



Opinion N° 2/2016
of the OLAF Supervisory Committee
on the OLAF Annual Activity Report

Executive summary

(A) The Supervisory Committee has analysed the OLAF Annual Activity Report 2015. The Committee has decided to focus on two key issues set out in Regulation 883/2013:

- *the duration of investigations;*
- *the complaints against OLAF investigative activities insofar they concern the procedural guarantees.*

In addition, the Committee considered the implementation by OLAF of the Committee's recommendations.

(B) While some improvements are noted, the Committee has identified additional ways to improve the reporting on the duration of investigations. The Committee would welcome a reasoned justification for the use of the benchmark of 20 months for the completion of the investigation by OLAF. In addition, the absence of data on review and control over duration of investigations is a reason for concern.

(C) OLAF's reporting to the Committee on the complaints lodged against OLAF linked to protection of fundamental rights is not exhaustive. OLAF reports only on the complaints lodged according to a procedure published on a website. The Committee has identified the existence of other complaints which are potentially linked to the protection of fundamental rights and procedural guarantees.

(D) Reporting by the OLAF Director General on the implementation of the Committee's recommendations does not align to the Committee's understanding of the position. The Committee is concerned about the lack of information shared by the OLAF Director General in this regard.



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I. Introduction

Article 15(1) of Regulation (EU) No 883/2013¹, first sub paragraph:

"The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office's independence in the proper exercise of the competences conferred upon it by this Regulation."

- (1) The monitoring mentioned in the Regulation is done, inter-alia, and according to Article 17(5) and the fifth sub-paragraph of Article 15(1) of the said Regulation, on the basis of information provided by the OLAF Director General either on his own initiative or at the request of the Committee.
- (2) Pursuant to Article 17(5) of Regulation 883/2013, the OLAF Director-General transmitted the Management Plan, the Annual Activity Report (hereinafter "AAR")² and the OLAF Operational Report for the year 2015³ to the Committee.
- (3) In previous opinions and reports, the Committee identified issues for concern related to OLAF's reporting⁴ on the implementation of its investigative function⁵ (cf. in particular Supervisory Committee Opinion No 5/2014 as well as Supervisory Committee Opinions No 2/2013, 1/2014, 4/2014, 3/2015 and Supervisory Committee Report 2/2014).

II. Purpose and methodology

- (4) The Committee is focusing on two aspects of its monitoring mandate conferred by the EU legislator: 1) The duration of OLAF investigations, for which the Committee has a specific role in Regulation 883/2013; 2) the handling of complaints by OLAF, on the basis of the evident link to the protection of fundamental rights of persons affected by OLAF investigations. The Committee also considered the OLAF follow-up of its recommendations.
- (5) OLAF reports on its activities through its Annual Activity Report, which follows its Annual Management Plan and which is a standard European Commission management tool for the implementation of policy priorities and operational activities. In addition, the Office produces an operational report (OLAF Annual Report), in order to inform the European Institutions about the operational results of the investigative activities.
- (6) The Committee decided to review developments in OLAF's reporting on the crucial aspects of the implementation of its investigative function mentioned in the introduction.

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), *OJ L 248, 18.9.2013, p. 1–22*.

² Note of 30/06/2016¹¹ with reference Ares(2016)3119982

³ Note of 30/05/2016 with reference Ares(2016)2495554

⁴ In its previous opinions and reports, the Committee indicated areas of concern as to the credibility, relevance, and robustness of some indicators applied by OLAF. The Committee noted that statistics used by OLAF seem very sensitive to the recurrent organizational changes and refer more to the quantity of work done than to the qualitative aspect of OLAF's investigations and, hence, their effectiveness in terms of protecting the EU budget.

⁵ See the text available on <http://europa.eu/supervisory-committee-olaf/opinions-and-reports>.

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In common accord with the Director General, OLAF included the follow-up of the Supervisory Committee's recommendations issued between 2012 and 2015 into the OLAF Annual Activity Report used in comprehensive discharge procedure for OLAF applied in the EU Institutions⁶.

- (7) For this purpose, the Committee analysed the OLAF Annual Activity Report provided by the OLAF Director General although it looked also to other sources for information such as the OLAF Annual Report. In this context, the Committee compared the findings to the results of similar Committee analyses in the past three years.
- (8) The Committee discussed the findings with the OLAF staff delegated by the OLAF Director General in two contradictory meetings where OLAF provided further data and clarifications. Following those meetings, OLAF completed the data and clarifications by written submission to the Committee. The position of OLAF and the requests of the Committee, together with all the supporting documents have been registered as preparatory works of the Committee in the database of documents of the European Commission⁷.
- (9) This input from OLAF helped the Committee to review its initial conclusions, so as to identify and focus on the issues which are most pertinent.

III. Duration of investigative actions carried out by OLAF

- (10) The Committee focused on OLAF's management of the duration of its investigations, this issue being at the core of the Supervisory Committee responsibilities (cf. Article 15(1) of the Regulation and the Supervisory Committee Opinions 4/2014 and 5/2014).
- (11) The Committee was in particular concerned by the robustness of the average duration of investigations as an indicator, following the introduction of a new methodology after the reorganisation of OLAF in 2012. The new methodology included on-going investigations into the calculation of the average duration, which, in the Committee's opinion, distorted the real picture.
- (12) Therefore, the Committee welcomes the fact that in OLAF's operational report 2015 (not the AAR) "Average duration of closed investigations only" is disclosed. It would be useful to have this indicator presented in the AAR as well.
- (13) The data presented in the operational report contains another useful indicator: the average duration of closed investigations including the selection phase.
- (14) To have a full picture of the handling of information at the pre-investigation stages it would be useful to indicate also the period elapsed between receiving and registering by OLAF of incoming information on one hand, and initiating the selection procedure, on the other.

⁶ Note of 04/05/2016 with reference ARES(2016)21393478, signed by the Director-General of OLAF.

⁷ Registered notes Ares(2016)6135401 of 26 October 2016, Ares(2016)6032125 of 20 October 2016 and Ares(2016)5565219 of 26 September 2016.

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- (15) OLAF should pay particular attention to the duration of investigations in view of the potential risk of time barring of the national procedure, if the preparatory work by OLAF is too lengthy in time.
- (16) There is no data available on the peer review or revision of decisions leading to the dismissal of information during the selection process. Furthermore, there is no data available on the mitigating measures implemented to avoid conflict of interest situations within the decision-making process leading to the dismissal of incoming information.
- (17) In its Opinion 5/2014 the Committee recommended that OLAF should report more transparently on the duration of the longest lasting investigation, because duration may in certain cases have an impact on procedural guarantees of the persons affected or on the principle of sound administration. Therefore, the Committee welcomes OLAF's reporting in the AAR 2015 on the percentage of cases lasting longer than 20 months.
- (18) However, the Committee would welcome a reasoned justification for the use of the benchmark of 20 months. The Regulation provides in Article 7(8) a benchmark of 12 months after which the OLAF Director General shall report on the reasons for the non-completion of the case and on the mitigating measures to speed up the investigations⁸. It is particularly important in view of the fact that OLAF investigations are normally just the preparatory measures and they are usually followed by judicial, disciplinary, or other procedures where time-barring may often be at stake if the preparatory measures take too long.

IV. Complaints linked to the protection of fundamental rights and procedural guarantees

- (19) OLAF reports four complaints in 2015 related to the handling of procedural guarantees in 2015. This figure refers only to the complaints received by OLAF on the basis of the procedure published in its website and, hence, does not cover complaints made by affected persons, such as, for instance, complaints to the European Ombudsman, complaints before national authorities, complaints to the mediation service of the European Commission, complaints on personal data processing, access to the case files etc.
- (20) The Committee requested the relevant information from OLAF, but was informed⁹ that retrieving it was subject to an "office-wide consultation" and the "setting-up of a working group," "since the information is either not documented in the specific format requested or not currently available."

⁸ There is no legal requirement on the delay to complete an investigation, there is a legal requirement, anchored in Article 7(8) of Regulation 883/2013 establishing that, "If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and the remedial measures envisaged with a view to speeding up the investigation".

⁹ See OLAF DG note of 25/02/2016 with ref. Ares(2016)980350.



V. Implementation of the Committee's recommendations addressed to OLAF

- (21) The Committee welcomes the integration of the follow-up to its recommendations by OLAF in the Annual Activity Report for 2015. 26 recommendations of the Committee fall to be followed up in the period covered by this report. However, the OLAF Director General only reported on 15 out of these 26 recommendations¹⁰.
- (22) The OLAF position taken and reported in its Annual Activity Report 2015 however does not align with the Committee's understanding on the level of implementation of the recommendations issued.
- (23) The OLAF Director General stated¹¹ that OLAF considered 11 out of the 15 recommendations issued by the Committee in four of its opinions¹² were implemented and one was not applicable. For OLAF, the implementation of three remaining recommendations was ongoing.
- (24) Based on information available to it, the Committee assessed the level of implementation of those 15 recommendations as follows:
- (i) 2 recommendations were implemented,
 - (ii) 6 recommendations were not implemented,
 - (iii) 1 recommendation was partially implemented,
 - (iv) 4 recommendations were rendered obsolete and
 - (v) for 2 recommendations no information has been communicated.
- (25) In future opinions the Committee will seek a formal commitment from the OLAF Director General on whether a recommendation will result in a specific action. The Committee will discontinue the follow up of any recommendation for which no such commitment is given on the grounds that the recommendation has not been agreed.

¹⁰ The OLAF Director-General provided no information to the Committee for 11 out of the 26 recommendations issued in the Opinion N° 2/2015 on the Legality Check and Review in OLAF and in the Opinion N° 3/2015 on the draft Investigation Policy Priorities for the year 2016. See letter of the SC Rapporteur to the OLAF Director General requesting an explanation on the lack of implementing actions and action plan, Ares (2016)6405652 of 14 November 2016.

¹¹ See registered note Ares(2016)222388 of 15 January 2016.

¹² SC Opinion 3/2014 OLAF's preliminary draft budget for 2015, SC Opinion 4/2014 Control of the duration of investigations conducted by OLAF, SC Opinion 5/2014 Statistics on investigative performance of OLAF (part I) - OLAF external reporting on the duration of investigations, and SC Opinion 1/2015 OLAF's preliminary draft budget for 2016.

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VI. Conclusions

- (26) The Committee welcomes the inclusion of the indicator “Average duration of closed investigations only” in OLAF’s operational report.
- (27) The Committee has identified ways to improve the reporting on the duration of investigations. The absence of data on review and control over duration of investigations is a reason for concern. Also the Committee would welcome a reasoned justification for the use of the 20 month benchmark.
- (28) The reporting by OLAF on the complaints lodged against it, which are linked to protection of fundamental rights, is not exhaustive. OLAF reports to the Committee only on the complaints lodged according to a procedure published on a website. The Committee has identified the existence of other complaints, which have a possible link to the protection of fundamental rights and procedural guarantees. The Committee considers it important that reporting of complaints be comprehensive given its role in respect of procedural guarantees.
- (29) The OLAF Director General reporting on the implementation of the Supervisory Committee’s recommendations does not align to the Committee’s understanding of the position. The Committee is concerned about the the lack of information shared by the OLAF Director General in this regard.

VII. Recommendations

- (30) The Supervisory Committee recommends that the Director General of OLAF:
- (i) Reports on the duration of pre-investigative work, including average time taken to initiate selection,
 - (ii) Ensures a full management and reporting system encompassing all complaints about which OLAF has been informed,
 - (iii) Reports in full on the follow up given to the Committee's recommendations, considering their implementation in agreement with the Committee.

Brussels, 20 January 2017

For the Supervisory Committee

Chair