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Opinion No 1/2013

OLAF's Preliminary Draft Budget for 2014

Brussels, 16 July 2013

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Introduction

At the meetings of 27 February and 16 July, 2013, OLAF's Supervisory Committee examined OLAF's preliminary budget for 2014 and adopted the following opinion.

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In accordance with the Regulation No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹ and Article 3 of the Commission Decision 1999/352/EC, ECSC, Euratom(4)², the European Anti-Fraud Office (hereinafter OLAF) shall have full independence to exercise its investigative function in all institutions, bodies, offices and agencies established by or on the basis of the Treaty on the European Union, Treaty on the Functioning of the European Union and the Euratom Treaty. To do this and to ensure that OLAF is able to function in an efficient and effective manner and contribute in the best possible way to the Union's objectives of the fight against fraud defined in Article 325 of the Treaty on the Functioning of the European Union, a specific budget line within the Commission budget (European Commission section of the General Budget of the European Union) is created for OLAF.³

In accordance with Article 11 of the Regulation No 1073/1999 the mission of the OLAF Supervisory Committee (SC) is to reinforce the independence of OLAF in the exercise of OLAF's investigative function. In the reform of Regulation No 1073/1999 adopted by the European Parliament and the Council in 2013, the role of the SC has been strengthened as guardian of the independence of OLAF in its investigative function and in the supervision of the respect of fundamental rights and freedoms. In this context, and with a view to the powers conferred by the Commission on the SC⁴, the SC has considered OLAF's Preliminary Draft Budget (PDB) and the Commission Draft Budget for 2014 concerning OLAF and delivers the following Opinion.

The objective of the procedure in which the SC adopts an Opinion on OLAF's Preliminary Draft Budget and Draft Budget is to give assurance that the Draft Budget duly takes into account the independence of the investigative function of OLAF and that OLAF is resourced to function effectively and efficiently as an inter-institutional service in stepping up the fight against fraud as foreseen by the Union legislator in Regulation No 1073/1999. The SC Opinion on the Preliminary Draft Budget also creates a documented forum of the SC advice to the Director-General of OLAF and to the Budgetary Authority of the Union and other Institutions of the Union on the prerequisites for efficient allocation and use of resources to

¹ Regulation No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 136, 31.5.1999, p. 1–7.

² 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), OJ L 136, 31.5.1999, p. 20–22.

³ See Art. 13 of Regulation No 1073/1999 (Art. 18 of the Regulation amended as of 1 October 2013).

⁴ Article 6 of the Commission Decision 1999/352/EC, ECSC, Euratom of 28th of April, 1999 establishing the European Anti-Fraud Office, OJ L 136, 31.5.1999, p. 20–22.

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and within OLAF. In this way the SC Opinion contributes to the attainment of value for money, legal certainty and efficient anti-fraud policy in the European Union. The Opinion of the SC is not therefore limited only to commenting on the budget line on the SC of the OLAF.

I. Resources

In the Draft Budget presented by the Commission on 26 June 2013, the OLAF budget will be increased by approximately 1.5 % with a total expenditure of € 58 523 000. The increase comes principally from the transfer of an additional 6 posts from headquarters budget line "Expenditure related to officials and temporary staff working with the institution to OLAF. If the impact of the EU enlargement to include Croatia is taken into account, the increase in the OLAF expenditure is 0.7 %. In the Draft Budget presented by the Commission the general increase in the Commission's administrative expenditure is 0.1 % and 0.8 % when taking into account the expenditure resulting from the enlargement to Croatia. The OLAF Budget has not been subject to the same strict savings measures as those within the Commission services in general. The SC notes this with satisfaction and considers that this line on resources provides the conditions necessary to continue the fight against fraud as one of the important priorities of the European Union.

The budget line concerning buildings and IT has been kept on zero growth in accordance with the general orientation of the Commission. The SC observes that a well-organised and up-to-date ICT support and infrastructure are necessary conditions for a cost-effective fraud investigation function. The SC has no objection to the general orientation in the Commission Draft Budget but SC would stress the need to keep both OLAF's Case Management, ICT analytics and other information systems up to date in order to enable OLAF to function efficiently.

Allocation of resources to priority activities

The SC has regularly recommended to OLAF in its previous opinions on the budget to allocate more staff to OLAF's core business – investigations – by shifting them from the support units. In addition, the SC has proposed clarification of the distinction between investigative and operational activities of OLAF. The SC notes the reorganisation of OLAF put in place on 1 February 2012 in which resources at the organisational level were increasingly concentrated on investigations. As a result of this, in the OLAF Report of 2012, the distribution of staff in the units dealing with the fight against fraud, OLAF policy strategy and coordination and administrative support is reported separately. This goes in the direction of clarification of the distinction between investigative and other operational activities of OLAF in line with the SC's earlier recommendations. However, the SC considers that clarification between investigation and investigation support functions, anti-fraud policy functions and other operational activities of OLAF should go still further.



Opening and follow up of the investigations

The SC would mention that consistent application over the years of the investigative policy priorities in line with Union's anti-fraud policy and the Commission's anti-fraud strategy is a core issue in the resources management of OLAF and in the performance of its investigative function. The SC notes that in the OLAF Management Plan the alignment with the investigative policy priorities is defined as one of the performance indicators for OLAF.⁵ The SC underlines the importance of transparent and reliable follow-up of the investigative policy priorities.

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The SC would refer to its earlier observations and statistics as presented by the European Court of Auditors in the Special Report No 2/2011⁶ on the low number of OLAF investigations leading to convictions by Member States judicial authorities.⁷ The SC considers that the rate of OLAF reports leading to convictions is one of the key indicators of the effectiveness of OLAF's investigative function requiring close and open attention. The SC recognises that the reasons why OLAF reports do not lead to conviction may, in some instances lie outside OLAF's control, however, the impact of such external factors should be carefully analysed and transparently reported. The SC therefore encourages OLAF to continue to develop indicators and report on them in a transparent and reliable manner in order to show an example of value for money and to demonstrate the positive impact that contribution of additional resources to OLAF has in the fight against fraud in the European Union, appropriate follow-up thus ensuring that the ultimate results of investigations are achieved. Without this OLAF risks carrying out good, hard work which may ultimately not produce the required results.

HR strategy

The reorganisation of the Office resulted in significant shifts of staff and modifications in their job description or even a completely new allocation of tasks. In such circumstances the SC reiterates its earlier position that it is essential to have an appropriate human resources strategy built on the identified and real needs of the organisation and its priorities, with the aim of giving direction and maximising the use of existing resources. The SC draws particular attention to OLAF's ability to recruit and maintain high quality professionals in its investigative functions as a focal point of cost-effective anti-fraud service at the Union level.

A crucial element of the human resources strategy should continue to be the continuous training related to internal mobility and overall restructuring. It should address the optimum balance between administrators and staff members with administrative professional background performing core investigative tasks and assistants providing support services.

⁵ See OLAF Annual Activity Report 2012 final, Ares (2013) 509786 – 26.3.2013: chapter 1.3, Specific objectives for “fight against fraud”: investigative and coordination activities, p. 5.

⁶ Special Report No 2/2011, “Follow-up of Special Report No 1/2005 concerning the management of the European Anti-Fraud Office”

⁷ See the SC Opinion 1/2012 of the 2013 OLAF Draft Budget, reproduced as Annex 2 of the SC Annual Report of 2012.



Recommendations:

- **Effective follow-up of investigations must be ensured and results of the investigations reported with timely and reliable indicators**
- **OLAF shall continue to develop indicators describing the efficiency and quality of its investigative function and on the alignment with the anti-fraud policy of the European Union and anti-fraud strategy of the European Commission**
- **A human resources strategy based on a needs assessment of OLAF's current activities should be developed and focus given to training, career development, succession planning and appropriate balance between assistants providing support services and administrators performing core investigative tasks.**

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II. Budgetary procedure

The Commission Decision establishing OLAF is clear that the SC must be consulted on the PDB of OLAF *before* it is sent to the Director-General for Budgets⁸. Up to now the Director-General of OLAF has transmitted the PDB to the Committee after "technical" meetings/arrangements with DG Budget. In 2013 the SC was presented with the preliminary draft budget in February and informed in June with regard to the Commission Decision on the Draft Budget for 2014. The SC believes that to provide an effective opinion on the PDB is one of its core tasks and would remind the Director-General of OLAF to undertake a substantive consultation with the SC prior to budget negotiations with DG Budget. Furthermore, the SC would encourage the Director-General to consult the SC on the OLAF Annual Management plan in order to have independent support and feed-back based on the follow-up of the investigative function by the SC.

Conclusion:

- **The Director-General of OLAF shall ensure that the SC be effectively consulted regarding the next PDB by means of a real and substantive exchange of opinions between the Director-General and the Committee *before* the PDB is sent to the Director-General for Budget in any form.**

⁸ Article 6 (2) of the Commission Decision 1999/352/EC, ECSC, Euratom cited above provides: "After consulting the Surveillance Committee, the Director shall send the Director-General for Budgets a preliminary draft budget to be entered in the special heading for the Office in the annual general budget".

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III. The SC and the Secretariat of the SC

The SC expenditure

The SC notes that the budget line of the expenditure related to the SC is not changed in 2014 Draft Budget.

The SC draws attention to the fact that with the extended responsibilities attributed to the SC by the Union legislator, the performance of the duties of the SC requires the devotion of a considerable amount of time by its Members who, by definition, do so on a part time bases.

The Resources of the Secretariat of the SC

In accordance with Regulation No 1073/1999 the SC has a crucial role to play in the monitoring of OLAF's investigative function. Moreover, the SC has a specific inter-institutional character.

In the discharge of its duties assigned by the legislator, the SC is dependent on its Secretariat. The SC would like to point out that the role of the Secretariat is primarily not to assist in the organisation and documentation of the meeting of the SC. In practice, the SC Secretariat performs an overall, regular monitoring of the investigative function of OLAF. This results from the fact that it is the SC Secretariat which has access, in accordance with the established access arrangements, to the OLAF Case Management System. The data protection rules *de facto* require that access to case information by the SC is implemented via the SC secretariat. An adequately staffed Secretariat with high quality personnel is thus a vital condition for the SC in the discharge of its duties as stipulated by the legislator.

The SC considers that the 2014 Draft Budget creates conditions for appropriate resourcing of the SC Secretariat.

The SC would point out the general principle of sincere cooperation between Institutions and bodies of the European Union, which is a general principle of the Union law, specifically that Regulation No 1073/1999 sets out further requirements on the sincere cooperation between the Director-General of OLAF and the SC. The Director-General of OLAF shall, in the spirit of sincere cooperation, consult the SC on all issues which relate to the staffing, promotion of personnel and resources of the SC Secretariat.

To be fully informative and representative of the total cost of supervision, the budget entry for the SC should incorporate the total cost of operations stemming from the duties stipulated in Regulation No 1073/1999, that is, all the SC Members' expenditure as well as that of its Secretariat which includes their salaries, training, travel etc.

OLAF has the privilege of transferring its funds freely from one line item to another. By joining up the total cost of the SC's function in a separate budget entry it is ensured that funds targeted for use by the SC are actually used for the supervisory function. However, funds remaining unused could be redeployed to other headings within the OLAF budget. Such redeployment should only be possible with prior notification to the SC and its approval.

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The Head of the SC Secretariat should be sub-delegated as the authorising officer to manage the total fund allocation for the SC's operations under the control of the Committee. Having one budget line which incorporates all expenditure will facilitate the management and efficiencies of the supervisory framework whilst, at the same time, any unused funds are passed on to other OLAF budget lines by the Director-General upon the approval of the SC.

A separate budget line has the benefit of transparency and reflects also the independence of the SC in line with the Regulation. At the same time, this separate budget line will inform the three institutions appointing the SC regarding the resources specifically allocated to the supervisory function.

Secretariat Staff

The SC maintains its position, as expressed in its previous opinions on the OLAF budget, on the minimum requirement of eight Secretariat staff, which is equivalent to the current needs of the SC. This represents about 2% of OLAF staff⁹ which the SC deems the minimum number required for it to carry out its monitoring function efficiently.¹⁰ The SC would point out that the legal duties of the SC require a small, but high quality staff in Secretariat. The SC has noted with satisfaction the intention of the OLAF Director-General to allocate additional posts to the Secretariat. The SC expects a fluid and rapid implementation of the announced intention.

Furthermore, the SC is of the opinion that, with regard to the appointment of the Head of the Secretariat and other staff for its Secretariat, including internal transfers, there should be close consultation with the Committee, as indicated in its Rules of Procedure¹¹ reflecting the principle of cooperation stipulated in the Regulation.

The SC acknowledges that the Commission staff rules and the appraisal and promotion system do not currently permit the SC Members to evaluate the performance of the staff of the Secretariat directly. The SC also notes that nothing in the Commission staff rules and appraisal and promotion system excludes the consultation of the SC and that some Institutions have developed consultation systems for situations in which a member of staff is effectively working for another directorate or body than the one which is legally responsible for the appraisal and promotion. Therefore the SC considers that even though the appraisal of the Head of Secretariat and his promotion are ultimately decided by the Director General of OLAF, he should make these decisions on the basis of the opinions of the Committee under

⁹ According to the OLAF report for 2011, there are 437 staff in the Office.

¹⁰ For the detailed analysis of the SC workload and consequently of the necessary SC Secretariat resources, see the note of the Head of the SC Secretariat of 21 March 2013. In view of the incoming amendments to Regulation No 1073/1999 entrusting additional tasks to the SC, the resources of the SC Secretariat may require reinforcement in the year 2014.

¹¹ Article 11 (3) of the SC's Rules of Procedure provides as follows: "In any case, the Head of the Secretariat shall inform the SC about the candidates for membership of the Secretariat. Once the applications are known, the Committee shall discuss in the plenary session whether they meet the Committee's working needs with a view to submitting a proposal for their appointment to OLAF's Director-General" (OJ L 308, 24.11.2011, p.114-120).

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whose direct authority the Secretariat works, as it is foreseen in the SC's Rules of Procedure¹². This will ensure the continuous independence of the Secretariat in their day to day functions.

Recommendations:

- **Separate budget line for both the SC and Secretariat should be considered to clearly indicate the costs of the SC function and to highlight in a transparent manner the inter-institutional character of the SC and its Secretariat.**
- **The Director-General of OLAF shall, in sincere and close cooperation with the SC, ensure that appropriate resources and staff members are allocated to the SC Secretariat in line with the intention expressed by the Director-General.**
- **Regular monitoring of the investigative function of OLAF and SC access to information depend on a small but high quality Secretariat. The Secretariat should have eight members of staff.**
- **Appointments, appraisal and promotion of the SC Secretariat staff should only be made following the approval of the SC, thus ensuring full independence of the SC Secretariat in the performance of its duties.**
- **Appraisal of the Head of Secretariat and his promotion should be decided by the Director-General on the basis of the SC's opinion.**

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IV. Conclusion

The SC supports OLAF's Draft Budget for 2014 with the provision that the above recommendations be taken into consideration.

In accordance with Article 6(2) of the Commission Decision of 28 April 1999, the Opinion should be transmitted to the Budgetary Authority by OLAF. Furthermore, the SC invites the Director-General of OLAF to update the SC regularly on measures taken by OLAF towards implementation of the recommendations in this Opinion.

Adopted in Brussels, on 16 July 2013

For the Supervisory Committee,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Chairman

¹² Article 11 (5) of the SC's Rules of Procedure provides as follows: "The Supervisory Committee shall periodically evaluate the work of the Head of the Secretariat and of the Secretariat members".