

**SUPERVISORY COMMITTEE**



**ACTIVITY REPORT**

**2016**





**Tuomas PÖYSTI, Committee Member and Chair until 12 July 2016**

Auditor General of Finland until 1 October 2015,  
then Under Secretary of State, Finland



**Johan DENOLF, Committee Member until 22 January 2016,  
Chair ad interim 13 July 2016 – 6 September 2016**

Chief Commissioner of the Federal Police,  
Member of the Financial Intelligence Unit (FIU), Belgium



**Colette DRINAN, Committee Member since 13 July 2016,  
Chair since 7 September 2016**

Director of Audit, Office of Comptroller & Auditor General, Ireland



**Herbert BÖSCH, Committee Member until 12 July 2016**

Former Member of the European Parliament,  
Former Chairman of the Committee of Budgetary Control of the European Parliament,  
Controller of the city of Bregenz, Austria



**Catherine PIGNON, Committee Member until 22 January 2017**

Chief Public Prosecutor at the Court of Appeal in Angers and then in Bordeaux,  
Chair of the College of General Prosecutors, France



**Dimitrios ZIMIANITIS, Committee Member until 22 January 2017**

Public Prosecutor at the Court of Appeal in Athens, Greece,  
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Public Prosecutor at the National Prosecutor's Office, Warsaw, Poland

## FOREWORD BY THE CHAIR



As Chair of the Supervisory Committee of the European Anti-Fraud Office (OLAF), I have the pleasure to submit the Annual Report of our Committee, in accordance with Article 15(9) of Regulation No 883/2013. I took over from Mr Pöysti, who together with Mr Bösch were replaced by Ms Stronikowska and I to implement the staggered renewal as foreseen in the Regulation.

The Supervisory Committee, as a high-level independent oversight body, contributes to the rule of law and to the efficiency and effectiveness of the European Union fight against fraud, serious irregularities and other illegal activities. Based on analysis of information it receives from the OLAF Director-General, the Committee issues opinions and reports. The Opinions may contain recommendations addressed to the OLAF Director-General. The Committee shall regularly monitor the implementation by OLAF of its investigative function, in order to reinforce OLAF's independence in the proper exercise of the Office's competences.

This is the fifth and last Activity Report of the Supervisory Committee in its current composition. It covers the activities of the Committee until 22 January 2017 and provides an overview of the monitoring activities, some of which led to the publication of opinions or reports during the year 2016. Given that it is the final report of the Committee which was appointed in January 2012, it includes extended chapters on the Committee's consideration of duration of investigations and on its consideration of the application of procedural guarantees in OLAF investigations.

In 2016, the Committee's work focused on the assessment of the investigative independence and the immunity of the OLAF Director-General, on OLAF's performance indicators as presented by OLAF in its Activity Report 2015, the qualitative and quantitative control over duration of investigations, the follow-up of disciplinary recommendations, the follow-up given to OLAF's recommendations, and the implementation of the Committee's recommendations by the OLAF Director-General.

The Committee was supported by the European Institutions which amended Regulation No 883/2013 ensuring the budgetary independence of the Committee and the functional independence of its Secretariat. They provided also the Joint Opinion of the Legal Services of the European Parliament, the Council and the European Commission on three aspects of the relationship between OLAF and its Supervisory Committee. This has brought greater clarity to the legal framework and has reinforced the Committee's independence.

The Supervisory Committee is committed to improving the accountability and transparency of the European Anti-Fraud Office. The Committee highly values the work carried out by the staff of OLAF in their important mission.

Brussels, 20 January 2017

Colette DRINAN

Chair, OLAF Supervisory Committee

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## MISSION STATEMENT

*Article 15(1) of Regulation No 883/2013:*

*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 mission of the Supervisory Committee of OLAF, as outlined in Regulation No 883/2013<sup>1</sup>, is to reinforce OLAF's independence in the proper exercise of the competences conferred upon it<sup>2</sup>. To accomplish this mission, the EU legislator entrusted the SC with a role which is threefold:

- The SC is the **supervisory body** of OLAF and guardian of OLAF's independence; it regularly monitors the implementation by OLAF of its investigative function and, in particular, developments concerning the application of procedural guarantees and the duration of investigations.
- The SC plays an **advisory role** with regard to the Director-General of OLAF, whom it assists in the discharge of his responsibilities:
  - by communicating to him the results of the SC's monitoring of the implementation of the OLAF investigative function, the application of procedural guarantees and the duration of investigations as well as, where necessary, making appropriate recommendations;
  - by addressing opinions to him, including, where appropriate, recommendations on, *inter alia*, the resources needed to carry out OLAF's investigative function, on the investigative priorities and on the duration of investigations;
  - by submitting its observations (including, where appropriate, recommendations) on the guidelines on investigation procedures (and any modification thereto) adopted by the Director-General in accordance with Article 17(8) of the Regulation.
- The SC is a **dialogue partner** of the EU institutions, to which it reports on its activities, at whose request it may issue opinions and with whom it exchanges views at a political level, thus providing the EU institutions with unique expertise based on its monitoring experience.

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<sup>1</sup> 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), OJ L 248, 18.9.2013, p. 1.

<sup>2</sup> Article 15.

## ACCESS TO INFORMATION FOR SUPERVISORY FUNCTIONS

*Article 15(1) of Regulation No 883/2013:*

*The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function [...]*

*Article 4 of Commission Decision of 28 April 1999 establishing the European Anti-fraud Office:*

*[...][The Supervisory] Committee shall be responsible for the regular monitoring of the discharge by the Office of its investigative function.*

1. In the Committee's activity report 2015, the restricted access to information from OLAF was highlighted as an urgent issue. This issue persisted during 2016, thus undermining the effectiveness of the Committee's supervisory role.
2. The core of the concern is a fundamental difference between the Supervisory Committee and the OLAF Director-General in the perception of the role of the Committee. The Director-General seems to believe that the Committee's main role is to support his independence and to monitor statistical data at a general level. The Committee underlines its supervisory role as the only entity which can ensure the accountability of OLAF's investigative function. The OLAF Director-General's perspective means the Supervisory Committee would act only on the basis of information that the Director-General chooses to provide. The Committee's perspective necessitates its independent access to information in order to ensure objective monitoring.
3. In 2016, the Committee was unable to access any requested individual case files. Instead it was provided with a sample of files selected by OLAF. In addition, there was difficulty accessing information in other areas. This included complaints, requests for access to documents by external parties and details of actions taken by OLAF in response to the Committee's recommendations. The Committee also noted that the reports submitted by OLAF on cases lasting more than 12 months were not sufficiently detailed to allow for an effective control.
4. In view of these difficulties, both the Supervisory Committee and the OLAF Director-General asked the Vice-President of the Commission to invite the Legal Services of the Commission, Parliament and Council to issue a Joint Opinion on three aspects of the relationship between OLAF and the Committee. This opinion was issued on 5 September 2016.
5. The Committee notes that the three Legal Services agreed with the Committee's position on the OLAF Director-General's reporting obligations and on the Committee's access to OLAF case files, including the dismissed and on-going cases.
6. As a result, by clarifying and confirming the reporting obligations of OLAF vis-à-vis the Supervisory Committee, the Joint Opinion should facilitate the Committee's performance of its monitoring function. Consequently, it will also serve as guidance for adopting the Supervisory Committee's new internal Rules of Procedure and the decision concerning the need of working arrangements between the Supervisory Committee and OLAF.

## ASSESSMENT OF THE DIRECTOR-GENERAL'S INDEPENDENCE

*Article 15(1) of Regulation No 883/2013:*

*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.*

*Article 15(9) of Regulation No 883/2013:*

*The Supervisory Committee shall adopt at least one report on its activities per year, covering, in particular the assessment of the Office's independence, the application of procedural guarantees and the duration of investigations. Those reports shall be sent to the European Parliament, the Council, the Commission and the Court of Auditors.*

*Article 17(3) of Regulation No 883/2013:*

*The Director-General shall neither seek nor take instructions from any government or any institution, body, office or agency in the performance of his duties with regard to the opening and carrying-out of external and internal investigations or to the drafting of reports following such investigations. If the Director-General considers that a measure taken by the Commission calls his independence into question, he shall immediately inform the Supervisory Committee, and shall decide whether to bring an action against the Commission before the Court of Justice.*

*Article 17(9) of Regulation No 883/2013:*

*Before imposing any disciplinary penalty on the Director-General, the Commission shall consult the Supervisory Committee.*

7. On 2 March 2016, the Commission<sup>3</sup> partially waived the immunity from legal proceedings of the Director-General of OLAF in response to a request from the Belgium judicial authorities. On 14 March 2016, the Director-General of OLAF informed<sup>4</sup> the Supervisory Committee, on the basis of Article 17(3) of Regulation No 883/2013, that he considered the Commission decision of 2 March to be a measure calling his independence into question.
8. Despite requests to both the Commission and the Director-General of OLAF, the Supervisory Committee has not been provided with a copy of the Commission Decision. In addition, the Committee has not seen the detailed submissions of either party to the General Court of the Court of Justice of the European Union (CJEU), where the Director-General brought an action seeking annulment of the Commission Decision.
9. The Supervisory Committee noted the Order of the President of the General Court of 20 July 2016 on the application of interim measures in this case<sup>5</sup>, being publicly available. The Order dismissed a second application brought by the Director-General of OLAF asking the President of the Court to suspend the operation of the Commission Decision on urgency grounds in order to avoid serious and irreparable harm to his own independence and the independence and proper working of OLAF.
10. The main action brought by the Director-General before the Court, seeking for the annulment of the Commission Decision, is still pending. Therefore, the Committee is not in a position, at this point in time, to form a conclusive view as to what potential impact the lifting of the Director-General's immunity may have on OLAF's independence. The Committee will closely monitor further developments, considering that the principles of presumption of innocence, impartiality,

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<sup>3</sup> Commission Decision C(2016) 1449 final.

<sup>4</sup> Ares(2016)1280862

<sup>5</sup> Order of the President of the General Court of 20 July 2016 — Director-General of OLAF v Commission in the case T-251/16R



independence and good governance and issues of impunity and accountability are key matters in this unprecedented situation.

11. The Supervisory Committee noted that under Article 17(9) of Regulation No 883/2013 the Commission shall consult the Supervisory Committee before imposing any disciplinary penalty on the Director-General. Such a requirement has not been established for a situation when the Commission decides to waive the immunity of the Director-General.
12. The Committee advised the OLAF Director-General to consider taking operational measures to mitigate possible conflicts of interest, or a perception of conflicts of interest, which may arise in interactions with the Belgian judicial authorities<sup>6</sup>. Article 17(6) of Regulation No 883/20103, in particular, gives scope for such measures. The Committee has not been informed of any such measures.

### ***PROCEDURAL GUARANTEES AND FUNDAMENTAL RIGHTS IN OLAF INVESTIGATIONS***

*The second paragraph of Article 15(1) of Regulation No 883/2013:*

*The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees (...).*

*Article 17(7) of Regulation No 883/2013:*

*The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned (...).*

13. Pursuant to Article 15(1) of Regulation No 883/2013, the Supervisory Committee has an explicit mandate to monitor, in particular, the application of procedural guarantees in the light of the information supplied by the Director-General of OLAF. The Committee addressed the issue on several occasions, in opinions, special reports and activity reports. A non-exhaustive summary of this work delivered by the outgoing Committee between 2012 and 2016 has been put together in a compendium<sup>7</sup>. It concerns in particular three key areas, detailed below.

#### ***Legality check and review***

14. In its Opinion No 2/2015, the Supervisory Committee analysed the legality check and review conducted in the course of investigative activities of OLAF, focusing on the respect of procedural guarantees and fundamental rights.
15. The Committee recommended in particular that OLAF develop reviewers' best practices with regard to the verification of respect of procedural guarantees and proportionate duration of investigations.
16. The Committee recommended also that the OLAF Director-General adopt a plan with specific actions with a view to effectively reinforcing the internal control and advisory mechanism foreseen by the Regulation. Adoption of such a plan is still pending.

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<sup>6</sup> Ares(2016)6451016 of 16 November 2016

<sup>7</sup> See the Compendium on the website of the OLAF Supervisory Committee.

## ***Complaints on OLAF's investigations***

17. In its Opinion No 2/2013, the Committee examined options for redress open to persons involved in OLAF investigations, as regards potential violations of their rights and procedural guarantees. The Committee found that such persons did not have sufficient and immediate remedies to redress potential violations either through an external or internal mechanism.
18. The Supervisory Committee therefore recommended that the OLAF Director-General establish and publish such an internal procedure after consulting the Committee on the details and then report regularly to the Committee on complaints received by OLAF and the follow-up given to them.
19. However the Committee has not received a detailed report on complaints lodged against OLAF activities and linked to the fundamental rights and procedural guarantees of persons affected by investigations, including complaints known to OLAF and lodged before other instances or bodies.

## ***Fundamental Rights Agency***

20. In 2016, the Supervisory Committee initiated an exchange of views with the Vienna based Fundamental Rights Agency (FRA) which is empowered to provide expertise and advice to the Member States, EU Institutions and bodies.
21. The Supervisory Committee identified a number of fields – such as the legislative proposal on the EPPO - where possible consultation between OLAF and FRA could have potentially resulted in enhancing the level of protection of fundamental rights of persons affected by investigations (be they persons concerned or not).
22. Consequently, the Supervisory Committee would consider it useful for OLAF to establish a contact with the FRA with a view to engaging in a formalised cooperation in particular as regards submitting the procedures of OLAF to a fundamental rights check by the FRA.

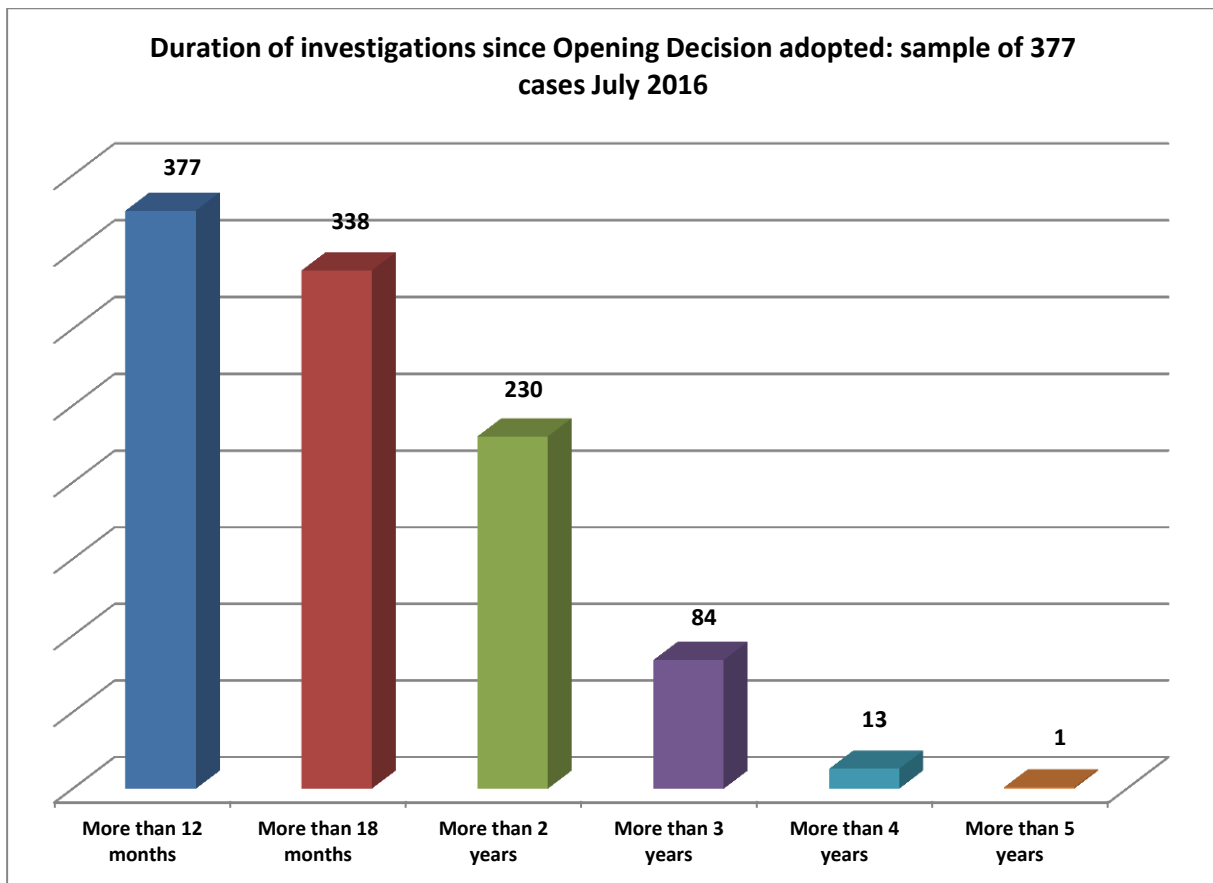
## ***DURATION OF OLAF INVESTIGATIONS***

*Article 7(8) of Regulation No 883/2013:*

*If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and the remedial measures envisaged with a view to speeding up the investigation.*

## ***Investigations lasting more than 12 months***

23. In 2016, the Supervisory Committee has analysed 477 reports concerning 377 investigations lasting more than 12 months reported by the OLAF Director-General. 274 cases had been closed while 103 were still open. In July 2016, the OLAF Director-General, at the Committee's request, provided additional statistical data concerning those reports, in order to allow the Committee to better identify general trends and patterns.



24. The OLAF Director-General has established a 20-month benchmark for duration of investigations in his Annual Management Plan (the Regulation establishes a 12-month benchmark). In the sample there were 42 cases (11%) lasting less than 20 months and 335 cases (89 %) lasting more than 20 months, 157 of which (47%) lasted more than 30 months.
25. The analysis of the data provided in July 2016 showed that a significant subset - 28 cases – stem from an aggregate operation on 2 February 2012, whereby 423 cases were opened on the same day<sup>8</sup>. The Supervisory Committee is of the opinion that those 28 cases should be particularly monitored by OLAF to avoid the hampering of performance by continuously dealing with the legacy of past systems.

### ***Duration of handling of the information before opening an investigation***

26. The duration of investigations is measured by OLAF from the decision to open an investigation. As such decisions are preceded by a period of evaluation of the reported information, the Supervisory Committee considered it important to examine also the duration of the treatment of the information from the date of its receipt by OLAF until opening or dismissing the case.
27. The OLAF Director-General established an indicative deadline for the evaluation as two months. It is not clear for the Committee whether it is counted from the receipt of the information by OLAF, from the creation of the case number, from the attribution of the incoming information to a selector or from the first action of the selectors in the case. OLAF informed the Committee that monitoring tools are in place to avoid dead spots in handling of the information.
28. The Supervisory Committee will consider the possibility of examining more closely those monitoring tools and the data on duration of handling of the incoming information.

<sup>8</sup> Cf. Supervisory Report N°3/2014 on *Opening of Cases in OLAF in 2012*

## ***Qualitative analysis of 477 reports on investigations lasting more than 12 months***

29. The Supervisory Committee carried out an in-depth analysis of 477 reports on investigations lasting more than 12 months<sup>9</sup> with the purpose of assessing in particular :
- The number of cases in which OLAF's report includes factually based reasons for non-completing the investigation and remedial measures to speed up the investigation;
  - The number of cases in which there was an evolution compared to the situation described in the Supervisory Committee Opinion No 4/2014<sup>10</sup>;
  - The number of cases in which the remedial measure is appropriate, given the reason put forward for not completing the investigation and/or is in accordance with the said Opinion.
30. In just over half of the reports, there were either no reasons for non-completion of investigations or the reasons indicated were considered insufficient. The lack of supporting details included in the report did not allow for any further check on this information.
31. In a high number of reports, the Supervisory Committee found that no remedial measures were indicated or there was a reason for concern about the adequacy of those measures.
32. In a high number of reports, the Committee found that the remedial measures adopted by the OLAF Director-General to speed up the investigations, or the text indicated, were not in line with the recommendations issued in the SC Opinion No 4/2014.
33. As a conclusion, the Committee found that there has been no significant evolution in OLAF's practices. While Regulation No 883/2013 has reinforced the Committee's role in the monitoring of the duration of OLAF's investigations, it cannot give assurance that investigations are conducted continuously and without undue delay having regard to the circumstances and complexity of the cases. This is a matter of concern in particular for the longest-lasting investigations.

### ***INVESTIGATION POLICY PRIORITIES FOR THE YEAR 2017***

*The first paragraph of Article 17(5) of Regulation No 883/2013:*

*The Director-General shall each year determine, within the context of the annual management plan, the investigation policy priorities of the Office and shall, prior to their publication, forward them to the Supervisory Committee.*

*Article 5(1): the Decision by the OLAF DG whether or not to open an investigation shall take into account the IPPs and the AMP.*

34. The Supervisory Committee received OLAF's draft Investigative Policy Priorities for 2017 on 22 December 2016. The Committee was invited to produce its comments by 13 January 2017. The Investigative Policy Priorities for 2017 are not substantially different from the ones for 2014, 2015 and 2016.
35. The Committee is awaiting details of OLAF's impact assessment of the Investigative Policy Priorities for 2016.

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<sup>9</sup> OLAF granted to the Supervisory Committee also access to a sample of 62 cases lasting more than 12 months. The Committee adopted an analysis grid and analysis of those cases still on-going

<sup>10</sup> In its Opinion No 4/2014 – "Control of the duration of investigations conducted by the European Anti-fraud Office", the Committee recommended, inter alia, OLAF: (1) Enrich the content of the 12-month reports with recurrent factual case-related information, in order to enable the SC to understand the background and progress of investigations; (2) Better substantiate the factual information concerning reasons for investigations lasting more than 12 months and (3) Better substantiate the information with regard to remedial measures to speed up investigations.

## ***FOLLOW-UP OF OLAF's RECOMMENDATIONS***

*The third paragraph of Article 17(5) of Regulation No 883/2013:*

*The Director-General shall inform the Supervisory Committee periodically:*

- (a) of cases in which the recommendations made by the Director-General have not been followed;*
- (b) of cases in which information has been transmitted to judicial authorities of the Member States;*

36. Once an OLAF investigation is closed, the Final Report establishing the facts (with supporting elements of evidence and a full list of the case file registered elements) and any recommendation issued by the OLAF Director-General should be sent to the competent authorities in Member States or in EU institutions and bodies which are responsible for subsequent actions.
37. There are four types of recommendations issued by the OLAF Director-General: administrative (fraud proofing of contracts, grant agreements, legislation and administrative praxis), financial (recovery of amounts unduly spent), judicial (criminal procedure by national authorities) and disciplinary (disciplinary procedure by EU Institutions, agencies and bodies).
38. Under Article 17(5), the Director-General shall inform the Committee periodically of cases in which his recommendations have not been followed.
39. In May and June 2016, the OLAF Director-General sent an update to the Supervisory Committee<sup>11</sup>. These summarised the replies received from relevant authorities until 29 February 2016 in respect of recommendations issued by OLAF from 1 October 2013, which have not been followed.

### ***Disciplinary recommendations***

40. OLAF reports<sup>12</sup> to have issued 55 disciplinary recommendations since 1 January 2013 (24 recommendations in 2013; 15 recommendations in 2014 and 16 recommendations in 2015).
41. Since 1 October 2013, OLAF reported to the Supervisory Committee that eight disciplinary recommendations have not been followed up by the receiving authorities invested with disciplinary powers. The Committee has not received any further details in the report, so the following observations rely on the summarized information provided by the OLAF Director-General.
42. In two cases, the authorities found that the facts had been insufficiently established by the investigative activities carried out. In one of the cases the authorities did not consider the facts established by OLAF serious enough to trigger disciplinary procedures. In two cases, the facts established by OLAF were reassessed and the authorities decided not to take any disciplinary action. One of the authorities stated that the facts established were not of a nature to involve disciplinary responsibility.
43. The Supervisory Committee started an analysis of the follow up of disciplinary recommendations. During the reporting period, the rapporteur responsible for the analysis of OLAF's financial, administrative and disciplinary recommendations carried out exploratory work to define the scope of a possible Opinion or Rapport. The initial analysis of recommendations was carried out on the basis of a sample provided by OLAF. The said analysis was complemented with bilateral contacts with the Internal Discipline Committee of the Commission and with the launching of a questionnaire to OLAF's stakeholders. Several regulatory agencies, EU Institutions and bodies replied providing very valuable information. However, the Secretary General<sup>13</sup> of the European Commission refused to reply to the Supervisory Committee's questionnaire and to disclose any

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<sup>11</sup> Ares(2016)2867755 of 20 June 2016 and Ares(2016)2336179 of 19 May 2016

<sup>12</sup> OLAF Operational Report 2015, see figure 12 "recommendations issued" on page 20 and figure 24 "actions taken by the appointing authorities following OLAF's disciplinary recommendations issued between 1 January 2013 and 31 December 2015" on page 30.

<sup>13</sup> See notes Ares(2016)2996187 of 28 June 2016 and Ares(2016)6032504 of 20 October 2016 signed by the Secretary General of the European Commission.

information, inviting the Committee, on two occasions, to work exclusively on the basis of the information provided by the OLAF Director-General.

44. Consequently, the Supervisory Committee has not enough qualitative information at its disposal to oversee the usefulness of OLAF's disciplinary recommendations. Furthermore, the Committee has not enough quantitative information to assess the ratio of recommendations followed up compared to the total number of disciplinary recommendations issued, given that the available information does not relate to the same time period.

### ***Judicial recommendations***

45. The Supervisory Committee undertook further work on the follow up of the judicial recommendations and the monitoring carried out by OLAF in this area. Several working meetings were held for this purpose and documentation was provided by OLAF on the measures taken to improve monitoring as well as the quality of the judicial recommendations.
46. In 2012, OLAF established a system for collecting information from Member States as well as monitoring guidelines, making it possible to track the decisions on dismissals or prosecutions as taken by the national judicial authorities following the transmission of OLAF's recommendations. The Committee wishes to acknowledge the significant effort required by OLAF to collect this information.
47. OLAF reports<sup>14</sup> to have issued 284 recommendations sent to judicial authorities since 1 January 2013 (85 recommendations in 2013; 101 recommendations in 2014 and 98 recommendations in 2015).
48. According to the information provided by the OLAF Director-General, 18 recommendations sent to the national judicial authorities have not implemented since October 2013 to February 2016<sup>15</sup>.
49. Reasons given for non-implementation of the recommendations received by judicial authorities were as follows:
- a) 13 recommendations could not be taken into account or implemented, due to lack of evidence or, in one case, insufficient evidence
  - b) 3 recommendations could not be taken into account or implemented, due to being time-barred
  - c) 2 recommendations could not be taken into account or implemented, as alleged facts not considered a criminal offence
50. The Supervisory Committee notes, however, that OLAF reports that out of 317 recommendations sent to the judicial authorities since 2008, 168 led to a dismissal of the information or to no action taken.
51. The Supervisory Committee may not draw any conclusions without data matching the reporting periods identified by OLAF.
52. The Supervisory Committee has not enough substantial information at its disposal to oversee the ratio of recommendations followed up compared to the total number of judicial recommendations issued, which would assist in assessing the effectiveness of OLAF's investigations. At a minimum, the Committee would need to receive:
- a) the final case report transmitted to the national judicial authority;
  - b) the reply given to OLAF by the national judicial authority.

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<sup>14</sup> OLAF Operational Report 2015, see figure 12 "recommendations issued" in page 20 and figure 24 "actions taken by the appointing authorities following OLAF's disciplinary recommendations issued between 1 January 2013 and 31 December 2015" in page 30.

<sup>15</sup> The reporting communicated includes 14 cases with unsuccessful judicial recommendations, 9 of which were due to insufficient evidence.

53. Consequently, the Supervisory Committee considers that the information transmitted by OLAF is not sufficient to fulfil the OLAF Director-General obligations established in Article 17(5) of Regulation 883/2013.
54. Examination of the reasons for the dismissal decisions taken by the Member States<sup>16</sup> and communicated by OLAF shows the two main reasons for dismissals were:
- a) lack of, or insufficient, evidence – 50% of dismissals
  - b) absence of criminal offences – 33% of dismissals
55. OLAF expressed its concern that it had observed "*a tendency among certain national prosecutors not to accord the same level of priority to cases as they affect the interests of the State, EU or national interests*"<sup>17</sup>. OLAF carried out an analysis indicating that the evidence gathered in its administrative investigations is not directly recognised by the Member States, especially when conducting or re-initiating large-scale investigations of a transnational dimension.
56. The Committee has not been informed at the end of the current reporting period of OLAF's analysis in support of its findings and, in particular, the content of its work in working groups with the Member States on this question. The Committee notes that the reform of the Regulation of 2013 strengthened and clarified OLAF's investigative powers in the collection of physical evidence.
57. Following the working meetings and the substantial discussions with OLAF, the Committee identified a number of issues which require in-depth analysis:
- Reinforcing OLAF's expertise as regards the procedural rights in individual Member States<sup>18</sup>;
  - Reinforcing OLAF's assistance to Member States after the transmission of its investigations;
  - OLAF's earlier and closer cooperation with Member States law enforcement agencies, for example through joint investigation teams;
  - Review of OLAF's application of provisions authorising transmission of information to judicial authorities when collection of evidence requires expeditious use of judicial powers.
58. In his reply to the Supervisory Committee's request for information concerning the follow up of OLAF's judicial recommendations, the OLAF Director-General stated that he "*established a working group to address your request and I expect the findings to be available in May [2016]. OLAF staff would also need to contact the SC Secretariat for clarifications related to some of these requests*"<sup>19</sup>. At the end of the current reporting period, the Supervisory Committee has not received the results of the work carried out by OLAF.

### ***Financial recommendations***

59. OLAF reports<sup>20</sup> to have issued 706 financial recommendations since 1 January 2013 (233 recommendations in 2013; 253 recommendations in 2014 and 220 recommendations in 2015).
60. According to the information provided by the Director-General in May and June 2016, five financial recommendations, issued between October 2013 and February 2016, were not implemented by the relevant authorities responsible for the management of EU funds. There was no clear pattern as to why the recommendations were not followed. The reasons varied from insufficient grounds, to no legal right to recuperate, to irregularities not being proven or not affecting EU funds.

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<sup>16</sup> This specific analysis was conducted over the years 2012 and 2013.

<sup>17</sup> Annual Report of 2015

<sup>18</sup> Regulation N° 883/2013 expressly underlined the importance for OLAF to have full knowledge of the national laws of the Member States to which it transmits its investigative reports. Article 11(2) of Regulation N°883/2013: "In drawing up such reports and recommendations, account shall be taken of the national law of the Member State concerned".

<sup>19</sup> Ares(2016)980350 – 25 February 2016

<sup>20</sup> OLAF Operational Report 2015, see figure 12 "recommendations issued" in page 20 and figure 24 "actions taken by the appointing authorities following OLAF's disciplinary recommendations issued between 1 January 2013 and 31 December 2015" in page 30.

61. An important indicator as regards the financial recommendations is how much of the amount recommended to be recovered is actually recovered. Before 2012, the recovered amounts were linked by OLAF to the specific year in which the recommendation was given, allowing the rate of recovery to be used as a performance indicator. After 2012, it is no longer possible to calculate the rate of recovery. It would be particularly useful when the relevant authorities' estimation of the amount to be recovered differs from OLAF's estimation. Following the discussions with the Committee, OLAF committed to carrying out an internal assessment in order to further refine the drafting of its financial recommendations. As the result, *Instructions on drafting financial recommendations and the related sections of OLAF Final Report* were issued on 7 October 2016 by the OLAF Director-General.
62. The Supervisory Committee further acknowledges that OLAF is conducting an internal assessment as regards the financial monitoring process and that this assessment includes alternative approaches to measure the effectiveness of the Office's financial recommendations. In essence, the OLAF Director-General intends to ask the recipients of his financial recommendations to communicate the amounts accepted for recovery.

### ***Administrative recommendations***

63. Since 1 January 2013, OLAF reports<sup>21</sup> that it issued 69 administrative recommendations (11 in 2013, 28 in 2014 and 30 in 2015).
64. However, the OLAF Director-General has not reported on the administrative recommendations issued by him which have not been followed up by the recipients, as there is no requirement to do so. Nevertheless, the Supervisory Committee considers that this information would be useful.

### ***PRELIMINARY DRAFT BUDGET 2017***

*Article 6 (2) of Commission Decision 1999/352/EC of 28 April 1999 establishing the European Anti-fraud Office, as amended by Decision of 27 September 2013 2013/478/EU:*

*"2. After consulting the Supervisory Committee, the Director-General shall send the Director-General for budgets a preliminary draft budget to be entered in the annex concerning the Office to the Commission section of the general budget of the European Union."*

*Article 15(1) of the Regulation (EU) No 883/2013, third paragraph:*

*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, [...]*

65. The Supervisory Committee supported the Preliminary Draft Budget of OLAF for the year 2017 provided its recommendations and observations are fully taken into consideration for the OLAF budget 2018, which the Committee will review in its yearly opinion.
66. It is the Committee's view that OLAF's resources should be concentrated on its core business i.e. investigating illegal activities, serious irregularities, fraud, breach of professional duties, and other elements detrimental to the EU interests. Based on OLAF's comments, the Committee however agrees that for preserving the independence of OLAF some limited and justified support resources are maintained within OLAF.
67. As far as investigative staff is concerned, the Committee acknowledges the explanations provided for 171 staff working in the investigative field - *"In addition to staff whose job description is "investigator", this figure includes also other investigative staff, such as "case-handler-selector" or*

<sup>21</sup> OLAF Operational Report 2015, see figure 12 "recommendations issued" in page 20 .



*"intelligence analyst". Heads of sector and deputy heads of investigative units are also investigative staff, despite having different job titles".*

68. In-house legal experts contribute to strengthening OLAF's capacity for the correct application of national law and the development of EU-wide capacities in the fight against fraud. OLAF should therefore continue recruiting EU staff with certified legal qualifications in the related language. The Committee considers that it is not possible to compensate for the lack of internal national legal experts through internal training for non-lawyers or limited supporting documentation, such as the "Country mini-profiles" available on OLAF's intranet and reviewed by the Committee. In this regard, the Committee welcomes the ongoing specialized competitions.

#### **OLAF'S ANNUAL ACTIVITY REPORT 2015**

*The first sub-paragraph of Article 15(1) of Regulation (EU) No 883/2013,*

*"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."*

69. The Supervisory Committee acknowledges that OLAF has improved the presentation of its OLAF Report and its Annual Activity Report in terms of readability, clarity of reporting as well as the charts and figures provided, which take into account the recommendations of the Supervisory Committee. In particular, the Committee welcomes the indication in the OLAF Report for the year 2015 of the "Average duration of closed investigations only" confirming the approach adopted in the 2014 OLAF Report.
70. The Committee identified ways to improve the reporting on the duration of investigations. The absence of data on review and control over duration of investigations is a reason for concern. Also the Committee would welcome a reasoned justification for the use of the 20-month benchmark.
71. The reporting by OLAF on complaints linked to protection of fundamental rights is not exhaustive. OLAF reports to the Committee only on the complaints lodged according to a procedure published on a website. The Committee identified the existence of other complaints which have a possible link to the protection of fundamental rights and procedural guarantees. The Committee considers it important that reporting of complaints be comprehensive given its role in this field.
72. The OLAF Director-General reporting on the implementation of the Supervisory Committee's recommendations does not match the Committee's evaluation. The Committee is concerned about the lack of sufficient information shared by the OLAF Director-General in this regard.

#### **FOLLOW-UP OF BY OLAF OF THE SUPERVISORY COMMITTEE RECOMMENDATIONS**

*The third paragraph of Article 15(1) of Regulation No 883/2013:*

*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.*

73. During the period covered by this report, the Supervisory Committee monitored the progress made by OLAF in respect of 26 of its recommendations. The Annex contains details of the specific recommendations and an update on the status of each of them.
74. The Supervisory Committee categorises as "high-priority" the recommendations which are related to fundamental rights of EU citizens, to OLAF's regulatory obligations and to safeguards of OLAF's independence.

75. The OLAF Director-General agreed on the list of recommendations to be followed up and did not formally disagree with the content of any of the 26 recommendations issued. However, he only self-assessed 15 of them<sup>22</sup>. Based on information available, the Supervisory Committee assessed the level of implementation of the recommendations as follows: 3 implemented, 1 partially implemented, 11 not implemented, 7 status unknown<sup>23</sup>, 4 obsolete.
76. As for future opinions, the Supervisory Committee will seek a formal commitment from the OLAF Director-General to take action(s) in response to recommendations. The Committee will not follow up any recommendations for which no such commitment is given on the grounds that the recommendation is not agreed.
77. Reporting by the OLAF Director-General does not reflect the current state of play of the Supervisory Committee's recommendations. The Committee is concerned about the non-implementation of its five "high priority" recommendations and the lack of sufficient information from the OLAF Director-General.

## ***SUPERVISORY COMMITTEE GOVERNANCE***

### ***Meetings with EU institutions, bodies and other agencies***

78. The Supervisory Committee actively contributed to the exchange of views with the Institutions as foreseen in Article 16 of Regulation No 883/2013 and regularly held meetings with and provided expert assistance to the Vice-President of the Commission with responsibility for OLAF, the European Parliament (the Budgetary Control Committee) and the Anti-Fraud Group in the Council.
79. The Supervisory Committee continues to engage with other stakeholders such as the European Court of Auditors, the European Ombudsman and the European Fundamental Rights Agency.

### ***Working methods and transparency***

80. In 2016, the Supervisory Committee held 11 plenary meetings. The Chair, the *rapporteurs* and the staff of the Committee's Secretariat also met regularly to work on particular issues. For every major issue examined, the Committee appointed a *rapporteur*. The *rapporteurs* worked with the Secretariat to prepare draft reports, opinions or papers to be discussed in plenary meetings. They also met with OLAF management and staff in the framework of the preparation of the Committee's opinions and reports.
81. The Supervisory Committee's opinions were always discussed extensively with OLAF prior to finalization. In 2016, the Committee consulted with OLAF and developed its procedure for adoption of opinions and reports. To ensure maximum transparency of its work, the Committee decided to publish non-confidential documents of public interest on its own website (<http://europa.eu/supervisory-committee-olaf/>).

### ***Amendment of Regulation 883/2013 concerning the Supervisory Committee secretariat***

82. The Secretariat of the Supervisory Committee consists of lawyers and assistants who ensure the daily monitoring of OLAF investigative activities and assist the Supervisory Committee Members in the execution of their tasks. The Secretariat receives information destined for the Committee on which it carries out an initial review. The Secretariat is also responsible for giving legal advice to the Committee Members. In 2016, the Secretariat had a total of eight posts.

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<sup>22</sup> Note ARES(2016)222388 of 15 January 2016, where the OLAF Director General establishes that "OLAF considers 11 out of the 15 recommendations as implemented and one as not applicable. The implementation of three recommendations, which are linked with the discussion on the Working Arrangements between OLAF and the SC, is ongoing"

<sup>23</sup> The OLAF Director-General provided no information to the Committee for 11 out of 26 recommendations issued in Opinion N° 2/2015 on the Legality Check and Review in OLAF and in Opinion N° 3/2015 on the draft Investigation Policy Priorities 2016.

83. The Supervisory Committee's Secretariat plays a crucial role by assisting the Committee in implementing its monitoring functions in a loyal and efficient manner. During the reporting period, however, the Secretariat staff remained administratively subordinated to the OLAF Director-General (notably in terms of training, evaluation, career development, and promotion).
84. Following the amendment to Regulation No 883/2013<sup>24</sup>, as of 1 January 2017 the Committee's Secretariat is provided directly by the Commission, independently from OLAF and in close cooperation with the Committee.

### ***Budgetary matters***

85. In 2016, the Committee's budget of € 200 000 was transferred from OLAF to the European Commission to ensure the Committee's independence from OLAF.
86. At the request of the Supervisory Committee, the Internal Audit Service of the European Commission prepared a report on the governance, planning, monitoring and implementation of the budget line of the OLAF Supervisory Committee. The Supervisory Committee welcomes the audit report and considers it a valuable tool to manage its budget better and more in line with practices of the Commission services. Several of the recommendations issued by the Internal Audit Service have already been implemented and integrated into the daily management of the Supervisory Committee's budget.

## ***LEGISLATIVE FRAMEWORK***

### ***Evaluation of Regulation No 883/2013***

*Article 19 of Regulation 883/2013,*

*"By 2 October 2017, the Commission shall submit to the European Parliament and the Council an evaluation report on the application of this Regulation. **That report shall be accompanied by an opinion of the Supervisory Committee** and shall state whether there is a need to amend this Regulation".*

87. According to the European Commission's roadmap for the evaluation of Regulation No 883/2013<sup>25</sup>, it identified key effectiveness, efficiency, relevance and coherence questions to be tackled. The governance aspects of the evaluation will include the monitoring tasks of the Supervisory Committee. The evaluation will cover the period from 1 October 2013 when Regulation No 883/2013 entered into force.
88. The Supervisory Committee has started its own process for evaluation of the application of the Regulation. It will be based on the results of the Committee's analysis, monitoring and follow up of the investigative activities of OLAF.
89. During the reporting period some Committee members were contacted by the Commission consultants for individual interviews to contribute to the evaluation of the Regulation. They agreed to participate only once their Committee mandate ended to avoid any situation of a potential conflict of roles.

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<sup>24</sup> Regulation (EU, Euratom) No 2016/2030 of the European Parliament and of the Council of 26 October 2016 amending Regulation (EU, Euratom) No 883/2013, as regards the secretariat of the Supervisory Committee of the European Anti-Fraud Office (OLAF) The regulation is applicable since 1 January 2017.

<sup>25</sup> See [http://ec.europa.eu/smart-regulation/roadmaps/docs/2017\\_olaf\\_001\\_evaluation\\_of\\_regulation\\_883\\_2013\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2017_olaf_001_evaluation_of_regulation_883_2013_en.pdf)

***Proposal for the establishment of the European Public Prosecutor Office***

90. The adoption of the European Public Prosecutor Office (EPPO) Regulation was listed in the Work Programme of the European Commission for 2017 as a priority for the co-legislators.
91. It is likely that the establishment of the EPPO will have an impact on the work and resources of OLAF and accordingly, on the monitoring role of the Supervisory Committee. It may require further revision of Regulation N° 883/2013. The Committee has, from the beginning of the project, regularly followed relevant developments and will continue to do so.

***ANNEX***

***FOLLOW UP OF THE SUPERVISORY COMMITTEE'S RECOMMENDATIONS BY OLAF***



PRIORITY	SUPERVISORY COMMITTEE'S RECOMMENDATIONS	OLAF SELF-ASSESSMENT	SC FINAL ASSESSMENT
	<b>Opinion 3/2014 on OLAF's Preliminary Draft Budget 2015:</b> <i>(I) OLAF should present more detailed information on allocation of resources to priority areas</i>	<i>Implemented</i>	<b>NOT IMPLEMENTED</b>
	<i>(II) OLAF should continue its work to develop an exemplary human resources strategy and inform the SC regularly on the progress</i>	<i>implemented</i>	<b>IMPLEMENTED</b>
	<i>(III) The Director General of OLAF should delegate, as far as possible, the powers of the appointing officers and Authorising Officer with respect to the staff and budget of the SC Secretariat to the Head of the Secretariat</i>	<i>implemented</i>	<b>OBSOLETE</b>
	<i>(IV) Changes to the staff and budget of the Supervisory Committee's Secretariat shall be subject to consent of the Supervisory Committee</i>	<i>implemented</i>	<b>OBSOLETE</b>
	<i>(V) In accordance with Article 7(2) of the Commission Decision of 28 April 1999, this Opinion shall be transmitted by OLAF to the Budgetary Authority</i>	<b>Not applicable</b>	<b>NOT IMPLEMENTED</b>
<b>HIGH</b>	<b>Opinion 4/2014 on Control of the duration of investigations conducted by OLAF:</b>  <i>OLAF should improve the information transmitted to the SC for the purpose of monitoring of the duration of investigations, in order to enable the SC to effectively and efficiently carry out its monitoring role and thereby comply with its obligation to report to the EU institutions. OLAF should also optimise the use of tools it has put in place for managing the duration of investigations. In doing so, OLAF should:</i>  <i>(1) Enrich the content of the 12-month reports with recurrent factual case-related information, in order to enable the SC to understand the background and progress of investigations.</i>  <i>To implement this recommendation, the SC suggests that the reports contain information such as the legal basis for the opening of investigations, a short description of the investigation (allegation, category of source of information, type of fraud or irregularity, the area concerned, the EU institution, body, office, agency or the Member State concerned, legislation allegedly breached, estimation of the financial impact, if possible), main investigative activities carried out or to be carried out and their chronology, time barring issues.</i>	<b>Ongoing</b>	<b>NOT IMPLEMENTED</b>
	<i>(2) Better substantiate the factual information concerning reasons for investigations lasting more than 12 months.</i>  <i>To implement this recommendation, the SC suggests that OLAF include in the 12-month reports categories and sub-categories of non-exhaustive pre-defined reasons explaining the non-completion of investigations within 12 months, supplemented by specific case-related information. OLAF could also provide guidelines and/or training to the investigators.</i>	<b>Ongoing</b>	<b>PARTIALLY IMPLEMENTED</b>
	<i>(3) Better substantiate the information on remedial measures to speed up investigations</i>	<b>Ongoing</b>	<b>NOT IMPLEMENTED</b>
	<i>(4) Give further consideration to the remedial measures to speed up investigations lasting more than 12 months and, in particular, develop tools allowing it to monitor the allocation of investigative resources based on the estimated workload.</i>	<i>implemented</i>	<b>NOT COMMUNICATED</b>
<b>HIGH</b>	<i>(5) Review and reinforce the process of verification of continuity of investigations carried out by the Investigation Selection and Review Unit (ISRU).</i>	<i>implemented</i>	<b>NOT COMMUNICATED</b>

	<u>Opinion No 5/2014 on OLAF's External Reporting on the Duration of Investigations:</u> <i>(1) For the sake of transparency and comparability of the information in the statistics on average duration of investigations, OLAF should report on the average duration of investigations closed within the reporting period.</i>	<i>implemented</i>	<b>IMPLEMENTED</b>
	<i>(2) Any one-off administrative operations having impact on calculation of the average duration of investigations should be highlighted, as a matter of transparency, in OLAF's reporting</i>	<i>implemented</i>	<b>NOT IMPLEMENTED</b>
<b>HIGH</b>	<i>(3) In the light of fundamental rights and principles of sound administration, OLAF should, in its Annual Report, report more transparently on the duration of the longest lasting investigations.</i>	<i>implemented</i>	<b>NOT IMPLEMENTED</b>
	<u>Opinion No 1/2015 on OLAF's Preliminary Draft Budget for 2016:</u> <i>(I) Director General of OLAF continues to delegate, as far as possible, the powers of the Appointing Officer and Authorising Officer with respect to the staff and budget of the SC Secretariat to the Head of the Secretariat.</i>	<i>implemented</i>	<b>OBSOLETE</b>
	<i>(II) Changes to the staff and budget of the Supervisory Committee's Secretariat shall be subject to consent of the Supervisory Committee</i>	<i>implemented</i>	<b>OBSOLETE</b>
<b>HIGH</b>	<u>Opinion 2/2015 on Legality check and review in OLAF:</u> <i>(1) Ensure that the ISRU has at its disposal sufficient staff resources so as to cover, efficiently, the legal expertise on national laws of all Member States;</i>	<i>Not communicated</i>	<b>NOT COMMUNICATED</b>
	<i>(2) Consider modifying a number of questions in the work-forms used by the ISRU, so as to invite comprehensive and substantiated replies, including case-related circumstances and legal arguments, where necessary;</i>	<i>Not communicated</i>	<b>NOT COMMUNICATED</b>
	<i>(3) Record properly in the case files the reviewers' suggestions and comments leading to eventual changes in the OLAF reports;</i>	<i>Not communicated</i>	<b>NOT COMMUNICATED</b>
	<i>(4) Ensure systematic follow-up to the reviewers' comments and provide them with appropriate feed-back as to their implementation;</i>	<i>Not communicated</i>	<b>NOT COMMUNICATED</b>
<b>HIGH</b>	<i>(5) Develop reviewers' best practices, in particular with regard to the verification of respect of procedural guarantees and proportionate duration of investigations:</i>  <i>- Ensure that the reviewers systematically check whether the applicable requirements and procedural guarantees have effectively been complied with and sufficiently substantiate their opinions;</i>  <i>- Reflect upon the necessity of establishing deadlines for the ISRU to provide its opinions, on the basis of a thorough analysis of the average time needed;</i>  <i>- Ensure substantial compliance verification and more consistency of the ISRU's opinions with the case-files reviewed, so as to ensure that the ISRU detects, to the largest extent possible, all instances of possible non-compliance with the legal requirements, incl. procedural guarantees;</i>  <i>- Make an analysis of the fields identified by the ISRU as being in need of improvement and the measures taken on the basis of review findings.</i>  <i>- Continue developing and maintaining constructive relationships between the investigation units and the ISRU.</i>	<i>Not communicated</i>	<b>NOT COMMUNICATED</b>
	<i>(6) The SC invites the OLAF DG to consider the adoption in due time of an Action Plan on recommendations to be taken up in the future with a view to effectively reinforcing the internal control and advisory mechanism foreseen by the Regulation.</i>	<i>Not Adopted</i>	<b>NOT IMPLEMENTED</b>



	<p><b><u>Opinion 3/2015 the OLAF draft Investigation Policy Priorities (IPPs) for the year 2016:</u></b></p> <p><b><i>(I) OLAF should determine IPPs, based on an impact assessment, the evaluation of the implementation of previous IPPs, the definition of specific performance indicators and a systematic linkage with EU spending priorities and EU policy priorities in the fight against financial crimes</i></b></p>	<p><b>Not communicated</b></p>	<p><b>NOT IMPLEMENTED</b></p>
	<p><b><i>(II) OLAF should revise its instructions and guidelines to selection officers in order to fully reflect the importance of the IPPs in the case selection process. These revised guidelines should be submitted to the SC, prior to their adoption, in line with Article 17(8) of the Regulation.</i></b></p>	<p><b>Not communicated</b></p>	<p><b>NOT IMPLEMENTED</b></p>
	<p><b><i>(III) OLAF should, with the aim of establishing IPPs for 2017, undertake, a complete impact assessment of IPPs for previous years, in consultation with all stakeholders in the Commission, other Institutions, Member States' authorities concerned and external parties involved.</i></b></p>	<p><b>Not communicated</b></p>	<p><b>NOT IMPLEMENTED</b></p>
	<p><b><i>(IV) OLAF should organise an inter-service consultation, in line with Commission procedures, when adopting the IPPs</i></b></p>	<p><b>Not communicated</b></p>	<p><b>NOT IMPLEMENTED</b></p>
	<p><b><i>(V) OLAF should clarify the IPPs for 2016 when referring to the illegal manufacturing "of tobacco", in the light of the contribution received from DG TAXUD.</i></b></p>	<p><b>Not communicated</b></p>	<p><b>IMPLEMENTED</b></p>