

SUPERVISORY COMMITTEE



CODE OF CONDUCT

of the Members of the Supervisory Committee of OLAF

Together with the Explanatory Memorandum: Risks of conflict of interest and safeguarding of impartiality in the exercise of the monitoring functions

February 2024

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Code of Conduct

of the Members of the Supervisory Committee of OLAF

1. Members of the Supervisory Committee of OLAF ('Members') shall act in a manner respecting the dignity and public trust of their office. They shall refrain from any activities which may jeopardise or may appear to jeopardise the independence and impartiality of the SC.
2. Members shall not deal with a matter in which, directly or indirectly, they have any personal interest such as to impair their independence, and, in particular, family and financial interests.
3. Any situation which is likely to alter the perception of the independence of the Members of the Supervisory Committee should be deemed incompatible with their mission.
4. In particular, when Members are acting at national level as public officials of their country's judicial or administrative services, the following principles shall apply.
5. Members shall avoid participation in the examination of individual cases concurrently as the responsible official of a competent national authority and as Member of the Supervisory Committee.
6. Members shall withdraw from participation in the Committee's proceedings on an individual OLAF case if they or the services to which they belong or they direct are, in any manner whatsoever, involved in an OLAF investigation related to that case.
7. When, on the other hand, Members act on their private and professional capacity, representing and providing legal advice to third parties the following principles shall apply.
8. Members of the Supervisory Committee should not provide legal advice or represent in court proceedings:
 - a. EU institutions, bodies and agencies;
 - b. Member states and third countries in cases that concern or are likely to concern the financial interests of the Union;
 - c. third parties in any case against the EU institutions;

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- d. **third parties in cases that concern the financial interests of the Union;**
 - e. **any natural or legal person subject to an OLAF ongoing investigation;**
 - f. **any natural or legal person which was subject to a closed investigations and with regard to whom OLAF made recommendations;**
 - g. **third Countries or entities that are subject to restrictive measures adopted on the basis of Article 215 TFEU**
9. **Members should declare to the Committee any situation that does not fall under point 8 above, but might nonetheless give rise to a risk of subjective or objective conflict of interest, lack of independence, or partiality. Members should, in particular, notify in advance to the Chair of the Committee the following situations that involve advising or representing:**
- a. **An entity that has received EU funding;**
 - b. **A natural or legal person subject to a closed investigation by OLAF and for which OLAF did not make recommendations;**
 - c. **A person who is a member of the staff of an EU institution, body or agency who is or has been subject to disciplinary procedures, unless the case is not related to disciplinary issues;**
 - d. **the entity in question is listed as high-risk third countries for AML purposes under Commission Delegated Regulation (EU) 2016/1675;**
 - e. **the potential case falls within the scope of Annex I to the list of non-cooperative jurisdictions for tax purposes;**
 - f. **the potential case concerns public procurements contracts entered into by EU institutions, agencies or bodies**
10. **The Member concerned may give commitments, and the Committee may also suggest mitigating measures, to address an actual, potential, or perceived situation of conflict of interests or any case that could undermine the impartiality of the Committee.**
11. **It is for the Committee to assess whether a declaration on conflict of interests and any commitments submitted by the Member concerned are sufficient to avert any risk of lack of impartiality and/or a situation of actual, potential, or perceived conflict of interests.**

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12. In assessing whether a certain activity engaged by a Member is incompatible with the requirements and principles mentioned above, the Committee will give due regard to the principle of proportionality.
13. Members shall inform the Chairman and the Head of the Secretariat without delay of the situations referred to in paragraphs 4-9.
14. Documents drawn up following the Committee's proceedings on an individual case shall clearly indicate if any Member withdrew from the proceedings because of an actual, potential, or perceived conflict of interest, or any other situation liable to compromise any of the principles governing the activity of the Supervisory Committee.



**Explanatory memorandum
on the Code of conduct of the Members of the Supervisory Committee of OLAF**

- Risks of conflict of interest and safeguarding of impartiality
in the exercise of the monitoring functions -

I. Introduction

1. The Supervisory Committee (SC) of OLAF, whose mission is to reinforce OLAF's independence by the regular monitoring of its investigative function, is composed of five independent members having experience in senior judicial, investigative, or comparable functions relating to the areas of OLAF's activities¹. The membership of the SC is a time-limited part-time function. As such, the Members of the SC generally may hold key functions in their national judicial system or administration, which may allow them to get involved, at a national level, at any stage of an OLAF investigation, or exercise comparable functions in the private sector (lawyers, academics, auditors, etc) that may also bring them in contact with natural or legal persons that have been, are or could potentially become subject of an OLAF investigation. Situations may thus occur when they have to deal with the same OLAF case both in the framework of their national or professional duties and as Members of the SC.
2. It is essential to make sure that dealing with a case in this dual capacity does not give rise to actual or potential conflicts of interest. Actual, potential, or perceived conflicts of interests could have a negative impact on the impartiality of the decisions taken and on the quality of the work of the SC, its reputation and undermine both the EU institutions' and the public's trust in the SC. Given the potential risks involved, it is important therefore to identify the risk areas for conflict-of-interest situations in order to prevent them.
3. To do so, it is necessary first to describe the specific tasks of the SC Members which may possibly lead to conflict-of-interest situations (II), followed by an non exhaustive inventory of concrete situations when conflicts of interest may occur (III), followed by the procedure on how to manage conflict of interest situations (IV).

II. Principles governing the activities of the Members of the Supervisory Committee

A. Legal Framework

4. Article 15.1 of Regulation n° 883/2013 ('the OLAF Regulation') states as follows:

¹ Article 18(2) of 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 1084/1999, OJ L 248, 18.9.2013.

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“The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office’s independence in the proper exercise of the competences conferred upon it by this Regulation. The Supervisory Committee shall, in particular, monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General in accordance with Article 7(8). The Supervisory Committee shall address to the Director-General opinions, including where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of the Office, on the investigative priorities of the Office and on the duration of investigations. Those opinions may be delivered on its own initiative, at the request of the Director-General or at the request of an institution, body, office, or agency, without however interfering with the conduct of investigations in progress. The institutions, bodies, offices, or agencies shall be provided with a copy of opinions delivered pursuant to the third subparagraph. In duly justified situations, the Supervisory Committee may ask the Office for additional information on investigations, including reports and recommendations on closed investigations, without however interfering with the conduct of investigations in progress”.

5. Article 15(2) of the OLAF Regulation provides that:

“The Supervisory Committee shall be composed of five independent members having experience in senior judicial or investigative functions or comparable functions relating to the areas of activity of the Office. They shall be appointed by common accord of the European Parliament, the Council, and the Commission”.

6. According to Article 15(7) of the OLAF Regulation:

“in carrying out their duties, the Members of the Supervisory Committee shall neither seek nor take instructions from any government or any institution, body, office or agency”.

7. According to Article 10(5), third subparagraph, of the OLAF Regulation:

“the Members of the Supervisory Committee shall be bound by an obligation of professional secrecy in the exercise of their functions, and shall continue to be bound by that obligation after the end of their mandate”.

8. Finally, Article 4.2 of the Rules of Procedure of the Supervisory Committee (‘Ethics’) states:

- ‘2. Likewise, as stated in the Decision on their appointment and in the Code of Conduct adopted by the Committee, members shall not deal with a matter in which, directly or indirectly, they have any personal interest, in particular, any family or financial interests, such as to impair their independence’.*
- 3. Members shall be bound by professional secrecy as laid down in Article 339 of the Treaty on the Functioning of the European Union (‘TFEU’). They shall continue to be bound by the secrecy obligation even after the end of their mandate. They shall treat the files submitted to them and their deliberations concerning them in strict secrecy.*

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4. *Members shall inform the Committee of any situation liable to compromise any of the principles governing its activity as referred to in paragraphs 1 and 2 so that the Committee may take appropriate measures, including informing the appointing institutions.'*

B. Conflict of interests.

9. The abovementioned Decision (EU, Euratom) 2022/521 of the European Parliament, the Council and the Commission appointing the members of the Supervisory Committee clearly states that:

'2. The Members of the Supervisory Committee shall not deal with a matter in which, directly or indirectly, they have any personal interest such as to impair their independence, and, in particular, family and financial interests (...).'

10. The terms “in particular” should be understood as meaning that the prohibition regarding the handling of matters before the Committee that may give rise to conflicts of interest goes beyond that of conflicts between the tasks of Members of the Committee and his or her family or financial interests, but also encompasses professional interests.

11. In addition, the Code of Conduct clarifies that it covers not only actual conflicts of interests but also potential conflicts of interests and perceived or apparent conflicts of interests.

12. Although the meaning of an actual or potential conflict of interests is straightforward, a perceived conflict of interests arises where it *appears* that a public official's private interests could improperly influence the performance of their duties, *but this is not in fact the case.*

C. Impartiality

13. Under Article 41(1) of the Charter of Fundamental Rights, everyone has the right, inter alia, to have his or her affairs handled impartially by the institutions of the European Union. Article 41(1) of the Charter applies to each person who takes part to the activity of the institution concerned.

14. Based on Article 41 of the Charter, the Members of the Committee are bound by a general obligation to be impartial.

15. Throughout the case law of the Union courts, this concept of impartiality has two aspects: **subjective** and **objective** impartiality. The requirement of subjective impartiality means that no member of the institution concerned may show bias or personal prejudice. The requirement of objective impartiality means that there must be sufficient guarantees to exclude any legitimate doubt as to bias on the part of the institution concerned.

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D. Independence

16. In addition to the duty to avoid conflicts of interests and to be impartial which applies to any person taking part in the activities of the EU institutions, Members of the Committee are subject to the requirement laid down in Article 15(7) of the OLAF Regulation that prevents them from seeking and accepting any instruction from any government or any institution, body, office or agency when they “*carry out their duties*”.
17. Article 15(7) should be understood as referring to any government or institution and therefore covers not only Members States and EU institutions, but also third countries and national or international institutions.
18. In light of the above-mentioned case-law on impartiality, the requirement of independence should also be interpreted broadly. This is supported by the second sentence of paragraph 1 of Article 4 of the Rules of Procedures of the Committee that states that “*During their mandate, members shall refrain from seeking or accepting any office or responsibility, in particular from the EU institutions, which might create a conflict of interests.*”
19. The performance of the Supervisory Committee’s duties should therefore not be understood as the monitoring of one specific investigation but as the general task to monitor the work of OLAF and to provide to the institutions an assurance that OLAF is acting within the limits of its legal remit and in compliance with applicable procedural guarantees. In this regard, OLAF is entitled to investigate in a broad range of areas as it is empowered by Article 1(4) of Regulation 883/2013 to carry out “*investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests*”.
20. It stems from this broad material scope of competence of OLAF that the duties of the Supervisory Committee cover any illegal or irregular activities affecting the financial interests of the Union.
21. In addition, in the light of the duty of objective impartiality, the prohibition to receive instructions is not limited to instructions directly related to the performance of his/her tasks by the Member of the Supervisory Committee. The prohibition of Article 15(7) of the OLAF Regulation should be understood as applicable to any situation which creates or is likely to create any legitimate doubt as to bias on the part of the Member.
22. Thus, any situation which is likely to alter the perception of the independence of the Members of the Supervisory Committee should be deemed incompatible with their mission.
23. The focus on independence underlines the necessity that the independence of the Supervisory Committee members from not only governments and institutions but also third parties should be above suspicion.

E. Protection of the reputation of the Supervisory Committee

24. Point 1 of the Code of conduct of the Committee states that Members shall act in a manner respecting the dignity and public trust of their office. That means that Members should refrain not only from activities which may jeopardise or may appear to jeopardise the



independence and impartiality of the Supervisory Committee, but also from activities that could be detrimental to the reputation of the Supervisory Committee² and of the Union.

III. Possible conflict of interest situations and how to address them

25. There could be many possible situations which may give rise to actual, potential, or perceived cases of conflicts of interests. Any such situation should be addressed by reference to the established jurisprudence of the EU Courts and the guiding principles set out below. In that regard, it is useful to make a distinction between (i) Members exercising at national level public sector duties and (ii) Members engaged in the provision of professional or other similar private activities. If the first category does not, as such, raise real issues of interpretation as far as the provisions of the Code of Conduct is concerned, the same cannot be said with regard to the professional or other private and comparable activities of Members.

A Members carrying out public or national duties

26. The situation where a Member is also a public official and part of the judicial or administrative services of his country and in that capacity is or could be involved at national level, at different stages, directly or indirectly, in an OLAF investigation can give rise to a situation, if not of an actual or potential, at least of a perceived conflict of interest. A Member in such a situation can be perceived to participate in the Committee's monitoring of an OLAF's investigation in which he was or appears to have been involved. The previous Code of Conduct was very clear as to how to address such risks. In essence, the Member concerned was expected not to participate in the proceedings of the Committee in which the case he was involved at national level was also being monitored by the Committee. The revised Code of Conduct maintains the same approach in that regard.

B Members exercising professional activities

27. The principle and rules set out in the Code of Conduct of the Committee apply without exception to Members who may be engaged in the provision of professional services to entities that have or risk being involved in an OLAF investigation. That said, the Committee decided to address in the revised Code the more specific situation in which a Member provides legal advice and/or represent before the EU courts, (i) a Union institution, body or agency, or (ii) third parties which may receive or have received funds from the EU, or have been involved in national public procurement procedures, and could thus become potentially subject to an OLAF investigation. The following principles should also apply by analogy to Members advising or "representing" legal or natural persons in a capacity other than that of a lawyer or an "in-house lawyer".

² See by analogy Article 5 (c) of Commission Decision C(2018)4048 on outside activities and assignments and on occupational activities after leaving the service according to which outside activities of staff members are prohibited if the activity in question is incompatible with the interests of the institution, for example because it: (i) is detrimental to the reputation of the institution; and/or (ii) damages public trust in the neutrality and objectivity of the institution; and/or (iii) gives rise to an actual conflict of interest.

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- (i) Members advising or representing EU institutions bodies and agencies
28. In unequivocal and general terms, Article 15(7) of the OLAF Regulation forbids the Members of the Supervisory Committee to receive instructions from any government or any institution, body, office, or agency in carrying out their duties. This prohibition is clarified by Article 4 of the Rules of Procedures of the SC that stresses that it applies to any office or responsibility, in particular, from the EU institutions, which might create a conflict of interests. This prohibition must be read in light of the duty to avoid conflicts of interests and to ensure objective impartiality.
29. As a preliminary remark, the SC notes that almost any case involving EU institutions is likely to have a direct or indirect impact on the financial interests of the EU.
30. Representing an EU institution, body or agency is likely to be perceived as impeding the independence of the Member of the Supervisory Committee concerned, even in cases that do not *directly* or *indirectly* concern the financial interests of the Union.
31. Thus, for the SC, representing EU institutions, bodies or agencies should be deemed incompatible with the mission of the Members of the Supervisory Committee.
- (ii) Members advising or representing third parties, including Members States, third countries, and economic operators
32. Article 15(7) of the OLAF Regulation also applies to “governments”. However, representing Member states and governments of third countries is less likely to give rise to actual, apparent or perceived conflicts of interests and partiality than representing EU institutions, bodies, and agencies.
33. That said, given the broad scope of the remit of OLAF, the Committee considers that a Member should not provide legal advice or represent governments in any case that is directly or indirectly related to the financial interests of the EU. The exclusion is therefore broader than cases that would actually involve OLAF investigations, antifraud policy or VAT fraud related issues, and should extend to all cases where the intervention of OLAF is a mere possibility.
34. Although the exclusion laid down in Article 15(7) of the OLAF Regulation does not apply to the representation of economic operators or natural persons, such representation should be excluded when it would lead to a conflict of interests and/or an actual or perceived lack of independence or impartiality.
35. Such exclusion should be automatic for any case lodged before the EU courts against an EU institution, agency or body as such cases would necessarily generate a potential conflict of interests. Indeed, any action that involves criticising, weakening, or putting at stake the financial interest of the EU institutions contains elements of potential conflicts of interests.
36. As far as other cases are concerned, the exclusion should also be automatic whenever the matter on which the legal advice or representation is provided relates to OLAF activities,

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anti-fraud policies, VAT fraud, and any other illegal or irregular activity affecting the financial interests of the Union.

37. In all other cases, the representation of persons or entities that have received EU funds or are involved in public procurement procedures or contracts should be assessed on a case-by-case basis.
38. Representing an economic operator or natural person who is or was subject to an OLAF investigation should be automatically excluded unless the closed investigation was not followed by any recommendation regarding that operator/person. In the latter case, a case-by-case assessment should be made in order to determine whether the case gives rise to a risk of conflict of interests and/or an actual or perceived lack of independence or impartiality.
39. In addition, in view of the strong links between the activities of OLAF and those of disciplinary bodies, Members of the Committee should in principle refrain from representing current or former members of the staff of EU institutions, bodies or agencies when those staff members are or were subject to disciplinary proceedings unless the case is clearly not related to disciplinary issues.
40. Moreover, the provision of legal advice to or representation of third parties that are subject to restrictive measures adopted on the basis of Article 215 TFEU should also be excluded as it would pose a reputational risk for the supervisory Committee.
41. Such reputational risk could also exist for example if the Committee Member was to provide legal advice to or represent in Court third countries that are on the list of non-cooperative jurisdictions for tax purposes or on the list of high-risk third countries for AML purposes³. Such situations would require a case-by-case analysis.

IV. Line to take in practical terms

A. Excluded entities

42. Members of the SC should not provide legal advice to or represent in court proceedings the following entities:
 - a. EU institutions, bodies and agencies;
 - b. Member states and third countries in cases that concern or are likely to concern the financial interests of the Union;
 - c. third parties in any case against the EU institutions;

³ Commission Delegated Regulation (EU)2016/1675 of 14 July 2016 supplementing directive (EU) 2015/849 of the European Parliament and of the Council identifying high risk countries with strategic deficiencies, OJ L 254, 20.9.2016, p. 1–4.

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- d. third parties in cases that concern the financial interests of the Union;
 - e. clients that are subject to an OLAF ongoing investigation;
 - f. any client who was subject to a closed investigations and with regard to whom OLAF made recommendations;
 - g. third Countries or entities that are subject to restrictive measures adopted on the basis of Article 215 TFEU;
43. Before accepting a new client, Members should consult the Secretariat of the Committee in order to verify, in particular, whether the potential client is or was subject to an OLAF investigation.
- B. Potential clients or cases requiring a case-by-case analysis and the procedure to be followed
44. Pursuant to Article 4(4) of the Rules of Procedure of the SC, Members are to bring any situation liable to compromise any of the principles governing the activity of the SC to the Committee's attention.
45. Accordingly, Members should declare to the Committee any situation that is not subject to an automatic exclusion (see paragraph 42), but might nonetheless give rise to a risk of subjective or objective conflict of interest, lack of independence, or partiality. Members should, in particular, notify in advance to the Chair of the Committee the following situations:
- a. the potential client has received EU funding;
 - b. the potential client was subject to a closed investigations by OLAF and the Office did not make recommendations regarding the client;
 - c. the potential client is a member of the staff of an EU institution, body or agency who is or has been subject to disciplinary procedures, unless the case is not related to disciplinary issues;
 - d. the potential client is listed as high-risk third countries for AML purposes under Commission Delegated Regulation (EU) 2016/1675;
 - e. the potential case falls within the scope of Annex I to the list of non-cooperative jurisdictions for tax purposes;
 - f. the potential case concerns public procurements contracts entered into by EU institutions, agencies or bodies.
46. The Committee should assess those situations as well as any commitment taken by the Committee Member in order to remove or mitigate the risks of conflict of interests and the reputational risks for the Committee and the Union.

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47. The Committee is aware that membership of the Committee is a part-time function and Members are therefore entitled to carry out other (professional) activities apart from those excluded in the call for expression of interest and those set out in paragraph 42. Thus, when assessing whether a certain activity is incompatible with the requirements and principles mentioned above, the Committee must take due regard to the principle of proportionality.

C. Possible mitigating measures and commitments offered

48. The Committee or the Member concerned may suggest mitigating measures. The Committee may, in particular, request the Member concerned to withdraw from the Supervisory Committee proceedings pertaining to a client or case.

49. Mitigating measures should in practice depend on the rules that may govern the professional activity of the Member of the Committee.

50. It should be possible that arrangements proposed and commitments made by the Member concerned could be agreed on a case-by-case basis. It would be for the Committee to assess whether the declaration on conflict of interests and possible commitments submitted by the Member concerned are sufficient to avert any risk of partiality.

51. Should the Committee consider that the commitments of the Member and the possible mitigating measures are not sufficient, the Committee might issue an opinion stating that the Member does not fulfil the conditions governing the performance of his/her duties pursuant to Article 15(7) of Regulation 883/2023 and submit this opinion to the three institutions which might relieve the member of his duties (See Article 15(5) of the OLAF Regulation).