



Opinion No 3/2024

OLAF Guidelines on investigation procedures

12 November 2024

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INTRODUCTION

1. By letter of 24 November 2023, the Director-General of the European Anti-Fraud Office (OLAF) requested that the Supervisory Committee give its observations on the draft new guidelines on investigation procedures intended to be adopted in 2024. The Committee is aware of the complexity of the task of compiling clear, thorough and practical rules of procedure in a single text, given the multiple regulations applicable to OLAF's mandate and the numerous existing internal instructions in this field. However, revising the guidelines is a serious undertaking for OLAF in view of the potential reform of the OLAF Regulation after the evaluation exercise in 2026 and the relations with the European Public Prosecutor's Office (EPPO) and other stakeholders. This is an opportunity for OLAF to set out the most efficient way to implement its wide investigation powers and internal control procedures.

Background information: the introduction of guidelines on investigation procedures

2. With the adoption of the OLAF Regulation¹ in 2013 (the "OLAF Regulation"), the legal instruments available to OLAF were supplemented by the introduction of 'guidelines on investigation procedures'². The guidelines were conceived as a way of enabling the OLAF Director-General to act in full independence in the conduct of investigations, but with greater transparency and accountability. For this purpose, the guidelines are also to be published on the OLAF website.
3. The guidelines have a binding effect on OLAF itself, but without creating or altering any rights or obligations arising under the OLAF Regulation. In 2013, the OLAF Director-General was empowered to give practical guidance to OLAF staff. This initially covered the following matters: (i) conduct of investigations; (ii) the procedural guarantees; (iii) details on the internal advisory and control procedures to be followed, including a legality check; and (iv) data protection³.
4. On these grounds, in September 2013 the OLAF Director-General published on OLAF's website the first 'guidelines for investigation procedures' (GIPs). This was a brief set of 28 articles, many of which merely copied existing provisions from the Regulation. Following the guidelines' adoption, the OLAF Director-General supplemented them with numerous internal guidelines and general instructions on key investigation matters, which fell in fact within the

¹ 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, as amended by Regulation 2020/2023, OJ L 423, 28.12.2020. The consolidated version of the Regulation is also available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20210117>.

² See Article 17(8) and recital (18) of the OLAF Regulation (EU, Euratom) No 883/2013: 'Investigations should be conducted **under the authority** of the Director-General, **in full independence** from the institutions, bodies, offices and agencies and from the Supervisory Committee. **To that end**, the Director-General should be able to adopt **guidelines on investigation procedures** for the staff of the Office. Those guidelines should provide **practical guidance** to the staff of the Office **on the conduct of investigations** and the **procedural guarantees and rights of persons concerned or witnesses**, and **details on the internal advisory and control procedures to be followed, including a legality check**. To provide greater **transparency** with regard to the conduct of investigations, **those guidelines should be available to the public on the Office's website**. Those guidelines should not create or alter any rights or obligations arising under this Regulation.'

³ See Article 17(8) of the OLAF Regulation (Regulation No 883/2013).

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scope of the GIPs. These were compiled in an internal set of working tools and were not given publicity⁴.

5. In the last evaluation of the OLAF Regulation carried out in 2017, the Supervisory Committee considered that this approach could be misleading for investigators. It called for all the key rules on investigation procedures to be unified in a single text that is publicly available, stressing that this was urgently needed⁵. In December 2020, the EU legislator amended the OLAF Regulation and took on board many of the Committee's remarks in the above-mentioned Opinion⁶.
6. As a result, a new Article 17(8) was drafted, expanding both the matters and the degree of information that the GIPs should cover for the proper guidance of investigators. These were as follows: **(i) the practices** to be observed in implementing the Office's mandate; **(ii) detailed rules governing investigation procedures**; **(iii) the procedural guarantees**; **(iv) details on the internal advisory and control procedures**, including the **legality check**; **(v) data protection** and policies on communication and **access to documents** as laid in down in Article 10(3b); and **(vi) relations with the EPPO**⁷. In addition, the legality check of investigations was entrusted to OLAF staff who are 'experts in law and investigative procedures' and whose opinions are to be annexed to the final investigation report (Article 17(7)).
7. With this new legal set-up, the revision of the GIPs started in 2021. In the first stage, the OLAF Director-General made a partial revision relating to new substantive provisions of the Regulation. The second and current stage of the revision aims at repealing most of the internal set of working tools, instructions and guidelines that were not publicly available and unifying them in the text of the GIPs, which in turn needed to be expanded in line with Article 17(8) of the OLAF Regulation⁸.

OBJECTIVE OF THE OPINION AND METHOD

8. In this Opinion, the Committee provides its observations and recommendations to the OLAF Director-General before the GIPs are adopted in line with Article 17(8) of the OLAF Regulation. The Opinion analyses whether the draft revised version of the GIPs encompasses in a consistent way and in a comprehensive text: (i) the rules and practices that OLAF staff

⁴ The first GIPs were adopted on 18 October 2013. From 2013 to 2017, the list of guidelines, instructions, decisions and other internal acts governing OLAF's investigative activities, not publicly available, was as follows: [OLAF internal documents - confidential].

⁵ See Supervisory Committee (SC) Opinion No 2/2017 accompanying the Commission evaluation report on the OLAF Regulation addressed to the EU legislator. 'The SC considers that the patchwork of rules does not provide the conduct of investigations with the transparency intended by the legislator and that the number of instructions may mislead OLAF staff, and specifically investigators. This situation could be prevented by having comprehensive investigation procedures laid down in the Regulation.'

⁶ See Regulation (EU, Euratom) No 2020/2223 amending the OLAF Regulation.

⁷ Recital (19) of Regulation No 883/2013 states 'OLAF staff should conduct investigations **in accordance with the GIPs and** on the basis of **individual instructions** given by the Director-General **in specific cases**'. Recital (21) states 'The GIPs should be in accordance with the Regulation'. **Recital (42) of Regulation No 2020/2223** states 'In order to supplement the procedural rules on the conduct of investigations set out in Regulation (EU, Euratom) No 883/2013, the Office should lay down guidelines on investigation procedures **to be followed by the staff of the Office.**'

⁸ The OLAF Director-General consulted the Supervisory Committee in both instances, and the Committee delivered two notes to him: the first on 17 August 2021 'First stage of the revision of the Guidelines on Investigation Procedures (GIPs)' (ARES(2021)5153587) and the second on 28 July 2023 'The draft of the Guidelines on Investigation Procedures for OLAF Staff (GIPs)' (ARES(2023)5253263).

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must observe in the conduct of investigations; and (ii) the internal advisory and control procedures for the respect of fundamental rights and procedural guarantees as required by Articles 17(7) and 17(8) of the OLAF Regulation⁹.

9. Particular attention is paid to ensuring that the GIPs formalise rules enabling the Supervisory Committee to strengthen OLAF's independence and to monitor how OLAF implements its investigative function in the proper exercise of its legal competence. The GIPs constitute practical rules that OLAF staff must follow¹⁰. Compliance with a body of clear rules makes it possible to ensure equal treatment, quality, efficacy, transparency and independence of investigations, while observing legality and legal certainty. These are key principles of EU law and paramount for OLAF's credibility.

Methodology

10. The Committee has examined the 97 articles and the 5 chapters of the new draft GIPs sent by the OLAF Director-General: 'General principles and provisions'; 'Selection'; 'Investigations, coordination, and support cases'; 'Final review and case closure'; and 'Monitoring and assistance'. It has examined the content of the existing internal instructions and guidance notes to OLAF staff, including those that the OLAF Director-General envisages repealing after the new GIPs are adopted. It has verified whether appropriate reference is made in the text to: (i) the existing internal instructions and guidance notes that OLAF will not repeal; and (ii) any other approach demonstrating that a clear link has been applied between the GIPs and internal rules and guidance notes which further detail the GIPs¹¹.
11. The Committee acknowledged the OLAF Director-General's replies to its preliminary observations from the beginning of the revision process. These included the impact of a recent national court judgment, the outcome of recent complaints to both the Controller of procedural guarantees and the European Ombudsman, and 'technical adjustments and structure and language improvements' in the last version of the draft GIPs¹².
12. The Supervisory Committee has on many occasions made recommendations to the OLAF Director-General on matters that, in the Committee's view, should be formalised in the GIPs. In recent years, it adopted several opinions in this regard, in particular Opinion No 3/2021 on sensitive internal cases¹³ and Opinion No 5/2021 on the duration of OLAF investigations¹⁴. In the present Opinion, the Committee also analysed whether the current draft revision of the GIPs is in line with those recommendations.
13. The Committee has divided the analysis of the draft version of the GIPs into several areas. These refer to topics that are particularly relevant for strengthening OLAF's independence and

⁹ The **list of existing internal instructions and guidance notes to be repealed after the new GIPs are adopted** reads as follows: [OLAF internal documents - confidential].

¹⁰ Recital 42 of Regulation (EU, Euratom) No 2020/2223 amending the OLAF Regulation (Regulation No 883/2013).

¹¹ The **list of internal instructions and guidance notes that OLAF will keep after the new GIPs are adopted** includes: [OLAF internal documents - confidential]

¹² See Note from the OLAF Director-General to the Chair of the Supervisory Committee [Confidential]. See also judgement [Reference to judgement of the Belgian Court – confidential].

¹³ The non-confidential version of Opinion No 3/2021 – Supervision of OLAF internal investigations: Strategic conclusions and best practices, also available at: https://supervisory-committee-olaf.europa.eu/document/download/57f5949d-886a-46ab-944c-e73a2da06bb2_en?filename=NC%20OPINION%203_2021-EXTRACT%20%20for%20Institutions.pdf.

¹⁴ Opinion No 5/2021 'Analysis of OLAF investigations lasting more than 36 months', also available at: https://supervisory-committee-olaf.europa.eu/document/download/25411b56-2cc1-4ba2-9c5c-b58e1e95c236_en?filename=NCV_Opinion%205_2021.pdf.

the monitoring work of the Supervisory Committee. Particular attention is paid to the duration of investigations, the decision-making process, and key procedural steps in the opening, conduct and closure of investigations. Following this analysis, the Committee makes observations and recommendations on the protection of procedural guarantees, the internal control and advisory procedures, and relations with the EPPO.

STRENGTHENING OLAF'S INDEPENDENCE AND THE SUPERVISORY COMMITTEE'S MONITORING ROLE

I.1. Analysis of the duration of OLAF investigations

This analysis of the draft revised GIPs, dealing with the duration of investigations, relates to Articles 6 and 11 ('General principles and provisions' chapter) and Articles 23, 40, 41 and 42 ('Selection process' and 'Investigations, coordination, and support cases' chapters). These provisions relate also to the OLAF internal note [OLAF internal document - confidential]¹⁵, which the OLAF Director-General envisages repealing after the new GIPs are adopted.

1. The 'reasonable time' requirement

Background: general considerations

14. The Committee is aware that the OLAF Regulation (Article 9) does not explicitly include among the 'Procedural guarantees' any specific or binding period for completing investigations. However, the right of people to have their affairs handled by OLAF within a reasonable time is guaranteed by the right to good administration under Article 41 of the EU Charter of Fundamental Rights¹⁶. Article 7(5) of the OLAF Regulation also establishes a clear link between the reasonable duration of an OLAF investigation and the specific circumstances of the case: 'Investigations shall be conducted **continuously** over a period which must be **proportionate** to the **circumstances** and **complexity** of the case'¹⁷.
15. To guarantee that OLAF investigations have a reasonable duration, Article 15(1) of the Regulation entrusts the Committee with monitoring the duration of such investigations. To this end, Article 17(5)(d) of the Regulation states that 'The Director-General shall inform the Supervisory Committee periodically on the duration of investigations in accordance with Article 7(8)¹⁸'. The Committee's monitoring role in this field is one of its main duties. It aims to secure that *no external interference* in the independence and impartial conduct of the investigation takes place, and also that there are *no unjustified periods of inactivity* preventing the investigation's intended result and the effective follow-up by the EU institutions, bodies, offices and agencies and the Member States concerned.

¹⁵ [OLAF internal document - confidential].

¹⁶ Article 41 paragraph 1 of the Charter of Fundamental rights of the EU 'Right to good administration', states: 'Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices, and agencies of the Union.'

¹⁷ According to case law, the OLAF Regulation does not prescribe any specific and binding period for OLAF to complete investigations. Instead, the circumstances of each case must be taken into consideration. See Case T-48/05, *Franchet and Byk v Commission*, paragraph 274; - Case T-166/16 *Panzari v European Parliament*, paragraph 104; Case T-609/20 *LA International Cooperation Srl*, paragraph 51; Case T-11/2023 *XH v Commission*, paragraph 82.

¹⁸ Article 7(8): '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, where appropriate, the remedial measures envisaged with a view to speeding up the investigation**'. This key role of the Supervisory Committee has not been mentioned in Article 11 of the draft GIPs, where reference is made to working arrangements that are meant to be a channel to facilitate the exchange of information and which in no way replace OLAF's duties towards the Committee as established under the OLAF Regulation.

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16. In its last opinion on the duration of investigations, the Committee noted that OLAF lacked specific and detailed provisions in the GIPs on issues of continuity and the duration of investigations. It identified shortcomings in OLAF procedures and recommended that the OLAF Director-General adopt formal, clear and detailed guidelines as part of the revision of the GIPs¹⁹.

Analysis of Articles 6 ('General principles and provisions' – Chapter I), and Articles 40, 41 ('Investigations, coordination, and support cases' – Chapter III)

17. The Committee notes that Article 6 of the draft revision, under the title 'Reasonable duration of cases', is worded similarly to Article 7(5) of the OLAF Regulation. It states that 'investigations shall be conducted *continuously* within a reasonable period which must be "proportionate to the complexity of the case and any other relevant circumstances"', while merely adding 'such as the time taken by national authorities, the EU institutions, bodies, offices or agencies or international organisations to provide OLAF with relevant information.'
18. The Committee acknowledges that this addition in Article 6 intends only to illustrate one of the main potential reasons for delays that may arise in the investigation (the lack of prompt cooperation from other authorities)²⁰. However, this selective reference to one of the potential reasons for delays does not tackle the main issue to be covered by the GIPs in this field, i.e. avoiding periods of inactivity. The Committee therefore recommends that OLAF delete this addition. The GIPs should give clear guidance to investigators to ensure that there are '**no unjustified periods of inactivity**' during the investigation process, which would be the key matter to include in this provision²¹.
19. In the same vein, the Committee noted that the existing internal instructions [OLAF internal document - confidential], which the OLAF Director-General envisages repealing, explicitly indicate that OLAF staff should 'avoid the occurrence of unjustified periods of inactivity'. For that reason, the Committee considers that OLAF should not repeal that reference but transpose it into the text of the revised GIPs and provide practical guidance to OLAF staff on how to avoid such periods²².

¹⁹ See recommendations 1c, 3, 4, 5, 6 of SC Opinion No 5/2021. In the interest of transparency, the Committee also recommended that the GIPs should be meaningful so as to assist the Controller of procedural guarantees in handling individual complaints against OLAF for infringements of procedural requirements and fundamental rights.

²⁰ There are multiple and equally relevant reasons for delays in the investigation life cycle. When assessing whether the duration of an investigation is reasonable, the EU Courts have considered, among others, the following criteria: the complexity of the case, the volume of documents examined by OLAF during the investigation and the volume of documents in the case file, the amount and complexity of investigative steps, and the conduct of the parties involved. See Case T-447/11, *Catinis v Commission*, Joined Cases F-124/05 and F-96/06, *A and G v Commission*, and Case T-166/16, *Panzari v European Parliament*.

²¹ The SC already expressed its views in Opinion No 5/2021, paragraph 44: 'the SC considers that periods of inactivity must be properly recorded and justified in the case file, and that obstacles or delays encountered by the case team during the lifecycle of the investigation should always be registered and traceable in the OCM (i.e. in the form of a note to the file). This would help OLAF management to effectively monitor progress in an investigation and ensure the required degree of transparency and accountability.' See also paragraph 46 and Recommendation 1b of the SC Opinion.

²² [OLAF internal document - confidential]. See also Recommendation 1b of SC Opinion No 5/2021, according to which the Director-General of OLAF should 'ensure that obstacles encountered by the case team that have or could have a substantial impact on the duration of an investigation, as well as all decisions taken to that effect by the case team or OLAF management are properly documented and registered in the case file of each investigation in the OCM;').

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2. Measures in the draft revised GIPs to secure the continuous conduct of investigations

Analysis of Articles 40 and 41 ('Investigations, coordination, and support cases' – Chapter III)

20. The Committee noted that Article 40 of the draft revised GIPs, 'Continuous conduct and reasonable duration of investigations', entrusts the managers of investigative units with the task of actively monitoring the steps to complete an investigation, a role in line with the one described in the existing instructions²³. The Committee welcomes the inclusion of some of the internal instructions and guidance notes in the draft revised GIPs in that field. However, it does not seem to be sufficient to overcome the issue of investigations in certain cases being excessively long²⁴.
21. The Committee is aware that external dependencies, such as delays from other institutions or Member State partners, are recognised as a potential risk for the continuity of investigations. However, the GIPs should include rules for OLAF staff to actively manage these risks through timely follow-up and propose solutions or mitigating measures to speed up the procedure. Article 41 'Work plans' should be explicit on this matter and include a section providing for proactive and uninterrupted relations with OLAF's partners to secure the continuity of the investigation team's work and the timely exchange of information²⁵.
22. Similarly, the Committee considers that the GIPs should: (i) detail the steps to take in cases where the investigation staff anticipate difficulty in closing the investigation within 12 months of opening due to exceptional circumstances; and (ii) state that the investigation staff must immediately notify the OLAF Director-General and submit to him an interim report outlining the reasons for the potential delay, including the steps already taken to mitigate it. This would enable the OLAF Director-General to determine the appropriate course of action, which may include reallocating resources or escalating to relevant EU or national authorities²⁶.
23. OLAF needs to equip the GIPs with instruments that are appropriate and sufficient to ensure that the obligation to conduct investigations continuously and without unjustified interruptions is met. The Committee takes note that an automatic alert mechanism on delays for investigators in the OLAF case management system (OCM) has been set up. However, it reiterates the need to provide, properly document and register in each OCM investigation case file: (i) an account of any obstacles the case team encounters, which have or could have a substantial impact on an investigation's duration; and (ii) an explanation of the team's efforts to deal with the obstacles and complete the investigation²⁷.
24. As to practical guidelines for OLAF staff in Article 40, the Committee considers that in cases running over 12 months, the GIPs should contain formal procedural steps for effective management and oversight. These should cover detailed instructions on the documentation to be compiled by the investigation unit (concerning all aspects of the case progress, including measures implemented to mitigate risks and strategies employed to prevent delays), together with a review of the OLAF Director-General's powers and the reporting duties towards the Committee, so that it can carry out its monitoring tasks. In addition, for cases lasting more

²³ See previous footnote.

²⁴ See the SC Opinion No 5/2021 on duration of investigations.

²⁵ On lack of cooperation from the Commission, EU institutions, Member State authorities, national authorities of third countries or from an individual/company, see SC Opinion No 2/2009 'OLAF's Reports of investigations that have been in progress for more than nine months'.

²⁶ The Committee notes that the Director-General's direct participation in monitoring this process was also set out in the existing instructions [OLAF internal document - confidential]. Similarly, SC Opinion No 5/2021 has previously made this recommendation (Recommendations 1c and 5).

²⁷ See also recommendation 1 of SC Opinion No 5/2021 on duration of investigations.

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than 24 months, the GIPs should also set up a specific review procedure so that the OLAF Director-General can decide how best to speed up their handling. The guidelines should also establish a special procedure for cases running over 36 months.

3. The obligation to report cases running over 12 months to the Committee

Analysis of Articles 40 and 42 ('Investigations, coordination, and support cases' – Chapter III)

25. The Committee examined the content of Articles 40 and 42 of the new draft GIPs '12-month reports to the Supervisory Committee'. It noted that the current wording ('the investigation unit prepares a report to the Supervisory Committee', 'OLAF management [...] actively monitors the investigative steps needed to complete an investigation by means of [...] reporting to the SC of cases lasting more than 12 months') might be misinterpreted as implying that once OLAF has sent the reports to the Committee, it is no longer accountable for the duration of its cases exceeding 12 months. The Committee would like to remind OLAF that internal control of the duration of OLAF investigations and compliance with the principle of reasonable duration of administrative investigations is a responsibility that lies with the OLAF Director-General. For these reasons, it is crucial to clarify in the GIPs that there is no direct interaction between the relevant investigation unit and the Committee.
26. While the investigation unit oversees the documentation to be provided to the OLAF Director-General, it is the OLAF Director-General who forwards this documentation to the Committee, whose interest lies in reviewing the Director-General's actions to mitigate risks and prevent delays. This distinction must be clearly set out in the GIPs to maintain proper channels of communication and accountability within the Office's organisational structure. Article 7(8) of the OLAF Regulation is clear in that respect: 'the Director-General shall [...] report to the Supervisory Committee.' This reporting obligation of the OLAF Director-General towards the Committee cannot be delegated. Thus, the SC considers it important that Article 42 make clear reference to the OLAF Director-General's obligation to report to the Committee.
27. In addition, the Committee considers that the GIPs should contain appropriate guidance on the information OLAF is to send to the Committee, in full alignment with Article 7(8) of the OLAF Regulation and the Committee's recommendations in several opinions. In particular, the investigation period should reflect the intricacy of the case, encompassing factors like the number of parties involved and the extent of documentation. Staff members are expected to prioritise prompt case resolution, striving to complete all cases as soon as practically possible²⁸. The Committee acknowledges that the reports provided to the SC by the OLAF Director-General are based on a reporting template agreed with the Committee in July 2019²⁹. In this context, it invites OLAF to ensure that Article 42 of the GIPs, '12 months reports to the Supervisory Committee', should include reference to detailed case-related information and to mitigation actions envisaged and/or already undertaken by the OLAF Director-General.

²⁸ The fact that the 'working arrangements between OLAF and the Supervisory Committee' provide the Committee with a system of access to the OCM does not release the OLAF Director-General from the obligation to report to the Committee on the duration of investigations. For that reason, it is important to establish the information that the 'report' should contain, including the 'opinion on the opening decision', the 'interim reports', the estimated economic impact, the content of the allegations, the legislation allegedly breached, the potential sanctions and any time-barring considerations. See [OLAF internal document - confidential].

²⁹ Information provided in the templates of July 2019 include: Date of opening decision; Description of the case, information on the extension of the scope; Criteria taken into account to determine the proportionality, efficient use of investigative resources and added value of the investigation at the time of the opening decision; Investigative activities already completed; Reasons why the investigation has not been completed; Remedial measures envisaged with a view to speeding up the investigation (from 18 months onwards, the reports include information on how remedial measures from former reports were implemented).

4. Conclusions and remarks

28. The Committee recalls that an OLAF administrative investigation is only the preliminary part of a much broader process, which may lead to other authorities imposing penalties, whether administrative, disciplinary, financial or judicial. In that context, OLAF's preliminary administrative enquiry must ensure that delays do not prevent the intended outcome of an investigation, including due to time-barring issues ('expiration of time limit' for the follow-up authorities to take actions) under the applicable national law and/or in EU law.
29. The Committee reiterates that the length of investigations has been a matter of common concern for the Supervisory Committee, for the institutions and partners and for OLAF itself. A lengthy investigation out of proportion to the circumstances and complexity of the case may have serious negative consequences on both the rights of defence of the individuals concerned and the investigative follow-up by the competent authorities. The GIPs should set out more detailed procedures on this matter, including the requirement for the OLAF Director-General to take into consideration potential time-barring issues from the opening stage of the investigation.

BOX 1

Summary of recommendations

The Committee recommends that the OLAF Director-General amend the draft version of the GIPs. The GIPs should:

- (i) include as a key reference that 'no unjustified delays or periods of inactivity' will occur in the investigation process – this is to ensure that obstacles the case team encounters, which have or could have a substantial impact on an investigation's duration, and all decisions taken to deal with them, are properly documented and registered in each investigation case file (in Article 6);
- (ii) ensure consistency in the criteria or circumstances listed to assess the reasonable duration of an investigation (in Article 6);
- (iii) specify the steps for the OLAF Director-General to take direct action when the investigative unit anticipates difficulties in completing the investigation within 12 months (in Article 40);
- (iv) formalise the internal overview mechanisms to scrutinise the duration of investigations lasting longer than 12 months (in Article 40);
- (v) keep the relevant wording of the current internal instructions [OLAF internal document - confidential];
- (vi) include in the work plan reference to solutions and measures to overcome problems, so as to achieve proactive and uninterrupted collaboration with OLAF partners and to secure the continuity of the investigation (in Article 41);
- (vii) make clear reference to the OLAF Director-General's obligation to report to the Supervisory Committee on the duration of investigations (in Articles 40 and 42); and
- (viii) refer to the fact that the information made available to the Supervisory Committee on the duration of investigations is detailed and includes mitigation or other measures to address the obstacles encountered by OLAF in trying to complete its investigations (in Article 42).

I.2. Analysis of the decision-making process in investigations: independence of the OLAF Director-General

This analysis of the draft revised GIPs dealing with the decision-making process relates to: Articles 9 and 10 (General principles and provisions, Chapter I), Articles 25, 26, 27 (Selection, Chapter II), Articles 29, 30, 31, 32 and Articles 43 and 44 (Investigations, coordination and support cases, Chapter III). These relate to the internal rules [OLAF internal document - confidential]³⁰, [OLAF internal document - confidential]³¹, [OLAF internal document - confidential]³², which the OLAF Director-General envisages repealing after the new GIPs have been adopted.

1. General considerations

30. One of the Committee's main duties, as provided for in Article 15 of the OLAF Regulation, is to ensure that the decision-making process in OLAF investigations remains free from external interference and is solely based on objective and verifiable grounds. The Committee has paid particular attention over the years to the practices observed by the OLAF Director-General and OLAF staff in this process. The Committee made straightforward recommendations on this matter in many opinions, most recently in Opinion No 3/2021; These recommendations should be formalised in the revision of the GIPs³³.
31. Among the many tasks attributed to the OLAF Director-General by the OLAF Regulation, the Director-General is specifically empowered to take the most important investigative actions, such as opening and closing investigations, directing the conduct of the investigation, and delivering recommendations on the actions to be taken once the final investigation report is drawn up 'under the Director-General's authority'³⁴. The Committee is aware that those extensive powers are rooted in the guarantees of independence linked to the Director-General's exercise of his or her powers. In this vein, not only does the Director-General decide on the actions previously listed, but also on whether to dismiss a case, to transmit information on internal investigations to national judicial authorities, to give consideration for the opening of a complementary investigation through an EPPO investigation, to discontinue an investigation, or to ask the EPPO to reopen an investigation. All these actions need to be clearly set out in the GIPs.
32. The Committee is aware of the exceptions to these rules and that the OLAF Regulation includes a provision allowing certain functions of the OLAF Director-General to be delegated 'to one or more members of the staff of the Office'³⁵. However, the OLAF Regulation remains vague on the implementing procedures for delegation. This is despite it making explicit reference to the areas subject to delegation at the various investigative stages, i.e. in the opening of

³⁰ [OLAF internal document - confidential]

³¹ [OLAF internal document - confidential]

³² [OLAF internal document - confidential]

³³ See SC Opinion No 3/2021 on sensitive internal investigations. [Reference to the content of the confidential version of the SC Opinion No 3/2021]

³⁴ In some other areas, it is not the Director-General but 'the Office' which is directly empowered by the Regulation to lead the decision-making process: See for instance the wording of Article 3(12): 'The Office may inform the competent authorities of the Member States'; Article 4(2)(b) 'the Office may request oral information...and written information from officials', and Article 4(8): 'the Office shall also inform the competent authorities of the Member State concerned (...)'.

³⁵ Article 17(6) of the OLAF Regulation reads: 'The Director-General may delegate in writing the exercise of certain of his functions under Article 5, Article 7(2), Article 11(7) and Article 12(2) to one or more members of the staff of the Office, specifying the conditions and limits governing such delegation.'

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investigations (Article 5), in the conduct of investigations (Article 7(2)), on the completion of the investigation (Article 11(7)), and on the transmission of information (Article 12(2)).

33. In that context, the Committee notes that from the perspective of supervision and external control over OLAF, the delegation of functions is not an entirely neutral practice. Whereas the OLAF Director-General is obliged to keep the Committee periodically informed (Article 17(5)) and is subject to the disciplinary authority of the Commission (prior consultation of the Supervisory Committee), OLAF staff are subject to the disciplinary authority of the OLAF Director-General in person. The Committee therefore considers that the GIPs should clearly set out the practical rules governing the decision-making process in this sensitive field, in particular when OLAF's investigative actions potentially interfere with the fundamental rights and procedural guarantees of persons under investigation.
34. In the present Opinion, the Committee noted that there is no unifying thread to the organisation of the rules on the decision-making process in the new GIPs; instead, they are scattered among many provisions in the various chapters³⁶. The Committee therefore focused its analysis in three broad areas: (i) the general principles and procedures applicable to the decisions to be taken by the OLAF Director-General; (ii) the principles and rules governing the delegation of certain of the Director-General's functions to members of staff of the Office; and (iii) the delegation of the production of written authorisations enabling Office staff to carry out investigative tasks³⁷.

2. General principles and procedures for the decision-making process: independence

This analysis of decisions to be taken by the OLAF Director-General relates to Article 9 (General principles and provisions, Chapter I), Articles 25 and 26 (Selection, Chapter II), Articles 29 and 30 (scope of the case, Chapter III) and Articles 31 and 32 (splitting and merging of investigations, Chapter III)

35. The principles governing the decision-making process have been a matter for concern for the Committee since the analysis of sensitive investigations in Opinion No 3/2021³⁸. It expected the review of the GIPs to put in place several recommendations, including the strengthening of internal safeguards for OLAF's independence and impartial conduct of investigations. Among the issues addressed, the Committee asked for clear investigation standards and for guidelines to be uniformly applied. Given the number of provisions in the new GIPs linked to this topic, in the current Opinion the Committee selected specific examples to illustrate the issues at stake.
36. In this vein, following the Committee's previous comments³⁹, it welcomes the reference to Article 21a of the Staff Regulations in Article 9(4) of the GIPs, reminding OLAF staff of their obligation to act fully in accordance with the law⁴⁰. In addition, the Committee believes that Article 1 of the new draft GIPs should indicate that in all investigations and operations, not only the OLAF Director-General but also OLAF staff are to carry out their tasks in full

³⁶ See for instance Articles 9, 23, 25, 26, 27, 28, 29, 30, 43 and 44 of the revised GIPs.

³⁷ In this area, see the glossary accompanying the new GIPs and the distinction made between 'authorisation' and 'authority', which the current Article 7(2) does not make, but which was set out by Article 6 of the first OLAF Regulation (Regulation No 1073/1999).

³⁸ See Point I 'Independence of the investigations and the decision-making process', conclusions (v), (vi), (vii) and (viii) of SC Opinion No 3/2021.

³⁹ See Note from the SC to the OLAF Director-General, July 2023 (ARES(2023)5253263).

⁴⁰ Article 9(4) of the new GIPs reads: 'Where a member of OLAF staff receives orders or instructions, which he or she considers to be irregular or likely to give rise to serious difficulties, Article 21a of the Staff Regulations applies'.

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independence and are not to seek or act on instructions from outside influence⁴¹. This will strengthen OLAF's independence when carrying out its investigative function.

37. In line with the recommendations made in Opinion No 3/2021, the Committee examined the general principles and provisions governing the decision-making process in Chapter I of the GIPs. It considers that Chapter I should make it clear that the following requirements underpin the decision-making process:
- a. **Transparency:** All decisions made by the OLAF Director-General regarding the management of investigations are to be transparent. This involves a clear rationale behind each decision and maintaining an open and understandable process.
 - b. **Documentation:** Every decision made by the OLAF Director-General on the opening, closing or scope alteration of a case is to be meticulously documented. This documentation includes the basis for the decision, any relevant discussions or considerations, and the decision's expected impact on the case. The documentation serves not only as a record for accountability but also as a reference for future strategies to manage investigations.
 - c. **Consultation and collaboration:** While the OLAF Director-General holds the final decision-making authority, these decisions are ideally made after consultation with relevant departments. Collaborative discussions prior to decision-making contribute to more comprehensive and well-informed outcomes⁴².
38. When examining the list of decisions in Article 9(1) to be taken by the OLAF Director-General in the draft new GIPs ('the Director-General takes decisions on the opening and closing of an investigation, coordination or support cases and changing of the scope'), the Committee noted that it does not cover the full range of decisions that only the Director-General is competent to take in accordance with the OLAF Regulation. The list is not exhaustive, and Article 9(1) does not refer to other key decisions for the OLAF Director-General to take, such as the dismissal of a case or the provision of information when he or she decides not to open a case despite there being sufficient suspicion⁴³. These decisions are referred to in other provisions relating to the selection process, including Articles 25, 26 and 28⁴⁴.
39. The Committee considers that Article 9 of the draft GIPs, being a definition of the OLAF Director-General's powers, needs to clearly specify the powers held by the OLAF Director-General, so as to give a clear overview of the decision-making process within OLAF.
40. In this area, the Committee notes that various provisions set out in different chapters of the new GIPs contain a wider range of decisions for the OLAF Director-General to take than those listed in Article 9. Thus, Article 25 ('Decision of the Director-General') mentions decisions on the dismissal of the case, on reporting of information to the EPPO and on the proposal to conduct a complementary investigation. In addition, Article 26 ('Information on dismissed cases') makes it the responsibility of the selection unit to transmit to the Member States or the IBOAs information on a case dismissed despite there being sufficient suspicion.

⁴¹ See recital 20 of the OLAF Regulation No 883/2013: 'In accordance with the Staff Regulations, the staff of the Office should carry out their investigative tasks in full independence and should avoid conflicts of interest.'

⁴² See conclusion (xix) of SC Opinion No 3/2021: 'The decision-making system governing the various stages of the investigation should be more transparent involving the input from experts of other Units in planning the strategy and defining objectives in the investigation'. See also references to [OLAF internal document - confidential] as an example of collective assistance to the Director-General in the decision-making process.

⁴³ See point 31 above, with some examples of the Director-General's far-reaching decision-making powers.

⁴⁴ Decisions such as dismissal of cases, conducting a complementary investigation, reporting on information to the EPPO, not opening the case, and transmitting information to the IBOA or Member State even when there is sufficient suspicion to open an investigation (splitting or merging cases).

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The Committee considers this not in line with the OLAF Regulation (Article 5(6)), which makes the OLAF Director-General directly responsible for such action. The Committee noted that sometimes there is no explicit mention of the OLAF Director-General's responsibility in the decision-making process (i.e. Articles 31 and 32 'splitting and merging cases').

41. The Committee also identified a lack of consistency in transposing into the draft new GIPs the current internal procedures [OLAF internal document - confidential]⁴⁵ that the OLAF Director-General envisages repealing. For instance, the investigation unit seems to bear direct responsibility for taking decisions such as the splitting and merging of investigations (Articles 31, 32 and 60(3)); this is in contrast with the clear and transparent decision-making steps involving the OLAF Director-General that the existing internal procedures describe⁴⁶. It is only by reading Article 29 on the 'scope of the case', where mention is made of the OLAF Director-General's role in the splitting-merging domain, that this becomes clear. The Committee recommends that the GIPs include provisions for a transparent decision-making step similar to the already existing 'internal procedures'.
42. Similarly, the Committee noted that the wording of certain provisions might be misinterpreted as implying that there is a direct relation between the investigation unit and the EPPO ('where the investigation unit envisages carrying out a complementary investigation ...it prepares a proposal to the EPPO', Article 50(3)). In fact, it is for the OLAF Director-General to decide on the proposal to conduct a complementary investigation (Article 25). To ensure further consistency, the GIPs should clearly set out the process by which the OLAF Director-General arrives at these decisions.
43. Lastly, on the quality of decisions both to open and to close an investigation, the Committee reiterates that the GIPs should ensure that such decisions are based on detailed rules incorporating a thorough legal analysis, thereby adding weight to the decisions of the OLAF Director-General.

3. Principles and rules for the Delegation of functions by the OLAF Director-General and the decision-making process⁴⁷

This analysis of the delegation of certain functions by the OLAF Director-General relates to Article 9 ('Decision-making'), Article 10 ('Delegation of the exercise of functions'), Articles 43 ('Investigative activities and authorisation'), and 44 ('Legality check during investigation'). The present analysis also relate to the internal procedures for delegation set out in the [OLAF internal document - confidential]⁴⁸ which will be transposed in Article 9 and 10 of the GIPs.

44. OLAF's operational experience showed that it was useful to allow the OLAF Director-General to delegate the exercise of certain of his functions. Article 17(6) of the OLAF Regulation sets out the delegation framework ('in writing [...] specifying the conditions and limits governing such delegation'), but it lacks detail both on those to whom the delegation is handed ('to one or more members of the staff') and on the functions open to delegation. For that reason, the Committee paid particular attention to the rules in Articles 9 'Decision-making' and 10

⁴⁵ [OLAF internal document - confidential]

⁴⁶ Example: 'If the investigation unit requests a decision of the OLAF Director-General to split a case, **the request together with all documentation must be submitted to the Unit 01** to provide an opinion on the legality and necessity of the splitting of the case.' See the [OLAF internal document - confidential].

⁴⁷ According to Article 17(6) of the OLAF Regulation, the OLAF Director-General may delegate the written execution of some of his/her tasks to one or more employees of the Office, specifying the terms and scope of that delegation (emphasis added).

⁴⁸ OLAF has confirmed that the current internal Decisions [OLAF internal documents - confidential] will be replaced by new Decisions after the GIPs are adopted. These Decisions will be kept outside the GIPs.

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'Delegation of the exercise of functions' and to some related provisions in Articles 43 and 44 of the new GIPs.

45. The Committee examined the sets of internal rules on delegation that the OLAF Director-General has adopted since 2014 for the exercise of certain of his functions by Directors A and B, together with the new rules on delegation in Articles 9 and 10. Although the Committee recognises the effort made by OLAF to incorporate the current internal procedures into this Article (Article 10(2), 10(3), 10(4), 10(5)), it noted that paragraph 1 of Article 10 of the draft new version of the GIPs is worded similarly to Article 17(6) of the OLAF Regulation, remaining vague on the role, seniority and management level of OLAF staff to whom the OLAF Director-General may delegate certain functions. The Committee believes that the new GIPs would gain in clarity if they included the specific functions which can be delegated to the Deputy Director-General, the Directors and/or the Heads of Unit of OLAF. The Committee would also like to stress the importance of the fact that: (i) when delegating his/her powers the OLAF Director-General must take an express decision to transfer those powers; (ii) no shift of responsibility may occur – the delegation can relate only to clearly defined executive powers (i.e. those powers in Article 17); and (iii) the Director-General cannot delegate powers whose exercise requires policy choices, otherwise this would involve a shift in the responsibility not envisaged by the Regulation.
46. The Committee recalls that the same principles of transparency and thorough documentation are equally applicable to OLAF staff executing delegated functions. Affected staff members are required to uphold the same level of clear, reasoned and well-recorded decision-making processes. This ensures a uniform standard of accountability and professionalism across all levels of management of investigations, maintaining the organisation's integrity. The Committee considers that including such a rule in the general provisions under Article 10 of the new GIPs would fill the current gap in this area.
47. The Committee notes that there is an imbalance of responsibilities in the schema of the decision-making process. The investigation unit seems to bear the weight of all the actions in the investigation life cycle, with practically no reference to the managerial role of the directors, who are mentioned at the final stage of the investigation cycle⁴⁹. The investigation unit prepares all draft proposals for the signature of the OLAF Director-General without any reference to the role to be played by internal legal advisers (different from the review team), heads of unit or directors. The workflow between OLAF's units and the people responsible is not mentioned. Only in articles referring to complaints (Articles 73 and 74) and to final reports and proposals of recommendations (Article 81) are the roles of directorates highlighted. The GIPs should rectify this imbalance.
48. In the Committee's view, the new GIPs should clarify the decision-making process by means of a consistent methodology. This should distinguish between: (i) decisions that are to be taken only by the OLAF Director-General as a guarantee of its independence; (ii) decisions that the OLAF Director-General can delegate in accordance with Article 17(6) and the rules for this delegation; and (iii) other decisions not explicitly entrusted to the OLAF Director-General by the Regulation, but which it would be advisable for the Director-General to take due to their impact on the investigation or the procedural rights involved (including for instance the decision to consider a person as a person concerned).

⁴⁹ Article 80(6) of the new GIPs: 'Final Reports shall be approved and signed by the investigator in charge, the Head of Unit, and the Director of the relevant investigation directorate.'

4. Delegation by the OLAF Director-General of the production of written authorisations

This analysis of the delegation rules in Articles 43 and 44 of the new GIPs relates to Article 9 ('Decision-making') and Article 10 ('Delegation of the exercise of functions')

49. Given its responsibility for monitoring developments concerning the application of procedural guarantees, the Committee paid particular attention to the rules for delegating functions relating to the 'authorisation' of actions that potentially interfere with the fundamental rights of a person concerned, including that person's right to privacy.
50. In this context, the Committee notes that clarity is required with regard to the use of the terms 'authorisation' and 'authority', given that Article 17(6) empowers the OLAF Director-General to delegate his or her functions under Article 7(2). The article does not make reference to the term 'authority'.
51. Finally, the Committee examined the existing internal procedures and Decisions [OLAF internal documents - confidential]⁵⁰. It notes that these procedures set out the high-level hierarchical position of those to whom the OLAF Director-General may delegate certain functions. In addition to this, the procedures make a distinction between some activities that may be delegated and those that are excluded from delegation⁵¹. In the interests of clarity and consistency, the Committee believes that the GIPs should keep these distinctions and recommends that OLAF revisit the drafting of Articles 9, 10, 43 and 44 in order to establish a classification and a clearer differentiation of activities, authorisations and delegation practices. The current drafting of the articles mentioned does not provide OLAF staff with clear guidance.

5. Conclusions and remarks

BOX 2

The Committee welcomes the inclusion of Article 21a of the Staff Regulations in Article 9(4); this enhances OLAF's independence in the implementation of the investigative function.

Summary of recommendations

The Committee recommends that the OLAF Director-General amend the draft version of the GIPs. The GIPs should:

- (i) provide, in the rules governing the decision-making process, a definition of the principles of transparency, documentation, consultation and collaboration (in Articles 9, 10, 25, 28, 31 and 32);
- (ii) set out the decision-making powers held by the OLAF Director-General in a clearer, more complete, and consistent way (in Article 9, in conjunction with Articles 25, 26, 27 and 50);
- (iii) integrate provisions on transparent decision-making steps similar to already existing internal procedures on the splitting and merging of investigations (in Articles 31, 32, 29 and 60(3));

⁵⁰ OLAF has confirmed that after the adoption of the GIPs OLAF will have new decisions replacing the current internal Decisions [OLAF internal documents - confidential] These Decisions will be kept outside of the GIPs. While the internal procedures [OLAF internal document - confidential] will be repealed by the GIPs, in particular in Articles 9 and 10 of the GIPs.

⁵¹ [Reference to the content of an OLAF internal document - confidential].

- (iv) make a clearer and systematic distinction between activities that the OLAF Director-General may delegate and those that are excluded from delegation (revisit the drafting of Articles 9, 10, 25, 26, 43 and 44);
- (v) include reference, in the interests of transparency, legal certainty and accountability, to the functions that the OLAF Director-General can delegate to the Deputy Director-General, directors and heads of unit (in Articles 10 and 43);
- (vi) clarify the decision-making process with a consistent methodology and detail the role of the legal advice unit (Articles 29 to 50, and from 58 to 70);
- (vii) secure the same level of clear, reasoned and well-recorded decision-making processes for OLAF staff executing delegated functions (in Article 10);
- (ix) provide clear definitions of the terms ‘authority’, ‘authorisation’ and ‘written act’ within the limits of Article 7(2) of the OLAF Regulation (in Articles 9, 10, 43 and 44);

I.3. The scope of the investigation: the right of defence and changes within the decision-making process

1. General considerations: the definition of the scope

This analysis relates to Articles 9, 24, 29 and 30 of the new draft GIPs, and to the internal rules [OLAF internal document - confidential], which the OLAF Director-General envisages repealing after the new GIPs are adopted.

52. The Committee monitors respect for fundamental rights and procedural guarantees in OLAF investigations (Article 15(1), second subparagraph and Article 15(9), first subparagraph of the OLAF Regulation). It has paid particular attention to the definition of the scope of the case and to the factual allegations that OLAF is investigating, including the investigation subject and purpose.
53. Following the establishment of the Controller of procedural guarantees, the Committee’s tasks in this field have been broadened (Article 9b(5) and (11) of the OLAF Regulation).
54. The Committee made straightforward recommendations on this matter in its Opinion No 3/2021. It recalled that in the interests of legal certainty and respect for the right of defence, OLAF is obliged to indicate, in the written authorisation with which the OLAF’s investigators are equipped for the purposes of carrying out an investigation, the subject matter, the purpose of the investigation and the legal basis. OLAF must specify the subject matter and purpose of the investigation to enable those who have the duty to cooperate to assess the scope of their collaboration⁵².
55. In light of the Committee’s monitoring experience, the Committee considers that the GIPs should make a clear reference to: (i) a well-defined scope of the investigation; (ii) changes to the initial scope during the investigation life cycle; and (iii) consistency between the investigative activities carried out by OLAF and the scope of the investigation⁵³. A continuous assessment of these three elements during the investigation life cycle would help to keep legal control of the investigation process and the collection of admissible evidence. The Committee

⁵² See Case C-15/00 *Commission v EIB*, ECLI:EU:C:2003:396, paragraph 164.

⁵³ See SC Opinion No 3/2021 on sensitive cases ‘Supervision of OLAF internal investigations - Strategic conclusions and best practices’. [Reference to the content of the confidential version of the SC Opinion No 3/2021].

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notes those elements are not explicitly described in Articles 9, 29 and 30 of the new draft GIPs and recommends that OLAF incorporate them into the GIPs.

2. Changes in the scope of the investigation

This analysis relates to Article 24 ‘Selection principles and criteria’, Article 29 ‘Scope of the case’ and Article 30 ‘Extension of the scope’.

56. For the Committee, any change in the scope of the investigation must be duly justified, documented in the case file and grounded in a sound legal analysis in the interests of transparency and the impartial and independent conduct of the investigation⁵⁴. The Committee considers it appropriate to clarify the elements of suspicion or evidence in which a decision to extend the scope should be grounded, in particular on the accuracy of the information⁵⁵.
57. In light of its monitoring experience, the Committee considers that any changes to the scope of investigations should be based on the relevant evaluation rules provided in **Article 24** of the GIPs for the ‘selection principles and criteria’.
58. The Committee considers that a thorough legal analysis should accompany the decision of the OLAF Director-General. This should always happen when the change to the investigation’s scope has an impact on the involvement of a new person as a person concerned⁵⁶.
59. The Committee considers that reference to the information collected should also be made when describing the investigation’s scope. All collected information justifying the opening of an OLAF investigation should be relevant and limited to the matter under investigation and collected for the purpose of the investigation. Having a well-defined scope would also ensure that during the investigation OLAF does not undertake investigation activities outside the scope thus defined.
60. The Committee welcomes the reference in Article 30(1) to the fact that where the investigation unit envisages conducting an investigative activity outside the existing scope of the investigation, a new decision of the OLAF Director-General unequivocally extending the investigation’s scope is required. The Supervisory Committee also welcomes the requirement for the review team to check the legality and necessity proposed extensions of the investigation’s scope⁵⁷. However, the Committee considers that the GIPs do not explicitly refer to the fact that all evidence gathered during the investigation should be relevant to the matter under investigation and collected for the investigation’s purpose. The Committee considers that such reference should be kept in the text of the new GIPs, similar to the wording of

⁵⁴ The Committee welcomes the changes that OLAF has made in Article 29(2) of the new draft GIPs following the Committee’s Note of July 2023 recalling that when the investigation unit envisages extending the scope there is an obligation to justify the request. The new draft confirms that ‘...**it shall submit a reasoned request** ...’.

⁵⁵ See SC Opinion No 3/2021 on sensitive cases [Reference to the content of the confidential version of the SC Opinion No 3/2021]

⁵⁶ See SC Opinion No 3/2021.

⁵⁷ Article 30(1) of the new draft GIPs reads: ‘**An extension of the scope** of an investigation, coordination or support case **may be justified where** new facts come to light during the investigation, that are sufficiently linked to those to which the original investigation related to and where **the investigation unit envisages conducting an investigative activity outside the existing scope of the case** or where an extension of the scope would additionally include internal or external elements, as referred to in Article 7(4) of OLAF Regulation’.

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Article 8(6) of the current GIPs⁵⁸. Moreover, the Committee considers that Articles 28 and 30 should provide clearer guidelines on extending the scope when an investigation combines external and internal elements.

61. The Committee considers that the possibility to extend the scope does not release OLAF from the obligation to evaluate whether there are ‘sufficient suspicions’ covering the investigation’s extended scope. In previous opinions, the Committee pointed out that OLAF must pay particular attention to this aspect throughout the conduct of the investigation because OLAF’s powers and obligations differ in internal and external investigations. This is to avoid any confusion as to the nature of the investigation while in progress and as to the accuracy of the investigation activities that OLAF can carry out, in particular on-the-spot checks and inspections and the interviews of individuals as a person concerned⁵⁹.
62. The Committee notes that **Articles 29 and 30** of the new draft GIPs refer to extending the scope, but not to a potential limitation of it. Based on the Committee’s monitoring experience, this change should be envisaged in the GIPs⁶⁰.
63. Similarly, in the Committee’s view, it is important that the legal checks carried out by OLAF ensure that the content of a request to extend the scope of an investigation are in line with the characterisation of the investigation.

3. Conclusions and remarks

BOX 3

The Committee welcomes the changes that OLAF has made in Article 29(2) of the new draft GIPs following the Committee’s Note of July 2023 recalling that when the investigation unit envisages changing the scope of an investigation there is an obligation to justify such a request.

Summary of recommendations

The Committee recommends that the OLAF Director-General amend the draft version of the GIPs. The GIPs should:

- (i) make reference to a ‘well-defined scope’, a ‘change to the scope during the investigation lifecycle’ and ‘the consistency between the investigative activities carried out by OLAF and the scope of the investigation’ –so as to keep legal control of the investigation process and the collection of admissible evidence (in Articles 9, 29 and 30 of the draft revised GIPs);
- (ii) subject any changes to the scope on the relevant rules of an investigation to the same evaluation rules as described in Article 24 of the GIPs;
- (iii) make explicit reference to the possibility not only to extend but also to limit the scope of an investigation (in Articles 29 and 30);
- (iv) provide more precise guidelines on changes of scope when an investigation combines external and internal elements (in Articles 28 and 30).

⁵⁸ This reference is present in Article 8(6) of the current GIPs, which reads: ‘All information or evidence, whether inculpatory or exculpatory, gathered in the course of investigation or coordination and support cases, shall be collected and recorded in due and proper form. **All evidence gathered should be relevant to the matter under investigation and collected for the purpose of the investigation**’.

⁵⁹ See SC Opinion No 2/2012, Point 3.2.2. on extending the scope.

⁶⁰ See SC Opinion No 3/2021 on sensitive cases ‘Supervision of OLAF internal investigations - Strategic conclusions and best practices’.

I.4. Criteria to open a case and the notion of sufficient suspicion: the independent analysis of the incoming information, a safeguard for the OLAF Director-General's independence, and the principle of equal treatment

1. The notion of sufficient suspicion

This analysis relates to Article 24 of the new draft GIPs 'Selection principles and criteria' (Chapter II – Selection) and to the internal rules [OLAF internal document - confidential]⁶¹.

64. The Committee welcomes the inclusion of the notion of 'sufficient suspicion' in the draft GIPs. This follows recommendations made by the Committee over the years and most recently in the note sent to the OLAF Director-General in July 2023. The Committee also welcomes the reference to the fact that when evaluating whether there is sufficient suspicion to open an investigation OLAF needs to consider (i) the reliability of the source; (ii) the credibility of the allegations; and the (iii) sufficiency of the collected information (Article 24(3)).
65. At the same time, the Committee considers that Article 24 could specify more clearly how OLAF applies those criteria in order to ensure a uniform approach that selectors must follow. For instance, the GIPs could specify the factors or elements that OLAF should consider when assessing (i) the reliability of the source (i.e. confirmation of the identity of the source, degree of cooperativeness, whether the source has direct knowledge of the facts, whether the source has provided details that can be verified by other means, whether the source has a direct interest in the opening of an OLAF investigation, etc the credibility of the allegations (i.e. precision and accuracy of the information provided by the source, whether allegations are corroborated by documentation, whether the allegations refer to irregularities identified by an audit) and (iii) the sufficiency of the collected information (i.e. whether information gathered is substantial, whether the information points to a grave infringement, whether the allegations have been confirmed by multiple sources)⁶². The Committee believes that it is also important that the GIPs specify that 'sufficient suspicion' is not based on inferences, but on accurate information collected.
66. Article 24(5) of the new GIPs provides further criteria to be taken into consideration. These include the need for efficient use of the OLAF's resources, the proportionality of the means employed, an analysis to determine which entity is best placed to investigate (subsidiarity criteria), and the added value of action by OLAF. On the assessment of the above criteria (referred to in Article 24(5)) the Committee notes that OLAF in its practice takes into consideration further elements which should be included in the GIPs⁶³. One such example is when OLAF assesses the proportionality principle (i.e. the human and other resources needed and the likelihood of achieving the expected results, the time-barring considerations, whether the matter is highly sensitive and can damage the reputation of the EU). Similarly, on the efficient use of OLAF's resources, the GIPs could clarify how selectors could assess efficiency (i.e. resources required, the workload of the investigative unit concerned, the complexity of the matter, available materials) and the subsidiary principle (i.e. is an investigation by another authority already ongoing, OLAF's primary competence to act, whether action by OLAF would put the independent conduct of the investigation by another authority at risk, whether there is an explicit request by an IBOA or Member State to act).

⁶¹ [OLAF internal document - confidential] OLAF confirmed that this document will be kept after the new GIPs are adopted.

⁶² [Reference to the content of the OLAF internal document - confidential]

⁶³ [Reference to the content of the OLAF internal document - confidential]

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67. In light of the above, the Committee considers that such additional guidance is missing and that the GIPs should address this issue.
68. On evaluating the notion of ‘sufficient suspicion’ when assessing incoming information, the Committee considers, based on its monitoring experience, that the GIPs should include a rule requiring a legal analysis to accompany the ‘opinion on opening decision’. This would ensure a solid, well-documented opening decision.
69. The Committee reiterates the need for the ‘opinion on opening decision’ to include an analysis of ‘sufficient suspicion’, specifying the following elements:
- (i) **who** is conducting the suspicious activity;
 - (ii) **what instruments** or mechanisms were used to commit it;
 - (iii) **when** did the suspicious activity take place, including time-barring considerations; and
 - (iv) **where** did the suspicious activity take place.

This could also include **an analysis** showing why the activity in question is believed to be **suspicious**⁶⁴ so as to preserve the independence/equal treatment when opening a case and the equal treatment of all people under investigation. The advice and assistance available to selectors during the assessment phase should include both operational intelligence and legal advice.

2. Activities during the selection process: incoming information and information of investigative interests

This analysis relates to Article 23 ‘Activities during the selection process’, and to Articles 19 to 21 ‘Initial information’ (Chapter II – Selection).

70. The Committee acknowledges the amendment of Article 23(1) points e) and f) ‘Activities during the selection process’ following the Committee’s comments⁶⁵. In addition, the Committee considers that the GIPs should make it clearer that the activities during the selection process (listed in Article 23 of the draft GIPs) do not overlap with actual ‘investigation activities’ listed in Article 43.
71. The Committee has examined the provisions in the new draft GIPs on ‘the selection phase’, Articles 19 (‘general’), 20 (‘incoming information’), 21 (‘other information’) and 22 (‘treatment of information’). It considers that these draft GIP articles are not sufficiently comprehensive to fully cover in an organised manner the process of defining and classifying incoming information.
72. The Committee recommends that the GIPs contain rules on how to apply a consistent and objective method to evaluate sources and information available. It recommends that the GIPs set out concrete guidelines, clearly describing the methods of analysis and the processing of incoming information, taking into consideration its source, quality and accuracy.
73. In the interests of clarity, the Committee notes that Articles 19 to 21 refer to the concept of ‘information of possible investigative interest’, without referring to the source of the information or providing a detailed description that would enable OLAF staff to identify and classify the actual source of information, which will then fall under various deadlines⁶⁶.

⁶⁴ See recommendations made in SC Opinion No 3/2021.

⁶⁵ See comments made in the Committee’s note of July 2023.

⁶⁶ Article 5 of the OLAF Regulation sets out the rules and deadlines dealing with incoming information.

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74. Within that context, the Committee recommends that the GIPs include a ‘classification of the source of information’ which indicates that a preliminary examination of information by the selection unit may be initiated on the basis of, for example:
- (i) anonymous information;
 - (ii) information from whistle-blowers and informants;
 - (iii) requests from an institution, body, office or agency, or from a Member State;
 - (iv) individual complaints;
 - (v) information sent by the EPPO; and
 - (vi) information from other cases or press (i.e. self-generated cases).
75. The Committee reiterates its recommendation that OLAF should adopt a protocol to deal with anonymous incoming information⁶⁷.
76. Similarly, in Article 20 ‘incoming information’ and Article 21 ‘other information’, the Committee notes that those articles deal only with the registration and recording of the information. On the other phases of the treatment of the information, namely (i) ‘analysis’, (ii) ‘notification’, (iii) ‘transmission’ and (iv) ‘deadlines’, the articles are silent. The Committee considers that Articles 19 to 22 could gain in clarity if they referred to these different stages.
77. On the content of the ‘incoming information’, in the interests of clear classification and the further treatment of cases and so as to enable staff to make a preliminary distinction and classification, the Committee considers that the GIPs should contain specific provisions on, for example:
- (i) information on matters that manifestly fall outside OLAF’s competence;
 - (ii) information that appears to relate to a situation already under examination or investigation by OLAF;
 - (iii) information on matters that fall within the competence of OLAF;
 - (iv) information on matters that could fall within the competence of the institutions, bodies, offices and agencies in the context of an internal investigation; and
 - (v) information on matters that fall within the competence of the EPPO or of national judicial authorities.
78. Finally, the Committee notes that Article 21 ‘other information’ of the draft revised GIPs only deals with the ‘registration’ and ‘recording’ of information gathered by OLAF on its own initiative. Following Art 5(2) of the OLAF Regulation, the Committee considers that the possibility for the OLAF Director-General to open an investigation acting on his/her own initiative, based on in the information gathered by OLAF, is a key tool in the fight against fraud, corruption and other illegal activities affecting the financial interests of the EU, in particular in view of the close work between OLAF and the EPPO. In this vein, the GIPs should expand the content of this provision in order to cover the nature and treatment of information that OLAF staff are to provide the OLAF Director-General with so as to justify the opening of an investigation acting on his/her own initiative.

3. Conclusions and remarks

79. The Committee welcomes, following its recommendation, the inclusion in Article 24 of the new draft GIPs of the ‘sufficient suspicion’ requirement to open an investigation. In addition, to prepare a solid analysis for the OLAF Director-General’s consideration, the Committee considers, as already explained in paragraphs 65 and 66 of this Opinion, that the GIPs should explicitly indicate which aspects or elements the operations and investigations selection unit

⁶⁷ See SC Note to the OLAF Director-General of July 2023 and SC Opinion No 3/2021.

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should assess during the selection process to determine the existence of sufficient suspicion and all the other criteria indicated in Article 24.

80. The Committee recommends the revision of articles relating to activities in the selection process in the draft GIPs.

BOX 4

Summary of recommendations

The Committee recommends that the OLAF Director-General amend the draft version of the GIPs. Article 24 of the GIPs should:

- (i) explain the **reasoning** for the ‘sufficient suspicion’ element in the opening decision in order to dispel any doubt on the independence of the OLAF Director-General in the opening of the investigation;
- (ii) accompany the ‘opening opinion’ of selectors with a legal analysis, in particular in sensitive cases;
- (iii) make reference to factors/elements that should be considered when applying the selection criteria, including elements for assessing information coming from anonymous sources;
- (iv) cover in a comprehensive and organised manner the process of defining and classifying incoming information (in Articles 19 to 21);
- (v) expand the content of Article 21 with regard to investigations opened at the OLAF Director-General’s own initiative;
- (vi) specify rules for the duration of the evaluation period depending on the source of information (in Article 23).

I.5. Consideration of a person as a person concerned: the right to defence and the principle of equal treatment

1. The principles of impartiality and fairness and thorough investigation

The following is an analysis of Article 4 ‘Impartiality and fairness’ (Chapter I – General principles and provisions).

81. The Committee welcomes the newly added reference to the legal obligation on OLAF to carry out impartial investigations seeking ‘evidence for and against the person concerned’ (Article 9(1) of the OLAF Regulation).
82. The Committee considers that impartiality and fairness in Article 4 of the new GIPs should be accompanied by a reference to the principle of thoroughness. OLAF staff should conduct investigations free from any bias and influence and to treat individuals and issues objectively. All information or evidence, whether inculpatory or exculpatory, gathered during investigation or coordination cases, must be collected and recorded in due and proper form. OLAF staff cannot display negative comments or personal opinions. All evidence gathered should be

relevant and collected for the purpose of the investigation, as set out in the decision-making process and in the scope of the investigation⁶⁸.

2. Notification of the person concerned

The following is an analysis of Article 36 ‘Notification of the person concerned on the opening of an investigation’, Articles 43(2), 44 and 45 ‘Conduct of investigations’ and Article 72 ‘Deferral of the opportunity to comment’ (Chapter III – Investigations, coordination, and support cases) of the new draft GIPs. It also covers [Internal OLAF document – CONFIDENTIAL]⁶⁹.

83. The Committee notes that Articles 36 and 43 do not involve the legal advice unit in examining the situation before the adoption of a decision to consider an individual as a person concerned in internal investigations. Based on the Committee’s monitoring experience, the decision to consider a person as a person concerned requires specific information to be submitted to the OLAF Director-General, alongside a previous legal analysis of the scope of the investigation and the sufficient suspicion or evidence collected in the case file. The Committee recommends that the GIPs include specific rules on this matter.
84. As for the specific time when a person is to be considered a person concerned, in the Committee’s view the wording ‘as soon as the investigation reveals that ... [someone] may be a person concerned’ (Article 9(3) of the OLAF Regulation) requires clearer guidance and legal advice to investigators. To strengthen the principle of equal treatment, this must address the specific timing of, and the conditions for, the notification to the person concerned⁷⁰. However, Article 36(1) does not provide such guidance to investigators.
85. Similarly, the notification to the institution on the quality/status of the person concerned requires a thorough analysis of the investigation’s scope. The Committee has in the past identified inconsistencies in OLAF’s practices in this respect; it recommended that OLAF pay rigorous attention to the legal basis used for its actions when notifying the EU institutions involved in opening an investigation⁷¹.
86. In addition, the notification to the institution may exceptionally be deferred in duly justified cases. In such cases the Supervisory Committee is to be informed by the OLAF Director-General after the closure of the investigation. The current GIPs do not set out practices on how to implement this rule (Article 4(6) of the OLAF Regulation).
87. Issues to be addressed include collecting evidence from the person concerned and the decision to interview the person concerned. Under Article 9(2) of the OLAF Regulation, OLAF is not obliged to interview a person concerned⁷². However, it seems reasonable that in cases where the person is available and the process of collection of evidence is ongoing, it would be good administrative practice for OLAF to justify a decision not to interview the person concerned.

⁶⁸ Chapter I on General principles and provisions should cover all the principles that should govern OLAF’s investigations, including equal treatment, consistency, legal certainty, non-biased decisions, integrity, investigation standards, rules of professional conduct, fairness, transparency, objectivity, proper implementation of OLAF’s powers, reasonable time, non-discrimination, and thorough investigation. This is to dispel any doubt as to the impartiality and independence of its conduct.

⁶⁹ The [OLAF internal document - confidential] will be repealed after the new GIPs are adopted.

⁷⁰ See SC Opinion No 3/2021 on sensitive cases.

⁷¹ See SC Opinion No 3/2021 [Reference to the content of the confidential version of the SC Opinion 3/2021].

⁷² Article 9(2) of OLAF Regulations reads: ‘The Office **may interview** a person concerned or a witness **at any time** during an investigation.’

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This would apply particularly when that person is in a position to provide key evidence to OLAF for investigation purposes. This should be reflected in the GIPs⁷³.

3. Conclusions and remarks

88. Given that interviews are an essential part of the evidence-gathering process, investigators should receive comprehensive guidance and legal advice on the standards for the respect of procedural guarantees and the admissibility of evidence in national law (Article 11(2) of the OLAF Regulation).

BOX 5

Summary of recommendations

The Committee recommends that the OLAF Director-General amend the draft version of the GIPs. The GIPs should:

- (i) include the principle of thorough investigation as a governing principle of OLAF's investigations (in general principles and provisions);
- (ii) provide for the legal advice unit to be involved before the decision to consider a person as a 'person concerned' is adopted, and the relevant person and institution notified, of the opening of the investigation (in Articles 36, 43(2) and 44) as previously recommended;
- (iii) provide investigators with clear guidance as to the appropriate specific time to consider a person as a person concerned (Article 36);
- (iv) formalise the OLAF Director-General's obligation both to inform the Supervisory Committee of deferral and to inform the institution to which the person concerned belongs (in accordance with Article 4(6) last paragraph of the OLAF Regulation); and
- (v) provide guidance to justify not interviewing a person concerned (in Article 64(1)).

I.6. Recording of telephone conversations: the fundamental right to respect for everyone's 'private life' and 'communications'

1. Background and analysis

This is an analysis of Article 17(2) of the new draft GIPs 'Case file' (Chapter I – General principles and provisions).

89. The Committee notes that OLAF has added a new paragraph in Article 17 'case file' of the new draft GIPs 'to address the recent judgment from a Belgian court, as well as a request from SC following the judgment' on OLAF's recording of a telephone conversation⁷⁴. Article 17(2) now reads 'OLAF staff are not entitled to make audio or video records of telephone conversations without express consent of all persons participating in that conversation.'
90. The Committee is not certain about the meaning of this new reference in Article 17 dealing with the 'case file'; it would ask OLAF to clarify the text. OLAF is not entitled to record private telephone conversations between two parties. It is not clear to the Committee the context in which OLAF could record a telephone conversation as a party to the conversation, except

⁷³ SC Opinion No 3/2021 on sensitive cases [Reference to the content of the confidential version of the SC Opinion 3/2021].

⁷⁴ [Reference to the judgement of the Belgian Court – confidential]

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where OLAF was conducting an interview with the person, whether as a witness or as a person concerned; this is covered in Articles 64 to 67 of the draft GIPs. In those cases, OLAF would not record a ‘conversation’ but an interview, with all the procedural guarantees of Article 9 of the OLAF Regulation. The Committee notes that Article 67 covers ‘interviews by videoconference’.

91. The Committee expressed its views on the fundamental right to respect ‘private life’ and ‘communications’ in SC Opinion No 2/2012. In that Opinion, it examined the possibility for OLAF to prepare and record a private telephone conversation in the light of Article 7 of the Charter of Fundamental Rights of the EU. Article 7 recognises everyone’s right to respect for ‘private life’ and ‘communications’; the article corresponds to Article 8 of the European Convention of Human Rights.

BOX 6

Conclusions and remarks

The terminology ‘telephone conversation’ is not accurate in this context. The Committee asks OLAF to clarify this matter.

I.7. Categories of investigations: types of OLAF cases: the right to legal certainty

This section analyses Articles 28 to 33 and Article 50 of the new draft GIPs, (Chapter III Investigations, coordination, and support cases); Articles 1, 1(4), 1(4a), 3, 4, 7, 10(1), 10(2), 11(3), 11(4), 12(1), 12(2), 17(3), 12f of the OLAF Regulation and Article 101 of the EPPO Regulation.

92. The Committee examined the ‘types of cases’ described under Article 28 of the new draft GIPs and has noted that the article does not contain guidelines on how to act when external and internal aspects are combined in a single investigation. The Committee asks OLAF to reflect on this matter taking into consideration the various rights of persons under investigation.
93. Similarly, OLAF has a variety of duties towards the institutions and the Supervisory Committee depending on the type of investigation (i.e. internal/external). As a result, it is essential that the OLAF Director-General clarifies these aspects in the GIPs; this is to meet the requirements of the OLAF Regulation, for instance, Article 4(6) on OLAF’s duty to inform the Supervisory Committee. The Committee recommends that OLAF revisits Articles 28(3) and 28(4).
94. The Committee recalls that the classification of investigations, in accordance with the legal basis in the OLAF Regulation, seems to cover three category types: external investigations, internal investigations and complementary investigations (Articles 3, 4 and 12f respectively). The investigative activities that OLAF is entitled and/or obliged to undertake depending on this classification are also reflected in other articles of the Regulation (Article 1, Articles 7, 10, 11, 12, 17, and in Article 101 of the EPPO Regulation).
95. The Committee notes that Article 28(3) of the new draft GIPs indicates that depending on the legal basis, investigations carried out by OLAF can be only classified as external investigations or internal investigations. On the other hand, the Committee notes that a further classification is made in Article 28(5) referring to complementary investigations, which are also the subject matter of Article 33 ‘Reclassification of cases’ and Article 50 ‘Complementary investigations’ of the GIPs in the context of relations with the EPPO. In the interests of clarity and consistency, the Committee considers that the GIPs require redrafting on the characterisation of investigations.

1. Conclusions and remarks

BOX 7

Summary of recommendations

The Committee recommends that the OLAF Director-General amend the draft version of the GIPs. The GIPs should:

- (i) clarify the classification of investigations and cases (in Articles 28(3) and 28(5), 33 and 50);
- (ii) give practical guidelines for the conduct of investigations that combine elements of both external and internal investigations (in Article 28).

I.8. Internal advisory and control procedures: advice and assistance available to investigators during the investigation phase regarding the respect for procedural guarantees and fundamental rights, including a legality check

1. Details on the internal advisory and control procedures: the principle of legality

The following analysis covers Article 2 'Legality' (Chapter I – General principles and provisions).

96. The Committee welcomes the drafting of paragraphs 2 and 3 of Article 2 on the legality check and final review, especially the reference to the internal advisory and control procedure. It suggests that OLAF further develop in the GIPs **other internal advisory and control procedures**. In particular, as stated by the Committee previously, OLAF would benefit from having, in addition to the review team and the legal advice unit, specialised legal staff that would be part of each investigation team and which could carry out a continuous and consistent legality check from the outset of the case until its closure⁷⁵.
97. In addition, the Committee suggests that the GIPs indicate that OLAF staff should read the OLAF Regulation and the current guidelines together with the relevant provisions of the EU Treaty, the Staff Regulations, the Code of Conduct and other regulations including the EPPO Regulation, Regulations (EURATOM, EC) No 2185/96 and (EC, EURATOM) No 2988/95 and other sectoral legal bases as listed in an annex to the GIPs.

The following analysis of Article 17(7) of the OLAF Regulation covers Article 44 'Legality check during the investigation' (Chapter III – Investigations, coordination, and support cases) and Article 87 'Final Review' (Chapter IV – Closure of investigation, coordination or support case) of the new draft GIPs.

98. The Committee has actively promoted, as one of its main tasks, the development of the highest standards in the respect for procedural guarantees and fundamental rights in OLAF investigations (Article 15(1) of the OLAF Regulation). This is vital for the Office's credibility and the effective use of OLAF reports and recommendations. The Committee notes that the new Article 17(7) of the OLAF Regulation strengthened procedures for the legality check.
99. As highlighted in SC Opinion No 3/2021 and based on the Committee's monitoring experience, the Committee considers that it would be a major improvement for OLAF to implement in the GIPs a system of permanent legal advice and a legality check of investigations

⁷⁵ Opinion No 3/2021 - Conclusions and recommendations (xviii), where the SC stated: 'A continuous and consistent legality check by specialised legal staff, part of the investigation team from the outset of the case is now a necessity'.

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within the investigation teams from the outset of the case⁷⁶. This would provide additional support to investigators and would alert them to any difficulties that might arise during the investigation, both at EU and national law level⁷⁷. In that regard, and following its suggestion, the Committee acknowledges the new reference in Articles 44(3) and 87(3) to the legal check by the review team.

100. The Committee reminds OLAF that to secure the admissibility of evidence collected by it in a specific Member State and in relation to cooperation with the EPPO, OLAF needs to know the applicable rules on admissibility of evidence. This is not only relevant for the evidential value of the OLAF final reports, but also for the purposes of testifying before the courts of the Member States (Article 19 of the Staff Regulations and Article 16 of the new draft GIPs ‘Use of confidential information in legal proceedings: duty of discretion’).
101. The Committee welcomes the new provision on final review in Article 87(3), which reflects the Supervisory Committee’s recommendation on the review of the applicable provisions of both EU law and the national laws of Member States. To secure the collection of admissible evidence, it is recommended that compliance with national law be ensured throughout the investigation life cycle and in the investigation strategy and planning.

2. Conclusions and remarks

102. The Committee acknowledges OLAF’s efforts to align the advisory structure of the new draft GIPs with the requirements of Article 17(7) of the OLAF Regulation.

BOX 8

The Committee welcomes the inclusion of Article 87(3) regarding the review of the applicable provisions of both EU law and the national law of Member States.

Summary of recommendations.

The Committee recommends that the OLAF Director-General amend the draft version of the GIPs. The GIPs should:

- (i) further detail an additional internal advisory and control procedure so as to improve the legal check and assistance available to investigators during the investigation phase. In particular, each investigation team should include specialised legal staff, which would effectively participate in investigation planning and provide legal advisory support to investigators.
- (ii) enhance the control of admissibility of evidence from the investigation planning.

I.9. Work plan: the effective conduct of investigations

The following analysis covers Articles 35, 40 and 41 of the new draft GIPs (‘Preliminary actions’ and ‘Investigation planning’ in Chapter III – Investigations, coordination, and support cases)

⁷⁶ See conclusions and recommendations of SC Opinion No 3/2021, Conclusions and Recommendations (xviii): ‘(...) There is a current lack of rigour and an absence of an efficient mechanism for giving internal legal advice and control of the investigation process. **A continuous and consistent legality check by specialised legal staff, part of the investigation team from the outset of the case is now a necessity.**’

⁷⁷ The number of experts in the review team needs to be sufficient to meet the advisory needs.

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103. Over the years, the Committee has put great emphasis on the need to draw up a proper investigation work plan from the outset of each case⁷⁸. The purpose of an investigation plan is threefold: (i) to focus the work of the investigation team and management on meeting the agreed objectives; (ii) to set a reasonable timeframe for the investigation and allocate appropriate resources to this end; and (iii) to ensure there is a framework for managers to identify any undue delays that need to be addressed, so as to determine whether the direction of the investigation has changed from the initial assessment and whether the investigation should be closed. When investigations lack proper planning, there is a danger that the team may deviate from the objectives set at the outset of the investigation and that accountability and transparency will suffer, thus undermining the independence of the investigation itself.
104. The investigation work plan is to be regularly reviewed for updates prompted by developments in the investigation itself, including potential changes in its scope. The Committee is aware that there is no ideal template for an investigation plan and each case is of course unique.
105. The Committee welcomes the inclusion in the GIPs of the requirement for investigators to outline an initial work plan and to revise and update it regularly (Articles 35(1) and 41 of the new draft GIPs). It therefore welcomes the drafting of Section 3.3 in the draft GIPs devoted to ‘Investigation planning and duration of investigations’, following the Committee’s recommendation in July 2023.

Conclusions and remarks

106. The Committee welcomes the formulation of investigation planning in the new draft GIPs. Having working plans drawn up at the start of an investigation and updated whenever required will provide OLAF management with a concrete tool to monitor the duration and progress of investigations and make best use of its staffing resources.

I.10. Relations between OLAF and the EPPO

107. In July 2021, the Committee delivered a note to the OLAF Director-General with preliminary observations on a partial revision of the GIPs to transpose new provisions of the 2020 amendment to the OLAF Regulation, including on relations with the EPPO. The Committee considered that OLAF’s future work with the EPPO will require constant assessment, by OLAF’s selectors, investigators and reviewers, of OLAF’s competence to act, not only in the selection process, but also during the investigation life cycle. For this reason, very clear guidelines were required on how to conduct this continuing assessment at every stage of the investigation process.
108. The Committee, as in its previous comments, invites OLAF to consider having separate provisions and guidelines for each of the new actions set out in Articles 12c to 12f of the new amended OLAF Regulation, from the assessment of incoming information to the final stage of an investigation. In that regard, the current draft provisions could be further clarified. For instance, Article 23 ‘activities during the selection process’ covers activities of a very diverse nature during the selection process, including preliminary activities, contacting sources, whistle-blowers as a source of information, reporting of criminal conduct to the EPPO,

⁷⁸ On this subject see recommendation 3 of SC Opinion 5/2021, which reads: ‘The SC recommends that the Director-General of OLAF adopt a consistent and uniform approach to strategic case planning across all investigative units. In particular, OLAF should revise the GIPs to ensure that a detailed investigation plan is drawn up for every opened investigation, regularly updated and annexed to the case file of each investigation.’

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preliminary verifications, opening of a complementary investigation, and of support cases at the EPPO's request. Similar comments can be made for Article 31, which not only covers the issues of splitting and merging OLAF cases, but also various questions on the non-duplication of an EPPO investigation and the scope of an OLAF investigation.

109. Similar comments can be made for the investigation stage, where the GIPs attempt to cover major, wide-ranging items in one provision (i.e. the means of gathering evidence, the OLAF Director-General's written authority for key investigative activities, the splitting and merging of cases and how investigators should proceed with regard to the EPPO's new competence under the new provisions of the OLAF Regulation - Articles 12c to 12f).

Conclusions and remarks

110. The Committee concludes that OLAF should assess whether having separate provisions and guidelines on its relations with the EPPO would increase clarity and efficiency.

INTERNAL INSTRUCTIONS AND GUIDANCE NOTES

111. The Supervisory Committee acknowledges the existence of additional internal instructions and guidance notes that are essential for structuring OLAF's operations. The Committee also observes that while certain internal instructions and guidance notes are scheduled for repeal when the guidelines for investigation procedures enter into force, several others will be kept separate from them. These include those related to investigations, such as [OLAF internal documents - confidential]. Although the Committee believes in the benefits of upholding the principles of transparency and equal treatment, which are consistently enhanced by comprehensive GIPs, it also acknowledges the viewpoint that overly detailed guidelines might constrain the essential flexibility required for organisational actions. In that regard, the Committee recognises the value of additional instructions and guidance notes alongside the GIPs, provided that such documents concern only the working method/know-how of OLAF and do not circumvent the rules, procedural guarantees and the principles detailed in the GIPs.
112. Therefore, the Committee recommends that OLAF (i) carry out a thorough quality review and update of these additional documents (which will not be repealed by the GIPs) to ensure their relevance, links with the GIPs and ease of use and (ii) inform the Supervisory Committee accordingly.

BOX 9

Summary of recommendations.

The Committee invites the OLAF Director-General to: (i) conduct a thorough review and update of the internal instructions and guidance notes to ensure their relevance, complementarity with the GIPs and user-friendliness; and (ii) inform the Supervisory Committee of the outcome of this process.

GENERAL CONCLUSIONS

113. After examining the draft guidelines on investigation procedures submitted by the OLAF Director-General for their observations, the Supervisory Committee recognises OLAF's efforts in revising and extending the 2021 version of the GIPs. The Committee acknowledges that progress has been made with the aim of providing investigators with a revised set of guidelines.
114. The Committee considers nonetheless that the current draft of the GIPs could be further improved. In particular, the Committee firmly believes that comprehensive, extensive and

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detailed investigation guidelines better deliver the benefits of upholding principles relating to: (i) the ‘reasonable time’ and continuous conduct of investigations; (ii) the necessity of a clear decision-making process; (iii) the application of procedural guarantees; (iv) transparency; and (v) the equal treatment of individuals in the course of the investigation.

115. With this Opinion, pursuant to Article 17(8) of the Regulation, the Committee highlights potential shortcomings in the submitted text and provides further comments and recommendations. The aim is to improve the GIPs so that they better meet the Regulation’s requirements. The Committee considers that detailed and practical guidelines, as required under the OLAF Regulation, are instrumental in ensuring that investigative activities follow OLAF core values and operational integrity.
116. The content of this Opinion is the result of a thorough examination and analysis of the new draft GIPs. Throughout the opinion, the Committee makes concrete and grounded recommendations and suggestions displayed in several boxes.
- **Box 1** summarises the recommendations on the issue of the duration of investigations. It addresses various items, mainly: investigation planning; unjustified periods of inactivity; continuous conduct of investigations; mechanisms to scrutinise the duration of investigations; reporting obligations to the Supervisory Committee; and a reasonable period for investigation, which should be proportionate to the complexity and the circumstances of the case.
 - **Box 2** summarises all the recommendations on the independence of the OLAF Director-General and the decision-making process. The recommendations aim at structuring the rules and describing the principles governing transparency, documentation, consultation and collaboration throughout the decision-making process, with specific attention paid to delegation of powers and hierarchical responsibilities.
 - **Box 3** summarises all the recommendations regarding the scope of the investigation made in the light of rights of defence and the decision-making process. It mainly involves recommendations on the necessity to justify any change in the scope of an investigation and to subject any change in scope to the same evaluation rules as described for the opening of an investigation.
 - **Box 4** summarises the recommendations regarding the notion of ‘sufficient suspicion’ to open an investigation, with specific attention paid to the various sources of incoming information and to the activities during the selection process.
 - **Box 5** summarises the recommendations relating to the principle of equal treatment in the conduct of the investigation. This is mainly to incorporate into the GIPs a principle of thorough investigation and to address the issue of the criteria used to determine whether a person can be considered a ‘person concerned’.
 - **Box 6** summarises the conclusions and remarks regarding the respect for everyone’s ‘private life’ and ‘telephone conversations’.
 - **Box 7** summarises the recommendations on the right to legal certainty, with particular emphasis on the classification of investigations and cases.
 - **Box 8** presents the recommendation on the internal advisory and control procedure and the need to strengthen it.
 - **Box 9** invites the OLAF Director-General to conduct a thorough review and update of internal instructions and guidance notes to ensure their relevance, complementarity with the GIPs and user-friendliness, and to inform the Supervisory Committee of the outcome of this process.