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COVER NOTE

From: Mr Johan DENOLF, Chairman of the OLAF Supervisory Committee
date of receipt: 1 April 2014
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 7: Supervisory Committee's 2012 Recommendations

Delegations will find attached ANNEX 7 to the Activity Report of the OLAF Supervisory Committee for the period February 2013 - January 2014.

Encl.: ANNEX 7: Supervisory Committee's 2012 Recommendations

SC Recommendations to OLAF DG (2012)

Subject	Document Reference	SC Recommendations to OLAF DG (2012)
<i>Right to private life</i>	Opinion 2/2012 (p. 17)	1) 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.
	Opinion 2/2012 (p. 17)	2) 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 necessarily such a legal analysis.
<i>Data protection</i>	Opinion 2/2012 (p. 18)	3) 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.
<i>Right to express views on all facts</i>	Opinion 2/2012 (p. 23)	4) 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.
<i>Complaints</i>	Activity Report 2012 ¹ (p. 26) Opinion 3/2010	5) OLAF to inform the SC of all complaints related to fundamental rights and procedural guarantees to allow the SC to fulfil properly its monitoring remit.

¹ OJ C 374, 20.12.2013, p. 1.

<i>Whistle-blowers</i>	Activity Report 2012 (p. 11) Opinion 5/2011	6) OLAF to ensure protection of whistle-blowers and informants as recommended in the SC Opinion No 5/2011 which seems not to have been fully implemented yet.
<i>Checks of economic operators</i>	Opinion 2/2012 (p. 13)	7) 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 of the seriousness of the damage done to the EU financial interests (“<i>very limited evidence</i>” is <u>not</u> a valid justification).
<i>Extension of the scope of investigation</i>	Opinion 2/2012 (p. 13)	8) 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.
<i>External vs. internal investigations</i>	Opinion 2/2012 (p. 13)	9) OLAF to differentiate clearly, where it is relevant, between its powers and legal basis applicable to external vs. internal investigations.
<i>Legality check incl. national provisions</i>	Activity Report 2012 (p. 24)	10) OLAF to ensure compliance with national rules for collection of evidence (within the framework of the EU Charter of Fundamental Rights) by establishing a procedure for legality check including the relevant national legal provisions.
<i>Sufficient suspicion</i>	Opinion 2/2012 (p. 7, 15) Activity	11) Selectors of cases must have enough time, information and competence to assess the seriousness of suspicions (not only the “<i>seriousness of allegations</i>”) and to ensure that the decision to open or to dismiss a case is taken with respect for OLAF independence.

<i>IPPs</i>	Report 2012 (p. 25)	12) OLAF to reconsider high financial thresholds for opening investigations and to introduce a follow-up procedure for cases dismissed on that basis, to avoid the risk of creating areas of impunity.
<i>DG's direct participation</i>	Opinion 2/2012 (p. 11)	13) 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.
<i>Notification to institutions</i>	Opinion 2/2012 (p. 8-9)	14) OLAF to follow rigorous 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.
<i>Follow-up of investigations</i>	Opinion 1/2012 (p. 4)	15) An effective follow-up of investigations must be ensured (incl. feedback on OLAF recommendations).
<i>Budget</i>	Opinion 1/2012	16) OLAF to consult its draft budget <u>effectively</u> with the SC before it is communicated outside.
<i>HR strategy</i>	(p. 4)	17) 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.
	Activity Report 2012	18) OLAF to provide the SC with all the necessary information, in particular: (i) sufficient information to assess the respect of fundamental rights and procedural guarantees in cases forwarded to national judicial authorities; (ii) information on duration of cases, sufficient to assess it in the context of legal requirements, including national time-barring provisions; (iii) if necessary, full access to individual case

<i>SC's access to data</i>	(p. 9-10)	<p>files.</p> <p>19) OLAF must ensure that information provided to the SC is reliable, accurate and reflects exactly the content of the case file.</p>
<i>SC Secretariat</i>	Opinion 1/2012 (p. 6)	<p>20) OLAF to ensure adequate staffing of the SC Secretariat (8 posts).</p> <p>21) OLAF to indicate global SC Secretariat's expenses separately from other positions.</p> <p>22) 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 opinions.</p>