

OPINION NO 3/2026

**OLAF's reporting duty concerning criminal conduct within the European Public
Prosecutor Office's competence**

EXECUTIVE SUMMARY

INTRODUCTION

1. The European Anti-Fraud Office ('OLAF') was created to protect the EU's financial interests by conducting administrative investigations into alleged fraud or other irregularities. At the same time, the Supervisory Committee of OLAF ('Committee') was established to strengthen and guarantee OLAF's independence through regular monitoring of its investigative function.
2. Subsequently, the European Prosecutor's Office ('EPPO') was created to investigate crimes affecting the EU's budget. OLAF and the EPPO have complementary roles in protecting the EU's financial interests and work in cooperation. The OLAF and EPPO Regulations establish rules governing the interaction between OLAF and the EPPO setting out a specific obligation on OLAF to report without undue delay on any criminal conduct falling within the EPPO's mandate.
3. Against this background, the Committee has adopted this opinion focussing on the implementation by OLAF of its reporting duty. The Committee aims to preserve OLAF's investigative independence by monitoring (i) the way OLAF collects, handles, and analyses all relevant information before deciding whether to report a case to the EPPO; (ii) that OLAF's decisions are taken impartially and without undue delay and that no external interference affects the conduct of OLAF's investigatory functions and; (iii) that OLAF's actions are fully in line with the OLAF Regulation, the EPPO Regulation and the PIF Directive.

MAIN AREAS ANALYSED

4. The Committee's opinion is based on the analysis of a sample of 68 cases dismissed, reported, discontinued or closed by OLAF in 2024. The Committee analysed:
 - OLAF's implementation of its reporting duty over the different stages of the investigation life cycle (during selection and/or investigation stages);
 - OLAF's verification of the existence of potential ongoing criminal investigation in the EPPO's case management system (both during selection and investigation stages);
 - The moment in which OLAF identifies criminal elements during an investigation and the moment in which it effectively reports these elements to the EPPO;
 - OLAF's definition of the notions of "criminal conduct" subject to reporting and "manifestly unsubstantiated allegations" which are excluded from the reporting obligation.

FINDINGS AND CONCLUSIONS

I. Analysis of the EPPO's competence at the selection stage

5. The case analysis revealed a lack of consistency in the level of detail concerning OLAF's evaluation of the EPPO's competence at the selection stage. While in some cases, OLAF's evaluation

addressed explicitly all relevant aspects, namely the material, temporal, territorial, and personal competence as provided for in the EPPO Regulation, in other cases, the examination was more limited, with only partial or succinct examination of these elements.

6. Each element of the EPPO's competence should be examined individually and in sufficient detail, with links to the factual allegations as they emerge at the selection stage. In this sense, OLAF's new internal guidelines (GIPs) applicable from the 1st of January 2026, provide that due consideration is to be given to all elements of the EPPO's competence, namely the material, temporal, territorial, and personal competence when assessing the EPPO's remit at the selection stage.
7. The Committee recommends OLAF to ensure through its internal control tools and procedures that, at the selection stage, a consistent and complete assessment of all the elements of the EPPO's competence is carried out in all cases, in line with Article 18.4 of the revised GIPs.

II. The notion of “manifestly unsubstantiated allegations”

8. Neither the OLAF Regulation, the EPPO Regulation, the Working arrangements between OLAF and the EPPO nor OLAF's internal procedural framework offer a formal definition or clear operational guidance on the concept of “manifestly unsubstantiated allegations” which do not require OLAF's reporting to the EPPO. In this context, it emerges from the case analysis that OLAF's interpretation and/or understanding of this concept is not applied consistently and uniformly across cases.
9. OLAF's ability not to report such “manifestly unsubstantiated allegations” to the EPPO should be interpreted primarily as a safeguard aimed at preserving the quality and credibility of the information transmitted. This standard should not be understood as requiring that allegations be substantiated or confirmed at the selection stage as a precondition for reporting.
10. The Committee recommends OLAF to establish, in cooperation with the EPPO, a common understanding accepted by both bodies, for the assessment and/or categorisation of “manifestly unsubstantiated allegations” that do not require reporting. The ongoing evaluation and forthcoming revision of the OLAF Regulation could be an appropriate moment to clarify this notion. Such a clarification may offer guidance to both OLAF and the EPPO on the appropriate evidentiary threshold required for reporting.

III. OLAF's verification of criminal investigations in the EPPO's case management system

11. In line with the applicable legal framework OLAF and the EPPO have established a system in which they can perform verifications in each other's case management system to obtain information on ongoing investigations being carried out by both entities to prevent parallel investigations into the same facts/allegations. The case analysis showed that this verification is a manual procedure that may take several days or weeks. As a result, the Committee recommends OLAF to pursue, in dialogue with the EPPO, arrangements on how OLAF can obtain better insight on ongoing EPPO cases to mitigate the risk of parallel investigations and simplify and accelerate the procedure for verifications.
12. When OLAF decides to dismiss its case at the selection stage without opening an investigation and reports it to the EPPO, it does not perform a verification in the EPPO's case management system. The Committee agrees that in these cases, performing such a verification would be redundant and could lead to unnecessary delays in reporting while awaiting the outcome of the verification.

13. Differently, in cases where OLAF's assessment of the initial allegations leads it to open an investigation, its practice concerning verifications appears to lack a clearly defined or consistently applied standard: in some cases, verifications are carried out, while in others they are not. Given OLAF's current absence of sufficient insight into ongoing EPPO cases, the Committee recommends OLAF to systematically conduct a verification before opening an investigation.
14. The case analysis identified instances in which OLAF was conducting its own investigation into irregularities while the EPPO was simultaneously carrying out criminal investigation, with neither entity aware of the other's activities. OLAF could consider adopting the practise of carrying out a preventive verification or notifying in advance the EPPO about its planned on-the-spot checks, which may affect any ongoing EPPO criminal investigation.

IV. Timing of OLAF's reporting during the investigation

15. Once the criminal elements are identified, OLAF suspends its investigation within a short timeframe and reports the cases expeditiously to the EPPO without undue delay. Exceptionally, in three cases, the reporting of the criminal elements required a longer timeframe. These cases mainly concerned situations where criminal elements were uncovered because of specific investigative activities, often involving the collection and analysis of a large volume of documents and information.
16. The Committee recommends that OLAF takes further steps to ensure that the reporting of criminal conduct to the EPPO is not disproportionately delayed because of the internal document processing or assessment, so that the EPPO's ability to assess its own competence in a timely manner is not adversely affected.

V. Assessment of a potential criminal conduct during the investigation

17. In a number of cases, OLAF undertakes a legal analysis of the allegations at an early stage of the investigation. This analysis may include a hypothetical qualification of the alleged conduct as criminal offences, should the investigation corroborate the initial hypothesis. The analysis of the case files also showed that the depth of the analysis of potential criminal conducts uncovered during the investigation may vary on a case-by-case basis.
18. OLAF could consider formalising an internal approach to the legal assessment of potential criminal conduct uncovered during investigations, whereby it documents in its case management system: (i) whether or not a potential criminal element was identified; (ii) the moment or date in which the criminal element was uncovered; (iii) the source/origin of the criminal elements and; (iv) a general analysis based on the provisions of the PIF Directive and the EPPO Regulation.
19. The Committee recommends that OLAF adopts a consistent approach to the legal qualification of the conduct which, as a rule, should remain at a general level, when assessing the EPPO competence's during investigations. The detailed assessment of complex or legally uncertain elements constituting a criminal offence should be left to the EPPO. OLAF should also be consistent in applying the EUR 10.000 reporting threshold to ensure that uncertainty as to the financial impact does not unduly restrict reporting. OLAF should take due account of scenarios in which the EPPO may exercise competence notwithstanding the threshold (including EU officials and/or "repercussions at Union level").

VI. Impact of OLAF's reporting to the EPPO

20. The OLAF Regulation requires OLAF to discontinue an ongoing administrative investigation and prohibits opening a new investigation where the EPPO is conducting a criminal investigation into the same facts.

21. When OLAF reports a case to the EPPO during the investigation, it has adopted the practice of suspending its investigations before reporting. In such instances, OLAF's investigation remains suspended pending the EPPO's decision on whether it will exercise its competence. The case analysis shows that in certain instances OLAF was informed of the EPPO's decision to open a criminal investigation several months after the initial reporting while OLAF's investigation remained suspended pending the decisions.
22. The Committee recommends OLAF to reassess its practice of systematically suspending its investigations before reporting cases to the EPPO, bearing in mind that: (i) the OLAF Regulation does not impose an obligation on OLAF to suspend its investigations before reporting a case to the EPPO and; (ii) that a response from the EPPO may require a significant amount of time.
23. The ongoing revision of the OLAF Regulation could provide an opportunity to strike an appropriate balance between, on the one hand, avoiding parallel investigations by OLAF and the EPPO and, on the other hand, preserving OLAF's ability to continue conducting its administrative investigations in a timely, autonomous and effective manner, without jeopardising potential future criminal proceedings.