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From: Mr Johan DENOLF, Chairman of the OLAF Supervisory Committee
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To: Mr Christos STAIKOURAS, President of the Council of the European Union

Subject: Activity Report of the OLAF Supervisory Committee: February 2013 - January 2014
- ANNEX 8: Mission, competences and objectives of the Supervisory Committee: Mid-term strategy

Delegations will find attached ANNEX 8 to the Activity Report of the OLAF Supervisory Committee for the period February 2013 - January 2014.

Encl.: ANNEX 8: Mission, competences and objectives of the Supervisory Committee: Mid-term strategy



**MISSION, COMPETENCES AND OBJECTIVES OF THE
SUPERVISORY COMMITTEE
OF THE EUROPEAN ANTI-FRAUD OFFICE**

Mid-term strategy (2012 -2015)

Annex 8
p. 1

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Introduction

1. In the light of the mission and tasks entrusted to it by Regulation No 883/2013¹, the Supervisory Committee (SC) of the European Anti-fraud Office (OLAF) hereby defines its strategic objectives and priorities for the first half of its five years mandate (as of 23 January 2012).

1. Legal framework

1.1 *Mission and role of the Supervisory Committee*

2. The mission of the SC, as outlined by Regulation No 883/2013, is to reinforce OLAF's independence in the proper exercise of the competences conferred upon it². To accomplish this mission, the SC was entrusted with a threefold role:
 - The SC is the **supervisory body** of OLAF and a guardian of OLAF's independence.
 - The SC plays an **advisory role** towards the Director-General of OLAF (DG).
 - The SC is a **dialogue partner** of the EU institutions.

1.2 *Core tasks of the Supervisory Committee*

3. The core tasks of the SC are also defined by the Regulation from this triple perspective.
 - As a **supervisory body**, the SC shall regularly monitor the implementation by OLAF of its investigative function and, in particular, developments concerning the application of procedural guarantees and the duration of investigations³.
 - In the framework of its **advisory role**, the SC provides consultation to the DG:

¹ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) 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.

² Article 15(1) first paragraph.

³ Article 15(1) first and second paragraphs.



- by communicating to him the results of the SC's monitoring of the implementation of the OLAF investigative function, the application of procedural guarantees and the duration of investigations and making, where necessary, appropriate recommendations;
 - by addressing to him opinions including, where appropriate, recommendations on, *inter alia*, the resources needed to carry out OLAF's investigative function, on the investigative priorities and on the duration of the investigation⁴;
 - by submitting its observations (including, where appropriate, recommendations) on the guidelines on investigation procedures (and any modification thereto) adopted by the DG in accordance with Article 17(8) of the Regulation.
- As a **dialogue partner** of the EU institutions, the SC reports to them on its activities⁵ and exchanges views at a political level⁶, thus providing the EU institutions with expertise based on its monitoring experience.

1.3 Reporting

4. The SC reports to the European Parliament, the Commission, the Council and the European Court of Auditors on its findings and activities *via*:

- activity reports, which remain the primary medium to report to the EU institutions on the SC's findings and assessment of OLAF's independence, the application of procedural guarantees and the duration of investigation⁷;
- reports on the results of OLAF's investigations and the action taken on the basis of those results⁸;
- opinions, including, where appropriate, recommendations adopted on the SC's own initiative or at the request of the DG or of an institution, body, office or agency.⁹

⁴ Article 15(1) third paragraph.

⁵ Article 15(9).

⁶ Article 16.

⁷ Article 15(9) first paragraph.

⁸ Article 15(9) second paragraph.



5. The SC underlines that opinions issued at the request of the DG or by an institution, body, office or agency should relate to the core activities of the SC and should not interfere with the conduct of investigations in progress, or put the independence and the objectivity of the SC at risk.

1.4 Access to information

6. The SC's monitoring is based on information that the DG is obliged to provide:
- The investigation policy priorities determined in the context of the annual management plan¹⁰;
 - Periodic information on OLAF's activities, on the implementation of its investigative function and the action taken by way of follow-up to investigations¹¹;
 - Periodic information on cases in which the recommendations made by the DG have not been followed, on cases in which information has been transmitted to judicial authorities of the Member States and on the duration of investigations¹²;
 - Decisions to defer informing an institution, body, office or agency that its member, official or other servant may be a person concerned in an internal investigation¹³;
 - The OLAF preliminary draft budget¹⁴.
7. In addition, the SC may ask the Office for additional information on investigations, including reports and recommendations on closed investigations, without however interfering with the conduct of investigations in progress¹⁵.

⁹ Article 15(1) third paragraph.

¹⁰ Article 17(5) first paragraph.

¹¹ Article 17(5) second paragraph.

¹² Article 17(5) third paragraph.

¹³ Article 4(6).

¹⁴ Article 6(2) of the Commission Decision of 28 April 1999 establishing OLAF, OJ L 136, 31.5.1999, p. 20–22, as amended by Commission Decision 2013/478/EU of 27 September 2013.

¹⁵ Article 15(1) fifth paragraph.



2. Monitoring formula

8. The SC provides OLAF and the EU institutions with a first-hand practitioners' view based on their expertise as high-level external professionals and on the regular monitoring of OLAF's investigative function.
9. The SC's monitoring is carried out both on a systemic level and on a case-by-case basis, using a matrix review of OLAF investigative activities: the SC collects and examines information concerning OLAF's cases horizontally and on sampling bases for the purpose of systemic and structural analyses; in addition it examines individual files or their components in order to obtain a more profound and concrete understanding of sensitive areas.
10. The SC's monitoring experience, based on examination of individual case files (or their representative samples), on information regularly forwarded by the DG as well as on the SC Members' specific knowledge (*savoir-faire*) of investigations, allows the SC to provide particular added value to the implementation by OLAF of its investigative function. The SC thus effectively contributes to ensuring, within OLAF, good administration, good governance and respect for fundamental rights and procedural guarantees as set out in EU law.

3. Secretariat of the Supervisory Committee

3.1 Role of the Secretariat

11. The role of the Secretariat of the SC (SCS) is to assist the SC Members in the discharge of their functions. The SCS staff members, legal and operational experts, prepare and carry out the initial examination of those matters subject to the SC monitoring and present the results for the SC Members' consideration.



12. The Regulation obliges OLAF to allocate staff to the SCS "*in close consultation with the SC*"¹⁶ and to *guarantee the independent functioning of the SCS in order to ensure that the SC can carry out its mission efficiently*¹⁷ - as already recommended by the European Court of Auditors¹⁸ and by the SC¹⁹ in 2011.

3.2 Independent functioning of the Secretariat

13. It is crucial that the SCS be able to assist the SC in the implementation of its monitoring functions in a loyal and efficient manner without being exposed to the risks of potential conflicts of interest as OLAF staff subordinate to the DG.

14. Therefore, the SC has recommended to the DG four conditions to ensure the independent functioning of the SCS:²⁰

➤ ***Reclassification of the Head of the SCS as a senior manager***

15. The Head of the SCS, also having the function of the SC Secretary, represents the SC in the daily monitoring of OLAF's investigative activities. Since, as an OLAF official, he is hierarchically subordinate directly to the DG, it is essential for the integrity of the SC's monitoring to put in place safeguards of independence for the Head of the SCS.

¹⁶ Article 15(8) sixth sentence.

¹⁷ Recital (40).

¹⁸ Point 44 of the European Court of Auditor's Opinion No 6/2011: *In order to reinforce the independent role of the Supervisory Committee, the Court recommends that the proposed Article 11(6) should provide that the Committee's secretariat must act solely in accordance with the Committee's instructions and independently of OLAF, and may not be appointed by or subject to the authority of the Director-General.*

¹⁹ Point 41 of the SC's Opinion no 4/2011: *Although provided by OLAF, the secretariat shall work in complete independence under the chair of the SC and its members. (...) members of the secretariat shall be appointed by an Appointing Authority different from OLAF DG, at the suggestion of the SC; they shall be periodically evaluated solely by the SC; they shall act with loyalty and in full respect of the instructions received exclusively from the SC. (...) the independence of its secretariat – and consequently of the SC – is illusory if the staff of the secretariat is appointed, administered and promoted by the service which it is in charge of monitoring.*

²⁰ Cf. SC's Opinion No 1/2013 on OLAF's Preliminary Draft Budget for 2014 and the previous SC's opinions on OLAF's Preliminary Draft Budget.



Therefore, when the SCS was originally established, its Head was nominated at Director level²¹ (in OLAF only the senior management enjoys certain, although very limited, independence with regard to the DG, who is not alone to decide on their appointments, internal transfers or leave).²²

➤ ***Recruitment, appraisal and promotion of the Head of the SCS on the basis of SC decisions***

16. The recruitment of the Head of the SCS should be done through an open competition to reinforce the independent nature of the SC. His appraisal and promotion should be decided on the basis of input from the SC Chairman.

➤ ***Recruitment, appraisal and promotion of the SCS's staff by its Head***

17. The recruitment, appraisal and promotion of the SCS's staff should be delegated, as far as possible, to the Head of the SCS.²³

➤ ***Sub-delegation of the SCS's budget implementation to its Head***

18. Powers of the authorising officer with regard to the SCS's budget should be delegated to the Head of the SCS as is already the case for the SC's budget. This would mean, for example, that authorisation of missions for the SCS staff and their participation at public events on behalf of the SC be sub-delegated to the Head of the SCS and thus

²¹ His successor was a senior Head of Unit , but the then DG ensured the then SC Chairman on 13.02.2007 that: "The status of your Secretariat is indicated by the fact that your present Secretary is one of only three OLAF Heads of Unit to hold the rank of AD14."

²² If, under the general rules of the Commission, it were undesirable to classify a Head of a relatively small team as a director, then the model of the Legal Service could be followed with the Head of the SCS classified as a principal (legal) advisor with management functions over a team of legal officers and secretarial staff (e.g. the M team in the Legal Service consists of a principal legal advisor, 7 lawyers and 5 assistants). The tasks of the SCS Head consist mainly in providing legal advice to the SC Members. Alternatively, the arrangements concerning principal advisors in the European Commission's Bureau of European Policy Advisers could be applied.

²³ In accordance with Article 6(1) of Commission Decision 1999/352 establishing OLAF (as amended by Commission Decision 2013/478/EU of 27 September 2013, OJ L 257, 28.9.2013, p. 19–20): *The Director-General of the Office 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. He shall be permitted to sub-delegate those powers (...).*



reinforce the ability of the SC Members to carry out their duties efficiently and to work with their Secretariat in a flexible manner.

19. Such sub-delegation would also be in line with the new wording of the provisions on the financing of OLAF (which introduce independently fixed resources for the SCS²⁴) as well as with the European Parliament's position.²⁵

4. Strategic objectives and priorities

20. In the light of the mission and tasks entrusted to it by the Regulation, the SC hereby defines its strategic objectives for the forthcoming period of its mandate, aiming at increasing the effectiveness and impact of its core activities and thus at supporting OLAF's investigative function and reinforcing OLAF's investigative independence. To meet these objectives, the SC has identified the following priorities.

²⁴ Article 18 of Regulation No 883/2013: *The total appropriations for the Office, including for the Supervisory Committee and its secretariat, shall be entered under a specific budget line within the section of the general budget of the European Union relating to the Commission and shall be set out in detail in an Annex to that section.*

The establishment plan of the Office, including the secretariat of the Supervisory Committee, shall be annexed to the establishment plan of the Commission.

²⁵ On 23 October 2013 the Parliament recommended to "split the line for OLAF expenditure related to officials and temporary staff, to reflect the widened mandate and strengthened independence of the Secretariat of the OLAF Supervisory Committee provided for in the new OLAF Regulation".

**Objective 1: Develop effective (and pragmatic) monitoring tools****1. Adopt evaluation grids**

- Propose new (and/or update the existing) evaluation grids concerning the application of procedural guarantees and the duration of investigations, to be filled in and regularly provided by OLAF.

2. Define and use criteria for the sampling of OLAF cases

- Define and use random, statistical and risk-based criteria for the selection of representative samples of OLAF cases.

3. Rely on the experience of experts from Member States

- Rely on the experience of experts from judicial and administrative authorities of Member States, working with OLAF and/or on the follow-up to OLAF cases.
- Return to the practice of hearing these experts for the purpose of the preparation of the SC activity reports and opinions.
- Organise such hearings by an SC rapporteur together with a member of the SCS working on a specific topic, and/or, exceptionally, in the context of the SC plenary meetings.
- Consider the possibility to occasionally organise the SC's plenary meetings in (some of) the Member States, in order to gather - from national experts - information and evidence on subjects precisely defined in advance.

Objective 2: Improve cooperation with OLAF and its Director-General**1. Agree on new working arrangements with OLAF**

- Propose to OLAF and agree on new working arrangements.

2. Organise regular exchanges of views with the Director-General

- Establish a direct reporting and consultation line with the DG and regularly invite him to the SC's plenary meetings.
- Exchange views and information with the DG on specific topics relating to OLAF's investigative activity.

3. Raise awareness of the SC's role and work within OLAF

- Organise/participate in workshops/meetings/lunch debates with OLAF staff.

Objective 3: Act as an important player in the fight against fraud

1. Participate in the exchange of views with the institutions

- Actively participate in the exchange of views with the EU institutions and the DG.
- Use this new inter-institutional forum as a platform for discussing the results of its monitoring as presented in the SC's opinions, reports and activity reports.
- Ensure that the exchange of views represents a positive arena for discussion and for assessment of the effectiveness of OLAF's work and thus becomes an asset in the fight against fraud.
- Ensure that the exchange of views does not entail the politicising of OLAF.

2. Hold bilateral meetings

- Hold regular (yearly) meetings with the three appointing EU institutions and with the European Court of Auditors (at least every two years).
- Hold bilateral meetings with the Commissioner responsible for the fight against fraud (at least once a year).

3. Take a proactive role in the legislative process concerning the revision of the EU antifraud legislation

- Take a proactive role in the on-going/forthcoming revision of the EU antifraud legislation, without however interfering in the EU legislative process.
- Assess the application of Regulation No 883/2013.
- Make appropriate recommendations on the instructions/guidelines to staff on investigative procedures as a way to address some of the remaining weaknesses of the OLAF Regulation, in particular, regarding fundamental rights and procedural guarantees.
- Contribute to the development of the Commission's legislative proposal on *Improving OLAF's governance and reinforcing procedural safeguards in investigations*²⁶, in order to:
 - reinforce procedural guarantees applicable in OLAF's investigations;
 - reinforce OLAF's supervision while at the same time safeguarding its investigative independence.

²⁶ COM(2013)533 final, 17.07.2013.



Objective 4: Increase the SC's visibility among EU institutions and Member States

1. *Develop an effective communication strategy*
2. *Improve reporting tools*
 - Inform the appointing institutions of the decisions/action points decided on by the SC during its plenary meetings, in full respect of the principle of confidentiality of investigations.
 - Change the format of the activity report, in order to better reflect the reinforced role and the core activities of the SC.
3. *Increase interaction with stakeholders on a broader range of issues*
 - Organise and/or participate in events promoting the SC's work (workshops, presentations, conferences, cocktails etc.).

Objective 5: Develop the SC's working methods

1. *Ensure a consistent approach in monitoring OLAF cases*
 - Adopt monitoring guidelines.
 - Adopt a workflow system to monitor the follow-up by OLAF of the SC's recommendations.
2. *Update the SC's Rules of procedure*
 - Update the SC's Rules of procedure, in order to reflect the changes brought about by the new Regulation.
3. *Develop an ethical code of conduct*
 - Develop an ethical code of conduct for the use of the SC Members.

Objective 6: Safeguard the independent functioning of the SC and its Secretariat

- Advocate the modernisation of the remuneration and financial arrangements for the SC's Members.
- Advocate a separate budget line for the SC and its Secretariat.
- Recommend to the DG appropriate measures for ensuring the independent functioning of the SCS: (1) reclassification of the Head of the SCS as a senior manager; (2) recruitment, appraisal and promotion of the Head of the SCS on the basis of SC's decisions; (3) recruitment, appraisal and promotion of the SCS's staff by its Head; (4) sub-delegation of the SCS's budget implementation to its Head.