



**SUPERVISORY COMMITTEE**



## **WORKING ARRANGEMENTS**

**between**

**the European Anti-Fraud Office (OLAF) and**

**the OLAF Supervisory Committee**

OLAF and its Supervisory Committee (SC) are committed to fulfil their respective rights and obligations while respecting each other's independence.

The SC needs comprehensive, adequate and timely information, so that it can properly carry out the regular monitoring functions conferred upon it by Article 15 of Regulation No 883/2013<sup>1</sup>, without however interfering with the conduct of investigations in progress and with due regard to the requirements of confidentiality and data protection.

OLAF will provide such information through regular reporting to the SC, complemented by granting the SC direct access rights to OLAF's Content Management System (OCM).

The SC and the Director-General of OLAF (DG) thereby agree to the following practical working arrangements (hereinafter the "arrangements") implementing the provisions of Regulation No 883/2013 and Commission Decision 1999/352<sup>2</sup>.

These arrangements do not create any additional legal obligation and are compatible with the rules governing the relations between the SC and OLAF.

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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), as lastly modified by Regulation 2020/2223 (OJ L 437, 28.12.2020, p. 49).

<sup>2</sup> Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF), 1999/352/EC, ECSC, Euratom (OJ L 136, 31.5.1999, p. 20) as amended by Commission Decision of 27 September 2013, 2013/478/EU (OJ L 257, 28.9.2013, p. 19).

# **Chapter I**

## **Regular reporting to the SC**

### *Section 1*

#### *General information on OLAF's activity*

#### Article 1

#### **Information on OLAF's activities, implementation of investigative functions and follow up to investigations**

(First sub-paragraph of Art. 17(5), Regulation 883/2013)

1. Each year the DG will forward the draft OLAF Annual Activity Report (AAR) to the SC at least 10 working days before publication.
2. Each year the DG will forward the draft OLAF Report to the SC at least 10 working days before publication.
3. Each year, and no later than ten working days following its publication, the DG will forward to the SC its annual management plan.

#### Article 2

#### **Budget**

(Art. 6(2), Decision 1999/352)

1. Each year, to the extent possible at least 10 working days before sending it to the Director-General of DG Budget, the DG will forward the preliminary draft budget to the SC.
2. The draft should be accompanied by explanations of any changes introduced since the previous budget.

## Article 3

### **Independence**

(First sub-paragraph of Art. 15(1) and second sentence of Art. 17(3),  
Regulation 883/2013)

In cases where the investigative independence of OLAF or its DG is or may be jeopardised the DG will immediately inform the SC and provide the necessary information.

## Article 4

### **Guidelines on investigation procedures**

(Second sub-paragraph of Art. 17(8), Regulation 883/2013)

1. The DG will forward any modification to OLAF's guidelines on investigation procedures, with the necessary explanations, to the SC, which will then have in principle at least 15 working days to submit its comments, unless a shorter deadline is agreed in view of the nature of the envisaged modification.
2. The DG should forward to the SC for information any other instructions, guidelines, best practices, vade-mecum and/or other similar documents addressed to staff relating to the investigative functions of OLAF.

## Article 5

### **OLAF's implementation of SC recommendations**

Each year, and no later than the end of February, the DG will report on the implementation by OLAF of recommendations issued by the SC in the previous calendar year and of those pending from OLAF's previous reports.

## *Section 2*

### *Specific information on OLAF's cases*

#### Article 6

#### **Complaints on procedural guarantees dealt with by OLAF and by the European Ombudsman**

(Second sub-paragraph of Art. 15 (1), Regulation 883/2013)

1. At least twice per year, by 31 January and 31 July, the DG will inform the SC on the complaints addressed to OLAF concerning procedural guarantees in the context of ongoing investigations dealt with by OLAF, by providing a table with the Content Management System ("OCM") reference of the case linked to each complaint.
2. For each complaint dealt with by OLAF, OLAF will provide automatic access to the corresponding case in OCM, as specified in Chapter II, which, in principle, contains the original complaint together with the reply provided by OLAF, including all other relevant documents. The SC may request, if necessary, further information to be provided.
3. Concurrently, the DG will also share with the SC information on inquiries related to procedural guarantees in OLAF investigations opened by the European Ombudsman.

#### Article 7

#### **OLAF's recommendations not followed**

(Second sub-paragraph point (a) of Art. 17(5), Regulation 883/2013)

1. The DG will report annually to the SC on cases in which recommendations have not been followed. Each year, by 31 May, the DG provides the SC with a table with the OCM reference of cases in which OLAF has issued recommendations and was informed during the previous annual monitoring exercise that recommendations have not been followed, including, where applicable and available, information on follow-up measures taken in the meantime.

2. Pursuant to Chapter II, OLAF will share with the SC any tool that gives targeted access to data on the follow-up of OLAF's recommendations as soon as such tool becomes operational.

#### Article 8

##### **Cases in which information has been transmitted to national judicial authorities or to the EPPO**

(Second sub-paragraph point (b) of Art. 17(5), Regulation 883/2013)

At the beginning of the year, and no later than the end of February, the DG will provide a table to the SC with the OCM reference of cases (including dismissal decisions) in which information has been transmitted to national judicial authorities or to the EPPO in the previous calendar year.

#### Article 9

##### **Cases in which no investigation has been opened and cases dismissed**

(Second sub-paragraph point (c) of Art. 17(5), Regulation 883/2013)

At the beginning of the year, and no later than the end of February, the DG will provide a table to the SC with the OCM reference of cases in which no investigation has been opened and of cases dismissed.

#### Article 10

##### **Cases lasting more than 12 months**

(Art. 7(8) and second sub-paragraph point (d) of Art. 17(5), Regulation 883/2013)

1. On a monthly basis, the DG will report to the SC on investigations which have not been closed within 12 months, indicating the OCM reference of each case and the reasons for which it was not possible to complete the investigation and, where appropriate, the remedial measures envisaged with a view to speeding up the investigation.

2. The DG will similarly report to the SC on investigations lasting more than 18, 24 and each additional 6 months.
3. To carry out its regular monitoring tasks under the Regulation, the SC and its Secretariat should have continuous electronic access to the cases reported to the SC, as set out in Chapter II and in line with the Commission-level retention list for European Commission files (CRL).

## Article 11

### **Deferrals**

(Third sub-paragraph Art. 4(6), Regulation 883/2013)

1. At the beginning of each year, and no later than the end of February, the DG will transmit to the SC any reasoned decision he/she might have adopted during the previous calendar year to defer information to the institution, body, office or agency to which a person concerned by an internal investigation belongs.
2. When the DG requested the opinion of the Controller on a decision to defer informing the person concerned in accordance with Article 9 b (9) of Regulation 883/2013, this opinion should be transmitted to the SC together with the decision mentioned in paragraph 1.
3. The transmission shall concern only closed investigations.
4. The DG will also inform the SC of the date when the institution, body, office or agency was provided with the deferred information.

## **Chapter II**

### **Information on the implementation of OLAF's investigative function made available to the SC through direct electronic access**

#### Article 12

##### **Direct access to OCM**

1. In addition to the information provided by means of regular reporting as set out in Chapter I above, OLAF will provide the SC with direct electronic access to parts of OCM, as defined in Article 13 of these arrangements, to enable the SC to carry out its tasks in accordance with Regulation 883/2013.
2. The SC assesses and records each time which information and documents, within the scope of its OCM access rights, is necessary for the performance of its task, without however interfering with the conduct of investigations in progress and with due regard to the requirements of confidentiality and data protection.
3. The SC will carry out its analysis based on data made accessible or reported by OLAF only with the assistance of its Secretariat. In agreement with the DG and subject to available resources, OLAF may provide additional technical assistance, in particular with regard to extraction of data from the OCM.
4. The DG will transfer the administration rights for access to OCM to the Chair of the SC and/or the Head of the Secretariat of the SC, for the cases mentioned in Article 13 below, in accordance with Article 10 (3) of Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission.
5. The Chair of the SC and/or the Head of the Secretariat will grant access to designated staff of the Secretariat and Members of the SC, based on the "need-to-know" principle.
6. Prior to the entry into force of these arrangements, the SC will put in place internal rules to ensure the respect of the principles mentioned in par. 2 to 5 above, specifying:



- a. criteria for granting access to its Members/Secretariat staff;
  - b. rules to ensure the protection of the confidentiality of the information to which the Members/Secretariat staff will have access. In particular, strict protection of confidentiality of court proceedings and external and internal legal advice, identity and confidentiality of whistle-blowers/informants, and respect of personal data protection rules and security of communication and information systems shall be ensured.
7. Prior to their adoption, the SC will forward the draft internal rules to OLAF, which will have at least 15 working days for comments.
  8. A technical Annex setting out the OCM access modalities for the SC and the Secretariat is integral part of these Working Arrangements. This Annex should be reviewed each time it proves necessary and at least one year after the entry into force of the Working Arrangements. The parties have agreed to amend this Annex without suspending the application of the Working Arrangements.

### Article 13

#### **Case related information**

(Art. 15(1) last sub-paragraph, Regulation 883/2013)

1. The authorised SC Members and SC Secretariat staff will have access to all the information and documents the SC considers necessary for the performance of its task, through access to OCM as follows:
  - a. full access to all closed investigations, as well as open investigations lasting for longer than 12 months or subject to a complaint on procedural guarantees dealt with by OLAF, except for the following:
    - i. cases with special handling elements which are not registered in OCM;
    - ii. names or means of identifying whistle-blowers and informants;
    - iii. documents related to the complaints dealt with by the Controller of procedural guarantees;
    - iv. exceptionally, other cases that may contain particularly sensitive documents or other elements, including EU classified information.
  - b. full access to cases in which no investigation has been opened and access to

all dismissal decisions and related Unit 0.1 opinions;

c. access to all opening decisions and related Unit 0.1 opinions in non-investigative files (in particular, so-called "coordination cases").

2. Access to the cases referred in paragraph 1 a) (i) to (iv) will be granted to authorised SC Members and SC Secretariat staff according to one of the following alternative procedures:

a. access to the paper version of the file or,

b. a read-only electronic access, only on OLAF premises.

The DG of OLAF, according to the specificity of the case, will indicate the reasons for the procedure chosen to the SC Members and SC Secretariat staff, to enable the SC to carry out its regular monitoring tasks.

3. Access based on the alternative procedures provided for in paragraph 2 above is without prejudice to:

a. Article 15 of these arrangements;

b. the relevant rules and procedures implementing Articles 22a and 22b of the EU Staff Regulations, in particular those concerning the protection of the confidentiality of the identity of EU staff members disclosing information to OLAF and Article 10 (3a) of Regulation 883/2013;

c. the Commission's rules on protecting different categories of information, in particular Commission Decision 2015/444 (EU, Euratom) of 13 March 2015 on the security rules for protecting EU classified information, Commission Decision 2015/443 (EU, Euratom) of 13 March 2015 on Security in the Commission and any relevant Security notice or other documents laying down provisions for implementing the said decisions.

#### Article 14

#### **Recording of accesses in OCM**

1. The Head of the SC Secretariat will inform by email the Head of OLAF Unit 0.2 – Policy Coordination and Communication (HoU 0.2) before the SC intends to use its

right of access to OCM, either for an individual case or for a list of cases, by specifying the OCM reference of the cases concerned and indicating the reasons for doing so and the name(s) of the authorised SC Members/SC Secretariat staff. This information will be registered by OLAF in OCM in each relevant case.

2. Access to the OCM by the SC and the SC Secretariat will be logged under the same conditions as for OLAF staff, in accordance with Regulation 2018/1725 and Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission.

## **Chapter III**

### **Additional information to be provided by OLAF at the SC's request**

#### Article 15

##### **Procedure for requests of additional information**

(Art. 15(1), last sub-paragraph, Regulation 883/2013)

1. Requests for additional information will be made by the Head of the SC Secretariat, the SC Chairman or the relevant SC Member - rapporteur to the DG in writing, through the HoU 0.2, explaining the reasons why the SC considers it necessary for the performance of its tasks. Such requests will be registered in OCM. This procedure shall apply to the following documents:
  - a. documents covered by Article 13 (3) b) and c) above;
  - b. particular documents in dismissed cases;
  - c. particular documents in cases other than investigations (such as in coordination cases);
  - d. additional information relating to OLAF's investigative activity which does not constitute a part of a case file.
2. When the request also concerns access to personal data, the SC will provide a justification on the reasons why such access is necessary, in line with relevant data protection provisions.
3. The DG will endeavour to reply to SC requests for additional information within 20

working days.

4. Any negative reply will state reasons for refusal.
5. When the DG considers it impossible to provide the requested access to a case file or other additional information within 20 working days, s/he will, within this time limit, explain the reasons thereof and propose a new deadline not exceeding 40 working days.

## **Chapter IV**

### **Cooperation**

#### Article 16

##### **Cooperation on SC's opinions and reports**

(Fourth sub-paragraph of Art. 15(1), Regulation 883/2013)

1. Each year, by the end of January, the SC will inform OLAF on its planned activities (notably opinions and reports).
2. The SC will transmit its draft opinions and reports, other than the SC Annual Activity Report, to OLAF at least 20 working days before their adoption. OLAF will have in principle 15 working days to submit its comments to the SC.
3. OLAF will publish on its website its replies to the opinions and reports delivered by the SC together with the SC's opinions.
4. The SC will publish replies from OLAF to its opinions or reports, other than the SC Annual Activity Report, on its website.

#### Article 17

##### **OLAF's information on the SC's Annual Activity Report**

The SC will share its draft Annual Activity Report with OLAF for information at least 10 working days before adoption.

## Article 18

### **OLAF's participation to SC plenaries**

(Article 15 (8), Regulation 883/2013)

1. The DG will be invited to take part in the SC plenary meetings whenever the SC considers the presence of the DG necessary. The DG can be accompanied by relevant OLAF staff. The DG can request on his own motion to take part in a plenary meeting of the SC.
2. Plenary meetings of the SC can also be convened on the initiative of the DG.
3. The SC will forward to the DG the relevant parts of the agenda of the plenary meeting at least 5 working days prior to the meeting. The DG can ask for additional points to be put on the agenda of the plenary meeting of the SC.

## **Chapter V**

### **Confidentiality**

(Article 10, Regulation 883/2013)

## Article 19

### **General obligation**

1. The SC and its Secretariat will ensure that the information and documents provided by OLAF are treated confidentially and shall not communicate them to any third party.
2. The SC and its Secretariat will refrain from any unauthorised disclosure of information received in the exercise of their functions, unless that information has already been lawfully made public or is accessible to the public. They will inform OLAF immediately should they become aware of such an unauthorised disclosure affecting the information or documents provided by OLAF to the SC and the eventual mitigating measures taken.

## Article 20

### **Requests for public access to documents**

When receiving requests from the public on access to documents provided to it by OLAF, the SC will apply the Commission's internal rules regarding access to documents.

## **Chapter VI**

### **General and final provisions**

## Article 21

### **Contact points**

1. All SC requests to OLAF, except for OCM technical questions, should come from its Members or the Head of the SC Secretariat.
2. For the purpose of streamlining the SC-OLAF communication, the following channels of communication will be used:

| <b>Subject matter</b>  | <b>SC Contact point</b>                     | <b>OLAF Contact point</b>     |
|--|---|-------------------------------|
| Formal SC Opinions, Reports, Recommendations, and Notes of the Head of the SC Secretariat on access to OCM | SC Head of the Secretariat                  | DG assistants<br>Copy HoU 0.2 |
| Requests from the Supervisory Committee  | SC Head of Secretariat                      | HoU 0.2<br>Copy DG assistants |
| Confidential issues  | SC Chair, Members or SC Head of Secretariat | DG                            |

|  |                                      |   |
|--|--------------------------------------|---|
| Routine matters related to staff and office of SC Secretariat as Commission staff (equipment, IT, training...) | SC Head of Secretariat               | Heads of Unit of relevant support units<br>Copy DG assistants, HoU<br>0.2 |
| OCM matters (questions, technical help...)   | SC Head and staff of the Secretariat | Director C<br>Copy DG assistants, HoU<br>0.2                              |

3. The designated contact points could further designate staff members to deal with the handling and follow up of the above-mentioned matters and requests. Any modification in the contacts points designated by OLAF and the SC should be brought to the knowledge of the other party, without any further delay.
4. If in doubt about the OLAF contact point, the Head of Secretariat should address the request to the HoU 0.2.

#### Article 22

#### **Deadlines**

Both OLAF and the SC will strive to respect all deadlines foreseen in these working arrangements. Whenever one of the parties is not able to abide by them, it should inform the other party, indicating when this will be met.

#### Article 23

#### **Amendment, interpretation and termination**

1. These arrangements may be amended in writing at any time by mutual consent between OLAF and the SC.
2. Any issue arising from the interpretation or the application of these arrangements are to be settled amicably between OLAF and the SC.
3. These arrangements may be terminated in writing by OLAF or the SC at any time with prior notice.

4. In case of termination, OLAF and the SC will endeavor to reach an agreement on the continued use and storage by the SC of the information that has already been communicated by OLAF to it.

#### Article 24

#### **Application date**

These arrangements are applicable from the date of their signature, subject to the adoption by the SC of the internal rules mentioned in Article 12 (6) above.

Done in Brussels, on ... *21. 10. 2021*

Ville Itälä,



Director-General of OLAF

Jan Mulder,



Chairman of the OLAF Supervisory Committee