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COVER NOTE

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

Delegations will find enclosed the Activity Report of the OLAF Supervisory Committee for the period February 2013 - January 2014.

Encl.: Activity Report of the OLAF Supervisory Committee.

SUPERVISORY COMMITTEE



**Activity Report
of the OLAF
Supervisory Committee**

February 2013 - January 2014

Members of the OLAF Supervisory Committee

Johan DENOLF (Chairman)

Chief Commissioner, Director of Directorate ECOFIN Crime of the Federal Police and Member of the Financial Intelligence Unit (FIU), Belgium

Herbert BÖSCH

Former Member of the European Parliament
Former Chairman of the Committee of Budgetary Control of the European Parliament, Austria

Catherine PIGNON

Chief Public Prosecutor at the Court of Appeal in Angers, France

Jens MADSEN

State Prosecutor for Serious Economic and International Crime, Denmark

Tuomas PÖYSTI

Auditor General of Finland, President of the National Audit Office, Finland

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MISSION STATEMENT

Article 15(1) of Regulation No 883/2013:

The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office's independence in the proper exercise of the competences conferred upon it by this Regulation.

The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General in accordance with Article 7(8).

The mission of the Supervisory Committee of OLAF, as outlined by Regulation No 883/2013¹, is to reinforce OLAF's independence in the proper exercise of the competences conferred upon it². To accomplish this mission, the EU legislator entrusted the SC with a threefold role:

- The SC is the **supervisory body** of OLAF and a guardian of OLAF's independence; it regularly monitors the implementation by OLAF of its investigative function and, in particular, developments concerning the application of procedural guarantees and the duration of investigations.

- The SC plays an **advisory role** with regard to the Director-General of OLAF, whom it assists in the discharge of his responsibilities:
 - 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 as well as, where necessary, making appropriate recommendations;

 - by addressing opinions to him, 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 investigation;

 - by submitting its observations (including, where appropriate, recommendations) on the guidelines on investigation procedures (and any modification thereto) adopted by the Director-General in accordance with Article 17(8) of the Regulation.

- The SC is a **dialogue partner** of the EU institutions, to which it reports on its activities, at whose request it may issue opinions and with whom it exchanges views at a political level, thus providing the EU institutions with unique expertise based on its monitoring experience.

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. 1–22.

² Article 15.

FOREWORD BY THE CHAIRMAN

As Chairman of the Supervisory Committee of the European Anti-fraud Office, I have the pleasure to submit the Annual Activity Report of our Committee, in accordance with Article 15(9) of Regulation No 883/2013.

This is the second Activity Report of the current Supervisory Committee and it provides an overview of the main activities carried out during the reporting period, from 1 February 2013 until 31 January 2014.

Chapters 1 and 2 offer a comprehensive account of the SC's monitoring activities. They focus on the monitoring of the implementation by OLAF of its investigative function and on OLAF's management in relation to its investigative function. **Chapters 3 and 4** concern the SC's relations with OLAF, as well as with the EU institutions and other stakeholders. **Chapters 5 and 6** give an overview of the Committee's working methods, of the policy papers adopted by the Committee and considerations regarding its Secretariat.

At the end of the reporting period one of the SC Members, Mr Jens Madsen, left the Committee to take over a new and challenging position in his national administration. I would like to take the opportunity of this report to thank him for his valuable contribution to the work of the Committee, and to welcome a new Member, Mr Dimitrios Zimianitis, as of 1 February 2014.

Finally, I would like to express special thanks to the staff of our Secretariat, for their invaluable support and their high quality work, which contributed in a great measure to the effectiveness of our monitoring of OLAF's investigative function.

Brussels, 12 March 2014



Johan DENOLF

OVERVIEW

Monitoring activities

Analysis and assessment of:

- **56 cases** requiring information to be forwarded to national judicial authorities;
- **186 nine month reports**;
- **293 opinions** on selection of cases;
- **14 complaints and requests** from individuals;
- **1 complaint** from an EU institution;
- **2 requests for public access** to the SC's documents;
- **1 request for cooperation** from a national judicial authority.

Opinions and reports

- **4 opinions** in relation to the implementation and management of OLAF's investigative function:
 - **Opinion No 1/2013**: OLAF's Preliminary draft budget for 2014;
 - **Opinion No 2/2013**: Establishing an internal OLAF procedure for complaints;
 - **Opinion No 1/2014**: OLAF Investigation Policy Priorities;
 - **Opinion No 2/2014**: Case selection in OLAF.
- **2012 Annual Activity Report**.

Position and policy papers

- **Position paper** on "Reinforcing procedural safeguards in OLAF";
- **Observations** on investigation procedures in OLAF;
- Paper on the **mission and competences of the SC** in the light of Regulation No 883/2013 and the **mid-term strategy**;
- **Monitoring guidelines** (on-going);
- **Amendment of the Rules of procedure** (on-going).

Cooperation

- **New working arrangements** with OLAF.

1 MONITORING OF OLAF INVESTIGATIONS

1. The Supervisory Committee of OLAF (SC) monitors different aspects of OLAF investigative activities on the basis of information which the Director-General of OLAF (OLAF DG) is obliged to provide and of information requested by the SC on its own initiative.

Article 15(1), third paragraph of Regulation No 883/2013:

The Supervisory Committee shall address to the Director-General opinions, including where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of the Office, on the investigative priorities of the Office and on the duration of investigations. Those opinions may be delivered on its own initiative, at the request of the Director-General or at the request of an institution, body, office or agency, without however interfering with the conduct of investigations in progress.

Instructions to Staff on Investigative Procedures

2. On 7 February 2013, the OLAF DG provided the SC with a copy of an amended version of the Instructions to Staff on Investigative Procedures (ISIP). On 5 July 2013, he provided the SC with a second amended version of the ISIP, intended to align OLAF's investigative procedures with new provisions foreseen by (draft) Regulation No 883/2013. The OLAF DG informed the SC of its intention to adopt the amended ISIP on 31 July 2013.
3. While underlining that it cannot carry out an in-depth analysis of the amended ISIP within such a short timeframe, the SC provided, on 30 July 2013, a number of **observations and questions on the amended ISIP**³. The SC examined, in particular, the provisions concerning the selection procedure and the conduct of investigation and coordination cases.
4. The SC considered that the amended ISIP should, *inter alia*:
 - explicitly mention the notion of "*sufficient suspicion*," as provided for in the Regulation, as a precondition for the opening of an investigation;
 - clearly structure the separation of selectors and reviewers in the Investigation Selection and Review Unit;
 - maintain a clear distinction between internal and external investigations, since OLAF's powers of investigations are different;
 - include provisions for organizing a wider internal control of the legality check, not only of the investigative activities mentioned in the ISIP, but also those that are not specifically foreseen in the ISIP but could potentially result in an interference with the rights of the persons concerned.
5. On 5 September 2013, at the SC's request, the OLAF DG provided his comments and additional information on issues raised by the SC. He also informed the SC of the finalisation of the amendments to the ISIP taking into consideration some of the SC's comments and forwarded to the SC the final draft of the new Guidelines on Investigation Procedures for OLAF staff, replacing the ISIP.

Investigation Policy Priorities

6. **Opinion No 1/2014** assessed OLAF **Investigation Policy Priorities** (IPPs) established, on a yearly basis, by the OLAF DG and published in the Annual Management Plan⁴.
7. The SC compared the IPPs for 2012 and 2013 with the draft IPPs for 2014 and welcomed the improved definition of the latter as a result of SC comments expressed during technical meetings with the OLAF DG, in the sense that the IPPs should not contain general principles

³ See Annex 5.

⁴ See Annex 3.

(which should always be taken into account when deciding whether or not to open an investigation), but only specific areas or types of fraud which OLAF should deal with as a matter of priority.

8. The SC found that the financial indicators, which in previous years were overstated, were completely excluded from the draft IPPs for 2014. The SC underlined that such indicators should be relevant for the assessment of the seriousness of the risk of fraud involved and could be useful as an element of reference and as internal guidelines on the application of the proportionality principle. The SC also drew attention to the need to reconsider the subsidiarity/added value policy and to apply it with caution, as well as to the need for a regular assessment of the IPPs.
9. The SC pointed out the need to clarify the IPPs and recommended that the OLAF DG issue guidelines on the application of the selection principles established by Regulation No 883/2013 and to enter into a constructive dialogue with the stakeholders on the determination and implementation of the IPPs, in particular with regard to financial indicators and possible follow-up of dismissed cases when their assessment leads to the conclusion that there are sufficient suspicions of fraud. At this stage, it remains difficult for the SC to appreciate OLAF's performance in the areas covered by the IPPs, since OLAF itself has not conducted any impact assessment of the IPPs. The SC therefore requested that the OLAF DG provide an assessment of the results of the implementation of the IPPs for 2012 and 2013 in each of the prioritised areas, together with a summary of the feedback provided by the stakeholders.

Case selection in OLAF

10. **Opinion No 2/2014 on Case selection in OLAF⁵** assessed the efficiency, quality and transparency of the selection process in OLAF. The SC's assessment was carried out on the basis of, *inter alia*, an analysis of a sample of 293 opinions of the OLAF Investigation Selection and Review Unit (ISRU) recommending either the dismissal of cases or the opening of investigation/coordination cases.
11. The SC firstly assessed the efficiency of the selection function by looking into the resources made available to the ISRU to carry out its tasks and the concrete results achieved in 2012 and 2013. The SC found that the technical, investigative and language expertise was sometimes missing or insufficient; legal analysis was not sufficiently demonstrated; the time allocated for selections (compulsory 2-month period) did not appear adequate in some cases; a clear procedure for dealing with whistle-blowers was also needed.
12. The SC then evaluated the quality of the opinions in the light of their conformity with the selection criteria established by the OLAF DG. The SC found that the instructions on the implementation of the selection criteria were not strictly adhered to: little consideration was given to the relevant legal instruments when assessing OLAF's competence to act; the selectors lacked precise indicators for evaluating the sufficiency of information; where such indicators were present, they were not constantly and consistently used; there was a frequent use of unsubstantiated statements.
13. Finally, the transparency of the selection process was scrutinised by looking into the information flow throughout the selection process, in particular with regard to the cooperation between the ISRU and the investigation units.
14. The SC issued a number of recommendations to the OLAF DG, aimed at improving the selection function of the ISRU. As an overall conclusion to its assessment, the SC issued a final recommendation that OLAF carry out an internal evaluation of the activities of the ISRU aimed at establishing, *inter alia*, the level of resources needed, the unit's strengths and weaknesses and the "error rate" for the evaluated cases. The SC also requested that the DG inform it on the follow-up given to the recommendations of this opinion one year after its adoption.

⁵ See Annex 4. Although this Opinion was adopted in March 2014, the SC decided to annex it to this Activity Report, since almost all the work on the opinion was carried out during the reporting period.

Duration of investigations

Article 11(7) of Regulation No 1073/1999:

Where an investigation has been in progress for more than nine months, the Director shall inform the Supervisory Committee of the reasons for which it has not yet been possible to wind up the investigation, and of the expected time for completion.

Article 7(8) of Regulation No 883/2013:

If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and the remedial measures envisaged with a view to speeding up the investigation.

15. The SC monitored the duration of OLAF's investigations by using, as a source of information, the 9-month reports⁶ and reports drawn up in cases transmitted to national judicial authorities forwarded by OLAF under the former Regulation No 1073/1999, as well as other case related documents when access was granted to the OLAF's Case Management System (CMS).
16. The SC started to analyse the reasons provided by OLAF for explaining the duration of cases lasting more than nine months: complexity of the matter under investigation, lack of resources, low priority of the case, lack of cooperation. The SC has noted a divergence between investigation directorates and their units regarding the accuracy of the explanations provided. The SC's analysis is still on-going.
17. Regulation No 883/2013 introduced two major changes aimed at allowing the SC to better monitor the duration of investigations: the twelve-month reports replacing the nine-month reports (which correspond better to reality, since most of OLAF's investigations last more than 12 months), and the new obligation for OLAF to regularly report every following 6 months, allowing the SC to follow the whole life cycle of an investigation.
18. On 31 January 2014, the SC received, for the first time, 83 twelve-month reports out of 243 cases lasting then more than 12 months. The SC noted with concern that, while the work-form used for these reports was revised by OLAF according to the requirements of Regulation No 883/2013, the new reports sent to the SC contained insufficient information, in particular concerning elements that would allow the SC to check the potential existence of undue delays in investigations. As an example, 33 out of the 83 reports in cases lasting more than 12 months give the reasons and the remedial measures envisaged in order to speed up the investigation without, however, providing any factual information whatsoever (i.e. a description of facts, the investigative steps taken by OLAF and their chronology, potential periods of inactivity, type of fraud, financial impact, time barring considerations etc.), without which it is impossible for the SC to fully evaluate the duration of an investigation. While Regulation 833/2013 has reinforced the role of the SC in controlling the duration of investigations, OLAF is not providing, on its own initiative, enough information for the SC to fulfil that mission. The SC raised this issue in a meeting with the OLAF DG and expects that the reports to be provided in future will be more descriptive.
19. The SC was informed by OLAF, during a technical meeting, of the tools used by OLAF to monitor the duration of cases, which consist mainly of a system of flagging in the CMS that dates for twelve- and six-month reports are due. OLAF set up also a new junior management structure within the investigative units, in charge of, *inter alia*, monitoring the duration of investigations. The SC welcomes OLAF's efforts and its willingness to improve the awareness of time limitations among investigators. At the same time, the SC underlines that the twelve- and six-month reports provided to the SC could be a useful management tool for OLAF itself to monitor the duration of investigation, but it is rendered impossible due to the lack of a substantial content in most of them. This is especially important for the cases which prolonged duration may adversely affect the reputation and professional lives of persons concerned or may result in time-barring of the subsequent national legal procedures.

⁶ In 2013, the SC received 186 nine-month reports.

Cases transmitted to national judicial authorities

Article 11(7) of Regulation No 1073/1999:

The Director shall inform the committee of cases requiring information to be forwarded to the judicial authorities of a Member State.

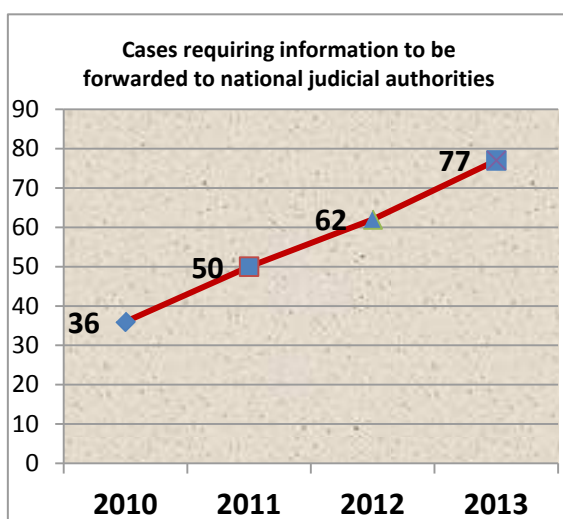
Article 17(5) third paragraph of Regulation No 883/2013:

The Director-General shall inform the Supervisory Committee periodically:

(...)

(b) of cases in which information has been transmitted to judicial authorities of the Member States (...).

20. Regulation No 883/2013 introduced a major change with regard to the cases that OLAF intends to forward to national judicial authorities: OLAF does not have to inform the SC of those cases *prior* to the transmission (as under the former Regulation 1073/1999), but only periodically, after the transmission.
21. Between 1 February 2013 and 30 September 2013 (until the entry into force of Regulation No 883/2013), the SC received 56 cases⁷ *requiring information to be forwarded* to national judicial authorities. Full access to the case-related documents in the CMS was granted, upon SC's request, in 18 cases.



22. The SC was not able, however, to examine thoroughly those cases *prior* to their transmission to national judicial authorities, due to the fact that it would receive access to the CMS case files only after the expiry of the 5-day period foreseen in previous agreements with OLAF. The SC's assessment of the application by OLAF of procedural guarantees is based mainly on the information contained in the Opinions on Final or interim reports and recommendations issued by the ISRU⁸ and, when access to cases was granted, on the case related documents registered in the CMS. The SC noted that according to all the ISRU opinions all the investigative activities were carried out in accordance with the applicable legal rules. On the basis of these opinions and other documents examined, the SC identified only isolated problems with regard to respect by OLAF of procedural guarantees (e.g. lack of information of the person concerned of the completion of the investigation in one case and lack of written authority to interview the person concerned in another case⁹).

⁷ 21 cases requiring information to be transmitted to national judicial authorities forwarded by OLAF to the SC in January 2013 were reported on in the 2012 SC's Annual Activity Report. The total number of cases received in 2013 was 77.

⁸ OLAF forwarded to the SC the Opinions on Final/interim report and recommendations in 72 out of the 77 cases transmitted to national judicial authorities in 2013.

⁹ In the latter case, the interview of the person concerned was conducted under the rules of the former OLAF Manual.

23. In one case, a person concerned reported to the SC an alleged serious breach by OLAF of the confidentiality requirement. However, the SC, having no adequate inquiry tools (the incident was not mentioned in the OLAF case file), could only refer the complaint to the OLAF DG who denied the existence of such a breach.
24. On 31 January 2014, the SC received information on 17 additional cases in which information was *transmitted* to judicial authorities of the Member States since 1 October 2013 (since the entry into force of Regulation No 883/2013). Given the fact that this information arrived on the last day of the period covered by this activity report, the SC will request additional information and examine these cases later in 2014.

Decisions to defer the information to the institution, body, office or agency

Article 4(6) of Regulation No 883/2013:

Where internal investigations reveal that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, the institution, body, office or agency to which that person belongs shall be informed. (...)

In exceptional cases, the provision of such information may be deferred on the basis of a reasoned decision by the Director-General, which shall be transmitted to the Supervisory Committee after the closure of the investigation.

25. Regulation No 883/2013 introduced, for the first time, the obligation for the OLAF DG to transmit to the SC, after the closure of an investigation, his reasoned decision to defer the information to an institution, body, office or agency to which the person concerned by an internal investigation belongs. On 31 January 2014 the SC was informed by OLAF that there had been no such deferrals since the entry into force of the Regulation.

Recommendations made by the OLAF Director-General

Article 11(7) of Regulation No 1073/1999:

The Director shall inform the committee of cases where the institution, body, agency or office concerned has failed to act on the recommendations made by it.

Article 17(5) third paragraph of Regulation No 883/2013:

The Director-General shall inform the Supervisory Committee periodically:

(a) of cases in which the recommendations made by the Director-General have not been followed (...).

26. During the reporting period and in fact since the beginning of its mandate, the SC has received very limited information on cases in which the recommendations made by the Director-General have not been followed. The SC's own inquiry leads it to the conclusion that, as in previous years, a significant number of such recommendations have not been followed. The SC highlighted in its previous activity reports that OLAF itself seems not to have had, in the past, appropriate monitoring tools allowing it to properly follow-up the implementation of its recommendations by national and EU authorities.
27. Following OLAF's reorganisation in 2012, the monitoring of the implementation of its recommendations was decentralized to the investigative units. Currently OLAF is working on the development and implementation of new monitoring tools allowing it to better follow-up the results and impact of its recommendations. The SC noted that OLAF did already undertake a significant effort to measure the implementation of its recommendations, in particular the judicial and financial ones. For example, OLAF is reviewing more than 600 cases closed with judicial recommendations. The SC noted with interest the evaluation grid used for this review, according to which the recommendation follow-up by national judicial authorities was checked against key stages of the national judicial proceedings (opening of a criminal investigation, indictment or dismissal decisions, acquittal or conviction decision etc.). As to the financial follow-up, OLAF seeks to improve its procedures to be able to establish the amounts effectively recovered for the EU budget.

28. The SC recognizes the complexity of this still on-going exercise and welcomes OLAF's willingness to improve its follow-up tools. At this stage, however, and in the absence of relevant information, it is premature for the SC to appreciate the impact of changes brought about by the reorganisation on the effectiveness and efficiency of OLAF's monitoring work. The SC expects better information from OLAF in the future, once the appropriate monitoring tools are implemented.

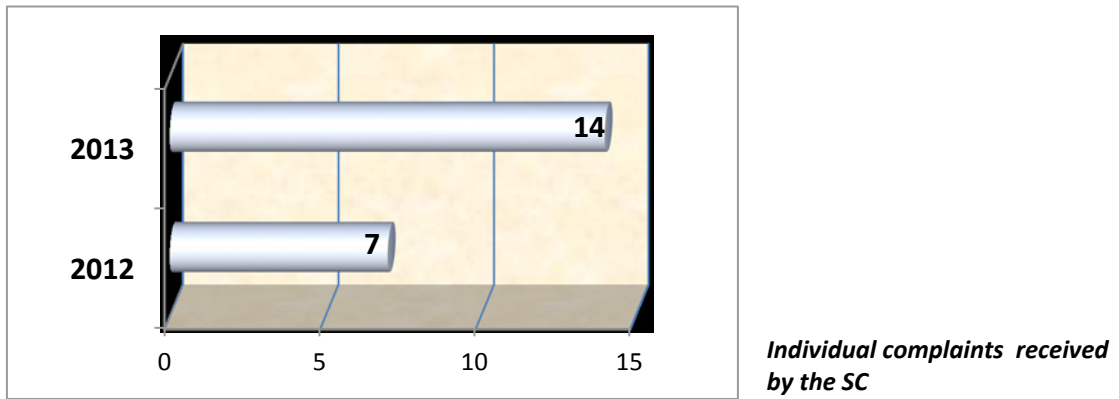
OLAF's procedures for dealing with complaints

29. In its **Opinion No 2/2013 (Establishing an internal OLAF procedure for complaints)** adopted in December 2013¹⁰, the SC examined the options for redress open to persons involved in OLAF's investigations regarding potential violations of their rights and procedural guarantees. The SC found that such persons did not have sufficient and immediate remedies to redress potential violations either through an external (an EU or national court, the European Ombudsman or the European Data Protection Supervisor) or internal mechanism (OLAF itself).
30. The SC underlined that the new Regulation No 883/2013 concerning investigations conducted by OLAF does not resolve the problem, since it does not introduce a mechanism for dealing with individual complaints. The SC expressed the opinion that the current legislative gap could be filled by a formalised complaints procedure within OLAF, in particular, concerning alleged breaches of fundamental rights and procedural guarantees in the course of an OLAF investigation.
31. The SC therefore recommended that the OLAF DG establish and publish such an internal procedure after consulting with the SC on the details. The SC expressed its wish that the OLAF DG report regularly to the SC on complaints received by OLAF and the follow-up given to them.
32. In January 2014, OLAF published on its website a description of the steps taken within OLAF when dealing with complaints. Following a request from the SC to see the written decision for establishing a relevant procedure, in his letter of 17 February 2014, the OLAF DG confirmed that he considered this web publication to be the formalisation of existing procedures which did not require a formal written decision on his part.
33. **As a result the SC must conclude that its recommendation has not been implemented. The SC is concerned by the danger of misleading citizens who would like to file a complaint with OLAF. They may think that the text presented on the OLAF website provides them with a legal framework for the complaint while in fact the relevant procedure (for complaints concerning procedural guarantees) does not, formally, exist, there being no legal act constituting the legal basis for such a procedure.**

Complaints and requests addressed to the Supervisory Committee

34. During the reporting period, the SC received **14 complaints and requests** from individuals. This represents an increase of 100 % compared to the previous year. The complaints concern, *inter alia*, alleged failure to respect fundamental rights and procedural guarantees, breach of confidentiality of investigations, excessive duration of investigations and allegedly wrongful closure of cases without recommendations. The complaints came mainly from persons concerned by OLAF investigations, but also from whistle-blowers unhappy with decisions taken by OLAF following their reporting of alleged fraud.

¹⁰ See Annex 2.



35. The SC replied to the complainants by underlining that in the framework of the current Regulation, the SC is not designed as a complaint body. However, the SC took these complaints into account in the framework of its systemic monitoring of OLAF's investigative function and requested, where it considered it appropriate, for further information and explanations from OLAF and/or full access to the CMS case files.
36. In January 2014 the SC received a formal notification from an EU Institution, which expressed its concern over an allegedly unjustified interference by OLAF with the right to protection of personal data of the officials of that institution. In its reply, the SC underlined that this allegation concerned an on-going investigation in which the SC is not allowed to intervene. The SC also indicated that the competent authority for dealing with such a complaint is the European Data Protection Supervisor and that the SC would need to await his decision.
37. The SC received 2 requests for access to its Opinion No 2/2012. The SC considered that the requested document was covered by exceptions set forth in Article 4 of Regulation No 1049/2001, in particular in the second and third indent of Article 4(2) and in Article 4(1)(b)) and therefore could not be publically disclosed at the time. However, the SC expressed its willingness to provide this document, if so requested, in the framework of on-going court proceedings.
38. Finally, a national judicial authority requested the lifting of the inviolability of the SC's archives with respect to Opinion No 2/2012 and of the reserve duty of its members, for the purpose of a national proceeding. The SC gave a favourable answer to this request.
39. The Staff Regulations of officials of the EU as well as the Conditions of Employment of other servants of the EU provide that any official or other servant who becomes aware of facts which give rise to a presumption of the existence of a possible illegal activity, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union, shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General or OLAF¹¹. These rules are equally applicable within OLAF, which means that OLAF staff members are obliged to report to one of their OLAF hierarchical superiors or, if they consider this to be appropriate, directly to the Secretary-General of the Commission any factual information and evidence on possible illegal activities or serious professional misconduct within OLAF of which they become aware. To take account of the particular position of staff in OLAF wishing to report possible wrongdoing within OLAF, it has been agreed¹² with the SC that such matters may be reported to its Chairman.
40. The SC has never received any such report. Possibly the procedure has not been adequately communicated to the OLAF staff, but even more importantly, the SC has not been granted any tools to follow-up such possible complaints and to ensure an effective inquiry and remedy.

¹¹ Article 22a of the Staff Regulations and Article 11 of the Conditions of Employment of other servants of the EU.

¹² After consultation of the Commission's Legal Service – see note of the OLAF DG of 10 November 2008 to OLAF staff members.

2 MONITORING OF THE MANAGEMENT OF THE INVESTIGATIVE FUNCTION OF OLAF

Article 6(2) of Commission Decision establishing OLAF, as amended by Commission Decision 2013/478/EU: After consulting the Supervisory Committee, the Director-General shall send the Director-General for budgets a preliminary draft budget to be entered in the annex concerning the Office to the Commission section of the general budget of the European Union.

Article 15(1) third paragraph of Regulation No 883/2013:

The Supervisory Committee shall address to the Director-General opinions, including where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of the Office (...).

Preliminary draft budget for 2014

42. To give assurance that OLAF's budget duly takes into account the independence of the investigative function of OLAF and that OLAF is resourced to function effectively and efficiently as an inter-institutional service in stepping up the fight against fraud, the SC adopted **Opinion No 1/2013 on OLAF's Preliminary Draft Budget for 2014**¹³.
43. The SC looked into the allocation of resources to priority activities and into the human resources strategy. The SC's recommendations focussed on the follow-up of investigations and on the development of indicators for efficiency and quality of the investigative function following the EU anti-fraud policy and the Commission anti-fraud strategy. It was also recommended that OLAF give focus to training, career development, succession planning as well as an appropriate balance between support services and investigators.
44. The SC underlined the importance of consulting the SC by means of a real and substantive exchange of opinions between the OLAF DG and the SC prior to the preliminary draft budget being sent to the Director-General for Budget in any form.
45. Finally, the SC recommended the introduction of a separate budget entry, within the OLAF budget, for both the SC and its Secretariat in order to clarify the costs of the SC function and to highlight in a transparent manner the inter-institutional character of the SC and its Secretariat. Furthermore, the SC underlined the importance of the DG allocating sufficient resources to the SC Secretariat and ensuring its independent functioning.
46. The SC supported the Preliminary Draft Budget for 2014 with the provision that the recommendations made in its Opinion are taken into consideration.

OLAF reorganisation and Staff Satisfaction Surveys

47. The survey carried out in 2013 throughout the Commission, followed by an internal survey in OLAF, showed a low level of satisfaction of staff with regard to their professional environment. The SC is particularly concerned by three elements, given their potential impact on the efficiency of OLAF's investigative function:
 - according to OLAF staff, the massive reorganisation of the Office did not lessen the administrative burden on investigators or improve the transparency of internal procedures;
 - the staff did not consider that OLAF senior management either communicated with them sufficiently or paid the necessary attention to their feedback;
 - following the reorganisation of OLAF in 2012, all senior managers and over 75% of middle managers were newly appointed to their current units/directorates, many members of the staff left and over one quarter of the remaining staff considered leaving, which, taken as a whole raises serious concern regarding the continuity of expertise within the Office.
48. As a consequence, the SC requested that the OLAF DG inform it regularly on measures foreseen or implemented to address these issues.

¹³ See Annex 1.

3 COOPERATION WITH OLAF

Follow-up by OLAF to the recommendations made by the Supervisory Committee

49. In 2012, the SC issued a number of recommendations to the OLAF DG, in particular concerning the protection of fundamental rights and procedural guarantees¹⁴. The SC's initial analysis indicates that the implementation of most of its recommendations from 2012 has not been satisfactory. In responses from the OLAF DG either there has been no sufficient justification for non-implementation or there has been no substantive information on how the recommendations were supposedly implemented. The SC will therefore analyse that issue in a separate Opinion to be delivered in 2014.

Working arrangements with OLAF

50. During the reporting period, the SC had extensive and lengthy discussions with the OLAF DG on the SC access to case-related information. The outcome of these discussions is reflected in the Working Arrangements¹⁵ signed by the OLAF DG and the SC Chairman on 14 January 2014. The arrangements set out (i) the scope of information on OLAF's investigative activities to be provided to the SC, (ii) the methodology for providing information and (iii) the timeframe. They are intended to strike a fair balance between OLAF's duty to protect the confidentiality of information related to its investigations and the monitoring needs of the SC.
51. With regard to cases transmitted to national judicial authorities, the SC expressed its wish to be provided with a copy of the opinions issued by the ISRU to the OLAF DG on the Final Report and Recommendations, in order to enable the SC to monitor developments concerning the application of procedural guarantees. Given that this document may contain personal data, the SC agreed with OLAF to request first the European Data Protection Supervisor's opinion on the matter. This opinion is currently pending.
52. The first transmission under the Working Arrangements of the information which the OLAF DG is obliged to send to the SC on a regular basis took place on 31 January 2014, the last day of the reporting period for this report. As a consequence, a more detailed assessment of the implementation of the arrangements will be presented in the following report.
53. While considering that the Working arrangements represent an important achievement, the SC insists now that their implementation must be improved, in particular with regard to the content of information provided to the SC by OLAF. Otherwise, the SC will not be able to conduct its monitoring functions effectively

¹⁴ See a summary in Annex 7.

¹⁵ See Annex 10.

4 COOPERATION WITH STAKEHOLDERS

Meetings with EU Institutions

54. Between May and July 2013 the SC was invited to present the conclusions from its 2012 Activity Report to the Parliament (the Committee on Budgetary Control), to the Council (the Working Group for the Fight against Fraud) and to the European Court of Auditors.
55. In several other meetings with the Committee on Budgetary Control and with Commissioner Šemeta, the SC reported on the results of OLAF investigations and the respect of fundamental rights. It also presented its conclusions on effectiveness of the supervision of OLAF, the reform of the OLAF Regulation and a new supervision structure for OLAF as proposed in the Commission's Communication on *Improving OLAF's governance and reinforcing procedural safeguards in investigations*¹⁶.
56. In November 2013 the SC organised an informal exchange of opinions on the challenges facing OLAF and its SC after the entry into force of Regulation No 883/2013.

Exchange of views with EU Institutions

57. In August 2013 the SC initiated preparations to a formalised exchange views on policy related to OLAF's activities with the Commission, Parliament, Council and the Court of Auditors, as foreseen by Article 16 of Regulation No 883/2013. The SC proposed to focus firstly on the supervision framework for the reformed OLAF. Regrettably, the Commission's administration organised the preparatory meetings including all other participants but excluding the SC. It remains therefore to be seen whether the first exchange of views will satisfy the objectives set forth by the Regulation.

European Parliament's public hearing on procedural guarantees

58. In October 2013, the SC adopted, on the basis of its monitoring experience, a **position paper on Reinforcing procedural safeguards in OLAF**¹⁷. The SC's position on possible new legislative amendments to Regulation No 883/2013, as proposed by the Commission in its Communication, was presented during a public hearing organised by the Parliament¹⁸.
59. The SC welcomed the Commission's proposal, but pointed out that some structural solutions should be reconsidered with specific regards to the independence of OLAF and of the SC. In particular, any potential conflicts of competences and duplication of work between the present and the foreseen supervision structures should be avoided. The SC proposed alternative solutions which would retain the useful instruments proposed by the Commission, but which would, at the same time, incorporate them into a comprehensive supervision mechanism.

Civil society

60. The Transparency International EU Office (TI-EU) decided to perform an assessment of the EU's integrity system¹⁹. In January 2014, the SC Chairman and members of the SC Secretariat met TI-EU's representatives and discussed issues such as the relationship between OLAF and the SC, OLAF's accountability and independence and the integrity rules governing the SC itself.

¹⁶ COM(2013)533 final, 17.07.2013.

¹⁷ See Annex 6.

¹⁸ Public hearing of 3 October 2013 "OLAF and the rights of the persons concerned".

¹⁹ See <http://www.transparencyinternational.eu/european-union-integrity-system-study/>.

5 SUPERVISORY COMMITTEE'S GOVERNANCE

Supervisory Committee's role under Regulation No 883/2013

61. Regulation No 883/2013 has introduced a number of changes to the role of the SC and to its monitoring tools. A significant part of the SC meetings was thus dedicated to discussions on their impact on the SC's activities.
62. The SC conducted a thorough analysis of the changes concerning its mission and role, its core tasks, its monitoring and reporting tools. The SC's **paper** on the **Mission, competences and objectives of the SC**²⁰ in the light of the new OLAF Regulation explains these changes, the SC's monitoring formula and the role of its Secretariat, its independent functioning being a guarantee of the independence of the SC itself.

Priorities and objectives

63. The SC defined its strategic objectives and priorities for the forthcoming period of its mandate, aimed at increasing the effectiveness and impact of its core activities and thus the support of OLAF's investigative function and reinforcement of OLAF's independence. The SC defined the following strategic objectives: (i) developing effective and pragmatic monitoring tools; (ii) improving the cooperation with OLAF and its Director-General; (iii) acting as a stakeholder in implementing the fight against fraud policy; (iv) increasing the SC's visibility among the EU institutions and Member States; (v) developing the SC's working methods; (vi) safeguarding the independent functioning of the SC and of its Secretariat; (vii) contributing to the legislative proposal of reinforcing OLAF's supervision. To meet these objectives, the SC identified a number of priorities, which are also presented in the paper on the **Mission, competences and objectives of the SC**, which represents at the same time the SC's **mid-term strategy**.

Code of conduct

64. On 9 October 2013, the SC adopted a **Code of conduct** together with an **Explanatory memorandum on Safeguards of impartiality and risks of conflict of interest in the exercise of the monitoring functions**²¹. The SC highlighted that its Members generally hold key functions in their national judicial system or administration, allowing them to act as a counterpart/partner of OLAF at a national level at any stage of an OLAF case. At the same time, they regularly monitor OLAF's cases, in particular, those requiring transmission of information to the national judicial authorities. Situations may thus occur when they may be faced with the same OLAF case both in the framework of their national duties and as Members of the SC. It is thus essential to make sure that dealing with a case in this dual capacity does not give rise to any actual or potential conflicts of interest endangering the public trust in the impartiality and objectivity of their work. The SC carried out an overview of those specific tasks of the Members of the SC which could possibly lead to conflict of interest situations, followed by an inventory of concrete situations when conflicts of interest may occur. The code of conduct foresees a clear procedure on how to manage conflict of interest situations.
65. In order to establish this policy and code of conduct in clear legal terms, the SC considered it appropriate to amend its Rules of Procedure. This work is currently on-going.

²⁰ See Annex 8.

²¹ See Annex 9.

Working methods

66. In March 2013, the SC welcomed a new Member, Mr Tuomas PÖYSTI. During its October 2013 meeting, the SC elected Mr Johan DENOLF to serve as Chairman for a further year.
67. From February 2013 to January 2014 included, the SC held 11 plenary meetings in Brussels and Luxembourg. The Chairman, the *rapporteurs* and the members of the Secretariat met also regularly to work on particular issues as well as on the preparation of and follow-up to the plenary meetings.
68. For every major issue examined, the SC appointed a *rapporteur*. Such was the case in particular for the OLAF budget, the analysis of the OLAF's procedures for dealing with complaints, the DG's Instructions to Staff on Investigative Procedures, OLAF Investigation Policy Priorities and the analysis of the selection process in OLAF. The *rapporteurs* worked with the SC Secretariat to prepare draft opinions or papers to be discussed in the plenary meetings.
69. During the February 2013 plenary meeting, the SC Secretariat presented to the senior management of OLAF the working methods of the SC in particular with regard to cases to be transmitted by OLAF to national judicial authorities. It was also explained what information was needed by the SC in order to carry out its tasks properly. This presentation served as the basis for the SC to develop a set of **monitoring guidelines**. Following the entry into force of Regulation No 883/2013, the SC is in the process of establishing new monitoring guidelines.

6 SUPERVISORY COMMITTEE'S SECRETARIAT

70. The Secretariat of the SC consists of lawyers, investigators and assistants who ensure the daily monitoring of OLAF investigative activities and assist the SC Members in the execution of their tasks. The Secretariat receives all the information provided to the SC and carries out its initial examination. The Secretariat is also responsible for preparing legal advice for the SC Members.
71. The SC would like to highlight that its Secretariat must be able to assist the SC in implementing its monitoring functions in a loyal and efficient manner without being exposed to the risk of potential conflicts of interest as OLAF staff subordinate to the OLAF DG. During the past few years, the SC has consistently underlined the importance of its independent and effective functioning which requires an independent and adequately staffed Secretariat that, whilst situated within the structure of OLAF, functions independently and under the exclusive instructions of the SC. The SC is satisfied that the independent functioning of its Secretariat is now guaranteed by Regulation No 883/2013²².
72. The SC has identified four basic conditions ensuring the independent functioning of the Secretariat: (i) recruitment, appraisal and promotion of the Head of the Secretariat on the basis of the SC's decisions; (ii) reclassification of the Head of the Secretariat as a senior manager; (iii) recruitment, appraisal and promotion of the staff of the Secretariat by its Head; (iv) sub-delegation of the Secretariat's budget implementation to its Head. The SC has started discussions with the OLAF DG on the implementation of this new regulatory requirement, which are currently on-going.
- 73 The SC is also satisfied that the OLAF DG has re-established the number of posts allocated to the Secretariat to eight, as was the case before the reorganisation of OLAF in 2012.

²² Recital 40.

How to contact the Supervisory Committee

Via the SC Secretariat:

By post

J30 13/62 – Rue Joseph II, 30 – B - 1049 Brussels

By telephone

+ 32 2 29 84022

By e-mail

OLAF-FMB-supervisory-committee@ec.europa.eu

By fax

+ 32 2 29 59776

Website

http://ec.europa.eu/anti_fraud/about-us/supervisory-committee/index_en.htm

ANNEXES

1. Opinion No 1/2013: OLAF's Preliminary draft budget for 2014
2. Opinion No 2/2013: Establishing an internal OLAF procedure for complaints
3. Opinion No 1/2014: OLAF Investigation Policy Priorities
4. Opinion No 2/2014: Case selection in OLAF
5. SC's observations on investigation procedures in OLAF
6. Paper on Reinforcing procedural safeguards in OLAF
7. SC's 2012 Recommendations
8. Mission, competences and objectives of the SC: Mid-term strategy
9. Code of Conduct of the Members of the SC and Explanatory memorandum on safeguards of impartiality and risks of conflict of interest in the exercise of the monitoring functions
10. Working arrangements with OLAF