



***Implementation by OLAF  
of the Supervisory Committee's recommendations***

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*Report No 2/2014 from the Supervisory Committee  
of the European Anti-fraud Office (OLAF)  
to  
the European Parliament, the Council, the Commission and the Court of Auditors*

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*(pursuant to Article 15(9) of Regulation No 883/2013)*

# SUPERVISORY COMMITTEE



Recommendation		Status of implementation
1	HR Strategy	Fully implemented
2		Fully implemented
3	Resources allocated to the ISRU	Could not be verified
4		Fully implemented
5		Could not be verified
6		Fully implemented
7		Not implemented
8		Fully implemented
9	Follow-up of investigations	Could not be verified
10		Could not be verified
11	Right to private life	Not implemented
12		Partially implemented
13	Data protection	Not implemented
14	Right to express views on all facts	Could not be verified
15	Checks of economic operators	Could not be verified
16	Extension of the scope of investigation	Could not be verified
17	DG's direct participation	Not implemented
18	Notification to institutions	Could not be verified
19	Conflict of interest	Could not be verified
20		Not implemented
21	Adoption of a complaints procedure	Partially implemented
22	Publication of a complaints procedure	Partially implemented
23	Guidelines on IPPs	Pending
24	Dialogue with stakeholders	Partially implemented
25	Application of the selection criteria by the ISRU	Not implemented
26		Not implemented
27		Not implemented
28		Not implemented
29		Not implemented
30		Could not be verified
31		Not implemented
32		Could not be verified
33		Not implemented
34		Not implemented
35	Transparency of the selection process	Could not be verified
36		Could not be verified
37		Could not be verified
38		Not implemented
39		Could not be verified
40	Internal evaluation of the ISRU	Not implemented
41	The SC Secretariat	Fully implemented
42		Partially implemented
43		Partially implemented
44		Fully implemented
45	Budgetary procedure	Fully implemented
46	Consultation with the SC	Not implemented
47	Reporting to the SC	Not implemented
48		Not implemented
49		Not implemented
50		Not implemented



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## I. Purpose of the report and methodology

1. The Supervisory Committee (SC) of the European Anti-fraud Office (OLAF) monitors the implementation of the Office's investigative function, in order to reinforce its independence in the proper exercise of the competences conferred upon it by Regulation No 883/2013<sup>1</sup>.
2. The current SC was appointed on 23 January 2012 and, having reached the first half of its five-year mandate, hereby presents, pursuant to Article 15(9) of Regulation No 883/2013, a mid-term report on the implementation of its recommendations by OLAF. This report gives, for the first time, an overview of the extent to which OLAF has implemented the recommendations of the SC and thus represents a barometer of the impact of the SC's monitoring activities on OLAF's investigative function.
3. In the first half of its mandate, the SC issued 50 recommendations to OLAF contained in 6 Opinions<sup>2</sup>. The evaluation of their implementation status was based on OLAF's replies to the SC's Opinions<sup>3</sup> and on OLAF's self-assessment of the implementation of the SC's recommendations, as well as, where possible, on the results of the SC's own monitoring activities. The SC has used the following categories to assess the implementation status of its recommendations:
  - (a) **Recommendation implemented fully**: OLAF has taken concrete and appropriate actions to implement the recommendations;
  - (b) **Recommendation implemented partially**: OLAF has taken substantive action, but the SC considers that additional information and/or measures are required;
  - (c) **Recommendation not yet implemented - pending**: OLAF has informed the SC that it is reflecting on possible actions to be taken or that measures are foreseen to be taken (but has not provided the SC with any conclusive information on the implementation);
  - (d) **Recommendation not implemented**: the SC has received a response, but OLAF did not agree to introduce the relevant measures or the actions taken are not satisfactory for the implementation of the recommendation;
  - (e) **Implementation of a recommendation could not be verified**: OLAF has not provided the SC with a substantial reply and the SC has no sufficient information to assess the implementation of the recommendation.

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<sup>1</sup> 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. 1–22.

<sup>2</sup> [http://ec.europa.eu/anti\\_fraud/about-us/reports/supervisory\\_reports/index\\_en.htm](http://ec.europa.eu/anti_fraud/about-us/reports/supervisory_reports/index_en.htm)

<sup>3</sup> [http://ec.europa.eu/anti\\_fraud/about-us/reports/official\\_responses\\_from\\_olaf\\_en.htm](http://ec.europa.eu/anti_fraud/about-us/reports/official_responses_from_olaf_en.htm)



4. The global results of the SC's review are presented in the table at the beginning, while **Annexes 1 to 7** show the distribution of the recommendations by topic and provide (i) a summary of the SC's recommendations, (ii) the follow-up actions taken by OLAF and/or the replies provided to the SC and (iii) the issues which, in the SC's opinion, remain to be addressed and would deserve to be further considered by OLAF.

## II. Recommendations concerning OLAF's investigative function

### OLAF investigative resources

5. In a number of its Opinions<sup>4</sup>, the SC assessed the use of investigative resources by OLAF. The SC made repeated recommendations concerning the HR strategy<sup>5</sup> which were finally implemented. OLAF has recently adopted an "HR Strategic plan 2014-2016"<sup>6</sup>. The SC welcomes it and will give it further consideration.
6. The recommendations concerning resources allocated to the Investigation Selection and Review Unit (ISRU)<sup>7</sup> have been implemented to a large extent. The ISRU is now organized in three sectors for selection and one sector for review, which allows, in the SC's opinion, a better implementation of the specialization principle, as the SC suggested, as well as a clearer separation of the selectors from the reviewers. The number of cases attributed for selection to the latter has been reduced. Finally, technical problems with OLAF's Fraud Notification System seem, according to OLAF, to be addressed. The SC welcomes these improvements.
7. The implementation of other SC recommendations (to increase the number of selectors, to ensure that they have appropriate expertise, to ensure an effective follow-up of investigations and to develop indicators describing the efficiency, quality and results of the follow-up of OLAF investigations) could not be assessed, since OLAF has not provided the SC with a substantial reply on these matters. Finally, internal guidelines for dealing with whistle-blowers have not been adopted. (see **Annex 1** for details)

### Implementation of new OLAF investigation procedures

8. In October 2012, the SC was informed of a case - concerning, *inter alia*, a Member of the European Commission - requiring information to be transmitted to national judicial authorities. At that time, this case was - since the reorganisation of OLAF and the change of the investigative procedures on 1 February 2012- the first and only one to be opened, conducted and closed entirely under the new rules set out in the Instructions to Staff on Investigative Procedures. The

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<sup>4</sup> Opinions 1/2012 and 1/2013 on *OLAF's Preliminary Draft Budget* (for 2013 and 2014) and Opinion 2/2014 on *Case selection in OLAF*.

<sup>5</sup> Opinions 1/2012 and 1/2013.

<sup>6</sup> Ref. Ares(2014)2828346 - 29/08/2014.

<sup>7</sup> Opinion 2/2014.



complexity of the investigation offered the SC the opportunity to assess the application of a significant number of those new internal OLAF rules<sup>8</sup>.

9. As a result, the SC issued, in its **Opinion 2/2012**<sup>9</sup>, a number of recommendations concerning fundamental rights (i.e. right to respect of private life and communications, right to protection of personal data, right to express views on all facts), legality checks (i.e. on-the-spot checks, extension of the scope of an investigation), impartiality rules, notification procedures.
10. The SC has reviewed the follow-up by OLAF to these recommendations (see **Annex 2**). The SC notes that the implementation of five recommendations could not be verified, since OLAF has not provided the SC with a substantial reply and/or satisfactory explanation or with any information on OLAF's follow-up to the SC's recommendations. As to the other recommendations, the SC disagrees with OLAF assessment and considers that four have not been implemented and one was partially implemented, for the reasons stated below.
11. Having identified at least two investigative measures which were applied apparently without any legal basis, the SC recommended to OLAF to indicate the legal basis prior to applying any measure potentially interfering with the fundamental rights to "private life" and "communications" of persons involved in an investigation and to make an analysis of its competence to gather evidence by way of recording private telephone conversations, namely to conduct an analysis on the legality of the recording, within OLAF's investigation, of a telephone conversation between a witness and a person concerned, agreed between the witness, one party to the conversation, and an investigator, the latter having assisted the witness in the preparation of this telephone conversation.
12. OLAF considers that it has implemented both recommendations. However, the SC has a different view and considers that the first one has not been implemented, since no valid legal basis for those measures has been indicated by OLAF, while the implementation of the second one appears to be only partially completed, since it appears from OLAF's reply that the legal analysis is not yet finalized<sup>10</sup>.
13. It appears from the analysis conducted by OLAF that the Member States require a judicial authorization for such measures performed without the knowledge of one of the parties. Specifically, the Belgian law, which was referred to by OLAF in its response to SC Opinion 2/2012<sup>11</sup>, does not allow public officials to conduct such recordings without a prior judicial authorization.
14. Moreover, the SC maintains its opinion that, independently of the national rules, such measure should be also in accordance with Article 7 of the Charter of Fundamental Rights of the EU

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<sup>8</sup> Especially the procedures concerning the selection of cases, opening decision, special investigation team, extension of scope of the investigation, conduct of investigative activities related to internal and external aspects of an investigation, legality check during the investigation and final quality and legal review.

<sup>9</sup> Opinion 2/2012: Analysis of OLAF case OF/2012/0617.

<sup>10</sup> On 11/06/2014, following two reminders sent by the SC, OLAF provided the SC with the legal analysis "as it stands today".

<sup>11</sup> Letter of the OLAF Director-General of 8 February 2013.

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(right to respect for everyone's "private life" and "communications"), which requires that this type of interference should have a legal basis. In the specific case analyzed by the SC, OLAF did not indicate any legal basis allowing it to perform this kind of action. Taking into account the results of the legal analysis provided by OLAF, the SC continues to question the legality of this measure conducted outside of any judicial control.

15. Two other recommendations which have not been implemented by OLAF concern the direct participation of the Director-General of OLAF (OLAF DG) in an investigation and the application of data protection rules.
16. The SC's recommendation that the OLAF DG should refrain from taking the risk of putting himself in a potential situation of conflict of interest that could jeopardize the review of OLAF's actions has not been implemented, since OLAF disagrees with the SC's interpretation of the notion of "conflict of interest". The SC maintains, however, its recommendation and it takes the view that the legitimacy of OLAF's investigations in the eyes of the public depends not only on avoiding real conflict of interest but also apparent conflict of interest<sup>12</sup>.
17. Finally, OLAF considers that it has implemented the SC's recommendation to inform persons unrelated to the investigation that their personal data and telephone listings appear in the case file, because OLAF follows the European Data Protection Supervisor's general recommendations which allow not informing persons unrelated to an investigation that OLAF is processing their personal data.
18. The SC has a different opinion on the matter and understands that the practice of not informing EU citizens that their personal data are processed by OLAF concerns exclusively persons whose data happen to appear in documents dealt with by OLAF, but without the intention of acquiring them and without any attempts to process them for the purposes of an investigation. In this particular case, OLAF actively acquired personal data of certain EU citizens unrelated to the investigation and processed them for the purpose of the investigation. Therefore, the SC is of the opinion that OLAF is clearly obliged to inform them about their rights under Regulation No 45/2001, which has not yet been done.
19. Additionally, the OLAF DG questioned the SC's competence "*to issue recommendations to OLAF on actions taken in the framework of a specific investigation*"<sup>13</sup> and stated that the SC has acted "*ultra vires*" by issuing an opinion on an individual case<sup>14</sup>. The SC disagrees with these remarks for the reasons below.
20. At the time when the SC issued its Opinion, Regulation No 1073/1999 was still in force. Article 11 expressly empowered the SC to issue recommendations, on its own initiative, on the "*activities of the Office*" and therefore on any aspect of the OLAF investigative function, with the only restriction of not "*interfering with the conduct of investigation in progress*". Any other

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<sup>12</sup> For a similar approach, see Decision of 1 February 2103 of the European Ombudsman closing his inquiry into complaint 1339/2012/FOR against the European Central Bank.

<sup>13</sup> Cf. letter of the OLAF DG of 5 March 2014.

<sup>14</sup> Cf. letter of the OLAF DG of 8 February 2013.



recommendations are within the SC powers and within its duties, including "*assisting the Office's [Director-General] in discharging his responsibilities*" (Recital 17), in particular when it comes to the respect of fundamental rights. Moreover, both the OLAF DG and the SC were equally responsible for ensuring respect of the rules concerning confidentiality and data protection (Article 8(4)). Regulation No 883/2013 has confirmed the SC's obligation to assist the OLAF DG in discharging his responsibilities (Recital 37), as well as its duty to monitor the implementation by the Office of its investigative function and the power to issue recommendations to the OLAF DG, with the only restriction of not "*interfering with the conduct of investigations in progress*" (Article 15).

21. At the time when the SC's Opinion was issued, the investigation was closed and therefore the recommendations made by the SC were not intended to recommend "*that OLAF should have taken different measures in that investigation*"<sup>15</sup> and did not have any effect on this specific investigation.
22. Furthermore, while agreeing, in principle, that dealing with systemic aspects of OLAF's investigative practice would require examination of those practices in a series of cases, the SC must also underline its role of ensuring OLAF's independence and respect of procedural guarantees in individual cases. The fact that the SC identifies irregularities in an individual case – and not in a series of cases – does not relieve it of its duty to react. In fact, the SC believes it is its duty to apply a zero-tolerance policy with regard to any violations of OLAF's independence or of respect of fundamental rights in its investigative activity.

### Complaints procedure

23. The SC's **Opinion 2/2013**<sup>16</sup> concerned OLAF's procedure for dealing with complaints. The SC recommended that OLAF establish a formalized internal complaints procedure in order to deal with individual complaints concerning OLAF investigations and publish it on OLAF website. OLAF and the SC have different views with regard to the degree of the implementation of the SC's recommendations (see **Annex 3**).
24. On 20 January 2014, OLAF published on its website a description of the manner in which complaints related to OLAF's investigations and addressed to OLAF are treated. Initially, the OLAF DG considered that he had thus formalized an already existing internal complaints procedure by publishing the description on OLAF's website and that this did not require a written decision from him. Following a discussion with the SC, he adopted a "written confirmation" of the existence of the complaints procedure, without, however, publishing any formal decision on OLAF's website. Consequently, the SC still considers that the complaints procedure has not as yet been properly formalized, due to the lack of a formal decision, duly dated, signed and published, fixing the procedure and specifying the complainants' rights. Therefore, the SC considers that its recommendations have been only partially implemented.

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<sup>15</sup> Cf. letter of the OLAF DG of 8 February 2013.

<sup>16</sup> Opinion No 2/2013 on *Establishing an internal OLAF procedure for complaints*, adopted in December 2013 and published in the SC 2013 Activity Report as annex 2.





## Investigation Policy Priorities

25. The SC examined the Investigation Policy Priorities (IPPs) established in 2012, 2013 and 2014 by the OLAF DG. Following comments expressed by the SC in its 2012 Activity Report<sup>17</sup> and during technical meetings with the SC Chairman, the OLAF DG adopted an amended definition of the IPPs for 2014 and reviewed the policy on financial indicators. However, as a result, the OLAF DG completely excluded any financial indicators from the draft IPPs for 2014. Therefore, the SC issued, in its **Opinion 1/2014**<sup>18</sup>, recommendations aiming to ensure that the unit responsible for case selection had appropriate and concrete guidance and that the adoption of the IPPs was based on feed-back from the stakeholders.
26. The SC notes that the implementation of the recommendation concerning the guidelines on the application of the selection principles is pending, while the other recommendation seems to be only partially implemented (see **Annex 4**).
27. OLAF informed the SC of a number of measures adopted in order to ensure regular consultations with Directorates-General of the Commission on matters related to fraud prevention and detection. However, financial indicators have been completely abandoned instead of being reviewed and therefore selectors still need further formal guidance on the application of the proportionality principle. Moreover, OLAF has not introduced any follow-up procedure for cases in which there is a "sufficient suspicion" of fraud, but which have been dismissed on the basis of subsidiarity, proportionality or investigation policy priorities.

## Selection of cases

28. The SC assessed the efficiency, quality and transparency of the selection process in OLAF and issued, in its **Opinion 2/2014**, a number of recommendations with the objective of improving it. As an overall conclusion of its assessment, the SC issued a final recommendation that OLAF carry out an internal evaluation of the activities of the ISRU and requested that the OLAF DG inform the SC on the follow-up given to its recommendations.
29. OLAF provided the SC with a self-assessment of the implementation of the SC's recommendations, indicating that most of them are either implemented or not applicable. However, the review carried out by the SC indicates that many of the responses are not substantial or not relevant to the recommendations. As a consequence, the SC could not verify the implementation of some of the recommendations, while others appear not to have yet been implemented (see **Annex 5**). Taking into account all the above considerations, the SC will consider the possibility of again reviewing the implementation of these recommendations in a future report.

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<sup>17</sup> The SC expressed the view that OLAF should reconsider high financial thresholds for opening of investigations.

<sup>18</sup> Opinion 1/2014 on *OLAF Investigation Policy Priorities*.



### III. Recommendations concerning the Supervisory Committee

#### Independent functioning of the Supervisory Committee and of its Secretariat

30. The SC has an inter-institutional character, which derives from the SC's mandate and tasks, as well as from the appointment procedure of the SC Members. The SC, as an independent body, reports to the EU institutions and participates in the exchange of views with the institutions. In addition, Regulation No 883/2013 calls for OLAF to equally ensure the independent functioning of the SC's Secretariat<sup>19</sup> which the SC considers as a prerequisite for the independence and effective functioning of the SC itself.
31. Therefore the SC recommended that OLAF ensure adequate staffing of the SC Secretariat, the independent functioning of the SC Secretariat (in particular regarding the staff appointment, appraisal and promotion) and a separate budget line for the SC's Secretariat.<sup>20</sup> OLAF fully implemented two recommendations and partially implemented one recommendation (see **Annex 6**).
32. OLAF allocated to the SC Secretariat the number of staff requested by the SC, sub-delegated the implementation of a part of the budget of the Secretariat to its Head and presented to the SC an estimate of the SC Secretariat's budget. The SC welcomes this improvement, but notes that the OLAF DG has still not sub-delegated powers with regard to the Secretariat staff to its Head.

#### Consultation with and reporting to the Supervisory Committee

33. The SC recommended that OLAF consult the SC or report to it on matters falling within the mandate of the SC. In particular, the SC recommended that OLAF:
- report regularly to the SC on complaints received and on the method of handling them<sup>21</sup>;
  - provide the SC with an assessment of the results of the implementation of the IPPs for 2012 and 2013 together with a summary of the feedback provided by the stakeholders<sup>22</sup>;
  - inform the SC whenever actions or omissions of EU or national authorities are likely to jeopardize OLAF's investigative independence and of the measures it intends to put in place in order to improve cooperation with stakeholders<sup>23</sup>;
  - inform the SC on all dismissed cases in which information has been transmitted to judicial authorities of Member States, in accordance with Article 17(5) of Regulation No 883/2013<sup>24</sup>;
  - consult the SC before OLAF's Preliminary Draft Budget is sent to the Directorate General for Budget<sup>25</sup>.

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<sup>19</sup> Recital 40.

<sup>20</sup> The recommendations were made in the SC's Opinion 1/2012 and were reiterated in the SC's Opinion 1/2013.

<sup>21</sup> Opinion 2/2013.

<sup>22</sup> Opinion 1/2014.

<sup>23</sup> Opinion 2/2014.

<sup>24</sup> Opinion 2/2014.



34. With the exception of the last of these recommendations, none of them have been implemented to date (see **Annex 7**). Either OLAF has just expressed its willingness to consult the SC in the future or acknowledged implementing difficulties or stated its disagreement.

#### **IV. Conclusions**

35. The implementation review shows that, out of 50 SC recommendations, OLAF has fully implemented only 8 recommendations (16 %) and partially implemented 6 recommendations (12 %).

72% of the SC's recommendations seem not to have been implemented: for 20 recommendations no satisfactory actions have been taken, implementation of 1 recommendation is pending and implementation of 15 recommendations could not be verified, since OLAF has not provided any sufficiently substantial information.

36. **The SC is particularly concerned that not only are the majority of the SC's recommendations not implemented, but that OLAF does not even provide any relevant justification therefor.**

The SC intends to monitor, on a regular basis, the implementation by OLAF of the SC's recommendations.

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<sup>25</sup> Opinions 1/2012 and 1/2013.

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## ANNEXES

### Annex 1 Recommendations concerning OLAF investigative resources

– Opinions 1/2012, 1/2013 and 2/2014

<i>Subject</i>	<i>Reference</i>	<i>SC recommendations to OLAF DG</i>	<i>OLAF self-assessment (5/03/2014 and 23/06/2014)</i>	<i>SC's assessment</i>
<i>OLAF resources and HR strategy</i>	<i>Opinion 1/2012</i>	<b>[nr 1]</b> OLAF to develop a human resources strategy based on a needs assessment, with focus on training, career development (also for temporary agents), succession planning and justified division of tasks among administrators and assistants.	<p><b>Partially implemented (on-going)</b></p> <p>SC's recommendation on OLAF staff policy seems to go beyond its mandate to monitor OLAF's investigative function.</p> <p>However we can inform you that an OLAF Human Resources Strategic Plan is under development and will be finalised by mid-2014.</p>	<p><b>[nr 1] and [nr 2] Implemented</b></p> <p>On 29 August 2014, the OLAF DG forwarded to the SC the "OLAF HR Strategic Plan 2014-2016".</p> <p>With regard to Opinion 1/2012, the SC cannot agree that its recommendation "goes beyond its mandate".</p> <p>The SC's role was confirmed by Regulation No 883/2013, which specifies that the SC recommendations shall concern, among others, "the resources needed to carry out the investigative function of the Office" (Article 15(1) third paragraph). The SC welcomes the fact that OLAF did not reiterate this statement with regard to Opinion 1/2013.</p>
	<i>Opinion 1/2013</i>	<b>[nr 2]</b> 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.	<p><b>Pending</b></p> <p>The adoption of an OLAF HR strategic plan is foreseen shortly.</p>	

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<p><i>Resources allocated to the ISRU</i></p>	<p><i>Opinion 2/2014</i></p>	<p>OLAF should ensure that the ISRU has at its disposal sufficient and adequate resources to carry out its selection tasks.</p> <p>In particular, OLAF should:</p> <p><b>[nr 3]</b> Increase the number of selectors with investigative experience;</p> <p><b>[nr 4]</b> Apply the principle of specialization of selectors more rigorously;</p> <p><b>[nr 5]</b> Ensure that the selectors have the appropriate (legal, linguistic and sectorial) expertise and provide them with sufficient training;</p> <p><b>[nr 6]</b> Improve the functioning of the FNS, in order to allow it to cope with the upload of documents of greater size.</p> <p><b>[nr 7]</b> Adopt proper procedures for dealing with whistle-blowers.</p>	<p><b>Implemented</b></p> <p><b>[nr 3]</b> the ISRU comprises selectors of various backgrounds – not only former OLAF investigators – covering a large area of expertise. The number of selectors was increased in June 2014.</p> <p><b>[nr 4]</b> the selectors are specialised and organised under three sectors, according to three subject areas: “EU staff, direct expenditure, external aid and new financial instruments”, “Customs, tobacco and counterfeiting” and “Structural funds and agricultural expenditure”.</p> <p><b>[nr 5]</b> the selectors have the appropriate expertise and regularly undergo training which is specifically adapted to their needs.</p> <p><b>[nr 6]</b> OLAF addressed the problems with the FNS through a new contract for maintenance. A new release was delivered and implemented mid June 2014 and is working as planned.</p> <p><b>[nr 7]</b> Proper procedures for dealing with whistle-blowers are in place. OLAF complies with the Staff Regulations and the Commission’s Guidelines on Whistleblowing (SEC(2012)679final). OLAF will consider the need for additional internal guidelines.</p>	<p><b><u>[nr 3]</u> and <u>[nr 5]</u> Implementation of recommendation could not be verified</b></p> <p>The SC has received no substantial reply: the number of selectors recently joining the unit is not indicated and OLAF did not indicate any remedial measures to the concerns expressed by the SC in its Opinion 2/2014.</p> <p><b><u>[nr 4]</u> and <u>[nr 6]</u> Implemented</b></p> <p><b><u>[nr 7]</u> Not implemented</b></p> <p>The SC is fully aware of the rules in the Staff Regulations and the Commission’s Guidelines on Whistleblowing (SEC(2012)679final) of December 2012. The SC however considered that they could be supplemented by clear and detailed internal rules for dealing with whistle-blowing (Opinion 2/2014, paragraph 42).</p> <p>The European Ombudsman stated, with regard to the above mentioned Guidelines, that "the Commission has been the most advanced institution by adopting guidelines on whistleblowing, <b>but not yet internal rules</b>"(emphasis added)<sup>26</sup>.</p> <p>The SC maintains its recommendation.</p>
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<sup>26</sup> See European Ombudsman's Press release no. 16/2014, 28 July 2014, "What are EU institutions doing to protect whistle-blowers"? <http://www.ombudsman.europa.eu/en/press/release.faces/en/54626/html.bookmark>.

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	<i>Opinion 2/2014</i>	<p><b>[nr 8]</b> OLAF should place the selectors in an organisational structure separate from the reviewers and maximally reduce the number of cases for selection allocated to reviewers.</p> <p><i>OLAF could consider either decentralising the selection function to the investigative Directorates, or introducing a rotation system whereby investigators from each investigation unit are allocated, for a period of time, to the ISRU.</i></p>	<p><b>Implemented</b></p> <p>OLAF has reduced the number of selection files allocated to reviewers. OLAF has carefully considered the SC recommendation and decided to keep the current organisational structure of the ISRU. The ISRU has been reinforced by recruiting staff from the investigative units.</p>	<p><b>Implemented</b></p> <p>Statistical information extracted from the CMS (prior to the SC's access to statistical data being cut by OLAF in June 2014) indicates a significant decrease in the number of cases for selection allocated to the reviewers in 2014.</p> <p>The SC takes note of the organisation of the ISRU into several sectors.</p>
<i>Follow-up of investigations</i>	<i>Opinion 1/2012</i>	<p><b>[nr 9]</b> An effective follow-up of investigations must be ensured (incl. feedback on OLAF recommendations).</p>	<p><b>Implemented</b></p> <p>With the new OLAF organisation the follow-up is done more efficiently and effectively.</p>	<p><b>Implementation of recommendation could not be verified</b></p> <p>The SC has received no substantial reply.</p> <p>The SC notes that the OLAF DG issued, on 12 May 2014, Guidelines on judicial, disciplinary and financial monitoring. However, due to the lack of access to OLAF cases, the SC is not in a position to assess OLAF's monitoring activity.</p>
	<i>Opinion 1/2013</i>	<p><b>[nr 10]</b> OLAF should continue to develop indicators describing the efficiency, quality and results of the follow-up of its investigations.</p>	<p><b>Implemented</b></p>	<p><b>Implementation of recommendation could not be verified</b></p> <p>The SC has received no substantial reply.</p> <p><i>(see also the recommendation above)</i></p>

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## Annex 2 Recommendations concerning OLAF case OF/2012/0617

### Opinion No 2/2012

<i>Subject</i>	<i>SC recommendations</i>	<i>OLAF self-assessment (7/02/ 2013 and 5/03/ 2014)</i>	<i>SC's assessment</i>
<p><i>Right to private life</i></p>	<p><b>[nr 11]</b> OLAF to indicate the legal basis prior to applying any measure potentially interfering in the fundamental rights to "private life" and "communications" of persons involved in an investigation.</p>	<p><b>Implemented</b></p> <p>For every investigation activity undertaken by OLAF, the legal basis is specified on the investigation authorisation.</p> <p>OLAF is well aware of the requirements of Article 7 of the Charter of Fundamental Rights of the EU and Article 8 of the European Convention of Human Rights (ECHR) that everyone has the right to protection of his private and family life, and his correspondence/communications. As an investigative body, OLAF acknowledges the fact that its activities are «potentially interfering in the fundamental rights to "private life" and "communications" of persons involved in an investigation». However, such interference by OLAF in the context of its investigations is in accordance with law and necessary in a democratic society in the interests of the economic wellbeing of the EU, and for the prevention of disorder or crime, as required in Article 8(2) ECHR.</p> <p>Further, OLAF fully respects all data protection requirements in the performance of its investigative activities, in accordance with Regulation (EC) No 45/2001. In particular, before undertaking any investigative activity, OLAF evaluates necessity and proportionality.</p>	<p><b>Not implemented</b></p> <p>In Opinion 2/2012 transmitted to the DG on 17 December 2012 the SC identified at least two investigative measures which were applied without legal basis and in probable violation of Article 7 of the Charter of Fundamental Rights of the EU (the right to "private life" and "correspondence").</p> <p>Until today, no valid legal basis for those measures has been indicated by OLAF.</p> <p>The SC does not agree with this OLAF position that the Office has some kind of a "blanket competence" to interfere in fundamental rights of the EU citizens. Every such possibility has to be carefully analysed and justified in advance on a case-by-case basis.</p> <p><i>(see also the recommendation below)</i></p>

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<p><i>Right to private life</i></p>	<p><b>[nr 12]</b> OLAF did not analyse its competence to gather evidence by way of recording private telephone conversations which seems contrary to Article 7 of the EU Charter of Fundamental Rights. OLAF to make such a legal analysis.</p>	<p><b>Implemented</b></p> <p>Following the SC's recommendation, OLAF conducted a legal analysis of the situation in several Member States concerning the use of recording by public authorities of private telephone conversations.</p>	<p><b>Partially implemented</b></p> <p>The relevant legal analysis was promised by the OLAF DG in a note addressed to the SC on 8 February 2013.</p> <p>On 11 June 2014, following two reminders sent by the SC, OLAF provided the SC with the legal analysis "as it stands today". Thus it would appear from OLAF's reply that this legal analysis is still on-going.</p>
<p><i>Data protection</i></p>	<p><b>[nr 13]</b> OLAF did not inform persons unrelated to the investigation that their personal data and telephone listings appear in the case file which seems contrary to requirements of Regulation 45/2001. OLAF to fulfil this legal obligation without delay.</p>	<p><b>Implemented</b></p> <p>OLAF:</p> <ul style="list-style-type: none"> <li>• considers that it is not the SC's mandate to issue recommendations to OLAF on action(s) to be taken in the framework of a specific investigation.</li> <li>• on data protection, follows the recommendations of the EDPS.</li> <li>• has complied with all its legal obligations towards "other persons unrelated to the investigation", as stipulated by the EDPS (as outlined in point 2.8 of its reply to SC's Opinion No. 2/2012).</li> </ul>	<p><b>Not implemented</b></p> <p>In 2012 OLAF actively sought data (including name, address, phone number, ID number) of certain persons unrelated to the investigation in question. OLAF requested and received, used and stored this personal data, but refused to inform the involved persons.</p> <p>Nevertheless, in his note of 5 March 2014, the OLAF DG claims that the SC recommendations were implemented, despite these persons still not having been informed, because OLAF is carrying out the EDPS' general recommendations which allow for not informing persons unrelated to an investigation that OLAF is processing their personal data.</p> <p>The SC understands that the practice of not informing EU citizens that their personal data are processed by OLAF concerns exclusively persons whose data happen to appear in documents dealt with by OLAF, but without the intention of acquiring them and without any attempts to process them for the purposes of an investigation.</p> <p>In this particular case, OLAF actively acquired personal</p>



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			<p>data of certain EU citizens unrelated to the investigation and processed them for the purpose of the investigation.</p> <p>Therefore, the SC is of the opinion that <u>OLAF is clearly obliged to inform them about their rights under Regulation No 45/2001, which has not yet been done.</u></p>
<p><i>Right to express views on all facts</i></p>	<p><b>[nr 14]</b> OLAF to ensure that persons concerned are informed of each fact concerning them in a clear and accurate manner, with an expressly separate question asked for each particular allegation, so that they can express views on all the facts concerning them.</p>	<p><b>Implemented</b></p> <p>In accordance with Article 9(4) of Regulation No 883/2013 and with Article 18 of the Guidelines on Investigation Procedures (GIP), all persons concerned are provided with the facts concerning them and are invited to comment on those facts in writing or at an interview.</p>	<p><b>Implementation of recommendation could not be verified</b></p> <p>The SC has received no substantial reply.</p> <p>The SC described a case where it seems that the allegations were not presented in a sufficiently clear and accurate manner. OLAF has not provided any explanation in this respect.</p> <p>The SC also issued a very precise recommendation and is not aware of any steps taken by OLAF to implement it.</p>
<p><i>Checks of economic operators</i></p>	<p><b>[nr 15]</b> OLAF to ensure a scrupulous legality check before applying Regulation 2185/96 (<i>on-the-spot checks of economic operators</i>) requiring justification in terms of the scale of fraud or seriousness of damage done to the EU financial interests (“<i>very limited evidence</i>” is <u>not</u> a valid justification)</p>	<p><b>Implemented</b></p> <p>In accordance with article 12 of GIP, OLAF performs a scrupulous legality, necessity and proportionality check before applying Regulation (EC) No 2185/96.</p>	<p><b>Implementation of recommendation could not be verified</b></p> <p>The SC has received no substantial reply.</p> <p>In its Opinion 2/2012 transmitted to the DG on 17 December 2012, the SC identified an on-the-spot check which could have violated the fundamental rights of the persons concerned.</p> <p>The SC has received no satisfactory explanation or any information on OLAF's follow-up to the SC recommendation.</p>

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<p><i>Extension of the scope of investigation</i></p>	<p><b>[nr 16]</b> OLAF to ensure a legality check of extension of the scope of an investigation, to respect in particular the requirement of “sufficiently serious suspicion” with regard to the new aspects.</p>	<p><b>Implemented</b></p> <p>OLAF performs, in accordance with Article 12 of GIP, a legality check of the extension of the scope of an investigation, which includes the requirement of “sufficient suspicion” (Article 5(1) of Regulation No 883/2013) with regard to the new aspects.</p>	<p><b>Implementation of recommendation could not be verified</b></p> <p>The SC has received no substantial reply.</p> <p>In its Opinion 2/2012 transmitted to the DG on 17 December 2012, the SC identified an extension of the scope of an investigation which could have violated the regulatory requirements.</p> <p>The SC has received no satisfactory explanation or any information on OLAF's follow-up to the SC recommendation.</p>
<p><i>DG's direct participation</i></p>	<p><b>[nr 17]</b> DG not to participate personally in investigative activities (interviews, on-the-spot checks, etc.) to avoid situations of a potential conflict of interest, especially in review of OLAF actions.</p>	<p><b>Not implemented</b></p> <p>The notion of "Conflict of interests" is defined in Article 11a of the Staff Regulations as situations where an official deals with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence and, in particular, family and financial interests. Consequently, involvement of the Director-General in investigations in which he has no personal interest cannot give rise to a potential conflict of interest.</p> <p>The Supervisory Committee raised the issue of a potential conflict of interest, referring to complaints submitted by EU officials under Article 90a of the Staff Regulation, implying that complainants lose the Director General as an instance of independent and impartial review.</p> <p>However, Article 90a does not provide for an independent and impartial review of OLAF's activities. On the contrary, it provides the Director-General with the opportunity to review his own decisions and, where appropriate, correct any errors on the basis of the objections of the complainant. Decisions taken by the Director-</p>	<p><b>Not implemented</b></p> <p><u>The OLAF DG has refused to implement this recommendation.</u></p> <p>Regulation No 883/2013 introduced even more specific provisions in this respect in Article 7(1) and (2) [emphasis added]:</p> <ol style="list-style-type: none"> <li>1. <i>The Director-General shall <u>direct the conduct of investigations</u> on the basis, where appropriate, of written instructions. <u>Investigations shall be conducted</u> under his direction <u>by the staff of the Office designated by him.</u></i></li> <li>2. <i>The <u>staff</u> of the Office <u>shall carry out their tasks</u> on production of a written authorisation showing their identity and their capacity. The Director-General shall issue such authorisation indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases.</i></li> </ol>

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		<p>General on those complaints are subsequently subject to judicial review.</p> <p>Furthermore, the interpretation given by the Supervisory Committee would mean that the Director-General would have to be excluded from deciding on <i>any</i> Article 90a complaint on the grounds of conflict of interest: Regulation 883/2013 attributes to the Director-General the function of investigation authority, not the function of independent and impartial arbiter. The Director-General “shall direct the conduct of investigations” and therefore is involved in all investigations (and may decide on the extent of his involvement in each case).</p>	The SC maintains its recommendation.
<i>Notification to institutions</i>	<p><b>[nr 18]</b> OLAF to follow rigorously the legal requirements on notifications to the institutions concerned by the opening of an investigation. OLAF, in particular, to notify the President when a Member of an institution or body (incl. the SC) is involved in an investigation.</p>	<p><b>Implemented</b></p> <p>OLAF always informs the institutions and bodies concerned in accordance with the relevant provisions of the Memoranda of Understanding or the Administrative Arrangements signed between OLAF and the institution or body in question.</p>	<p><b>Implementation of recommendation could not be verified</b></p> <p>Due to the lack of access to OLAF cases and to OLAF’s unsubstantiated reply, the SC is not in a position to assess the implementation of this recommendation.</p>
<i>Conflict of interest</i>	<p><b>[nr 19]</b> OLAF to verify whether there was any potential conflict of interest between the duties of the national expert and his participation in investigation activities.</p>	<p><b>Implemented</b></p> <p>Possible conflicts of interests are considered prior to the appointment of any investigator for a given case. The rules concerning the seconded national experts (SNE) are set out in Commission Decision C(2008)6866. These rules require both the SNE and his employer to confirm that no conflicts of interest exist in the appointment of the SNE as a member of staff. In this case the</p>	<p><b>[nr 19] Implementation of recommendation could not be verified</b></p> <p>The SC was not in a position to verify the implementation of this recommendation, since OLAF has not provided any relevant documents allegedly implementing the recommendation.</p>

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	<p><b>[nr 20]</b> If such verification had been done, the Committee recommends including it into the case file.</p>	<p>SNE in question signed his “Statement on my honour” on 13 September 2011 and a separate declaration was signed on 19 September 2011 by his employer, the Swedish economic crime authority. Both of these documents are kept in the SNE’s personal records in accordance with Article 6(5) of the Commission Decision. Leaving aside this general point, OLAF does not understand how the circumstance of a seconded Swedish prosecutor participating in this investigation could possibly constitute a conflict of interest.</p> <p>For reasons of confidentiality and data protection, all personnel matters are kept in personal files which are under the responsibility of the Human Resource unit of OLAF. There is no reason why these documents should appear in the investigation files. There are no additional obligations for OLAF to verify possible conflicts of interest of SNE involved in any given investigation. In addition, Article 6(5) of the Commission Decision places the obligation to inform the Director-General of any possible conflict arising during his appointment on the SNE directly. This obligation to inform of possible conflicts of interest applies to all staff. The Commission relies on the integrity and professionalism of its members of staff including its SNEs.</p> <p>Article 6(1) of Regulation (EC) No 2185/96 foresees that seconded national experts (SNEs) may assist in the checks and inspections, which is what occurred in the present case. The SNE was not in charge of any investigative activity in this investigation.</p> <p>OLAF complied with its obligation to obtain the relevant statements concerning conflicts of interest from both the SNE and his employer at the time of his secondment to OLAF. These documents have been kept correctly in OLAF's personnel files.</p>	<p><b>[nr 20] Not implemented</b></p> <p>The SC disagrees with OLAF’s statement that there should be no mention included in the case file with regard to verifications concerning potential conflict of interest.</p> <p>The SC maintains its recommendation.</p>
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### Annex 3 Recommendations concerning OLAF complaints procedure

- Opinion 2/2013

<i>Subject</i>	<i>SC recommendations to OLAF DG</i>	<i>OLAF self-assessment (23/06/2014)</i>	<i>SC's assessment</i>
<b>Complaints procedure - adoption</b>	[nr 21] The OLAF DG should set up an internal procedure for dealing with individual complaints concerning OLAF investigations.	<b>Implemented</b>	<p><b>Partially implemented</b> <b>(substantive action taken, but additional measures required)</b></p> <p>OLAF and the SC have different views with regard to the degree of the implementation of the SC's recommendation.</p> <p>On 20 January 2014, OLAF published on its website a description of the manner in which complaints related to OLAF's investigations and addressed to OLAF are treated. The OLAF DG considered that he had formalized an already existing internal complaints procedure by publishing the description on OLAF's website and that this did not require a written decision from him (letter to the SC of 17 February 2014). Following a discussion with the SC, he adopted a "written confirmation" of the existence of the complaints procedure, without, however, publishing any formal decision on OLAF's website. Therefore, the SC does not consider the complaints procedure to be properly established and formalized as yet, due to the lack of a formal decision, duly dated, signed and published, fixing the procedure and specifying the complainants' rights.</p>
<b>Complaints procedure - publication</b>	[nr 22] The OLAF DG should publish the procedure on OLAF's website after its adoption.	<b>Implemented</b>	<p><b>Partially implemented</b></p> <p>OLAF has published on its website a description of the manner in which complaints in connection with OLAF's investigations and addressed to OLAF are treated. However, the SC considers that the complaints procedure has not as yet been properly formalized (see above).</p>

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### Annex 4 Recommendations concerning OLAF Investigation Policy Priorities

- Opinion 1/2014

<i>Subject</i>	<i>SC recommendations to OLAF DG</i>	<i>OLAF self-assessment (23/06/2014)</i>	<i>SC's assessment</i>
<b><i>Guidelines</i></b>	[nr 23] The OLAF DG should issue guidelines on the application of the three selection principles established by the Regulation, including on the application of financial indicators as a proportionality criterion.	<b>Pending</b>  OLAF is considering the need for additional guidance, building on the guidance used in the past to support the implementation of the same principles.	<b>Pending</b>  The SC notes that, instead of reviewing the level of financial threshold (or indicators), OLAF abolished them completely, leaving selectors without any formal guidance on application of the proportionality principle in this respect. Moreover, OLAF has not introduced any internal follow-up procedure for cases in which there is a "sufficient suspicion" of fraud, but which have been dismissed on the basis of subsidiarity, proportionality or investigation policy priorities.  However, the SC has noted, in the framework of its analysis of the ISRU's opinions on selection of cases, that the financial indicators, when they are used by the selectors, were not a determining factor when proposing to dismiss or open a case (see SC's Opinion 2/2014, paragraph 64).
<b><i>Dialogue with stakeholders</i></b>	[nr 24] The OLAF DG should enter into a constructive dialogue with the stakeholders on the determination and implementation of IPPs, in particular with regard to financial indicators and possible follow-up of dismissed cases.	<b>Implemented</b>	<b>Partially implemented (substantive action taken, but additional measures are required)</b>  OLAF informed the SC of a number of measures adopted in order to ensure regular consultation with Directorates-General (DGs) of the Commission on matters related to fraud prevention and detection. For example, OLAF supported the DGs in devising their anti-fraud strategy and action plans; OLAF set up a Fraud Prevention and Detection Network with the DGs concerned, in the framework of which the IPPs for 2013 and 2014 were discussed and an OLAF "Guidance note for treatment of dismissed cases" was discussed and distributed to the relevant DGs.  However, it does not appear from these measures that the financial indicators were discussed with the stakeholders, or established on the basis of input from them.

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## Annex 5 Recommendations concerning the selection of cases in OLAF

- Opinion 2/2014

<i>Subject</i>	<i>SC recommendations to OLAF DG</i>	<i>OLAF self-assessment (23/06/2014)</i>	<i>SC's assessment</i>
<p><i>Application of the selection criteria by the ISRU</i></p>	<p><b>OLAF should require the selectors:</b></p> <p><b>[nr 25]</b> to better explain illegal or irregular activities to which the allegations refer and the way in which they affect the financial interests of the EU;</p> <p><b>[nr 26]</b> to systematically make reference to relevant legal instruments.</p> <p><i>OLAF could consider compensating for the lack of sufficient legal expertise by the introduction of appropriate training and of procedures for consultations with OLAF's Legal Advice Unit.</i></p>	<p><b>Implemented</b></p> <p><b>[nr 25]</b> The analysis and definition of the alleged irregular and/or illegal acts together with a reference to the respective financial instrument or source of funding is made on a systematic basis in the opinions of the ISRU.</p> <p><b>[nr 26]</b> The relevant legal basis for the opening or dismissal of cases is always mentioned in the Decision of the Director-General.</p> <p>The ISRU possesses sufficient capacity in terms of legal expertise. Reviewers are lawyers and magistrates and their legal expertise is also used for internal advice. Moreover, the OLAF's Legal Advice Unit and also the Legal Service of the Commission are consulted every time that the particularities of a case require it.</p>	<p><b>Not implemented</b></p> <p>The response received is not relevant to the recommendations.</p> <p>Moreover, one recommendation <b>[nr 26]</b> seems to be misunderstood, since it refers to the need to make reference to the relevant legal instruments relating to the protection of the financial interests of the EU (as required by Article 5.4 of the GIP) and not to the legal basis for the opening and dismissal of cases. During its review of the selection function of the ISRU, the SC did not have the opportunity to examine the decisions taken by the DG, since it has been provided only with the paper version of the opinions of the ISRU and had no access to OLAF case files.</p> <p>The SC maintains its recommendations.</p>

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	<p><b>[nr 27]</b> OLAF should establish a list of concrete and measurable indicators for assessing the reliability of the source, credibility of the allegations and sufficiency of suspicions.</p>	<p><b>Implemented</b></p> <p>According to article 5.4 of the GIP, in evaluating whether the information is sufficient to open an investigation or coordination case, consideration must be given to the reliability of the source and the credibility of the allegations. In that respect, already in January 2013, selectors were instructed by the ISRU Head of Unit to follow guidelines which take into account several relevant criteria (e.g. past experiences with the same source, distance of the source from information, position of the source with respect to the reported facts/events). It is not possible to impose “in abstracto” concrete and measurable indicators for assessing the credibility of the allegations and the sufficiency of suspicions which need to be assessed on the face of individual allegations and the analysis carried out.</p>	<p><b>Not implemented</b></p> <p>The SC has received no substantial reply: the SC has not been provided with a copy of the guidelines mentioned by OLAF. The SC's Opinion 2/2014 clearly reflects that, if they exist, they have not been fully applied.</p> <p>The SC maintains its recommendation.</p>
	<p><b>[nr 28]</b> OLAF should clarify the application of the proportionality principle and provide the selectors with clearer guidelines.</p> <p><i>In particular, OLAF should better assess the forecast of the manpower required and other foreseeable costs, weighted against the likelihood of financial recovery or prosecution, and deterrent value. Financial indicators, which are relevant for the assessment of the seriousness of the risk involved, should be used as an element of reference and as internal guidelines on the application of the proportionality principle.</i></p>	<p><b>Implemented</b></p> <p>The ISRU assesses the manpower required and other foreseeable costs and weights them against the likelihood of financial recovery and/or prosecution and the deterrent value.</p>	<p><b>Not implemented</b></p> <p>The response received is not relevant to the recommendations. The SC's Opinion 2/2014 clearly reflects that the assessment carried out by the ISRU is incomplete.</p> <p>The SC maintains its recommendation.</p>





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	<p>act);</p> <p><b>[nr 33]</b> concrete and measurable indicators for assessing the reliability of the source, credibility of the allegations and sufficiency of suspicions (to be used when evaluating the sufficiency of information);</p> <p><b>[nr 34]</b> concrete and measurable indicators for assessing the IPPs.</p>	<p>[below].</p> <p><b>[nr 34] Not applicable</b></p> <p>It is not possible to simplify in a pre-determined list concrete and measurable indicators for assessing the IPPs. A motivated assessment is needed.</p>	<p>need to be exhaustive, but rather give some guidance to the selectors.</p> <p>The SC maintains its recommendation.</p>
<p><i>Transparency of the selection process</i></p>	<p><b>OLAF should improve the transparency of the selection process.</b></p> <p>In particular:</p> <p><b>[nr 35]</b> Give better feedback to the source of information on the action (not) taken by OLAF following the information provided by the source;</p> <p><b>[nr 36]</b> Reinforce internal consultation and exchange of information between the ISRU and the investigation (support) units.</p>	<p><b>Implemented</b></p> <p><b>[nr 35]</b> Although not always mentioned in the opinions, the source is as a general rule notified by the ISRU of the dismissal of the case (Art. 7.1 of the GIP), unless anonymous. Whether or not the dismissal should be communicated to the source is included in the newly revised selection opinion form, adopted in June 2014.</p> <p><b>[nr 36]</b> There is close cooperation and exchange of information and experiences between investigative units and the ISRU. Internal consultation is carried out on a regular basis with the investigative units. Such cooperation is mainly targeted at achieving a better understanding of the investigative unit's resources and verifying potential links between new incoming information and existing cases. Other instances of cooperation between the ISRU and the investigative units are motivated by the need to make best use of language skills not elsewhere accessible. In the autumn of 2013, OLAF undertook a set of initiatives to improve internal consultation and to adequately report on it in its opinions.</p>	<p><b>[nr 35] and [nr 36] Implementation of recommendations could not be verified</b></p> <p>The SC has received no substantial reply. The SC was not informed of the revision of the selection opinion form and was not provided with a copy of it. OLAF did not inform the SC which concrete initiatives it has taken to improve the internal consultation.</p>

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	<p><b>Conclusions of the selection opinions should clearly specify actions that OLAF should take following a decision to dismiss or open an investigation or coordination case:</b></p> <p><b>[nr 37]</b> to inform the national or EU authorities better placed to act;</p> <p><b>[nr 38]</b> to protect (or not) the identity of the source;</p> <p><b>[nr 39]</b> to inform (or not) the source of information of OLAF's decisions.</p>	<p><b>Implemented for the decision to <u>dismiss a case</u>:</b></p> <p><b>[nr 37]</b> In the newly revised selection opinion form whether or not the information is communicated to the national or EU authorities will be systematically included.</p> <p><b>[nr 38]</b> Since the protection of the identity of the source is already foreseen by general rules, there is no need to repeat it in the opinion of an individual case.</p> <p><b>[nr 39]</b> See reply to recommendation no 22.a)<sup>27</sup></p> <p><u>Concerning the decision to open an investigation</u>, the actions to take are not specified in the selection opinion; it is for the investigative units to adopt their investigative strategy, hence the further actions to take.</p>	<p><u>Regarding the decisions to dismiss cases</u></p> <p><b>[nr 37] and [nr 39] Implementation of recommendation could not be verified</b></p> <p>The SC has received no substantial reply. The SC was not informed of any revision of the selection opinion form and was not provided with a copy of it.</p> <p><b>[nr 38] Not implemented</b></p> <p>The SC believes that actions to take by the selectors should be specified in the opinion, in order to allow the management team to better verify compliance with the general rules.</p> <p>The SC maintains its recommendation.</p> <p><b><u>Concerning the decisions to open an investigation:</u></b></p> <p>The SC agrees with OLAF's point of view.</p>
<p><i>Internal evaluation of the ISRU</i></p>	<p><b>[nr 40]</b> OLAF should carry out an internal evaluation of the activities of the ISRU.</p> <p><i>Such evaluation could be carried out either by OLAF's internal auditor and/or by a special team designated by the Director-General, in close consultation with Directors A and B.</i></p>	<p><b>Pending</b></p> <p>OLAF is awaiting the SC Opinion on the review function of the ISRU before considering carrying out an internal evaluation.</p>	<p><b>Not implemented</b></p> <p>The recommended internal evaluation concerns the selection function of the ISRU only. The SC is of the opinion that OLAF should carry out such an internal evaluation independently of the SC's assessment of the review function of the ISRU (which is currently on-going and no completion date can yet be indicated).</p>

<sup>27</sup> Previous recommendation in this annex.

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### Annex 6 Recommendations concerning the independent functioning of the SC and of its Secretariat – Opinions 1/2012 and 1/2013

<i>Subject</i>	<i>Reference</i>	<i>SC recommendations</i>	<i>OLAF self-assessment (5/03/2014)</i>	<i>SC's assessment</i>
<b>Staff numbers of the SC Secretariat</b>	<i>Opinion 1/2012 and, repeated, Opinion 1/2013</i>	[nr 41] OLAF to ensure adequate staffing of the SC Secretariat (8 posts).	<b>Implemented</b> (since mid-June 2013)	<b>Implemented</b> The SC Secretariat numbers 8 members of staff as of January 2014.
<b>Independent functioning of the SC Secretariat</b>	<i>Opinion 1/2012</i>	[nr 42] OLAF to ensure independent functioning of the SC Secretariat as a precondition of the independence and effective functioning of the SC itself, in particular: staff to be appointed, evaluated and promoted on the basis of SC input.	<b>Implemented</b> Staff is appointed, evaluated and promoted according to Staff Regulations of officials and the Conditions of Employment of other servants of the European Union. As mentioned in the note ARES (2013)3180362, OLAF's Director-General will take into account the evaluation of the Members of the Committee to form his opinion on the performance of the work undertaken by the Secretariat staff.	<b>Partially implemented</b> <b>(substantive action taken, but additional measures required)</b> The OLAF DG still has not sub-delegated powers with regard to the Secretariat staff to the Head of the Secretariat.  Article 6(1) of the Commission Decision 1999/352/EC establishing OLAF (as amended by Commission Decision 2013/478 /EU of 27 September 2013): the DG "shall exercise, with regard to the staff of the Office, the powers of the appointing authority and of the authority empowered to conclude contracts of employment delegated to him. <b>He shall be permitted to sub-delegate those powers</b> ". (emphasis added)
	<i>Opinion 1/2013</i>	[nr 43] Appointment, appraisal and promotion of the SC Secretary and the Secretariat staff should be made following the SC input.	<b>Not applicable</b> Staff of the SC Secretariat is appointed, evaluated and promoted according to the Staff Regulations of officials and the Conditions of Employment of other servants of the European Union. In doing so, the OLAF DG takes into account the opinion of the Members of the SC.	

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<i>SC budget line</i>	<i>Opinion 1/2012</i>	[nr 44] OLAF to indicate global SC Secretariat's expenses separately from other positions.	<p><b>Not Applicable</b></p> <p>Changes in this respect are not within OLAF's competence, but have to be addressed to the budgetary authorities. Article 18 of Regulation No 883/2013 states: "The total appropriations for the Office, including for the Supervisory Committee and its secretariat, shall be entered under a specific budget line" (24.0107 in the MFF 2014-20).</p> <p>The Regulation does not specify a separate budget line for the Supervisory Committee and a separate establishment plan for the staff of its Secretariat. The expenses (salary, rent, mission costs, etc.) of the staff of the Secretariat are included in the same heading as other OLAF staff since they are part of OLAF's establishment plan.</p> <p>However, should you wish to have an overview of the resources related to your supervisory function, OLAF's Unit 0.2 can produce reports presenting overall expenditures related to the SC, including its Secretariat.</p>	<p><b>Implemented</b></p> <p>The recommendation from Opinion 1/2012 was not initially implemented, since OLAF considered that it cannot decide on separating the Secretariat's expenses from the expenses of the rest of the Office.</p> <p>However, taking into consideration the measures taken by OLAF after the SC reiterated its recommendation in its Opinion 1/2013, the SC considers that this recommendation was implemented.</p>
	<i>Opinion 1/2013</i>	<i>[recommendation repeated]</i>	<p><b>Implemented</b></p> <p>OLAF considered the proposal of the SC. The requested change in the budget structure is not within OLAF's competence. However, to clearly indicate the costs of the SC function, OLAF sent to the SC a breakdown of the SC and SC Secretariat budget. The amount attributed to the SC and its Secretariat (EUR 1 200 000) was indicated in the Draft Budget 2015 of the European Commission (Working Document DB2015 part VI).</p> <p>Furthermore, OLAF sent to the SC a proposal for the implementation of the budget allocated to the SC and its Secretariat which clarifies the responsibilities of the Head of the SC Secretariat and his discretion in the implementation of the budget.</p>	

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### Annex 7 Recommendations concerning the consultation with and reporting to the SC

– Opinions 1/2012, 1/2013, 2/2013, 1/2014 and 2/2014

<i>Subject</i>	<i>Reference</i>	<i>SC recommendations</i>	<i>OLAF self-assessment</i> (5/03/2014 and 23/06/2014)	<i>SC's assessment</i>
<b>Consultation on budgetary procedure</b>	<i>Opinion 1/2012 and Opinion 1/2013</i>	<b>[nr 45]</b> The OLAF DG should consult the SC on the preliminary draft budget before it is sent to the Director-General for Budget in any form.	<b>Implemented</b> (since 2013)	<b>Implemented</b>
<b>Consultation on complaints procedure</b>	<i>Opinion 2/2013</i>	<b>[nr 46]</b> The OLAF DG should consult with the SC on the details of the procedure before its adoption.	<b>Not applicable</b> OLAF received the SC recommendation on 30 January 2014, after the publication of the complaints procedure on its website on 20 January 2014.	<b>Not implemented</b> The SC's concerns and expectations were discussed with the OLAF DG during technical meetings with the SC Chairman on 18 December 2013. Moreover, the formal establishment of the procedure has not been completed yet.
<b>Reporting on IPPs</b>	<i>Opinion 1/2014</i>	<b>[nr 47]</b> The OLAF DG should provide the SC, by 6/03/2014, with an assessment of the implementation of 2012 and 2013 IPPs, with a summary of stakeholders' feedback; in future the documents should be attached to the new draft IPPs transmitted annually to the SC.	<b>Partially implemented</b> OLAF regularly assesses the usefulness of the IPPs, in consultation with different stakeholders. However, there is no document summarising the results of the evaluation/implementation. The Regulation does not require specific IPPs performance indicators. Furthermore, the results from the implementation of the IPPs for the previous year are not available at the time of finalising the new IPPs.	<b>Not implemented</b> The SC does not agree with OLAF's position and believes that an assessment of IPPs implementation is crucial.  Nevertheless, the SC notes OLAF's willingness to provide the SC, in future, with statistics on the impact of the IPPs application has on the selection of cases, and to describe the IPPs implementation in the annual activity report.
<b>Reporting on</b>	<i>Opinion</i>	<b>[nr 48]</b> The OLAF DG should report regularly to the SC on	<b>Pending</b>	<b>Not implemented</b>

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<p><i>complaints</i></p>	<p>2/2013</p>	<p>complaints received by OLAF and on the way they have been handled.</p>	<p>OLAF is reflecting on how best to comply with OLAF's obligations in relation to the SC, in line with Regulation No 883/2013 and the Working Arrangements.</p> <p>OLAF is ready to transmit to the SC annual statistics on complaints received and decided upon. However, there is no obligation requiring OLAF to provide information concerning individual complaints, either in Regulation No 883/2013 or in the Working Arrangements recently signed.</p> <p>Moreover, OLAF might not be in the legal position to communicate information on individual complaints to the SC since, in some cases, the complaints to the EDPS and to the Ombudsman are qualified as "confidential". The same applies to procedures under Article 90a of the Staff Regulations.</p> <p>Furthermore, communicating information on individual complaints submitted during an investigation could lead to a situation falling within the notion of "interference with the conduct of investigations in progress" within the meaning of Article 15(1) of Regulation No 883/2013.</p>	<p>To date, the SC has no substantive information on complaints received and treated by OLAF, but only statistical information on the number of complaints concerning OLAF's investigative activity.</p> <p>The SC disagrees with OLAF's position and would underline that it wishes to receive information on how OLAF dealt with the complaints, and not specific case-related information in individual cases.</p> <p>The SC would also point out that the protection of procedural guarantees of persons involved in OLAF investigations is one of the SC's core tasks.</p> <p>Therefore, the SC maintains its recommendation.</p>
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<p><b>Reporting on other matters falling within the SC's mandate</b></p>	<p><i>Opinion 2/2014</i></p>	<p>OLAF should improve its reporting to the SC. In particular:</p> <p><b>[nr 49]</b> Inform the SC whenever actions or omissions of EU or national authorities are likely to jeopardize OLAF's investigative independence and of the measures foreseen to improve cooperation with these authorities;</p> <p><b>[nr 50]</b> Inform the SC of all dismissed cases in which information has been transmitted to national judicial authorities, in accordance with Article 17(5) of Regulation No 883/2013.</p>	<p><b>[nr 49] Implemented</b></p> <p>Should actions or omissions of EU or national authorities jeopardize OLAF's investigative independence, OLAF will inform the SC according to article 4 of the Working Arrangements.</p> <p><b>[nr 50] Not applicable</b></p> <p>OLAF does not share the SC's interpretation of Regulation 883/2013 on this point. The information to the SC provided by the Director-General under Article 17(5)(b) of Regulation 883/2013 on "cases in which the information has been transmitted to judicial authorities of the Member States" takes into account the clarification offered by recital (45) of the Regulation, making reference to "cases in which information has been transmitted to the judicial authorities of the Member States [...] by way of follow-up to an investigation conducted by the Office".</p>	<p><b>[nr 49] Not implemented</b></p> <p>To date, the SC has not received any relevant information from the OLAF DG, though the SC is aware of the existence of relevant situations.</p> <p>The SC maintains its recommendation.</p> <p><b>[nr 50] Not implemented</b></p> <p>The SC does not agree with OLAF's restrictive interpretation.</p> <p>The purpose of this reporting obligation by OLAF to the SC is, <i>inter alia</i>, protection of procedural guarantees. Obviously, it was not the intention of the legislators to exclude from that protection the persons who are not properly investigated by OLAF, nevertheless, the information on suspicions against them is transmitted to national judicial authorities.</p> <p>The SC maintains its recommendation.</p>
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