



OLAF Supervisory Committee

## **OPINION No 4/2010**

### **Investigation Planning**

Brussels, 12 October 2010



## OLAF Supervisory Committee

### 1. Summary

- 1.1 In order to carry out effective investigations which meet their targets, are cost-effective and make the best use of resources, it is essential to formulate investigation plans at the outset of each investigation and to revisit the plans throughout the life of the investigation to review changes necessitated by the development of the enquiries.
- 1.2 The Supervisory Committee, exercising its role under Regulation 1073/99 to monitor the investigatory function of OLAF, has examined a random selection of 40 cases from Directorates A and B to ascertain whether and to what extent investigation planning assists OLAF in the carrying out of its investigations. As was pointed out in the Activity Report of the Supervisory Committee for 2008/9, examination of case planning and the strategic direction of cases is an essential part of the work of the Supervisory Committee in monitoring investigations to assess whether OLAF is working efficiently and making maximum use of its limited resources.

### 2. Background

- 2.1 The purpose of an investigation plan is threefold: first, to concentrate the minds of the Director, the Head of Unit and the investigators on the objective of the investigation; second, to set a timeframe for the investigation and allocate appropriate resources to it; third, to ensure there is a framework against which managers can assess how far the investigation has progressed, whether there are any undue or untoward delays in the investigation which need to be addressed or whether the direction of the investigation has changed from the initial assessment and whether the investigation should be discontinued.
- 2.2 Where investigations lack proper planning at each stage of the case, there is an ever-present danger that investigators may divert their activities from the objectives set at the outset of the investigation, leading to a lack of accountability and thereby impugn the independence of the investigation itself.
- 2.3 There is no ideal template for an investigation plan and each case is of course unique. However, there is much to be gained from adopting a project management approach and process in relation to each case opened, which would provide Heads of Unit with a workable and practical system to maintain control over each investigation, to assess its progress and be aware of the projected work plan of each investigator in his or her Unit, so as to be able to deploy resources appropriately in relation to the case demands of the Unit. The purpose of effective planning is to decrease, rather than add to, any unnecessary administrative burden on investigators and Heads of Units.



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- 2.4 The Supervisory Committee also observes that a fine balance must be struck between too prescriptive a control over the activities of investigators who, after all, are experienced professionals and a lack of direction and management of the cases. It is vital that investigators be motivated and encouraged to use their expertise and experience to carry out investigations efficiently; at the same time, it is equally important that Heads of Units manage the cases effectively.
- 2.5 OLAF has a wide range of cases under investigation, ranging from simple and straightforward internal cases involving one or two potential “offenders” who are suspected of fraud or financial irregularities, in relation to, for example, claims for reimbursement of medical expenses or other benefits, up to and including external cases of enormous complexity involving enquiries in several jurisdictions. On the other hand, an increasing number of complex monitoring, coordination and assistance cases, which do not involve pure OLAF investigation work, often require long-term involvement, over which OLAF has little control. Hence, each type of case has different requirements in terms of the resources required, the time likely to be taken in investigation and the target amount of money which may be recoverable.
- 2.6 Investigations carried out by Directorates A and B differ in relation to the fields covered by the respective directorates and notably insofar as all internal investigations are carried out within Directorate A (Unit A.1 and A.2) and customs and co-ordination cases are predominantly carried out in Directorate B.
- 2.7 The Supervisory Committee wishes to ensure that OLAF makes best use of the limited resources available to it to carry out all investigations that it undertakes effectively and efficiently and as economically as possible. Concern has been expressed more generally, including from sources outside the Supervisory Committee, that some investigations take too long (the Supervisory Committee has already observed<sup>1</sup> that over 78% of investigations as at December 2008 were still in progress nine months after they had been opened) and that the returns, particularly in terms of monies recovered, do not represent value for money or demonstrate efficiency in relation to the conduct of investigations. The Supervisory Committee considers that effective planning of investigations could lead to a more precise focus on the objectives of an investigation, the shortening of the period of investigation and the avoidance of repeated missions. This exercise was undertaken in order to examine whether investigation planning is carried out by OLAF, is consistent across the Directorates and the Investigation Units and whether good practice is disseminated.
- 2.8 The advantages of good planning enable investigators to scope the intended enquiries, to set the objectives to be achieved and determine how long the enquiries are expected to take. At the same time, to ensure that managers are informed as to what progress is being made in any investigation and to be able to deploy their investigatory staff to best effect, it is essential that they know what work each member of their team is engaged on at any time and when they expect to complete it so as to be able to deploy

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<sup>1</sup> Opinion 2/2009



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them on another assignment. Good relevant management process within OLAF enables managers to keep on top of their cases and investigators to have direction for the course of the investigations.

2.9 The objectives of the investigations must refer as well to the likely outcome of each case. For example for cases which are likely to be transmitted to national judicial authorities, objectives must reflect legal advice from national experts from Directorate C and for those cases where recovery is planned the objectives should reflect the likely amount to be recovered and the necessary elements to do this. This will assist members of Units C 2 and C3 who will take this work forward.

2.10 In its special report 1/2005 the European Court of Auditors stated:

*“77. With regard to preliminary work (assessments), analyses are still rudimentary. The support units (magistrates, follow-up and operational analysis) have taken little part in defining objectives and planning the strategy to be adopted in each investigation. The Executive Board has not insisted strongly enough on the need for clear formulation of the objectives and expected results of investigations (see paragraphs 20 and 22).*

*“Some investigation acts still need to be justified more convincingly, the objectives set for the investigators in each case need to be clarified and there must be more insistence on work programmes to support proposed decisions. Regarding the Executive Board, it would be worth considering smaller groupings each of which would bring together managers working on files that have common features (3).*

*This kind of approach would reduce the participants’ burden of work on examining files and would encourage more rational and more thorough analysis of draft decisions. It would also allow coordinated follow-up of the portfolio of current cases and the introduction of a system of prioritisation. Nothing would prevent all the subgroups of the Executive Board from coming together, if the need arose, to deal with matters of principle in which all the services have an interest.*

*“78. Supervision of investigations by the Office's management has generally proved inadequate (see paragraphs 28, 35 and 36). The duration of investigations has not been brought under control*

*(See paragraph 24).*

*Heads of Unit must ensure that priorities are as far as possible respected and must both be aware of and control investigators’ actual workload. In the course of an investigation, the search for evidence must take precedence over*



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*mere collation of information already available. From this point of view, the Office must make better use of the means it has available (witness hearings, on-the-spot visits to collect documents, operational analyses, etc.).”*

- 2.11 The Supervisory Committee mentioned the need for investigation planning in its Opinion n° 2/2009 on "nine months reports":

*II- A lack of investigative methodology and rigour and a need for improvement in the internal levels of management and control of investigations.*

*The key to successful and focussed investigations is good investigation planning.*

*A detailed investigation plan should be developed by the investigation team at the outset of each and every investigation, thoroughly enough to allow for the forecast of a date for the final decision. The indication of the “expected time for completion” is not only a legal obligation from OLAF towards the SC but also an essential tool for managing investigations and avoiding the negative consequences of their excessive duration.*

*This plan should cover every investigative step envisaged and be associated with a preliminary timetable for each step. This planning should be in writing and systematically annexed to the case file, facilitating its review and consultation in the event that investigators are met with demands for postponements or other kinds of delays.*

*The management, at Unit level, should examine investigation plans regularly to follow and, where necessary, guide development of cases.*

Similarly in its recommendations in the last Supervisory Committee Activity Report 2008-2009:

*Conclusion n° IV* *The SC has noted an inadequate level of supervision and control of the day to day management of investigations which OLAF should address. Detailed investigation plans should be drawn up for every investigation opened with timeframes or deadlines agreed and set for all phases of the investigation cycle, including evaluations and follow-up activities and a system of assessing the results, based on key performance indicators.*

### 3. Current Practice

- 3.1 The OLAF Operational Manual gives guidance to the investigator for an initial work plan to be drawn up at the evaluation stage of a case.

#### **3.2.2.2 (7) Initial work plan suggestions**



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*This section should outline the scope and the main investigative steps insofar as they can be anticipated at this stage of the procedure. The following items, aimed at informing the Board as to the main aspects of the investigation, should be included:*

- *data, information and documents to be secured;*
- *other information to be obtained and from what source;*
- *investigation activities to be undertaken;*
- *indication of costs and benefits of planned actions.*

*The case handler together with the intelligence officer should plan and identify the scope of the intelligence, technical and computer forensic requirements foreseen for the investigation stage of casework....*

### **3.2.2.2 (9) Revision of initial work plan**

*Each revision of the work plan shall be documented.....*

### **3.3.6.4 Transmission of information to the OLAF Supervisory Committee....**

#### **(2) Statutory information to the Supervisory Committee**

##### **(a) Nine months report**

*Article 11(7) of Regulation 1073/99 provides that where an investigation has been in progress for more than nine months, the Director-General informs the Supervisory Committee of the reasons why it has not yet been possible to conclude the investigation, and of the expected time for completion. This report is also used as a supervision tool and if necessary refers to **a revised work plan** (our emphasis) covering every investigative step envisaged and,*



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*where possible, a timetable for each step. Work carried out externally should be clearly indicated in the report...*

- 3.2 There is no further reference in the Manual to a work plan, still less to a full investigation plan for use at a later stage once an investigation has been opened. The purpose of the initial work plan, which is drawn up during the evaluation stage, is to provide an indicator for the Board that the investigator in charge of the evaluation has already reflected on the manner of undertaking the investigation. As a general rule this would involve the most obvious tasks suggested by an analysis of the facts carried out within the framework of the evaluation.
- 3.3 From an examination of the case files (paragraph 1.2 above), the Supervisory Committee notes that the initial work plans consistently fail to include all, and in some cases, hardly any of the features recommended in paragraph 3.2.2.2 (7) of the Manual.
- 3.4 When the case is opened, the Supervisory Committee would expect the investigators in charge of the case, in consultation with their Head of Unit, to draw up a full investigation plan setting out all the elements referred to in paragraph 2.4 above and 6.8 and 6.9 below.
- 3.5 In the course of the preparation for this Opinion, the Directors of Directorates A and B, together with Heads of Units (A1, A2, and A4, B2 and B3) of Directorate A and B were consulted for their experience of drawing up initial work plans and investigation plans. There did not appear to be any consistency of practice or written guidance (apart from the Manual reference, above) across investigation units, still less across the two investigation Directorates.
- 3.6 Where good practice was evident, insofar as clear time management charts were kept by some Heads of Units (predominantly in Directorate B) and quarterly case reports were drawn up and reviewed on a regular basis, again, in Directorate B, these practices were not consistently adopted in Directorate A.
- 3.7 Overall, there was no or no sufficient attempt made to communicate and disseminate good practice across both Directorates and ensure it was taken forward.
- 3.8 The Time Management System appears to be little used, if at all; reluctance to use it stemming from a perception that the data produced in the TMS is historical (that is, it records past events) and is not regarded as useful for case management.
- 3.9 There are many international examples of good practice in drawing up and using investigation plans (for example, the UN, Serious Fraud Office, City of London Police Economic Crime Department and others) that we have examined.



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### 4. Perceptions of Heads of Unit

- 4.1 In consultation with Heads of Unit in Directorates A and B, it was noteworthy that Heads of Unit (particularly those of B2 & B3) in Directorate B, clearly keep tight control over the movements and tasks allocated to their investigators and were able to identify at a glance which staff members were available to be deployed on further work and which were fully committed for a foreseeable time on a particular case. This was borne out in the quarterly case reports that each investigator is required to complete and discuss with the respective HoU in Directorate B. These reports comprise a short account of the "Current Situation" in the investigation, actions taken in the previous quarter, actions foreseen in the next quarter and an updated estimated of the date for completion of the investigation.
- 4.2 In Directorate A, on the other hand, the Supervisory Committee found little indication of written evidence on the basis of the historic case files examined that planning of investigations has taken place at all in the past.
- 4.3 The Director of Directorate A has recently (June 2010) issued to his staff "Action Point 13", which addresses the need to put in place "significant improvement of the investigation planning and time scheduling" in cases in this Directorate. This Action Point requires that all assessment reports proposing the opening of an internal or external investigation "shall display a detailed, consistent and comprehensive working plan... each specific activity will be described and what is expected from it will be explained". It goes on to say that "once the case is opened, it is required that the working plan, as agreed by the Board, is developed through a time schedule for each of the specific investigation activities" which will be signed by the investigator in charge of the case, the Head of Unit and representatives of other units where they are involved.
- 4.4 The Action Point also addresses the need to carry out a cost/benefit analysis where overseas missions are envisaged and suggests that "missions are limited to the strict needs of the investigation" and that "repeated missions are to be avoided [unless] there are genuine new elements that lead OLAF to go again on the same mission".

### 5. Analysis of case files

- 5.1 40 cases were selected at random for analysis from Directorates A and B. From an analysis of these cases, it was apparent that, with one exception (see paragraph 5.7 below) no formal investigation plans were drawn up for cases in either directorate. Initial work plan suggestions, as prescribed in paragraphs 3.2.2.2(7) and (9) of the Manual (see paragraph 3.1 above) were present in all or almost all case files (see Annex). However, even then, very little attempt was made to provide much or, in





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some cases, any of the information suggested in the Manual. Several cases (see Annex) consisted solely of brief and vague “suggestions”, such as -

- To open an internal investigation
- To interview (suspect) as an interested party. It will then be assessed if and which further investigative steps are warranted” (case 5 in Annex).

- 5.2 The majority of initial work plan suggestions state merely “interview X, interview Y”, without any indication of what evidence it is intended to obtain from these witnesses or what purpose the interview is intended to serve. In some cases (see Cases Nos 11, 23, 24, 25 and 26 in Annex), the evaluator has included the words “with a view to establishing ...” but these are the exceptions, rather than the rule.
- 5.3 Rarely were dates for the projected completion of the enquiries or timeframes for the investigation included; where they were included, they appeared to be arbitrary and unrealistic. For example, in one case (see, Case No. 9 in Annex), an estimate of “two investigators/10 man days” was given, with no explanation for this estimate; in the event, the work done took 10 months to complete. The practice of including an estimate of work time in initial case assessments has now largely been discontinued.
- 5.4 The lack of evidence as regards the way the initial work plans are processed was noteworthy. No remarks or observations by management or the Board were observed in the files. This indicates that the initial work plan does not serve its purpose in guiding management decision-making. It should be pointed out that the initial work plan suggestions, set out in the Manual, as indicated above, are intended to guide the Board at the time of evaluating a case with a view to its being accepted or rejected for investigation by OLAF and not intended to guide the course of the investigation as a whole.
- 5.5 Once a case has been accepted by the Board, there appears, on the face of the case files, to be no further attempt to plan the course of the investigation.
- 5.6 Where cases were monitoring, assistance or co-ordination cases, as many cases are in Directorate B and also some in Directorate A, it is clear that the criteria set out in the Manual paragraphs 3.2.2.2(7) and (9) for completing the Assessment of Initial Information Form are not appropriate and no criticism is made of the absence of conformity with those criteria in such cases.
- 5.7 It is noteworthy that the Supervisory Committee did not find any formal case investigation plans after the cases had been opened in case files in either Dir A or B. However, in Directorate B, case update reports are prepared every three months to indicate to the Head of Unit what progress has been made in each investigation.



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- 5.8 The one exception, where a model investigation plan was included in the case file was Case No 41 in the Annex. This case could serve as a model for other case files: it contains full details of the allegations made, the objective of the investigation, realistic timeframes and a constructive initial work plan detailing investigation activities to be undertaken. This work plan was appropriately updated as the investigation progressed, with notations of what tasks had been completed and what assignments were still to be carried out, adding fresh tasks to be undertaken. Although this document is headed "Work Plan", it is, in fact, a full investigation plan, of exactly the type that the Supervisory Committee would like to see included in every case.
- 5.9 It must be pointed out that although the Supervisory Committee was unable to find any documented investigation plans, with the exception referred to in paragraph 5.7 above, this does not imply that in all cases the investigation was not carried out with rigour and thoroughness: indeed, in many cases it is clear that the cases were well investigated and produced results. The Supervisory Committee, however, suggests that the timeliness and focus of all investigations would benefit from active planning at the outset of each investigation, with work plans updated as the investigation progresses.
- 5.10 The Supervisory Committee notes that if the protocol set out in Action Point 13 issued to Units in Directorate A, referred to in paragraphs 4.3 and 4.4 above is adopted and implemented throughout OLAF, most of the concerns expressed in this Opinion will have been addressed. If this provision is found to be useful in practice, as the Supervisory Committee expects it to be, it is hoped that it will be reflected in the Manual as a mandatory procedure. This should be done by the Director General.

## 6. Recommendations

- 6.1 The Supervisory Committee recommends that a consistent, if not uniform, approach to strategic case planning be adopted across the operational Directorates.
- 6.2 The Supervisory Committee recommends that OLAF examines what information it needs to form an initial assessment of a case to enable the Board to make an informed decision as to whether or not a case should be accepted and the Form should reflect this. As it is, at the moment, completion of the Form is left to the discretion of the individual evaluator and Head of Unit and bears little if any resemblance to the criteria in the Manual especially since it is not in effective use by Board.
- 6.3 The Supervisory Committee recommends that the Board gives more detailed and careful scrutiny to the initial workplan, and makes constructive suggestions which can serve at a later stage in the investigation



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- 6.4 Overall, OLAF should consider adopting a two step approach in investigation planning - an initial assessment phase and a much more detailed plan once the case has been opened.
- 6.5 The Supervisory Committee recommends that OLAF sets out a template for an investigation plan and, while no two investigations have identical features, there are sufficiently common issues which should be present in every investigation plan. These will be different at the evaluation phase from the stage when the case is taken on for investigation. At the evaluation phase, features could be considered including the following -
- i. The objectives and scope of the investigation:
    - What is the suspected fraud/irregularity that is to be investigated?
    - Is it likely to be criminal, disciplinary or administrative?
    - What type of evidence is going to be required to be collected to support and/or disregard the information?
    - Where is the evidence likely to be found?
  - ii. The amount of money at stake and thought to be recoverable and what documentary evidence (and possible limitations) to support this would be needed?
  - iii. How many investigators, intelligence officers and legal advisors are likely to be deployed on the investigation?
  - iv. The likely timeframe for the investigation, bearing in mind that if a case is likely to be transmitted to national judicial authorities, there may be time limits imposed by national legislation which may effectively time-bar a prosecution.
- 6.6 The Supervisory Committee recommends that an investigation plan is revisited after the Board has taken a decision to open the case. The investigation plan is likely to consist of far more prescriptive and detailed tasks and timeframes for each step of the investigation, together with likely costings and suggested activities for each phase of an investigation.
- 6.7 If missions are to be included, careful consideration should be given during the planning phase to ensure the most effective use of Community funds. Moreover, the



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investigation plan should be drawn up bearing in mind those cases to be given priority treatment and the resources available.

- 6.8 It should be emphasised that the investigation plan is a dynamic document, to be reviewed regularly for updates prompted by developments in the investigation itself. It will be readily apparent from the plan, to the investigator as well as to the Head of Unit and the Director, that a case is proceeding well or running into difficulties. A good investigation plan allow each Head of Unit to see at a glance –
- The stage the investigation has reached;
  - Whether deadlines are being adhered to;
  - Whether deadlines should be modified, if new priorities are set;
  - Whether each investigator has carried out the planned tasks;
  - Whether each investigator has planned tasks for the coming weeks.
- 6.9 The Supervisory Committee, before the end of its mandate, hopes to assess whether and to what extent these recommendations regarding investigation planning have been implemented by OLAF.