(1) of the OLAF Regulation, point 6.2.2 of the Working Agreement.

²⁸ The fact that OLAF and the EPPO may keep mutually agreed Minutes regarding a proposal to open a complementary investigation, cannot substitute for a formal proposal made by OLAF to the EPPO, and nor does it satisfy the degree of transparency expected in that regard by the OLAF Regulation.

EPPO's objections to OLAF's proposals for complementary investigations

44. The EPPO'S power to object to the opening of a complementary investigation by OLAF, including the 'performance of certain acts pertaining to the investigation' stems from the OLAF Regulation (Article 12f(1)).
45. In compliance with the non-duplication of investigations principle, OLAF confirmed in writing to the Committee that, if there is an objection from the EPPO, it does not proceed with opening a complementary investigation. This is also supported by the fact that OLAF must 'suspend or discontinue' a complementary investigation when the EPPO, having initially not objected to the opening of such an investigation, does so at a later stage (Article 12f(1)). As a result, it stands to reason that OLAF should also not be able to open a complementary investigation when the EPPO objects from the outset to OLAF's proposal.
46. As already mentioned, the EPPO objected to four OLAF proposals to open a complementary investigation. The grounds invoked by the EPPO in these four cases are set out in the table below.

OC NUMBER	Proposal sender	Reply by recipient	Year	Status	EPPO country [redacted]	Reasons for objection
<i>Case A</i>	<i>OLAF</i>	<i>NO</i>	<i>2022</i>	<i>Dismissed</i>		Potential violation of the double jeopardy (<i>ne bis in idem</i>) principle
<i>Case B</i>	<i>OLAF</i>	<i>NO</i>	<i>2023</i>	<i>Dismissed</i>		Support considered sufficient
<i>Case C</i>	<i>OLAF</i>	<i>NO</i>	<i>2022</i>	<i>Dismissed</i>		Complementary investigation not necessary
<i>Case D</i>	<i>OLAF</i>	<i>YES</i>	<i>2021</i>	<i>Dismissed</i>		Need to preserve the confidentiality of the ongoing criminal investigation

47. In case A, in his reply to OLAF's proposal for a complementary investigation, the EDP considered that the proposed complementary investigation would raise a risk of 'double jeopardy' (*ne bis in idem*)²⁹. Given however, the specific context of the case at hand, the EDP added that OLAF's proposal would be re-examined once the EPPO was in a

²⁹ According to the EDP, 'no disciplinary or any other kind of sanctions should be applied / recommended as the criminal investigation is ongoing (in order to avoid the ne bis in idem risk)'. The EDP added, however, that given the specific context of the case at hand, the EPPO 'puts its answer to the proposition for a complementary investigation by OLAF on hold and will re-examine it once the EPPO will be in a position to analyse all the data available.'

position to analyse all the available data³⁰. The EDP also asked OLAF to transfer all the documents that OLAF had received from [redacted] to the EPPO.

48. As the examination of the file showed, the EDP was in close cooperation with the OLAF investigators before formally replying to OLAF's proposal, including holding a video call with the OLAF investigators where all the options of how best to respond to OLAF's proposal were discussed, including the possibility for OLAF to provide instead support activities. These exchanges were marked by a spirit of mutual cooperation and trust. OLAF confirmed subsequently to the EDP that, following his objections, it had closed its own investigation in accordance with Article 12c(5) of the OLAF Regulation. OLAF also transferred [redacted] , including additional material that could be of further use in his criminal investigation. Given the amount of potential financial damage involved, OLAF invited the EDP to inform it *as and when* his objections would in the future cease to apply so that it could open a complementary investigation.
49. In case A, since OLAF had deferred providing information to the person concerned, the EDP's objection to OLAF's proposal for a complementary investigation not only meant that OLAF had to discontinue its investigation but also that the reasons for the deferral were no longer valid. However, given the need to preserve the confidentiality of the EPPO's investigation, OLAF asked the EDP to inform it of any reasons related to his investigation and its confidentiality that would require OLAF to keep the deferral in place. In that regard, OLAF shared with the EDP the template OLAF uses to provide information to a person concerned. The EDP promptly replied to OLAF. Then OLAF lifted the deferral and informed the person concerned about the closure of its investigation and that the EPPO was now looking into the same facts.
50. This case illustrates the kind of close cooperation that is expected between OLAF and the EPPO/EDP whenever the issue of opening a complementary investigation arises, either at the request of OLAF or the EPPO. In this case, the exchanges between the parties were based on a clear and common understanding of their respective positions, views and interests.
51. In case B, in its proposal for a complementary investigation, OLAF explained to the EPPO that it had already collected all the necessary digital and paper documentation in order to conduct a proper analysis of the relevant facts, draw conclusions and determine the estimated financial impact. The proposed complementary investigation was to focus on irregularities related to the breach of the provisions of the grant agreement of the projects in question. This would enable OLAF to issue financial recommendations and ask the Commission to adopt precautionary measures. According to OLAF, the Commission, based on previous findings of OLAF, had already adopted precautionary measures for this case and suspended further payments to the company under investigation. OLAF indicated to the EPPO that it could issue a final report within 3 months of the EPPO's accepting its proposal. No other investigative steps were planned other than the analysis of the large amount of data already collected. However, the EDP and the European Prosecutor of the country concerned objected to OLAF's proposal on the grounds that support by OLAF to the EPPO was sufficient in this case.

³⁰ The EDP stated that the EPPO 'puts its answer to the proposition for a complementary investigation by OLAF on hold and will re-examine it once the EPPO will be in a position to analyse all the data available'.

52. As a result of the EPPO's objections, OLAF discontinued its investigation and informed the Commission's departments concerned. OLAF also forwarded to the EDP, at his request, all the relevant documents and correspondence in its case file. This included two hard drives containing the digital forensic information collected during the on-the-spot check carried out by OLAF at the premises of the company under investigation. All the relevant exchanges between the OLAF investigators and the EDP were properly documented and registered in the OLAF OCM case file, including notes of online meetings between the parties. The case file also contains the EPPO's request to OLAF for support (predating OLAF's proposal for a complementary investigation). In that request, the EDP asked OLAF to provide the EPPO with an analysis of the documentation in OLAF's files on the EU programmes in which the company under investigation participated³¹.
53. It is clear from the exchanges between OLAF and the EDP that the EDP considered OLAF's support 'more suitable' for the EPPO's investigation. However, it is not clear to the Committee why the specific grounds put forward by OLAF for opening a complementary investigation were not valid. Support activities are different from complementary investigations because they are provided by OLAF to support an ongoing EPPO criminal investigation. Complementary investigations, by definition, do not constitute a **support** mechanism to an EPPO investigation. Complementary investigations are **administrative** investigations that can enable OLAF to issue financial or administrative recommendations, including asking the institutions, bodies or agencies concerned to adopt precautionary measures. In this case, OLAF explained to the EPPO that, having already conducted an on-the-spot check and a digital forensic inspection, it could adopt a final report with financial and administrative recommendations within 3 months of receiving the EPPO's agreement. OLAF also stated that it could ask the Commission to take further precautionary measures in relation to ongoing projects in which the company under investigation was participating at that time.
54. For the Committee, the reference to OLAF's support being 'more suitable' for its criminal investigation does not explain why the conduct of a complementary investigation under the conditions described by OLAF would or could adversely impact the criminal investigation. Under the OLAF Regulation, a request by the EPPO for OLAF support and for OLAF to conduct a complementary investigation are not mutually exclusive. Therefore, OLAF can still provide support to the EPPO while conducting a complementary investigation at the same time.
55. The Committee recalls that providing information to an EU institution, body, office, or agency with a view to adopting measures for the recovery of EU funds or precautionary measures is not only an OLAF prerogative. Article 103(2) of the EPPO Regulation ('Relations with other institutions, bodies, offices and agencies of the Union') also provides that:
2. *Without prejudice to the proper conduct and confidentiality of its investigations, the EPPO shall without delay, provide the institution, body, office or agency of the Union and other victims concerned sufficient information in order to allow them to take appropriate measures, in particular:*

³¹ For the EDP, OLAF's analysis should detail 'in an individualised manner the characteristics of each programme, and the irregularities committed by [the entity in question] and also indicating their financial impact'.

- (a) *administrative measures, **such as precautionary measures** to protect the financial interests of the Union, in this regard. The EPPO may recommend specific measures to the institution, body, office or agency of the Union.*
- (b) (...)
- (c) *measures for the purpose of **administrative recovery of sums** due to the Union budget or disciplinary action.*

56. Therefore, if an EDP concludes that the EPPO could provide the institution, body, office, or agency concerned with the required information for taking the administrative, financial and/or precautionary measures needed to protect the EU's financial interests and as a result, a proposed complementary investigation by OLAF is not justified, OLAF should ensure that this is explained in the EPPO's formal reply to OLAF's proposal.
57. In case C, OLAF proposed opening a complementary investigation into irregularities committed in a tender procedure for the construction of a plant co-financed by EU cohesion funds. OLAF justified its proposal on the grounds of 'facilitating the collection of relevant information' and that 'substantial financial damage to the EU budget appeared to have occurred'. OLAF indicated that it would be able to complete its investigation within a year and issue financial recommendations.
58. OLAF's proposal was preceded by a first meeting with the EDP concerned. At the meeting, OLAF investigators explained the reasons why a complementary investigation was likely to lead to a recovery order by the Commission. The OLAF investigators also underlined that OLAF would always coordinate any course of action to be taken with the EDP in order to protect the confidentiality of the EPPO's criminal investigation. The minutes of that meeting show that both OLAF and the EDP held a frank and open exchange of views within a context of close cooperation. Following OLAF's formal proposal for a complementary investigation, a second meeting between OLAF and the EDP took place. At that meeting, the EDP informed OLAF that, given the considerable progress made in the criminal investigation, a complementary investigation seemed unnecessary at that time. The parties also discussed the future possibility of the EDP asking OLAF to open a complementary investigation if a national court found the evidence collected by the EDP to be insufficient³². The minutes of that meeting reveal an in-depth exchange of views between the parties on how best to ensure the protection of the EU's financial interests in light of certain specific aspects of the case.
59. The subsequent formal reply by the EPPO merely repeated the conclusions of the discussions mentioned above that OLAF had had with the EDP concerned on the best way to protect at that specific point in time the EU's financial interests³³. The EDP left

³² In that regard, recital 105 of the EPPO Regulation states that 'the EPPO could consider informing OLAF of cases where there are no reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, but an administrative investigation by OLAF may be appropriate, or where the EPPO dismisses a case and a referral to OLAF is desirable for administrative follow-up or recovery. When the EPPO provides information, it may request that OLAF considers whether to open an administrative investigation or take other administrative follow-up or monitoring action, in particular for the purposes of precautionary measures, recovery or disciplinary action, in accordance with Regulation (EU, Euratom) No 883/2013'.

³³ For the EDP, 'given the scope of the investigation conducted by the EPPO and thus far achieved results within that investigation, a complementary investigation is at this point in time unnecessary'.

open the future possibility of requesting OLAF to open a complementary investigation if the criminal investigation failed to gather sufficient evidence for a prosecution under national law.

60. Finally, in case D, OLAF proposed to the EPPO to open a complementary investigation into the implementation of specific EU-funded projects. Its aim was to issue financial or administrative recommendations (i.e. the possible inclusion of the beneficiary company in the EU's EDES) and enable the Commission to adopt precautionary measures. In a detailed note to OLAF, preceding the EPPO's formal reply, the EDP concerned considered that OLAF's proposal did not contain sufficient reasons to justify investigating the alleged risks of harm to the EU's financial interests. For the EDP, there was instead a real risk that a complementary investigation, if opened at that particular moment in time, could undermine the confidentiality of the ongoing criminal investigation. Mindful of OLAF's mandate, the EDP did not exclude the opening of a complementary investigation at a later stage after the main steps of the criminal investigation were completed. He thus invited OLAF to contact him again in 3 months and revisit the relevant issues again. In this particular case, both the EDP concerned, and OLAF fully cooperated with each other in a transparent manner. Both parties appeared to have a clear understanding of how best to coordinate the work under their respective mandates.
61. The four cases above, in particular, cases A, C and D, clearly illustrate the kind of openness within which both parties tried to address the likely added value of an OLAF complementary investigation. Even if the EDP concerned considered that the required conditions for a complementary investigation were not met, the reasons put forward were clearly formulated and OLAF clearly understood them. In case B, the Committee's view is that, even if the parties appear to have reached between them an implicit understanding of the reasons behind the EPPO's objection to OLAF's proposal to open a complementary investigation, it is imperative that the EPPO provides comprehensive justifications for any such decision.

Opening a complementary investigation – cooperation with the EPPO

62. Looking into the complementary investigations opened by OLAF, in particular the 42 investigations it has already completed, one of the aspects that quickly emerges is the good, if not successful, cooperation between OLAF and the EDPs concerned. In that respect, one could mention at least three of these investigations as best practices of the kind of sincere cooperation and transparency underpinning the relationship between OLAF investigators and the EDPs.
63. In that regard, reference can be made to a case where a complementary investigation was opened following 'a brief informal note for drafting a proposal for a complementary investigation on [third country] companies' sent by the EDP to OLAF's investigators. Far from being 'brief', in his note to OLAF, the EDP detailed extensively the criminal issues and the specific companies under investigation, the investigative activities he had carried out so far, the results obtained and the specific (forensic) activities that would need to be carried out in the third country concerned to collect important missing information. In the EDP's opinion, an administrative investigation by OLAF in a third country would be appropriate and complementary to the ongoing criminal

investigation³⁴. That note was a follow-up to an earlier meeting between the EDP and OLAF investigators in which the EDP had already highlighted the need to carry out a quick investigation in a third country to support conservative financial measures that were already pending before the Supreme Court of his country.

64. All possible options of support to the EPPO were discussed in depth by both parties, including how best to deal with possible problems of conducting a forensic and an ‘on-the-spot check’ in the third country concerned. In the end, both parties agreed that the best way for OLAF to assist the EDP would be to open a complementary investigation.
65. OLAF reacted within 5 days to the EDP’s informal note by sending the EPPO a formal proposal for a complementary investigation. The EPPO replied soon after and OLAF then opened its investigation 13 days later. This case is illustrative of the close coordination and cooperation between OLAF and the EDP and the proper ‘complementary’ assistance that OLAF can provide, especially when conducting investigative steps in third countries. OLAF completed its investigation within 1 year, issuing a financial recommendation for [redacted]. OLAF shared its findings with the EDP and also consulted him as to whether it should defer informing the companies found to have breached the EU anti-dumping rules on imports from a third country to preserve the conduct of EDP’s criminal investigation into the same facts.
66. In another case, OLAF proposed a complementary investigation in [redacted] 2022 to which the EPPO gave its agreement within 3 days. As OLAF had already done a large amount of work, it managed to close the case in less than 2 months, issuing a number of administrative and financial recommendations. This particular case should be seen as an example where both parties privileged the principle of procedural economy and administrative efficiency.
67. Similarly, when OLAF proposed to the EPPO to open another complementary investigation in [redacted] 2021, the EPPO replied within 11 working days. In its proposal, OLAF explained to the EPPO that the complementary investigation would facilitate collecting relevant information by means of an ‘on-the-spot check’ in the country concerned. The check would be combined with a digital forensic operation of possible tender irregularities under a project financed by the EU. Given the substantial financial damage to the EU budget and the possible lack of sufficient national checks, OLAF considered that not only financial but also administrative recommendations would need to be issued.
68. The EDP kept close and regular exchanges with the OLAF investigators. Based on the provisions of the Working Arrangement between OLAF and the EPPO on the exchange of relevant information, the EDP sent OLAF detailed information on evidence that he had collected as part of police searches and his own forensic activities. This included important digital files to be forensically examined by the OLAF IT experts ‘for the purposes of OLAF’s complementary investigation’. The evidence that the EDP forwarded to OLAF was then used by OLAF to support its main findings and the recommendations made in its final report. Before doing so, OLAF held a meeting with and fully consulted the EDP as to whether referring in the final report to pieces of

³⁴ For the EDP ‘it [would be] appropriate [for OLAF] to carry the administrative checks outlined above by means of an investigation [in the third country], which is complementary to the [criminal] investigation carried out [by the EDP]’.

evidence provided by the EDP could harm the ongoing criminal investigation. The close cooperation, the support granted and the exchange of relevant information between both parties makes this case an example of a best practice in conducting a complementary investigation by OLAF.

Duration of investigations

69. One of the positive aspects of the complementary investigations carried out so far by OLAF has been their duration. In 75% of these cases, the duration of a complementary investigation was less than a year, averaging around a couple of months. On average, the time between the EPPO's statement of no objection and OLAF's closure of the investigation amounted to 8 months (245 days). In very few cases (10- 20%), that time exceeded 1 year due to objective reasons, such as the particularly complex nature of the issues under investigation, including the large number of people concerned and/or countries involved.

The EPPO countries involved

70. Of the EPPO countries involved in OLAF's complementary investigations, most of OLAF's complementary investigations concerned [countries redacted]. Some countries were involved in one or two OLAF complementary investigations [countries redacted], and some have been involved in none so far [countries redacted].
71. It is not clear to the Committee why EDPs from some Member States appear to have been involved in more than one complementary investigation, whereas EDPs from other Member States have yet to do so. Both the OLAF investigators and the EDPs involved in those complementary investigations that were analysed appear to have had a very good understanding of the relevant applicable legal provisions. The exchanges that the EDPs concerned have had with OLAF investigators show that the EDPs had a very good understanding of OLAF's know-how and investigative experience. In particular, this experience includes on-the-spot checks, interviews of persons concerned and digital forensic inspections, especially in cases of VAT fraud and inspections in third countries concerning circumvention of anti-dumping duties and the EU's common custom tariff.
72. The Committee is aware that OLAF and the EPPO, through their regular bilateral informal meetings, discuss and inform each other of a number of issues regarding their mutual case work (to avoid duplication), issues pertaining to EPPO's requests for support activities, and the possibility that OLAF opens a complementary investigation. As mentioned above, based on these informal exchanges with the EDPs concerned, OLAF may decide not to formally propose to the EPPO to open a complementary investigation, as set out in the applicable rules.
73. The Committee would find it contrary to the principle of transparency if such a practice were to become the norm. This would deprive the Committee of understanding the reasons for which the EDP concerned considers that an OLAF complementary investigation will not 'facilitate the adoption of precautionary measures or of financial, disciplinary or administrative action' (Article 12f(1) of the OLAF Regulation) or risk endangering the ongoing criminal investigation.
74. The Committee also notices that the number of complementary investigations opened in 2023 (11) was significantly lower than in 2022 (40) and 2021 (19) but it might be too early to speak of an emerging pattern. It is important to acknowledge that when the

EPPO started its operations, OLAF transferred to it the bulk of its ongoing investigations that were of a criminal nature. For a number of those cases, OLAF had already conducted many investigative activities, knew the issues at stake and could therefore propose to the EPPO to open a complementary investigation in order to adopt the necessary administrative and financial recommendations.

75. In particular, when the EPPO started its operations on 1 June 2021, OLAF transferred to it 167 cases that involved a ‘criminal conduct’³⁵. In 85 of these cases, the EPPO opened a criminal investigation. In 2022, OLAF reported 71 cases to the EPPO on the basis of which the EPPO opened 42 criminal investigations. Since starting its operations, the EPPO has also registered more than 4 000 crime reports from participating Member States and private parties; as of June 2022, it had opened over 929 investigations³⁶. Given that OLAF only reported a very small number of those cases, one may expect that most proposals to open a complementary investigation may come from the EPPO in the future.

Recommendations issued by OLAF

76. By 1 December 2023, OLAF had closed 42 complementary investigations, issuing financial recommendations amounting to approximately EUR 460 million. Nine complementary investigations were closed without any recommendations being issued, whereas two investigations were closed with judicial recommendations and one with disciplinary recommendations. The financial recommendations issued in these cases vary between several thousand and several million euro. In three cases concerning the evasion of customs duties and VAT on goods coming from China, OLAF recommended the recovery of almost EUR 350 million to three Member States [*countries redacted*]. In addition, these three complementary investigations were closed in less than 4 months, demonstrating considerable procedural efficiency.

3. PRELIMINARY CONCLUSIONS: RECOMMENDATIONS AND A FURTHER SUGGESTION

77. The common thread running through the EU’s current anti-fraud architecture is the need to increase fraud detection, avoid duplication, protect the integrity and efficiency of criminal investigations, and maximise the recovery of EU funds. OLAF’s administrative investigations and the EPPO’s criminal investigations are supposed to serve and pursue this common objective. Therefore, for the EU legislator, both offices need to combine their investigative and other capacities to protect the EU’s financial interests. The notion of complementary investigations was first referred to in the EPPO Regulation as OLAF’s ‘administrative investigations’ and subsequently defined and further detailed in the amending OLAF Regulation. They are an important mechanism in ensuring that OLAF and the EPPO comply with the complementarity of their respective mandates.

³⁵ See Article 12c(1) of the OLAF Regulation: ‘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.’ See also ‘The OLAF Report 2021’, p 41, at https://anti-fraud.ec.europa.eu/system/files/2022-09/olaf-report-2021_en.pdf.

³⁶ See <https://www.eppo.europa.eu/en/mission-and-tasks>.

78. The analysis of the 70 complementary investigations opened by OLAF since the start of the EPPO's operations on 1 June 2021 shows that this mechanism has so far worked as it should, yielding promising results for the future.
79. It enables OLAF to conduct independent administrative investigations into the same situations as the EPPO's criminal investigations by focusing on determining the financial losses that the EU budget incurred, issuing financial and administrative recommendations for a speedy recovery, and proposing the adoption of necessary precautionary measures. These investigations are carried out in close cooperation with the EDPs concerned with mutual trust, respect, and an understanding of the other party's prerogatives.
80. The Committee commends both the EPPO and OLAF (and, respectively, the EDPs and OLAF investigators involved in these cases) for their efforts to make this new mechanism a success in the constant fight against fraud. The analysis of the cases at hand shows both parties' commitment and professional attitude, engaging at an early stage in open and frank discussions as to whether OLAF should support or complement the EPPO's criminal investigation.
81. It is true, as noted above, that not all EPPO countries have had the opportunity to be involved in such investigations. At this early stage, it is not clear whether this is due to EDPs from certain countries facing more difficulties than other EDPs in combining their own national criminal investigations with an administrative investigation conducted by OLAF under the OLAF Regulation. What is clear is that any such problems or obstacles are best resolved and addressed when both parties privilege sincere cooperation and mutual trust.
82. For the Committee, one way to build on and consolidate the gains already achieved by both offices is to ensure that the useful, early, and informal exchanges and discussions between the EDPs and OLAF investigators are reflected in a more formal framework. This would increase transparency, build trust, and potentially lead to OLAF opening a higher number of complementary investigations.
83. To date, the relatively small number of cases where the EPPO has formally objected to an OLAF-proposed complementary investigation (four cases) may not reflect the actual number of objections raised by the EPPO to other cases. There is a risk that, based on EPPO objections that are only communicated to OLAF at the bilateral informal exchange of views, OLAF may decide not to make a formal and duly reasoned proposal to the EPPO to open a complementary investigation.
84. In the Committee's view, it is important to always keep proper records and formalise the regular exchanges between the EDPs and OLAF. In that regard, the use of the agreed forms and templates, as set out in the Working Arrangement, should be mandatory, in particular, for a proposal to open a complementary investigation and EPPO's agreement or objection to it. The case file should remain the only source of record of exchanges between the EDPs and OLAF.

85. Therefore, the Committee is **issuing the two recommendations** below to OLAF.
- A. Always use the forms and templates agreed with the EPPO to make a proposal for a complementary investigation even when the EPPO has already *informally* informed OLAF that it would object to such a proposal.
 - B. Ensure that OLAF's Guidelines on Investigation Procedures for OLAF Staff (GIPs) set out the recommendation above and that complete records must be kept of all the exchanges with the EPPO about proposals to open a complementary investigation.
86. To strengthen the good level of cooperation built between the EDPs and OLAF investigators so far, it is essential that OLAF investigators and EDPs learn from the experience gained by their colleagues involved in complementary investigations. The Committee would therefore further **suggest that OLAF, in cooperation with the EPPO,**
- identifies and shares best practices among their staff in the conduct of complementary investigations, and if necessary, reflect them in their 'Working Arrangement'.
87. In conclusion, the Committee considers that complementary investigations have a clear potential to become instrumental in the fight against fraud and irregularities affecting the EU's financial interests. OLAF has more than 20 years of investigative experience and considerable expertise in investigative techniques. In the Committee's view, complementary investigations are a powerful instrument capable of making procedures considerably more efficient and beneficial to the EU population citizens.
88. The Committee will continue to monitor OLAF's complementary investigations in the future and trusts that OLAF will comply with the recommendations and further suggestion made above to further improve its cooperation with the EPPO and the evolving framework for conducting complementary investigations.