



2.9.2024

WORKING DOCUMENT

on the OLAF Annual Reports 2022

Committee on Budgetary Control

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1. Context

The information and considerations herewith presented aim at offering a contribution material to the analysis carried out in CONT during the discharge procedure and the adoption of the INI Report on the Protection of the European Union's Financial Interests.

The European Anti-Fraud Office (OLAF) annual report is presented together with the Annual Report of the OLAF Supervisory Committee and, this year for the very first time, together with the Annual Report of the Controller of Procedural Guarantee. OLAF Annual Report is presented mainly to the media and, later on, shared with the European Parliament, with a view to inform about some of the achievements and activities carried out during the year. In this regard, the annual report is part of OLAF's external communication efforts to inform Union's citizens about the risk of fraud and irregularities and the efforts to protect the money of the European taxpayers in a scenario where fraud and other misconducts change rapidly and require constant analysis and updated design of effective remedies.

The analysis presented in the current document is, therefore, based on the information offered by the three reports above, integrated -where possible and appropriate for the sake of a comprehensive analysis- with the outcome of the exchanges of views that are held at the CONT Committee with OLAF Director-General and other relevant OLAF managers on specific cases and matters of interest. The data are further complemented with those retrieved from the OLAF Annual Activity Report (AAR) 2022, which is the published management report that OLAF Director-General addresses to the College of Commissioners. The latter represents the main instrument of management accountability within the Commission and, on its basis, the College of Commissioners takes political responsibility for its decisions as well as for the coordinating, executive and management functions it exercises¹. Finally yet importantly, in respect of some specific matters, such as those related to the cooperation with the other components of the EU Anti-Fraud Architecture, attention has been paid to the annual reports from European Public Prosecutor's Office (EPPO) and Europol.

2. Landscape 2022

On 16 February 2022, the judgments of the Court of Justice of the European Union (CJEU) in the case Hungary v European Parliament and Council of the European Union (C-156/21, EU:C:2022:97) and in the case Republic of Poland v European Parliament and Council of the European Union, (C-157/21, EU:C:2022:98) conclude that the rule-of-law conditionality mechanism is in line with EU law, confirm the appropriateness of the legal basis and the compatibility of the general regime of conditionality with Article 7 of the Treaty on European Union (TEU) and the principle of legal certainty;

On 25 February 2022, the Commission adopts the second Financing Decision for the Union Anti-Fraud Programme (UAFP). It establishes an EU contribution of EUR 24.4 million for the implementation of the programme, out of which EUR 15.4 million to the Hercule component, EUR 9 million for the AFIS component and about EUR 1 million for the IMS component. This decision will result in the awarding of grants to the relevant implementing bodies and in the

¹ The focus of the AAR on the objectives, their priorities and the key performance indicators allows a factual analysis linked to comparable data: duration of the selection cases, of the investigation cases, amounts recommended for recovery, number of cases closed and opened, etc.

financing of specialised training, databases, support for research, monitoring and analyses;

On 2 March 2022, the Commission adopts the “Guidelines on the application of the Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget”²;

On 3 May 2022, the European Commission appoints the Controller of procedural guarantees for investigations conducted by OLAF for a non-renewable mandate of five years; the Controller, Prof. Dr Julia LAFFRANQUE, takes up office in September 2022;

On 16 May 2022, the Commission presents a proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (Financial Regulation recast - COM(2022)0223 final) including relevant provisions to enhance the protection of the Union’s financial interests;

On 25 May 2022, the Directive on Asset Recovery and Confiscation is adopted, (COM/2022/245 final);

On 13 July 2022, the Commission sends its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - on the 2022 Rule of Law Report (COM(2022) 500 final);

On 18 September 2022, the Commission presents its proposal of for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (COM(2022)0485);

On 23 September 2022, the OLAF Supervisory Committee is finally convened in its new composition with the five new Members taking over from the previous committee;

On 27 October 2022, the European Court of Auditors’ (ECA) Opinion 06/2022 on the Financial Regulation recast proposal by the Commission is published³;

On 16 November 2022, the Controller, after consulting both OLAF and the Supervisory Committee, adopts the Implementing Provisions on how the complaint shall be handled and, on 28 December 2022, such Implementing Provisions are translated into all EU official languages and published in the Official Journal; to be noted that, in 2022, the Controller has to deal with the backlog of many complaints lodged well before her appointment, and to examine them within the deadlines laid down by the OLAF Regulation;

On 24 November 2022, the European Parliament adopts its resolution on the assessment of Hungary’s compliance with the rule of law conditions under the Conditionality Regulation and on the state of play of the Hungarian RRP;

On 1 March 2023, the EPPO adopts its annual report 2022, covering for the first time the first full year of operational activities.

² OJ C 123, 18.3.2022, p. 12.

³ Opinion 06/2022 (pursuant to Article 322(1), TFEU) concerning the proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, OJ C 446, 24.11.2022, p. 26. The full opinion is available at https://www.eca.europa.eu/Lists/ECADocuments/OP22_06/OP_Recast_EN.pdf.

3. General remarks on OLAF's investigative performance in 2022

In 2022, the following **main indicators of OLAF performance** were observed:

- Number of new investigations opened = **192** (290 in 2020 and 234 in 2021)
- Number of investigations concluded : **256** (230 in 2020 and 212 in 2021)
- Number of recommendations issued **275** (375 in 2020 and 294 in 2021)
- Duration of closed investigations **26.8** months (24.3 in 2020 and 25.2 in 2021)
- Amount of recommended financial recovery **426.8** ml (527.4 ml in 2021)
- Amounts recommended to be prevented from being unduly spent **197.9** ml (340.8 ml in 2021).
- Duration of the selection stage : **1.8** (from 1.9 months in 2021)

4. On reporting

The OLAF 2022 Report has adopted a new approach and is presented in a digital edition. This new format makes harder the comparative analysis and identification of performance trends.

It is to be pointed out that the yearly issue of OLAF Reports and their presentation to the European Parliament is a practice consolidated during the years, since the establishment of the Office whose actions and reporting was initially governed by Regulation 1073/1999 and, later on, by Regulation 883/2013, as below (emphasis added):

Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

Article 12 - Director

3. ...omissis.... The Director shall report regularly to the European Parliament, the Council, the Commission and the Court of Auditors on the findings of investigations carried out by the Office, whilst respecting the confidentiality of those investigations, the legitimate rights of the persons concerned and, where appropriate, national provisions applicable to judicial proceedings.

...omissis...

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

Article 17 - Director-General

4. The Director-General shall report regularly to the European Parliament, the Council, the Commission and the Court of Auditors on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and of informants, and, where appropriate, national law applicable to judicial proceedings.

Currently, the Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending the Regulation (EU, Euratom) No 883/2013, draws a direct link between the reporting by the Office and the prerogatives and rights of the discharge

authority, as follows:

Article 17 - Director-General

4. The Director-General shall report regularly, and at least annually, to the European Parliament, to the Council, to the Commission and to the Court of Auditors on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and of informants, and, where appropriate, national law applicable to judicial proceedings. Those reports shall also include an assessment of the actions taken by the competent authorities of Member States and the institutions, bodies, offices and agencies, following reports and recommendations drawn up by the Office.

4a. At the request of the European Parliament or of the Council, in the context of their budgetary control rights, the Director-General may provide information about the Office's activities, respecting the confidentiality of investigations and follow-up proceedings. The European Parliament and the Council shall ensure the confidentiality of information provided in accordance with this paragraph.

Taking into account that the essential skeleton of the OLAF Reports has remained unchanged since when the activity of the Office was governed by Reg 1073/1999, and it has become even more succinct for what concern technical data in the most recent editions, consideration might be given to the opportunity to **re-assess the reporting tool** to guarantee better alignment with the current regulation in force.

On the issue of the adequacy of OLAF reporting, the exchanges of views held in CONT have given the opportunity to express the favour of the Committee towards **higher granularity** of the data provided, for the sake of building **analyses** on effectiveness and efficiency of the efforts to counter irregularities and mitigate fraud risk.

In particular, and to exemplify, more **data on the investigative activities** could give a clear idea of the intensity of OLAF work, such as the number of on-the-spot checks carried out, aggregated per Country or per area of intervention (direct expenditure, cohesion, agriculture, own resources, etc), the number of economic operators visited, also in this case aggregated according to several criteria (country, sector, funds disbursed, nature of the entity, if SMEs, int.l holdings, NGO etc); the number of persons interviewed (persons concerned and witnesses); the number of case of international - transnational profile involving more than one Country; the success rate of investigative cases linked to the nature of the investigative input (from public authorities, from media and journalists, from whistle-blowers, or from anonymous source, etc). This kind of data, grouped appropriately per cluster of interest, could facilitate OLAF management's decision-making process and a dynamic and more effective deployment of resources; it would also allow the discharge authority to receive **more information** on which to build its further analyses.

The analysis of trends and patterns of irregularities, fraudulent and not fraudulent, is traditionally part of the annual report on the protection of the Union's financial interests, the so called PIF Report. However, such analysis is referred to a different kind of data, being inspired by the information submitted by Member states into the Irregularity Management System - IMS of the Commission, managed by OLAF. The volume of data provided by the national authorities dilutes the lessons learnt message from OLAF investigative experience, which is not fully

perceivable in the PIF analysis. This aspect suggests that a better coordination between the existing reporting tools should also be pursued, consistently with the EP reiterated call to the Commission for a more holistic approach in assessing the design, the outcome, the strengths and the weaknesses of the Union's Anti-Fraud Architecture.

Also the OLAF Supervisory Committee 2022 is very succinct. This is the more visible effect of the process to renew its composition, which has resulted in the gathering of all the new Members of the Committee only in September 2022. This has allowed the adoption of only one Opinion, on the OLAF budget 2023. Against this less extended content, the sections and overall graphic presentations remain unchanged.

The Controller of procedural rights Annual Report is a totally new document, and its content is innovative and extremely useful. The number of cases assessed by the Controller during the first short period of activity reported this year is relevant nonetheless, building a relevant backlog that the Controller has handled efficiently.

5. COVID-19 and EPPO

In the context of the pandemic, OLAF investigations had to be deployed, for more than two years, with very limited use of its peculiar powers and prerogatives: on-the-spot checks, interviews, visit at the premises of the economic operators, forensics inspections etc.

OLAF Annual Activity Report 2022 reports to the College that: *“For the third consecutive year, COVID-19 restrictions made it difficult for OLAF to fulfil its investigative activities, consequently having a negative impact on operational effectiveness and the duration of investigations...omissis... Missions and on-the-spot checks, with access to the premises of the economic operators and, where appropriate, forensic operations, are an essential investigative tool. During 2022, the number of missions performed by OLAF staff increased steadily to 75% (from 30% during 2021) of pre-COVID-19 levels. The mitigating practices adopted due to the pandemic have led to new working methods, some of which (remote interviews, requests for documents) are likely to be retained in the future. The difficulty faced by OLAF in carrying out missions and on-the-spot checks was mitigated to a certain extent by cooperation with national authorities, but inevitably impacted on the duration of investigations. In 2022, despite a globally strong performance, all cases were impacted, while some cases were delayed as investigative actions could not be carried out.”*

In the 2022 report, the operational cooperation with EPPO was expected to receive a specific analysis.

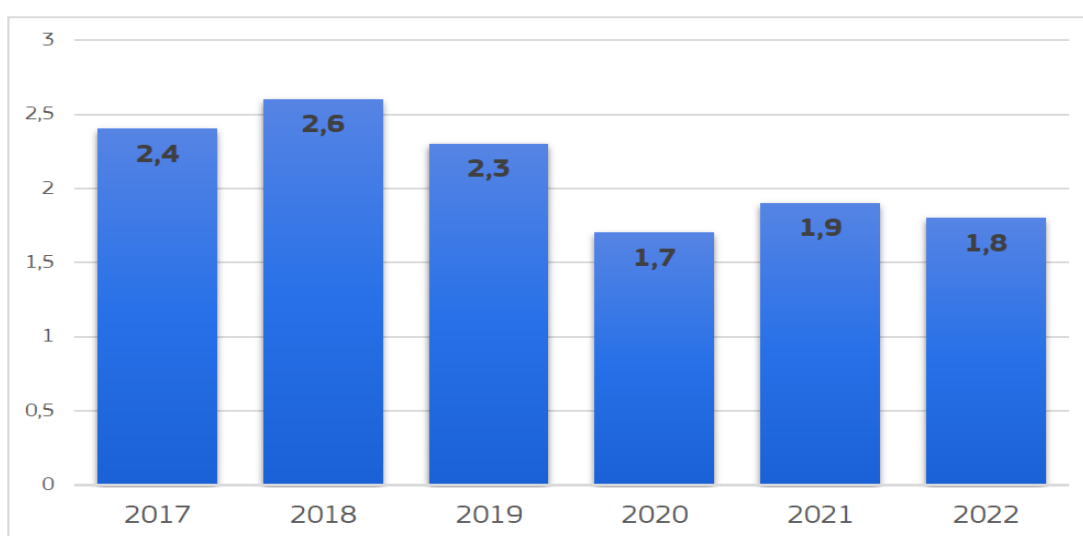
6. Analysis of OLAF performance indicators

The two main key performance indicators (KPIs) taken into account are (i) the duration of the closed selections and (ii) the duration of the closed investigations. Additionally, consideration is given to two further indicators, that is the (iii) percentage of OLAF investigations lasting more than 20 months and to (iv) the absolute number of OLAF investigation exceeding the 12 months.

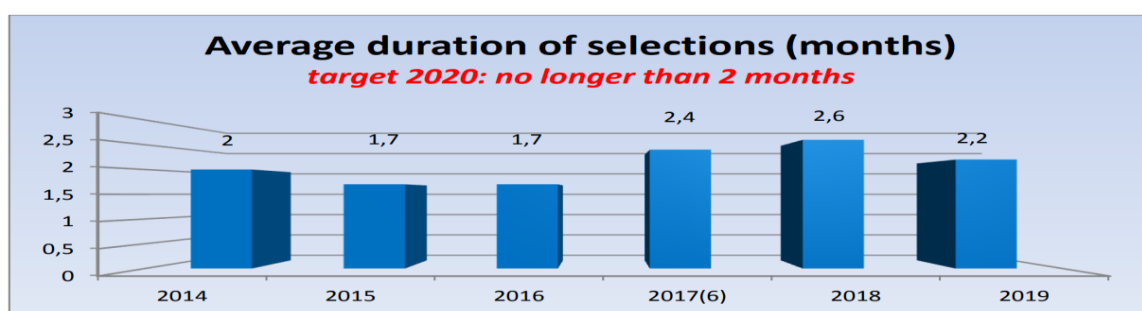
6.1 Duration of selections

The **average duration of closed selections** (first KPI) shortened to 1.8 months in 2022, thus complying with the target of 2.1 months.

1. Average duration of closed selections (in months) Target 2022: 2.1 months



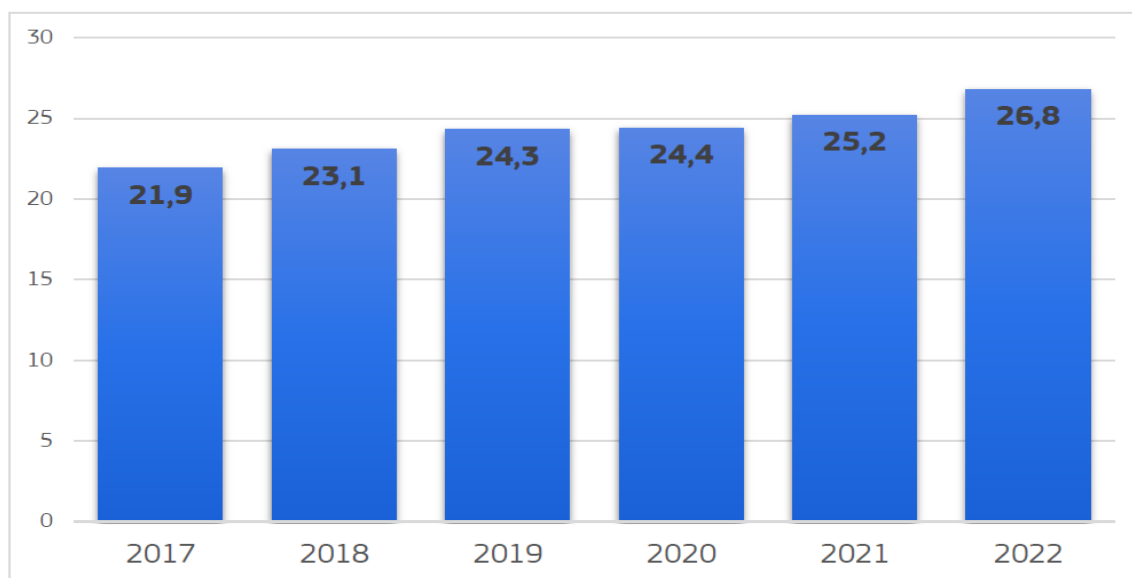
This is an objectively positive result for OLAF. However, in the years before the adoption of the new OLAF case management system (OCM) -occurred at the end of 2016- the performance indicator was even better, against a target that was even stricter (target of 2.0 months against the current 2.1 months). The OCM has been costly -more than EUR 29m- and its setting longer than expected -about 6-7 years to achieve an adequate performance levels- and it has been already the subject of remarks by both the OLAF Supervisory Committee and the EP (see WD 2021, Section 8, suggesting that further considerations could be needed in respect of OCM compatibility and interoperability with the systems in use at the EPPO and in other Commission's services).



6.2 Duration of closed investigations

The average duration of OLAF closed investigations (second KPI), increased to **26.8 months**, compared to the target of **24.3 months**

2. Average duration of closed investigations (in months) Target 2022: 24.3 months



6.3 Duration of investigations

In the same period, a third indicator referred to the percentage of OLAF investigations lasting more than 20 months has increased to **37.7%** (against a target of **29%**).

A last indicator, referred to the absolute number of OLAF investigations exceeding the 12 months, is assessed by the OLAF Supervisory Committee in its Annual Reports and (where possible or deemed necessary) in its Opinions on *ad hoc* topics.

Because the relevant information on this indicator related to case duration is not mentioned in the OLAF Report and OLAF Annual Report, the relevant data are to be found in the OLAF Supervisory Committee Annual Reports.

The OLAF Supervisory Committee has paid particular attention over the years to the continuity and duration of OLAF's investigations. In fact, Article 7(8) of the OLAF Regulation requires the Committee to carry out a case-by-case analysis of each inquiry which is older than 12 months, to ensure that OLAF's investigations are conducted continuously and over a period proportionate to their circumstances and complexity. The Committee seeks to verify that no external or internal interference in the impartial conduct of an investigation has taken place, but by monitoring the length of investigations, the Committee also verifies that the human and financial resources allocated to OLAF have been used efficiently.

According to the accessible data, the number of reports on cases lasting longer than 12 months

which was **417** in 2017 has reached **751** in 2022⁴. The individual cases lasting more than 12 months have increased from **343** (in 2018) to **467** (in 2022). As a last additional indicator, the Supervisory Committee data point out that the percentage of the cases reported exceeding the 24 months has increased in 2022 to reach an unprecedented **54.17%** (against **43.57%** in 2021 and, to go farther, 38.4% in 2019).

As pointed out in previous year's Working Document, there is not such a thing as the "correct duration" of an investigation and there is no provision, in any Regulation, setting the "ideal timing" of an investigation. Moreover, the duration of an investigation is not an absolute valid criteria to assess the effectiveness and impact of the investigative action or its quality.

However, a long lasting investigation results in the issue of belated recommendations, whose implementation can be jeopardized by the remote date of the occurrence of the facts. Any measure (corrective or precautionary) is less effective if implemented too late. Even more, where the lifecycle of an investigation is affected by periods of inactivity and breaks (which, whether justified or not, can have an adverse effect on the effectiveness of the investigation).

The exchanges previously occurred with OLAF allowed to verify that the postponing of the finalisation of an investigation is often related to situations in large part out of OLAF's control. It has also appeared that OLAF management is proactively assessing the needs of the operational units, re-allocating the resources where needed and depending on availabilities, languages and competences, workload, nature of the activities, prioritisation. Overall, OLAF is committed to flexibility and embrace a result-oriented approach.

6.4 Other indicators

In the last three years, OLAF has assessed a **number of information of investigative interest** substantially stable, stemming for the largest part from private sources (in 2022 they were 1017, in 2021 were 1122 input, in 2020 were 1097 and in 2019 were 1095).

Out of such an important number of operational inputs, between 2016 and 2019, the total **number of investigations opened** was rather stable and around 220. However, in 2020, 290 investigations were opened, which is an around 30 percent increase. In 2021, the number decreased meaningfully to 234, getting closer to the average of the previous years, and in 2022 the investigations opened were 192: in respect of what reported in 2020, there is a noticeable decrease of about 100 investigations. The Supervisory Committee Opinion No. 1/2022 clarified that the number of opened cases for 2022, where it comprises the support to EPPO via investigations opened, supporting cases and complementary investigations, reaches the 226 cases.

As already explained in respect of previous year's performance analysis, it is important to point out that the cases opened in 2022 do not necessarily refer to situation occurred in the same year. On the contrary, it could be that misconducts detected and denounced in 2022 had occurred in 2021 or 2020. As a matter of fact, it is not possible to link increase or decrease of cases to the

⁴ 2018 : the Committee analysed 484 reports concerning **343** of investigations lasting more than 12 months;
2019: the Committee received 587 reports concerning **375** individual investigations lasting more than 12 months;
2020: the Committee received 619 reports concerning **412** individual investigations lasting more than 12 months;
2021: the Committee received 761 reports concerning **482** individual investigations lasting more than 12 months;
2022: the Committee received 751 reports concerning **467** individual investigations lasting more than 12 months.

actual characteristics of the programming period or of the regulation in force. Therefore, this data does not offer any valuable information for the design of present or future regulatory framework or procedures and it remains not connectable to the discharge analysis, which requires data relatable with a direct reference to a clearly identified timeframe, resources and geographical area.

OLAF Annual reports provides also information on the **number of investigations closed** in the year. In 2020 and 2021, OLAF reported having concluded respectively 230 and 212 investigation. In 2022, there were 256 investigations concluded during the year. The sharp increase of case closed is a good result for OLAF, whose approach in the management of its case-portfolio is oriented to achieve a ratio “cases opened/cases closed” of at least 1/1 or better, to avoid the accumulation of on-going cases lasting too much.

However, the **number of recommendations issued** goes in the opposite direction, because it decreases in respect of the 294 in 2021 and 375 in 2020: in 2022, in fact, OLAF issued 275 financial, judicial, disciplinary and administrative recommendations to competent authorities at EU and national levels.

OLAF maintains that the amount of recommendations issued in each given year is not foreseeable, and that it is related to reasons going beyond the rationale.

The amount recommended by OLAF for financial recovery was EUR 426.8 million, decreased from the EUR 529.9 million in 2021. In addition, in 2022 OLAF recommended EUR 197.9 million **to be prevented from being unduly spent**, in comparison to EUR 340.8 million in 2021.

OLAF maintains that the sum recommended for recovery each year depends on the scope and scale of the investigations concluded in that particular year. The amounts recommended for recovery are therefore not an indication of the overall level of fraud in Europe but only relate to the specific cases finalised in the given year.

The number of cases concerning the shared management area is constantly high (from 61 in 2016 up to 94 in 2021 and 73 in 2022) but it is not possible to identify the possible role that risk-scoring and data-mining tools have in the detection phase: this data could be useful to further corroborate the recommendations to use Arachne or equivalent tool.

The number of cases in the direct management area is stable in the last years but it shows a slight decrease in 2022 (from 26 in 2019 to 50 in 2021 to 44 in 2022). The reporting, however, does not clarify if this (decreasing) data includes also cases related to RRF, whose implementation is reaching its peak and which is implemented under the direct management mode.

Looking at the **geographical location of the investigative cases**, in 2021, 11 investigations took place in Italy, followed by Bulgaria, Poland and Slovakia (10 each) and Hungary (9) and Macedonia (8).

In 2022, Hungary is the country with the highest number of closed investigations and recommendations.

The comparison across the reported data shows that some countries are recurrently amongst the

top investigated countries in most years. As a matter of fact, it is well known that some of these Member States (e.g.: Romania and Italy) have long success history of top-of-the-art law enforcement structures, which reasonably result in high detection level and, as a consequence, in a bigger number of cases. Overall, there is no indication in OLAF Report whether the recurrence of the high number of cases (or its variation) has to do with higher weaknesses of the management systems or with greater strength of the detection apparatus or of the controlling structures. Also the operational activity of the EPPO could have offered some explanations, considering that HU and PL are not amongst the participating MSs, hence OLAF carries out the investigations and does not transfer to EPPO the relevant cases for EPPO to investigate.

OLAF also opens investigative cases following information gathered during the investigations already launched.

CONT is aware that fostering detection is carried out by OLAF through indirect activities such as conferences or seminars. Raising awareness amongst relevant stakeholders and citizens, with a view to increase the input submitted to OLAF by those parties, is an effective strategy. However, considering the stable number of cases during the last years, and the calls from other partners (i.e. the EPPO) to increase the detection efforts, it should be explored the possibility of enhancing the own-initiative analyses of the scenarios, the identification of weaknesses that could be exploited by fraudsters and the assessment of risks, and look at the findings through the lenses of the investigative experience earned on the field. Because advanced data analytics technologies and data mining tools are used in OLAF for operations, it should be considered if similar tools could be used, *mutatis mutandis*, also for the detection of cases on which to open investigations.

OLAF Annual report does not provide information on the **financial amounts involved per investigative area**. Figures provided refer to the number of investigations opened in the main investigative areas, and within some of them (i.e. shared management) a detail of the cases concerning the main funds (ESF, ERDF, EAFRD, Cohesion, others).

7. Follow-up and monitoring of OLAF's recommendations

As already remarked in last year's Working Document, OLAF's strategy in monitoring its recommendation has evolved in the recent years, taking into account that while OLAF has no powers to enforce its recommendations, recipients are obliged to report to OLAF on the actions taken on such input.

On **financial recommendations**, OLAF started in 2019 to monitor their follow-up, with the aim of understanding the tangible impacts of its actions, to evaluate the cooperation with its partners and to identify areas for improvements. This stocktaking exercise was launched together with Directorate-General for Budget (DG BUDG) of the European Commission.

To monitor and follow-up its recommendations, OLAF re-deployed resources internally, and a dedicated new monitoring and reporting unit was created to replace the task force monitoring that was established in a previous re-organisation.

In 2021, OLAF Supervisory Committee intervened on the topic of the monitoring of recommendations, and pointed out that:

- 1) the way OLAF monitors its recommendations is crucial for their successful implementation;
- 2) the lifecycle of an investigation does not end when the final case report is adopted;
- 3) follow-up steps by the recipients of recommendations are as important as OLAF's investigation itself.

The OLAF Annual Activity Report 2021 (addressed only to the College of Commissioners), referred to the follow-up of the financial recommendations carried out by OLAF in cooperation with DG BUDG. It indicates that out of an amount of **EUR 7.075 billion** (recommended for recovery by OLAF between 2012 and 2020), the Commission services had established that the amounts to be recovered amounted to only **EUR 2.208 billion**, out of which **EUR 1.166 billion** had been effectively recovered at the beginning of 2021. However, EUR 2.751 billion out of a total of EUR 7.075 billion concerned five major cases of undervaluation of traditional own resources, which were pending before the Court of Justice at the time of drafting the OLAF report. These cases were successfully finalised and **EUR 3 billion** transferred to the Union's budget ⁵.

The OLAF Report 2022 **does not indicate the results of the monitoring and follow up actions on financial recommendations**.

To be noted that the figures and tables in the OLAF Report still refer to “*recommendations for recovery*” and not to “*recovery*”. Moreover, the percentage of the financial impact of the irregularities (fraudulent and not-fraudulent) on the overall Union's budget (for expenditure and in the traditional own-resources area) is referred for both the MS and OLAF to the

⁵ In fact, following the Court of Justice's ruling of 8 March 2022 (C-213/19, Commission v UK), the UK has made available to the EU budget a total amount of EUR 3 billion, consisting of a principal amount of EUR 1.6 billion and late payment interest of EUR 1.4 billion. EUR 678 million of this was already paid in June 2022 and the remaining amount of around EUR 2.3 billion was paid in early 2023.

“*detection*” (and for OLAF to the “*recommendations*”), but these categories cannot be linked to the amounts effectively recovered.

In its replies to recent CONT Committee’s follow-up questions, OLAF maintained that discrepancies between the amounts recommended for recovery by OLAF and those established for recovery by the spending services may result from factual or legal aspects discovered through supplementary checks, audits and adversarial exchanges with the beneficiaries. □ □ Differences between amounts established and amounts recovered are often due to delays linked to national judicial and administrative proceedings, to time-barring, insolvency, or (lack of) effectiveness of national recovery enforcement systems.

The **administrative recommendations** aim at excluding fraudulent beneficiaries from EU funding or enhancing fraud prevention. For this kind of recommendations, in the period between 2016 and 2020, OLAF indicates in the Annual Activity Report 2022 that 60 % of its recommendations are either fully or partly implemented, 20% is still ongoing and 19% is not implemented. In OLAF Report 2022, however, is indicated that 45% of OLAF administrative recommendations issued between 2018 and 2022 have been fully or partly implemented. For another 45%, action is pending.

On **judicial recommendations**, the monitoring indicates that between, 2018-2022, around 34% of cases transmitted by OLAF to judicial authorities of the EU-27 Member States, and on which a decision has already been taken, ended with an indictment. For the period 2018-2021 the success rate was 35%.

OLAF is endowed with purely administrative investigative powers, hence conclusive evidence of a criminal offence cannot always be collected by the Office. Moreover, in spite of OLAF liaising with the national authorities to improve the follow up given at national level, the Member states’ judicial authorities have no obligation to follow OLAF’s recommendations.

The monitoring results, however, are expected to be gradually influenced by the EPPO operations, because the European Prosecutor can directly investigate and bring to court criminals responsible for damaging the EU’s financial interests, as well as ensuring that the necessary steps are taken for the recovery of EU funds, when possible. The national prosecutors who will follow the cases concerning infringements foreseen by the PIF Directive (on which OLAF had so far investigated forwarding its judicial recommendations), are now directly liaising with the EPPO.

8. OLAF cooperation with the main partners

In 2021, **EPPO** became operational, hence the cooperation with OLAF was successfully launched. The legal frameworks of OLAF and the EPPO clearly provide for the two offices to work in close cooperation while respecting their individual mandates, powers and competences.

Under the current Union's anti-fraud architecture, OLAF and the EPPO are strongly encouraged to effectively cooperate in complementary investigations and support, by using the administrative and criminal tools available and ensuring a comprehensive protection of the EU's financial interests.

The EPPO is tasked to enhance the protection of EU funds across Europe by conducting criminal investigations and prosecutions, while OLAF conducts administrative investigations. OLAF's administrative investigations protect the EU budget by facilitating speedy financial recovery and administrative action: OLAF investigations are expected to result in precautionary measures and to contribute to the development of solutions to the systematic/systemic shortcomings identified. OLAF actions in this regard are crucial for ensuring a comprehensive protection of the EU budget.

Under the OLAF Regulation in force, a distinction must be drawn between;

- the investigations in support to the EPPO (ex Article 12e, opened by OLAF on EPPO request, following the agreement by OLAF) and
- the complementary investigations (ex Article 12f, opened by OLAF on OLAF's initiative, following the agreement with the EPPO).

The number of requests received from EPPO and the cases where initiative was undertaken by OLAF is an indicator of the effectiveness of the cooperation arrangements and of the efficiency of the coordinated actions, and as such it should be reported.

While no detailed information on these categories is provided in the OLAF Reports 2021 and 2022, from the OLAF reporting to the College of Commissioners results the following:

From the OLAF AAR 2021

- OLAF transferred 169 cases to the EPPO (since when the EPPO started on 1 June 2021, in the first seven months of operational work of the EPPO);
- EPPO opened criminal investigations in more than 80 of these transferred cases;
- OLAF and the EPPO cooperated in 26 complementary investigations and in three instances OLAF made financial recommendations for the recovery of EU funds;
- OLAF supported the EPPO in 9 cases.

From the OLAF AAR 2022

- OLAF reported 71 cases (EPPO Crime Reports ECRs) to EPPO (16 stemming from the European Commission, transferred to the EPPO by OLAF on behalf of the Commission);

OLAF remains the EPPO's main source of incoming information at EU level, analysing allegations that it receives and ensuring grounded suspicions of criminal activity are reported;

- EPPO opened 42 criminal investigations based on OLAF reporting (exercised competence in respect of 49 transmissions);
- The EPPO reported 9 cases to OLAF;
- OLAF and the EPPO engaged in 19 complementary investigations;
- OLAF provided support to the EPPO through 15 support cases
- EPPO asked OLAF support 20 times: *"EPPO has requested OLAF's support in their investigations 20 times in 2022, and these are cases which remain solely EPPO cases"*; it appears from the OLAF Report 2020 that support was provided in 13 cases out of 20;

From other official documents (Annexes to the OLAF AAR 2022), it is possible to learn that OLAF uses an indicator to measure the extent to which it provides the requested support to EPPO, or complements the EPPO's activity. The indicator is represented by the proportion of EPPO requests that OLAF is able to deliver. This indicator in 2022 has reached the 71% : 20 requests were accepted out of 28 submitted. The text quotes: *"During the course of 2022 EPPO requested complementary investigation/support 28 times and OLAF opened a complementary investigation/support case in 20 of the 28 cases."*

According to article 103(2) of the EPPO Regulation, the EPPO shall, without delay and without prejudice to the proper conduct and confidentiality of its investigation, provide the Commission with sufficient information in order to allow the Commission to take appropriate measures. In particular, Article 103(2) refers to administrative measures, such as precautionary actions to protect the financial interests of the Union, and to measures for the purpose of administrative recovery of sums due to the Union budget.

According to the same Article 103(2) of EPPO Regulation, EPPO and Commission shall conclude an agreement setting out the modalities of their cooperation for the purpose of protecting the financial interests of the Union. To be noted that in this specific case, the EPPO Regulation does not refer to "arrangement" (as it does for the other EPPO's partners) but to "agreement", implying the more solid nature and substantial content of such document.

Under Article 6(4)c of the EPPO-COM Agreement, signed on 18 June 2021, it is foreseen the transmission of information from EPPO to the Paying Directorate-General of the Commission in order to allow the latter to adopt protective measures or corrective measure.

In its liaison role, OLAF provides support to the EPPO and the Commission Services in the context of the Commission-EPPO Agreement.

Replying to the written questionnaire submitted in 2022, OLAF has confirmed that, in the context of recoveries, OLAF is designated as the Commission contact point in order to receive all information related to recoveries and is in charge to transmit this information to the relevant DGs or services responsible for taking the follow-up measures. This role is linked to OLAF prerogative of intervening via complementary investigations in order to establish the facts that

would allow for the adoption of precautionary measures, including an early recovery of funds in cases under criminal investigation.

What above emphasises that cooperation EPPO/Commission via OLAF is of the essence in order to ensure a prompt protection of the EU financial interests.

No figure or analysis is provided (by OLAF, by EPPO, by the Commission) about the implementation of these provisions governing one of the most valuable tool for the protection of the EU budget.

Besides the EPPO, OLAF actively cooperates with the ECA, with workshop, training and receiving and assessing information of potential investigative interest (20 information were received from ECA, out of which 5 resulted in the opening of investigative cases). Additionally, OLAF had been amongst the auditees for two ECA Special Reports (on blacklisting and response to fraud in Common Agricultural Policy).

With EUROJUST a new Working Arrangement was signed in March 2023 to replace the obsolete Practical Arrangements dating back to 2008. The arrangements now include mutual advice, assistance, the operational cooperation in general and the participation in Joint Investigation Teams.

With EUROPOL the cooperation is continuous. Besides the initiatives “Sentinel” and “NextGenEU Law Enforcement Forum” which provide the framework for intelligence sharing and information exchange, a new joint Europol-OLAF report assessing the threats to the NextGenerationEU funds was published in March 2022.

OLAF also provides support to many Member States authorities for anti-fraud actions: in particular to improve fraud prevention policy and practice through the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF). In 2022, OLAF set up an *ad hoc* expert group within COCOLAF focusing on the anti-fraud IT tools for the RRF. The expert group gathered 15 national representatives from 13 Member States and served as a platform for Member States to share best practices and pull together the existing information, databases and know-how.

9. OLAF and anti-fraud policy

OLAF coordinates the implementation of the Commission Anti-Fraud Strategy (CAFS), adopted in April 2019, and develops fraud risk analysis and anti-fraud policy measures to support Commission services. The implementation of the action plan accompanying the CAFS has been successful, with 60 out of the 63 actions implemented by the end of 2022.

To ensure sustained anti-fraud efforts in the Commission and address the remaining actions of the CAFS Action plan and new Commission priorities, OLAF started a revision of the plan which shall be carried out in 2023.

To support fraud prevention activities by the competent national authorities in the Member States, OLAF also issued specific anti-fraud advice related to IT hardware and software purchased under EU-funded projects (in July 2022) as well as environmental investment projects funded by the Recovery and Resilience Facility (in November 2022). to feed into fraud prevention activities of the competent national authorities in the Member States.

Part of OLAF contribution to the anti-fraud policy implementing actions is the management of the Union Anti-Fraud Programme (UAFP). In 2022, the Commission adopted its second Financing Decision, allocating a budget of EUR 24.4 million which will fund various activities to benefit the Member States' authorities, to enhance their operational capacities to protect the Union's financial interests (specialised forensic and analyst trainings and access to commercial databases). The first workshop organised in Brussels in April 2022 gathered the programme's past beneficiaries of grants and confirmed the high relevance and effectiveness of the support provided to Member States.

In the previous Working Document, it was expressed the expectation that Member States might have considered using the available UAFP funding to build up their national capacities and enhance protection against fraud-risk in the implementation of the new RRF. UAFP is eligible for use to support advanced data analytics technologies or data-mining tools and this approach would have allowed emphasising data-analysis as a tool for detecting fraud, in line with the Commission's commitment to encourage use of ARACHNE and interoperable databases.

10. Budget and human resources

OLAF is endowed with a total **budget** of EUR 85.9 million⁶. OLAF's operational budget finances activities in the framework of the UAAP and the operation of AFIS. Its administrative expenditure is managed through the Office's own budget, which is annexed to that of the Commission⁷.

In 2022, approximately 76% (47.3 million euro) of OLAF's administrative budget was co-delegated to the Paymaster Office (PMO), Infrastructure and Logistics Office (OIB), Publications Office (OP), Secretariat-General and Directorates-General for Human Resources (HR), Competition (COMP), International Partnerships (INTPA) and Informatics (DIGIT). Additionally, OLAF has co-delegated the implementation of a share of its operational budget to the Directorate-General for Taxation and Customs Union (TAXUD) & Communication (COMM).

OLAF has received a co-delegation from Directorate-General for Financial Stability, Financial Services and Capital Markets Union (FISMA) to cover for the expenses related to the development and maintenance of the FIU.net and signed a Service Level Agreement with the European Union Intellectual Property Office (EUIPO) and Joint Research Centre (JRC-ISPRA).

OLAF combines a centralised management mode for the overheads and the pre-financing payments, with a decentralised financial mode with counterweight of the financial unit for the projects managed by the business units. Every Head of Unit and Director has been granted the powers of Authorising Officer by sub-delegation (AOSD).

In 2022, the analysis of the available control results, the assessment of the weaknesses identified and that of their relative impact on legality and regularity have not unveiled any significant weakness, which could have a material impact as regards the legality and regularity of the financial operations.

According to what reported on **human resources**, OLAF's vacancy rate decreased in late 2022 compared to end 2021. OLAF published the lists of its specialised competitions in 2022 and started a recruitment campaign.

In the first quarter of 2022 OLAF's establishment plan provided for 322 statutory staff posts (officials and temporary agents), 58 external posts (interim agents, contract agents and SNEs) and 96 external service providers' posts covering informatics and communication. In the fourth quarter of 2022, OLAF staffing was reduced by fourteen full-time equivalents (FTE) and four contract agents.

Sixteen FTEs were transferred to the EPPO, two FTEs were returned to the Commission in the framework of the cuts for surcharge.

A small-scale reorganisation was carried out in December 2022, to preserve effectiveness

⁶ EUR 61.6 million for administrative expenditure and EUR 24.3 million for operational activities, implemented in direct management mode.

⁷ Crossed-subdelegated funds are received from Directorate-General for Neighbourhood and Enlargement Negotiations, for a limited amount of EUR 15 000.

despite the reduction of staff, by reviewing priorities and redeploying internally the staff.

The overall share of women working for OLAF remained substantially stable at 41.2 %, which is above the overall Commission target of 40 %, while the share of women in middle management positions in OLAF continued to improve in 2022, with 47 % of all middle management posts held by women (compared to 43.8% in 2021).

On the **reduction of staff in OLAF**, in its Opinion 4/2021, the Supervisory Committee had already expressed the view that it is “*somehow counterproductive to assign, on the one hand, every year to OLAF new responsibilities and tasks (EPPO, RRF) and on the other hand, to implement each year a gradual reduction of its human and financial resources.*”

The OLAF Supervisory Committee had raised concerns about the critical staffing situation, pointing out that with the final transfer in 2023 of 16 posts to the EPPO, a total of 45 posts have been contributed by OLAF to the establishment of the EPPO between 2019 and 2023⁸.

The Supervisory Committee also pointed out that OLAF has received no reinforcement for year 2022 (thus not seeing any compensation for the long sick leave absences contrary to what recorded at the time of the budgetary hearings, regarding 17 long term sick absences or absences with more than 365 days of sickness in a 3 year period). Moreover, OLAF specialised competitions will produce the lists of laureates, but there are no posts to proceed with recruitments of the specialists that OLAF needs. Absence of posts to recruit forensics, investigators and analysts in the next years would jeopardise OLAF operations and generate abnormal duration of investigations.

OLAF workload had not diminished proportionally to the staff cuts suffered and the analysis of the available data confirms that the creation of the EPPO has not led to a reduction of OLAF’s workload and investigative activities.

Even after 2017, date of creation of EPPO, the number of cases opened each year by OLAF has remained stable: OLAF appears therefore to maintain the same workload having, however, to perform its tasks with 45 posts less, transferred to the EPPO.

Even after 2021, date of beginning of EPPO operational activities, OLAF still carries out full administrative and criminal investigations in the MSs outside the EPPO area and in Third Countries, besides having exclusive competence for administrative and criminal investigations referred to facts occurred before October 2017 and for all the administrative investigations across all the Union (cases leading to recovery of funds are exclusively OLAF’s remit and it concerns more than 98% of cases affecting EU expenditure). Additionally, OLAF also provides support to the EPPO and carries out complementary investigations in parallel to those of the EPPO. At the same time, OLAF is involved in a number of new strategic initiatives for the European Commission, such as investigations and operational support to Member States concerning the RRF and for “support to Ukraine” matters.

OLAF lack of resources is to be assessed against its **legal framework** under the regulation in force⁹, OLAF has **investigative independence** to exercise its function in all EU institutions,

⁸ Because Member States have agreed to a zero financial impact for the setting up of EPPO, it is OLAF which had to bear most of the adverse financial impact in terms of human resources.

⁹ Regulation (EU) No 883/2013 (the “OLAF Regulation”) and Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom,

bodies, offices and agencies established by or on the basis of the Treaty on the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Euratom Treaty. OLAF operational independence is guaranteed by its **budgetary independence**.

To ensure that OLAF can run efficiently and effectively and contribute in the best possible way to the EU's objectives on fighting fraud (Article 325 of the TFEU), the total budgetary appropriations for OLAF are to be entered under a specific budget line within the section of the general budget of the EU relating to the Commission and set out in detail in an annex to that section¹⁰. Moreover, OLAF can transfer resources among its different budget lines according to its needs, making “internal” budgetary transfers without requesting the permission of the EU budgetary authority.

In the previous Working Document it was maintained that OLAF is expected having adequate and stable human and finance resources, independent from the Commission, to be able to properly fulfil its mission, and that OLAF's independence is to be safeguarded in three main areas: administrative, financial and investigative.

Administrative independence and financial independence means that OLAF's Director-General must have at its disposal the necessary human and financial resources to investigate fraud against the EU budget, corruption and serious misconduct within the European institutions, and to develop a meaningful and deterrent anti-fraud policy for the European Commission¹¹.

In 2023, to compensate the staff cuts occurred in 2022, OLAF has requested 16 additional full time equivalent posts in the preparation of the PDB2024 (FTE - 12 temporary and 4 permanent) to be allocated on “Support to Ukraine” (5 temporary FTE), internal cases and investigations on ethics and serious breaches of the Staff Rules (3 permanent FTE), RRF cases and fraud prevention (4 temporary FTE), EPPO-related procedures (3 temporary FTE) and as support to the Legal Advice Unit for the complaints submitted to the Controller of procedural guarantees (1 permanent FTE). The Supervisory Committee has endorsed such request. On 26 April 2023, the Corporate Management Board of the Commission (CMB) has discussed OLAF's request for additional posts and, although it did not reach any definitive decision on it, the CMB proposed that OLAF get 2 additional posts for external staff (“seconded national experts” or contract agents) for its anticipated involvement and role in the support for Ukraine.

¹⁰ Article 18 of Regulation (EU) No 883/2013.

¹¹ OLAF Supervisory Commission Opinion 4/2021 on OLAF preliminary draft budget for 2022 and Working Document on OLAF annual reports 2021 Committee on Budgetary Control - Rapporteur: Gilles Boyer (dated 24.10.2022)

11. Controls and oversight

OLAF's actions are subject of controls and verification by a range of entities.

Audits are carried out by **the Internal Audit Function (IAF)** on the issues falling under OLAF Director-General's independence with respect to investigations. Additionally, the Commission **Internal Audit Service (IAS)** and the European Court of Auditors (ECA) carry out audit on the other subjects inherent to OLAF mandate.

In the period 2018-2022, the IAS has undertaken the following work in OLAF:

- Audit of IT project management practices in OLAF (2019)
- Audit on human resources strategy in OLAF (2019)
- Audit on performance management (2021)
- Audit on preparedness of OLAF to implement the EPPO regulation (2021)
- Consulting engagement on risk management in OLAF (2021)

OLAF has accepted all recommendations issued by the IAS, which are also considered to have been duly implemented in full by the end of 2022.

In 2022, **ECA** did not issue further recommendations to OLAF, but the implementation and follow up of the previous reports published in 2019 ¹² further progressed.

The European Ombudsman and the **European Data Protection Supervisor** also may open inquiries.

In 2022, no complaints were filed against OLAF with the EDPS, while the **European Ombudsman** opened one inquiry concerning OLAF (six inquiries were opened in 2021, and closed without recommendations). The inquiry concerned OLAF's lack of reply to a citizen's correspondence which OLAF had deemed repetitive and abusive, discontinuing corresponding in line with Article 14(3) of the European Code of Good Administrative Behaviour and Article 4 of the Commission Code of Good Administrative Behaviour. In 2022, Ombudsman requested OLAF to revise the templates used, to ensure that participants in procurement procedures receive accurate information about their right to complain to the Ombudsman. OLAF satisfied the request.

Regulation (EU, Euratom) 2020/2223 amending Regulation No 883/2013, established a **Controller of Procedural Guarantees** and a new complaints mechanism (see dedicated section of the present WD).

Finally, OLAF's investigative function is regularly monitored by the **OLAF Supervisory Committee**, in accordance with Article 15 of Regulation (EU, EURATOM) No 883/2013.

¹² Mainly the reference is made to ECA Special Report 1/2019 "Fighting Fraud in EU Spending: Action Needed" and ECA Special Report 6/2019 "Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination"

The Committee receives biannual reports and relevant documents on individual complaints handled by OLAF.

In 2022, the Director-General informed the Committee that there was only one complaint lodged by persons other than “persons concerned” and handled by OLAF. The complainant claimed that OLAF would have not conducted the investigation within a reasonable period of time. OLAF replied that there was no breach of the applicable rules, and that the investigation had been carried out continuously and within a reasonable time-limit. The Committee noted that OLAF did provide sufficient explanations to justify the duration of the investigation to the complainant, making reference to the complexity of the case, the sensitive nature of the subject matter, the volume of the information gathered and the numerous investigative activities carried out. The Committee noted OLAF compliance with its obligation to give reasons for its decisions provided by the Charter of Fundamental Rights of the European Union.

12. OLAF Supervisory Committee

The Supervisory Committee monitors OLAF’s investigative function to reinforce and guarantee its independence in compliance with Regulation (EU, EURATOM) No 883/2013. The Committee publishes opinions, which can include recommendations to the OLAF Director-General. OLAF Director-General regularly informs the Supervisory Committee about the activities of the Office and reports annually on the state of implementation of its recommendations.

Year 2022 was marked by the complete renewal of the Supervisory Committee, in two stages, following the Decision of 28 March 2022 of the European Parliament, the Council and the Commission appointing the new members. The first two members took office on 28 March, and the remaining three on 23 September. The resignation in August of one of the first two newly appointed members resulted in the arrival of a new member from the reserve list, in compliance with the procedure laid down in Article 15, paragraph 2 of the OLAF Regulation.

As emerged in the exchanges occurred in CONT sessions, the changes of the Committee’s composition affected the intensity of its work, which could only start in September when the Committee was convened in its new and final composition. The Committee reported having immediately start to design its work plan for the coming year, centred for the time being on the review by OLAF of its Guidelines on Investigation Procedures (GIPs) for which the Committee is expected to adopt an Opinion. The cooperation with the Controller of procedural guarantees progressed with the consultation of Committee for the drafting of the provisions on the handling of complaints, for which the Committee provided its comments that were taken into account in the final version adopted in November 2022.

In 2022, the Supervisory Committee presented its opinion on OLAF’s preliminary draft budget (“PDB”) for 2023. The opinion is oriented at giving assurance that the draft budget takes into account the independence of OLAF’s investigative function, and that OLAF has sufficient resources to provide an effective and efficient inter-institutional fraud-fighting service. The opinion takes into account the impact of the establishment of EPPO and the additional tasks carried out by OLAF as of the end of 202, in particular the strategic initiatives for the European Commission, such as investigations and operational support to Member States concerning the Recovery and Resilience Facility (‘RRF’), the ‘Rule of Law Conditionality Mechanism’, and the operational cooperation with the EPPO. As in the previous years, the Committee expressed

its ongoing concerns regarding OLAF's diminishing human resources. For the Committee, the significant cuts in OLAF's staff may well prevent OLAF of the possibility to hire the qualified and specialised staff necessary for carrying out its tasks, including the need to establish and provide appropriate control mechanisms in relation to the use of the Recovery and Resilience Facility funds. The Committee reiterates that OLAF's independence must be pursued in all the three main administrative, financial, and investigative areas.

The investigative independence has a more obvious ground and direct connection to OLAF mandate, but also the administrative and financial independence are material to the operational independence: any lack of human and financial resources would negatively impact on the OLAF's Director-General possibility to deploy and manage an efficient structure investigating fraud against the EU budget, corruption and serious misconduct within the European institutions, developing a meaningful and deterrent anti-fraud policy for the European Commission and, in conclusion, to protect the Union's financial interests.

In its opinion, the Committee considered that OLAF's PDB for 2023 is in line with the resources needed to conduct investigations efficiently. However, the Committee fully supported OLAF's request for additional posts and criticized the further reduction by 20 % of its budget for missions, which could sensibly jeopardise its ability to carry out investigations on-the-spot, representing the peculiar prerogative of the Office.

Having regard to the Supervisory Committee's work plan for the coming year, expectations exist on the delivery of analyses on the duration of the investigations, possibly in connection with the need for introduction of provisions within the Guidelines for Investigation Procedures related to the managing of the duration of the investigations, which are currently lacking. The above-observed increase of closed case and the reduction of recommendations and of the amounts recommended for financial recovery, also suggests that further aspects of interest would be OLAF detection strategy, possibly linked with the prioritisation in the opening of new investigations and in the allocation of resources in identifiable investigative areas where the impacts of OLAF efforts could be more tangible and effective.

13. The OLAF Controller of procedural guarantees

2022 was the first year of activity of the Controller of Procedural Rights; hence there is no term of reference to compare the intensity and volume of the workload. However, in 2022 the Controller received 14 complaints: 13 forwarded to the Controller by OLAF, and 1 submitted directly to her. The complainants, both individuals and legal entities, were persons concerned in OLAF internal (6 cases) and external investigations (7 cases).

Even taking into account the relatively short period of activity of the Controller, the cases accumulated since the entry into force of the Regulation (EU, Euratom) 2020/2223, amending Regulation 883/2013, were varied and relevant in number. For the most part (12 cases), the complainants invoked breaches of their procedural guarantees under Article 9 of the OLAF Regulation and their fundamental rights under the Charter of Fundamental Rights. In particular, they complained about (i) the right to be heard and the effective exercise of their right to submit observations regarding facts concerning them (7 cases, referring to Article 9(4) of the OLAF Regulation); and (ii) the right to have their affairs handled within a reasonable time (5 cases referring to Article 41 of the Charter of Fundamental Rights). Complainants also put forward allegations about their right to be informed (in 3 cases, referring to Article 9(3) of the OLAF

Regulation) and allegations of breaches of the principles of fairness and impartiality (3 cases). Complainants were to a lesser extent claiming infringements of the rules applicable to OLAF investigations (2 cases, where the rules allegedly infringed related to digital forensic operations, on-the-spot checks and interviews).

In 2022, the Controller concluded the examination of 6 out of the 14 complaints received: 3 were declared inadmissible and 3 were closed, after receiving OLAF's and the complainant's views on the matters under examination. Two of these cases concerned the duration of the investigations subject to the complaints. The third case concerned the digital forensic acquisition of data and the application of the OLAF Guidelines on Digital Forensic Procedures. In all 3 cases, the Controller reached the conclusion that OLAF had acted in accordance with the rules in force and did not breach the complainants' procedural guarantees. Moreover, for one of the cases submitted in 2022, the Controller invited OLAF to improve the practices adopted so far on information to the persons concerned about their status and their corresponding rights. OLAF reacted positively to the Controller's invitation.

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The Rapporteurs' recommendations

On OLAF and its role within the Anti-Fraud Architecture

1. Welcomes OLAF's activities in protection of the Union's financial interests and its commitment to support the main priorities of the European Commission, as indicated in the OLAF Report 2022, including the implementation of the Recovery and Resilience Facility and the initiatives related to the support to Ukraine, as much as the actions carried out to protect health and safety of the European taxpayers during the COVID-19 pandemic;
2. Notes that OLAF is an essential component of the new European anti-fraud architecture, whose aim is to foster synergistic actions and enhance effectiveness and which is expected to achieve a result that is bigger than the sum of its components;
3. Believes that cooperation amongst the components of the European anti-fraud architecture is crucial to protect the EU's financial interests, and appreciates OLAF's efforts to strengthen their coordinated replies to tackle the rapidly changing fraud-risk landscape; understands that support to European, national and international partners, is one of OLAF's added values, which is well perceivable in the OLAF Report 2022;
4. Asks the Commission to step up its role of coordinator of the actions run by EPPO and OLAF, by EUROPOL and EUROJUST and to facilitate the integration of those of their activities which are complementary in achieving an enhanced protection of the financial interests of the EU;
5. Notes that OLAF has a coordinating and facilitating role in the exchange of information between EPPO and the Commission via the implementation of the EPPO-Commission Agreement stipulated under Article 103(2) of the EPPO Regulation; Regrets that very limited information is made available on the implementation of such cooperation and exchange; expects the EPPO to timely provide the Commission with the information stemming from its investigative actions in such a way to allow the adoption of the most appropriate measures for the protection of the EU budget; asks OLAF in its liaison role to report to the EP on the implementation of the specific provision of the EPPO/Commission agreement, how many information have been transmitted from EPPO to the Commission, how many measures have been adopted and with which result, which obstacles -if any- have been identified in such cooperation, which is OLAF assistance provided in this context, which are the OLAF activities carried out in connection to recovery or corrections made by the Commission services on the basis of communications from the EPPO on its criminal investigations governed by the provisions of Article 103 of Council Regulation (EU) 2017/1939 of 12 October 2017; asks OLAF to provide data on the amounts concerned by such cooperation;
6. Underlines that OLAF and EPPO have distinct and complementary mandates: the EPPO conducts criminal investigations and prosecutions to ensure the protection of the EU financial interests and OLAF conducts administrative investigations at Union level to facilitate the effective and timely recovery of disbursed funds, the adoption of precautionary measures and the development of systemic solutions where shortcomings are identified;

7. Observes that in 2022 the cooperation with the EPPO had an appreciable impact on OLAF's own resources and workload; underlines that on 5 July 2021, OLAF and EPPO signed a working arrangements to clearly delineate the respective tasks and responsibilities and to work together in the most efficient manner; that the Guidelines of Investigation Procedures for OLAF staff (GIPs) were updated to transpose the provisions of the revised OLAF Regulation and to align them with the operational arrangements stipulated with EPPO, and that on June 2021 OLAF underwent a reorganisation to streamline its operational cooperation with the EPPO; suggests to consider the update and revision of the OLAF/EPPO working arrangements in the light of the experience earned in the first period of its implementation;
8. Calls on OLAF to report in clear and detailed manner about its cooperation with EPPO via the investigations in support and the complementary investigation, their number, results and possible obstacles;

Next Generation EU and RRF

9. Reiterates its concerns on the increasing threat to EU budget resources from the organised crime, responsible for cross-border frauds and using criminal methodologies to perpetrate administrative irregularities that make their illegal activities more harmful and more difficult to investigate and correct;
10. Welcomes OLAF's contributions to the Commission and Member States in the design and deployment of measures to mitigate the risks of fraud, corruption, conflict of interest and double funding, particularly within the deployment of the Next Generation EU and the RRF resources;
11. Believes that Union Anti-Fraud Programme (UAFP) resources should be used to financially support the setting in each Member State of the central oversight mechanism to record how NGEU funds are spent nationally; maintains that this should include a central digital repository for the collection and storage of data on final beneficiaries, contractors, sub-contractors and ultimate beneficial owners, which should be made accessible by the investigative authorities at the national and the EU level;
12. Reiterates its calls on OLAF, as part of its guidance to Member States in the use of the resources deployed with UAFP, to pay specific attention on initiatives aligned with the requirements of the RRF checks and controls, including data analytics technologies, data mining and risk-scoring tools and interoperability of data-bases;
13. Recommends OLAF and the Commission to consider the launching of specific UAFP calls for technical assistance projects and for training which focus on the new provisions proposed in the Financial Regulation recast, concerning the mandatory use of a single integrated and interoperable information and monitoring system provided by the Commission and allowing for the electronic recording and storage of data; believes that this would facilitate the Member State's effective and efficient implementation of the relevant provisions;

Fraud detection - fraud prevention

14. Notes the differences reported in the OLAF Report between Member States in the

number of cases of fraud and irregularities detected and investigated; is aware that in other official documents, such as the annual report on the protection of the EU financial interests, is emphasised that differences in the number of irregularities detected and reported is not a direct indicator of the level of fraud in a specific Member State but the indication of the capacity to intercept potential fraud by that Member State and that the detection and reporting of the irregularities and fraud implies that corrective measures are being taken to protect the financial interests affected; invites OLAF to align its approach when reporting such situation with this clearer and factual presentation;

15. Reiterates its view that improving the level of protection of the financial interests of the EU starts with increasing the level of detection of EU fraud and that the level of detection of fraud affecting the financial interests of the EU varies from Member State to Member State;
16. Remarks that the level of information of potential investigative interest assessed by OLAF and the number of investigative cases accordingly opened has remained stable; is aware that calls have been made to increase the level of detection of EU fraud; believes that stepping up efforts in this regard would meaningfully improve the safeguarding of the EU budget; asks OLAF to explore new ways to enhance its detection capability, where possible and appropriate by coordinating a joint effort from the Union's departments and the Member States' authorities towards this achievement;
17. Welcomes OLAF's initiative to revise and update the action plan implementing the Commission Anti-Fraud Strategy ¹³;
18. Is aware that OLAF is engaging in an assessment of the AFCOS activities across the Member States and regrets that OLAF has not yet considered relaunching an exchange of views with these partners on the setting of Cooperation Arrangements or Working Arrangements or Memoranda of Understanding to ensure a more efficient operational cooperation between the Office and the AFCOS as relevant authorities in the Member States to support the actions carried out in protection of the financial interests of the Union;
19. Reiterates that the increasing importance of the role of the national authorities and the complexity of the tasks and actions that the national services are expected to carry out in the implementation of the Union's financed policies (for instance in the implementation of the RRF or of the new CAP, and in many cases in cooperation with, or to support, OLAF) require ad hoc cooperation and communication strategies with clearly established priorities, objectives, resources, and timelines;
20. Maintains that OLAF should to consider providing support and advice to the MSs in a more structured and horizontal approach, having specific regard to the establishment of the National Anti Fraud Strategies (NAFS) in such a way as to guarantee a minimum content of common provisions in every NAFS adopted by each Member State, to facilitate the creation of a level playing field and a consistent fraud-counteracting and fraud-preventing approach across the Union; reiterates its calls on the Commission to

¹³ Commission Staff Working Document "Commission Anti-Fraud Strategy (CAFS) Action Plan - State of Play June 2021" SWD(2021) 262 final - dated 20.9.2021

engage in a dialogue with OLAF for the design and establishment of such frameworks, acknowledging that such a task would require additional resources;

21. Welcomes the lesson-learnt analysis run by OLAF which has resulted in the dissemination of anti-fraud advices aiming at supporting national authorities and union's department in their anti-fraud and fraud-prevention efforts, which follows -up the European Parliament's calls in this regard; Underlines the importance of OLAF Anti-Fraud Knowledge Centre in drawing lessons from OLAF investigative cases for the purpose of fraud prevention and detection; recommends OLAF to continue in its efforts of optimising the creation and the dissemination of knowledge on fraud-related matters, building in particular on the lessons learnt during its own investigative actions;

Reporting

22. Underlines that the attention devoted in the OLAF Annual Report to practical cases results in a form of reporting that does not provide the sufficient level of technical information for carrying out an informed analysis of the regulatory framework and of the procedures in force at the time of the investigated infringements, which would be important for the setting of the current and future frameworks; points out that consideration should be given to the opportunity to re-assess the reporting tool to guarantee better alignment with the current regulation in force;
23. Recalls its previous observations that the time of reference for identifying trends of frauds and irregularities is not the conclusion of an investigation but it rather is when the misconducts or infringements of the rules in force have occurred;
24. Believes that the reference to the time of occurrence of the misconduct or the infringement would allow the identification of the weaknesses and the organisational, regulatory, procedural contexts to which the misconducts refer; in contrast the time of conclusion of an investigation is determined influenced by a number of unrelated and at time stochastic circumstances;
25. Expects for the next OLAF report to contain information on the monitoring and follow-up given to OLAF financial recommendation;
26. Is aware that OLAF has invested resources in the setting of a dedicated monitoring and reporting unit, aiming to identify areas of improvement, and in the drafting of a follow-up guidance document on recoveries related to fraud and other irregularities;
27. Believes that the monitoring actions and the collection and analysis of the data related to the implementation of OLAF's recommendations would allow identifying the best ways to enhance the impact of OLAF's activities;
28. Calls on OLAF to report to the CONT Committee, jointly with the Commission where appropriate, about the results on the monitoring of the financial recommendations and on the actions undertaken by the Commission's services and by the Member States authorities following OLAF's recommendations;
29. Calls on the Commission to take advantage of OLAF's competence and expertise to explore alternative ways of reporting comprehensively on the broad anti-fraud

architecture, involving in such reporting the other components of said architecture;

OLAF's Resources

30. Reiterates its concern on the negative impact that budgetary and staff cuts bring on OLAF's operations and investigations and believes that they could adversely affect the fight against fraud and irregularities in protection of the EU's financial interests;
31. Notes the OLAF Supervisory Committee has expressed concerns on the effective possibility for OLAF to hire the qualified and specialized staff that it needs in the field of investigations and assets recovery, in particular in a time when the implementation of the Anti-Fraud Architecture and the cooperation with EPPO and support to the newly created Office require increased attention and resources;
32. Maintains its view that OLAF must remain independent in the three main administrative, financial and investigative areas, which are intertwined; observes that budgetary independence means that OLAF's Director-General must have at its disposal the necessary human and financial resources to investigate fraud concerning the EU budget, corruption and serious misconduct within the European institutions, and develop a meaningful and dissuasive anti-fraud policy for the European Commission;
33. Appreciates OLAF's efforts to reorganise internally and reallocate its resources to optimise its processes to the reduction of resources and staff; calls on OLAF and on the Commission to embrace a result-oriented approach compliant with the current legal basis when implementing OLAF mandate in tangible actions, giving priority to OLAF core business so that all OLAF's actions are effectively and consistently oriented towards the protection of the EU budget, with targeted investigations, in depth analysis, and strong support to Member States in the fight against fraud;

On the Supervisory Committee

34. Welcomes the establishment of the new Supervisory Committee; believes that the role of the Supervisory Committee is crucial for guaranteeing OLAF's independence and its contributions, via opinions and recommendations and constant dialogue, are material to the effectiveness of OLAF investigative function;
35. Notes the Supervisory Committee's initiative to monitoring OLAF investigations which are currently open and have been open for more than 36 months, in order to assess the reasons for their duration and monitor how the procedural guarantees are being ensured for the persons concerned; believes that this action would allow a clearer understanding of the reasons and related issues of long-lasting cases and to help addressing the matter; asks the Supervisory Committee to present to CONT the outcome of its analysis and the proposals for mitigating the inherent risks;
36. Welcomes the ongoing dialogue between OLAF and the Supervisory Committee on the GIPs; shares the view that the new GIPs, hopefully to be adopted in 2023 at the end of the second phase of their review, encompass a comprehensive revision and harmonisation of all the existing internal OLAF guidelines and instructions and encourages OLAF to integrate them into the GIPs, for the sake of consistency and transparency, taking into account that the GIPs are the only guidelines, instructions or

manual the OLAF Regulation requires OLAF to make public for the sake of ensuring adequate level of legal certainty and accountability; encourages OLAF to take into account the relevant recommendations and observations delivered by the Supervisory Committee in its previous years' opinions, having specific regard to the duration of the investigative cases;

37. Agrees with the Supervisory Committee's remarks on the currently suboptimal location of its Secretariat and on its hybrid attachment to the Office for the Payment of Individual Entitlements of the European Commission (PMO); invites the Commission and OLAF to cooperate with the Supervisory Committee with a view to address the matter with an effective and efficient solution;

On the Controller of procedural rights

38. Share the view that the Controller is intended to be a solidly established function within the overall antifraud architecture of the EU, and to contribute to further reinforcing OLAF's transparency and its accountability;
39. Welcomes the cooperation between OLAF and the Controller, and OLAF's intention to facilitate the work of the Controller by granting electronic access to the case files of the investigations subject to complaints for a limited period of time, corresponding in principle to the maximum duration for the handling of complaints; appreciates the agreed measures so far adopted by both the parties to allow a thorough assessment of the cases without prejudice to the confidentiality and effectiveness of the investigative actions; encourages OLAF and the Controller to adopt working arrangements which formalise the terms of the Controller's access to the OLAF case file, and to find a convenient equitable solution for those parts of the case file which are confidential and cannot be disclosed to the complainants but are relevant for the Controller's assessment and decision; notes the first positive response given by the Director-General of OLAF to the suggestions of the Controller following a case presented in 2022, by acknowledging the need to improve OLAF's practices on informing the persons concerned of their status and correspondent defence rights and by issuing mandatory "Instructions on the means of notification to be used in correspondence with persons concerned".

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