

OLAF Instructions to Staff on Investigative Procedures

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The Instructions to Staff on Investigative Procedures are internal rules which ensure that all OLAF investigations are treated in a consistent and coherent way thereby guaranteeing the legitimacy of the investigations.

In carrying out its investigative activities, OLAF staff must respect the EU Treaties, the Charter of Fundamental Rights of the EU, EU legislation and the Instructions to Staff on Investigative Procedures set out herein.

All investigative activities must be carried out in an objective and impartial manner ensuring procedural fairness. OLAF staff must carry out their investigations in accordance with the highest professional standards in full respect of the rights of the persons concerned.

CHAPTER I SELECTION

Article 1. General

1.1 During the selection phase, the Investigation Selection and Review Unit analyses information of possible investigative interest in order to provide an opinion to the Director-General on whether an investigation or coordination case should be opened or whether the case should be dismissed.

Article 2. Incoming Information

2.1 Information of possible investigative interest to OLAF received by a member of staff must be forwarded to the Registry without delay. Where information does not relate to an existing investigation or coordination case, it must be forwarded to the Registry no later than 5 working days following its receipt, or where the information is received during a mission, within 5 working days of return to the office.

2.2 Information received by staff orally should be recorded in a written note and forwarded to the Registry in accordance with the time limits provided for the recording of incoming information.

Article 3. Other Information

3.1 Where OLAF on its own initiative gathers information of possible investigative interest, it must be forwarded to the Registry.

Article 4. Treatment of Information

4.1 On receipt of information, the Registry allocates information containing an OF number to the relevant OLAF case. In all other cases, the information is forwarded to the Investigation Selection and Review Unit.

4.2 The Investigation Selection and Review Unit assesses whether the information relates to an identifiable investigation or coordination case, or a case in the selection process and allocates the information to the appropriate OLAF case.

4.3 In respect of other information of possible investigative interest, the Investigation Selection and Review Unit creates new OLAF case numbers (OF numbers) and allocates the information to those cases.

Article 5. Selection Process

5.1 The Investigation Selection and Review Unit may where necessary contact the source and the EU institution, body, office or agency concerned in order to obtain clarification and further documentation concerning the initial information. It may also consult databases and other sources available to OLAF. Where it is necessary to collect additional information to support the selection process, the Investigation Selection and Review Unit may use inter alia the following means:

- a. Collecting documents and information
- b. Collecting information in the framework of operational meetings
- c. Taking statements from any person able to provide relevant information
- d. Carrying out fact-finding missions in Member States

5.2 Where the source is a whistleblower the Investigation Selection and Review Unit must inform him within 60 days of the time needed to take appropriate action.

5.3 The opinion on the opening of an investigation or coordination case must be based on whether the information falls within OLAF's competency to act, whether the information is sufficient to open an investigation or coordination case and whether the information falls within the Investigative Policy Priorities (IPP) established by the Director-General.

5.4 In assessing whether OLAF is competent to act, consideration must be given to relevant EU Regulations, Decisions, Interinstitutional Agreements and other legal instruments relating to the protection of the financial and other interests of the EU. In evaluating whether the information is sufficient to open an investigation or coordination case, consideration must be given to the reliability of the source and the credibility of the allegations. In addition, all information collected during the selection process must be taken into account in justifying the opening of an investigation or coordination case. The IPP set out the criteria to be applied in determining whether an information falls within an established investigative priority.

5.5 The Investigation Selection and Review Unit should provide an opinion on the opening or dismissal of a case to the Director-General within 2 months of the registration of the incoming information.

Article 6. Decision of the Director-General

6.1 After consideration of the opinion provided by the Investigation Selection and Review Unit, the Director-General decides whether to open an investigation or coordination case, or dismiss the case.

6.2 The Director-General assigns the investigation or coordination case to the competent unit.

6.3 The Director-General may, in exceptional circumstances, assign a case to an investigation unit other than the competent one or to a special investigation team established for that purpose. Such measures may be taken where the special nature of the case so requires or where special resource needs exist.

Article 7. Information on dismissed cases

7.1 The Investigation Selection and Review Unit must inform the source of the Director-General's decision to dismiss the case.

7.2. The Investigation Selection and Review Unit must inform the EU institution, body, office, agency or national authority where necessary.

CHAPTER II INVESTIGATION AND COORDINATION CASES

Article 8. General

8.1 The purpose of an investigation is to collect the evidence to verify whether a fraud or irregularity affecting the financial or other interests of the EU has occurred, including serious matters relating to the discharge of professional duties of Members, officials or other servants of the EU institutions, bodies, offices and agencies.

8.2 The purpose of a coordination case is to provide the Member States with assistance in the coordination of their investigations and other related activities for the protection of the EU financial interests.

8.3 To enhance efficiency of investigations and effectiveness of Recommendations, investigation and coordination cases must be conducted continuously and without undue delay.

8.4 All information or evidence gathered in the course of investigation or coordination cases must be collected and recorded in due and proper form, including inculpatory and exculpatory evidence. All evidence collected should be relevant to the matter under investigation and collected for the purpose of the investigation.

8.5 The confidentiality of the information collected must be respected in the interests of both those concerned and the integrity of the investigation. In particular, during the investigation the confidentiality of the identity of informants and whistleblowers must be respected in so far as it would not be contrary to the interests of the investigation.

8.6 In the event that a potential conflict of interests arises at any time during a case the Director-General must be informed immediately

Article 9. Preliminary Actions

9.1 A preliminary examination of the information collected or obtained during the selection process is carried out by the investigation unit in order to establish what further action may be required for collecting the necessary evidence relevant to the investigation or coordination case.

9.2 An investigation work plan must be prepared to ensure an efficient and effective investigation process, providing for the best use of resources and setting out a possible timeframe for completion of the proposed investigative activities.

9.3 The investigation unit must inform Members, officials or other servants of the EU institutions, bodies, offices and agencies at the earliest opportunity of their possible implication in an open investigation. This notification may be deferred where it would be harmful to the investigation to provide such information.

9.4 The investigation unit must inform the EU institution, body, office or agency concerned as soon as it becomes apparent that Members, officials or other servants may be involved in an investigation, except in cases requiring absolute secrecy or requiring recourse to investigative acts falling within the competence of a national judicial authority.

9.5 The investigation unit must where appropriate, inform the source of the Director-General's decision to open an investigation or a coordination case.

9.6 The investigation unit must, where appropriate, involve the relevant investigative and judicial authorities concerned in the investigation or coordination case at the earliest possible opportunity.

9.7 Where the evidence available does not indicate the existence of a fraud or irregularity affecting the financial or other interests of the EU and no further investigation action is required, a Final Report must be prepared to enable the Director-General to decide on the closure of the investigation.

9.8 All investigative actions must be conducted with full respect for the rights of persons including data protection and the procedural guarantees and rights applicable to OLAF investigations.

Article 10. Coordination cases

10.1 The investigation unit should provide all necessary assistance to the administrative, police and judicial authorities of the Member States and should provide cooperation to the national authorities to coordinate their investigations and other related activities.

10.2 Within the framework of a coordination case, the investigation unit provides assistance and contributes to investigations carried out by competent national authorities. It facilitates the collection and exchange of evidence and ensures investigation synergy among the relevant competent authorities.

10.3 The investigation unit must not conduct investigative activities in coordination cases, however it may provide assistance to the Member States in the conduct of their investigations by facilitating the:

- a. Collection of documents and information in any format which can be used as evidence
- b. Collection of evidence in the framework of operational meetings
- c. Taking of statements from any person able to provide relevant information
- d. Taking of samples for scientific examination

10.4 Where it becomes necessary in the course of a coordination case for OLAF to conduct an investigative activity, the investigation unit must submit a request for a decision on reclassification of the coordination case as an investigation to the Investigation Selection and Review Unit. The Investigation Selection and Review Unit must verify the proposed reclassification and provide an opinion to the Director-General on the basis of which he may take a decision.

Article 11. Investigation

11.1 The investigation unit may conduct administrative investigations within the EU institutions, bodies, offices and agencies established by, or on the basis of, the Treaties (internal investigations), or in the Member States, in third countries or on the premises of international organisations where permitted under legal provisions (external investigations) in order to verify whether a fraud or irregularity affecting the financial or other interests of the EU has occurred.

11.2 Internal investigations are conducted for the purpose of detecting serious matters relating to the discharge of professional duties that constitute a breach of the obligations of Members, officials or other servants of the EU institutions, bodies, offices and agencies, and are liable to result in disciplinary or criminal proceedings.

11.3 External investigations are conducted for the purpose of detecting fraud or other irregularities concerning matters that do not relate to Members, officials or other servants of the EU institutions, bodies, offices and agencies.

11.4 The investigation unit may within the framework of a single investigation, deal with both internal and external aspects of a case arising from a common factual background.

11.5 The investigation unit collects evidence using inter alia the following means:

- a. Collecting documents and information in any format which can be used as evidence
- b. Collecting evidence in the framework of operational meetings
- c. Taking statements from any person able to provide relevant information
- d. Carrying out fact-finding missions in Member States
- e. Taking samples for scientific examination
- f. Conducting interviews with persons concerned or witnesses (Regulation (EC) n° 1073/99)
- g. Carrying out inspections of premises (Regulation (EC) n° 1073/99)
- h. Carrying out on-the-spot checks (Council Regulation (Euratom, EC) n° 2185/96)
- i. Carrying out forensic operations
- j. Carrying out investigative missions in third countries
- k. Carrying out checks and inspections under the conditions laid down in the sectoral rules

11.6 Members of the investigation unit carry out the following investigative activities upon production of the Director-General's written act showing their identity and capacity, and the investigative activity they are authorised and mandated to carry out:

- a. Interviews with persons concerned
- b. Inspections of premises
- c. On-the-spot checks
- d. Forensic operations
- e. Checks and inspections under sectoral rules

11.7 Where the investigation unit considers that precautionary administrative measures to protect the financial interests may be needed, the EU institution, body, office or agency concerned must be informed.

11.8 Where the investigation unit identifies the need for a flagging under the Early Warning System (EWS), it must request the introduction, renewal or cancellation of the flagging to the relevant OLAF policy unit.

11.9 The investigation unit must inform the Supervisory Committee where an investigation has not been completed within 9 months.

Article 12. Legality check during the investigation

12.1 Where the investigation unit envisages conducting an investigative activity which requires the Director-General's authorisation in accordance with Article 11(6) or an investigative mission in a third country, the investigation unit must submit a request for a decision on the proposed investigative activity to the Investigation Selection and Review Unit.

12.2 The Investigation Selection and Review Unit must verify the legality of the proposed investigative activity and may also consider the necessity of carrying out the investigative activity concerned. It must provide an opinion to the Director-General on the basis of which he decides whether to authorise the proposed investigative activity.

12.3 Where the investigation unit envisages conducting an investigative activity outside the existing scope of the investigation or coordination case, it must submit a request for a decision to extend the scope to the Investigation Selection and Review Unit. The Investigation Selection and Review Unit must verify the proposed extension of the scope and provide an opinion to the Director-General on the basis of which he may take a decision.

Article 13. Inspections of EU premises

13.1 The investigation unit may carry out inspections of the premises of the EU institutions, bodies, offices or agencies at any time during an investigation.

13.2 The investigation unit must inform the Secretary-General or equivalent authority of the EU institution, body, office or agency concerned whenever it intends to conduct an inspection of its premises. The investigation unit must submit the proposed notification to the Investigation Selection and Review Unit together with their request for authorisation for the proposed inspection.

13.3 Prior to conducting an inspection of premises the investigation unit should where necessary inform the head of security of the EU institution, body, office or agency concerned and request his assistance.

13.4 The investigation unit may conduct the inspection in the presence of the Member, official or servant of the EU institution, body, office or agency concerned. Where the inspection is made in the absence of the Member, official or other servant concerned, another member of staff or a member of the security of the EU institution, body, office or agency concerned must be present.

13.5 During an inspection of premises, members of the investigation unit may access any information held by the EU institution, body, office or agency concerned, including inter alia copies of electronic data, copies of private documents (including medical records) where they may be relevant to the investigation. Original documents may be taken where there is a danger that they might be tampered with or removed.

13.6 Members of the investigation unit may request information from Members, officials or other servants of the EU institution, body, office or agency concerned in the course of an inspection.

13.7 Members of the investigation unit who are engaged in carrying out the inspection must draw up a report of the activities undertaken during the inspection and must ask the participants to countersign the report. Copies of the report must be provided to the participants. Where it is in the interests of the investigation, the investigation unit may provide the copy of the inspection report at a later stage.

Article 14. On-the-spot checks

14.1 Prior to conducting an on-the-spot check on an economic operator the investigation unit must establish whether there are or have been similar checks carried out by the Commission or national authorities in respect of the same facts with regard to the same economic operator.

14.2 The national authority concerned must be notified in good time of the on-the-spot check to be carried out and provided with the object, purpose and legal basis of the check. Where required by national legislation, the economic operator must be notified of the on-the-spot check to be carried out.

14.3 The on-the-spot check should be conducted with the cooperation of the competent national authority. Officials of the national authorities may participate in the on-the-spot check or it may be carried out jointly between OLAF and the competent national authority.

14.4 Members of the investigation unit carrying out the on-the-spot check must ensure that they access the economic operator's premises and relevant evidence under the same conditions as the national authority's inspectors and in compliance with national legislation.

14.5 Members of the investigation unit may take statements from economic operators in the course of an on-the-spot check.

14.6 Members of the investigation unit carrying out the on-the-spot check must draw up a report of the activities undertaken during the on-the-spot check including any forensic operations, and must ask the participating national inspectors concerned and economic operator concerned to countersign the report. The report should include any fact or suspicion that has come to light during the on-the-spot check. The report must be drawn up in accordance with the applicable national rules of the Member State concerned. Copies of the on-the-spot check report must be provided to the national authority and where required also to the economic operator concerned.

14.7 On-the-spot checks may be conducted on economic operators other than those directly concerned where it is strictly necessary to have access to relevant evidence held by them.

14.8 On-the-spot checks may be conducted on economic operators in third countries on the basis of legal provisions providing for OLAF or the Commission to conduct such checks.

14.9 In investigations concerning Members, officials or other servants of the EU institutions, bodies, offices or agencies, on-the-spot checks may be conducted on economic operators where it is necessary to have access to relevant evidence held by them.

Article 15. Forensic operations within inspections or on-the-spot checks

15.1 Forensic operations may be carried out within the framework of inspections or on-the-spot checks. Forensic experts must accompany the investigation unit and must conduct the forensic operation.

15.2 Forensic operations must respect the principles of necessity, proportionality and must be carried out in accordance with national legal provisions. Forensic operations should, where possible, be preceded by preliminary identification of the necessary data to be collected in order to target the scope of the operation. The forensic examination and analysis must be limited to extracting data relevant to the investigation concerned.

Article 16. Interviews

16.1 The investigation unit may interview a person concerned or a witness at any time during an investigation.

16.2 When a witness is interviewed the investigation unit must inform him of his right not to incriminate himself. He must also be informed that he may use an official EU language of his choice. If the witness is an official or other servant of the EU, the investigation unit may conduct the interview in an official EU language of which the witness has a thorough knowledge. Officials or other servants should also be informed that they have a duty to cooperate with the OLAF investigation.

16.3 The investigation unit must allow the witness to approve the record of the interview or make observations.

16.4 If during the course of an interview it becomes apparent that a witness is in fact a person concerned, the interview must be ended. He must be informed that he will be treated as a person concerned and informed of his rights. Upon request he must be provided with a copy of his past statements.

16.5 Where the investigation unit intends to interview a person concerned, an invitation to the interview must be sent with 10 working days notice of the interview date or such shorter period as is agreed or justified by the urgency of the matter. The investigation unit must inform the person concerned of his right not to incriminate himself and of his right to be assisted by a person of his choice. He must also be informed that he may use an official EU language of his choice. If the person concerned is an official or other servant of the EU, the investigation unit may conduct the interview in an official EU language of which the person concerned has a thorough knowledge. Officials or other servants should also be informed that they have a duty to cooperate with the OLAF investigation.

16.6 Where a person concerned was previously interviewed as a witness, the investigation unit must not use his past statements against him in any way.

16.7 The investigation unit must allow the person concerned to approve the record of the interview or make observations, and must give him a copy of the record. Where it is in the interests of the investigation, the investigation unit may provide the copy of the interview record at a later stage.

16.8 The investigation unit may decide in the interests of efficiency and proportionality, to conduct an interview by video conference, where appropriate.

Article 17. Investigative missions in third countries

17.1 The investigation unit may conduct investigative missions in third countries when the evidence necessary to establish the existence of irregularities or fraud is not available in the Member States. Such investigative missions must be conducted in accordance with all relevant legal provisions.

17.2 A mission in a third country may relate to irregularities or fraud in the following areas:

- a. customs
- b. traditional own resources
- c. expenditure of EU funds
- d. expenditure of EU funds through international organisations or financial institutions or funds managed by an EU institution, body, office or agency

17.3 The investigative mission should be conducted with the agreement and cooperation of the competent authorities of the third country concerned.

17.4 Members of the investigation unit may take statements from persons holding relevant information in the course of an investigative mission in a third country.

17.5 Members of the investigation unit who are engaged in carrying out the investigative mission must draw up a report of the activities undertaken during the mission, a copy of which must be provided to the participants.

17.6 Prior to investigative missions concerning customs or traditional own resources, the investigative unit should send an official communication to the Member States concerned informing them of the proposed investigative mission. Where necessary the Member States should be requested to provide information or data relating to the matter under investigation.

17.7 Investigative missions concerning customs or traditional own resources should include members of the investigative unit and officials of the Member States concerned. The needs of those Member States not participating in the investigative mission but having an interest in the matter under investigation should also be addressed during the investigative mission.

Article 18. Opportunity to provide comments

18.1 Prior to drawing conclusions referring by name to a person concerned, the investigation unit must inform him of facts concerning him and invite him to comment on those facts. These comments may be provided within the framework of an interview or in writing.

18.2 The letter inviting the person concerned to comment must provide him with 10 working days notice for providing comments either in writing or at an interview.

18.3 Where it is necessary to preserve the confidentiality of the investigation or a national judicial proceeding, the right of the person concerned to comment on facts concerning him may be deferred. Where the person concerned is a Member, official or other servant of an EU institution, body, office or agency, the right to comment may be deferred in agreement with the Secretary-General or equivalent authority.

Article 19. Final Report and proposed Recommendations

19.1 The Final Report must be drawn up when all investigative activities have been completed and should include all findings and conclusions established in the course of an investigation and coordination case.

19.2 Interim Reports may be drawn up at any stage in an investigation or coordination cases where it is necessary to inform the competent authorities of investigative findings established at that stage in the investigation. The purpose of the Interim Report is to provide information to the competent authorities, including national judicial authorities where it becomes apparent that a criminal offence may have been committed, to enable them to take appropriate action at the earliest possible opportunity.

19.3 Interim Reports must be treated under the same procedures applicable to Final Reports.

19.4 Final Reports must set out the investigative activities carried out and the evidence collected in the course of the investigation or coordination case. A legal analysis of the facts established and, where possible, a determination of the amounts to be recovered or prevented from being unduly spent must also be included. The Final Reports must also analyse the evidence collected and provide conclusions in relation to the existence or otherwise of the fraud or irregularity under investigation. Conclusions must be based on an impartial and objective assessment of the entirety of the evidence collected.

19.5 Final Reports must also set out the actions taken to ensure the respect of procedural guarantees (including data protection) and the rights of persons concerned, and must detail any comments made by the person concerned in relation to facts concerning him.

19.6 Final Reports must be approved and signed by the investigator in charge, the Head of Unit and the Director of the relevant investigation directorate.

19.7 The investigation directorate proposes that the Director-General make Recommendations on the basis of the findings and conclusions of the Final Report. Any such proposals must be submitted to the Investigation Selection and Review Unit for an opinion. The Recommendations must be signed by the Director-General and set out the action to be taken by the EU institutions, bodies, offices, agencies or Member States concerned.

19.8 Where the investigation establishes that a criminal offence may have occurred in a Member State, the investigation directorate must make a proposal for the Director-General to recommend that action be taken by the judicial authorities of the Member States.

19.9 Where the investigation establishes that a disciplinary offence may have occurred, the investigation directorate must make a proposal for the Director-General to recommend that disciplinary measures be taken by the relevant EU institution, body, office or agency.

19.10 Where the investigation establishes an amount to be recovered or prevented from being unduly spent, the investigation directorate must make a proposal for the Director-General to recommend that action should be taken by the relevant EU institution, body, office, agency or competent authority of the Member State.

19.11 Where the investigation unit identifies weaknesses in management or control systems or in the legal framework, the investigation directorate must inform the relevant OLAF policy unit who should make a proposal for the Director-General to recommend that

action should be taken by the relevant EU institution, body, office or agency. Any such proposal must be submitted by the policy directorate to the Investigation Selection and Review Unit for an opinion.

19.12 The investigation unit proposes that the Director-General provides information on the results of the OLAF investigation to international organisations or a third country authority where appropriate.

CHAPTER III REVIEW

Article 20. General

20.1 The Investigation Selection and Review Unit must examine the Final Report together with the proposed Recommendations in order to provide an opinion to the Director-General.

20.2 The purpose of the review is to ensure the legality of the activities undertaken during investigation or coordination case and the respect of the rights of the persons concerned throughout the investigative procedure.

Article 21. Final quality and legal review

21.1 The investigation directorate must submit the Final Report and the proposed Recommendations to the Investigation Selection and Review Unit for review, together with any proposals for informing international organisations or third country authorities.

21.2 The Investigation Selection and Review Unit checks whether the investigation unit has complied with the legal requirements including the rights and procedural guarantees of the persons concerned, data protection requirements and overall quality of the Final Report. It must also check whether the proposed Recommendations are justified in line with the findings of the investigation or coordination case.

21.3 The Investigation Selection and Review Unit must issue an opinion on the Final Report and the proposed Recommendations to be sent to the Director-General.

21.4 Prior to issuing a possible negative opinion on the Final Report, the Investigation Selection and Review Unit must discuss with the investigation directorate to provide it with an opportunity to reconsider the Final Report if necessary. Where the Investigation Selection and Review Unit considers that the Final Report or proposed Recommendations are not satisfactory it must issue a reasoned negative opinion for the Director-General.

Article 22. Closure Decision and Recommendations

22.1 The Director-General makes the decision to close an investigation or coordination case. In the event that his decision is not in accordance with the opinion of the Investigation Selection and Review Unit the Director-General will provide reasons for his decision.

22.2 The Director-General may make Recommendations for action to be taken by the EU institutions, bodies, offices, agencies or by Member States as a result of the findings of the investigation or coordination case, as set out in Article 19.

22.3 OLAF may request that the competent authority report on the actions taken to implement the Recommendations and the final outcome of any judicial, disciplinary, financial or administrative action.

22.4 The Director-General may provide information in relation to the OLAF investigation to international organisations or to third country authorities where necessary.

Article 23. Complaints concerning failure to respect procedural guarantees

23.1 Where a natural person concerned by an investigation has requested a review of the handling of his procedural guarantees, the Director-General appoints a member of OLAF staff not connected with the investigation, to conduct such a review.

23.2 The person entrusted with the review must act independently in his review of the complaint and report his findings to the Director-General.

23.3 The Director-General may take appropriate action in respect of any failure to respect procedural guarantees and will inform the complainant.

CHAPTER IV MONITORING

Article 24. General

24.1 During the monitoring phase the investigation unit transmits the Final Report of the OLAF investigative activity together with the Recommendations of the Director-General, to the competent authorities.

24.2 The purpose of the monitoring phase is to follow the progress of the implementation of the Recommendations, provide assistance to the competent authorities upon request and record the outcome of implementation actions taken by the competent authorities resulting from the OLAF investigation activity.

24.3 The investigation unit must inform the person concerned and the source, of the Director-General's decision to close the case.

Article 25. Transmission requirements

25.1 Where the Director-General has taken a decision to close an investigation or coordination case, the investigation unit must always transmit the Final Report together with the Recommendations if any, to the relevant EU institution, body, office or agency concerned.

25.2 Where the Director-General has taken a decision to close an investigation or coordination case with the Recommendations, the investigation unit must always transmit the Final Report and such Recommendations to the relevant judicial or other competent national authority.

25.3 Where there are no Recommendations, the Director-General may decide to transmit the Final Report to the relevant international organisation or Member State concerned. In such cases, the investigation unit must transmit the relevant information.

25.4 The investigation unit must inform the Supervisory Committee of transmissions made to judicial authorities.

Article 26. Assistance to competent authorities

26.1 The investigation unit should, on request, provide assistance to EU institutions, bodies, agencies or offices, Member States in relation to actions taken resulting from the Recommendations made, including:

- a. providing specific documents mentioned in the Interim or Final Report but not included in the transmission of the report
- b. providing any further information requested for the implementation of the Recommendations, as appropriate
- c. providing the authorisation for OLAF staff to appear as witnesses in legal proceedings or assist in obtaining the authorisation for officials of other EU institutions, bodies, agencies or offices to appear as witnesses
- d. providing assistance in obtaining the waiver of the immunities under the Protocol on privileges and immunities in cases where competent national authorities have initiated criminal proceedings concerning acts of officials of EU institutions, bodies, agencies or offices, performed in their official capacity

- e. providing expert advice where requested by the national authority

26.2 Where the request concerns matters relating to the recovery of EU funds or actions preventing them from being unduly spent, the investigation unit also represents OLAF in administrative procedures with the European Commission services concerning matters relating to recovery actions (including contradictory procedures, clearance of accounts procedures, REM/REC applications and requests for write-off of amounts).

26.3 Where the request concerns matters relating to judicial or disciplinary actions resulting from the Recommendations made, the investigation unit also assists in the waiving of immunities, provision of legal advice and translations.

Article 27. Monitoring the Implementation of Recommendations

27.1 The investigation unit must monitor the implementation of the Recommendations of a judicial, disciplinary and financial nature made to EU institutions, bodies, agencies, offices and to Member States on an annual basis. The investigation unit must carry out the monitoring activity in order to collect information on the actions taken, their progress and any results thereof in sufficient time for inclusion in OLAF annual reports.

27.2 The investigation unit must also monitor the need to maintain the deferral of information to data subjects and where appropriate provide the necessary notifications.

27.3 Where possible the investigation unit should consult the information systems in which EU institutions, bodies, agencies, offices and Member States record the actions they have taken in respect of the Recommendations made.

27.4 The investigation unit may consult inter alia the following information systems:

- a. The Accrual Based Accounting system of the Commission (ABAC) in cases of EU expenditure under centralised direct management rules
- b. The Irregularity Management System (IMS) in cases of EU expenditure under shared or decentralised management
- c. The Own Resources database (OwnRes) in cases involving traditional own resources
- d. The File Exchange Application relating to information on structural funds

27.5 Where no information system is available, the investigation unit must request a written update from the EU institution, body, office, agency or competent national authority concerning the actions they have taken in respect of the Recommendations made.

Article 28. Recording of financial, judicial and disciplinary results

28.1 The investigation unit must record the actions taken in respect of the Recommendations made, their progress and any results thereof in OLAF's case management system.

28.2 The investigation unit must inform the EU institutions, bodies, agencies or offices of the final outcome of national judicial proceedings where appropriate and inform the competent OLAF policy unit for the purposes of the EWS.

CHAPTER V TRANSITIONAL MEASURES

Article 29. General

29.1 The OLAF Instructions to Staff on Investigative Procedures enter into force on 1 February 2012 and replace the OLAF Manual on Operational Procedures.

29.2 The purpose of the transitional measures is to provide a framework for the replacement of procedures existing prior to 1 February 2012 by the procedures entering into force on that day. These measures provide for the reduction and reclassification of case types, the replacement of the Executive Board by new internal review procedures and the integration of the monitoring activities into the investigative units.

Article 30. Transitional measures

30.1 From 1 February 2012 all open internal and external investigation cases must be treated as investigations under the new procedures.

30.2 From 1 February 2012 all assessments of information involving Members, officials or other servants of the EU registered in OLAF prior to 1 February 2012 must be treated by the investigation unit concerned under the procedures applicable at the date of registration. The investigation unit must make proposals for either opening an investigation or coordination case, or for the case to be dismissed and must submit them to the Investigation Selection and Review Unit for an opinion in accordance with the new procedures.

Brussels,
1 February 2012

Giovanni KESSLER
Director-General
OLAF

GLOSSARY

- Authorisation [Art 12]

The authorisation is the permission granted by the Director-General to members of the investigation unit to allow them to carry out the investigative activities listed in Article 11.6.

- Authority [Work form]

The authority is the written act by which the Director-General empowers the members of the investigation unit to carry out the investigative activities listed in Article 11.6. The members of the investigation unit must produce the authority when carrying out such investigative activities.

- Amounts to be recovered [Art 19]

The amount to be recovered is any EU expenditure identified during an investigation or coordination case as having been unduly spent which is to be retrieved from beneficiaries, national managing authorities or paying agencies (by direct recovery, offsetting, deduction, decommitment, programme closure, clearance of accounts, etc). The amount to be recovered is also the amount of traditional own resources identified during an investigation or coordination case as having been evaded and which is to be recovered from economic operators or charged to the Member States resulting from their negligence or lack of due diligence.

- Amounts prevented from being unduly spent [Art 19]

These amounts include any EU expenditure identified during investigation or coordination cases which were prevented from being unduly spent.

- Case [Art 1]

A case is the framework within which information of possible investigative interest is treated by OLAF; including the selection and investigation of such information, and the monitoring of implementation of Recommendations concerning such information. All cases treated by OLAF are allocated an OLAF case number (OF number).

- Complaints concerning failure to respect procedural guarantees [Art 23]

A complaint concerning failure to respect procedural guarantees is a request made by a natural person for a review of the handling by OLAF of his procedural guarantees.

- Conflict of interest [Art 8]

Art 11a Staff Regulations of officials of the European Communities.

- Dismissed case [Art 5]

A dismissed case is a case in which the Director-General has made a decision that the information of possible investigative interest does not meet the criteria for the opening of an investigation or coordination case.

- Evidence [Art 8]

Evidence is anything that is relevant to the facts under investigation. Evidence is collected during an investigation in order to establish facts and can be inculpatory or exculpatory. Evidence includes inter alia information, documents, reports, records, statements, images, forensic and scientific analysis.

- Extension of the scope of a case [Art 12]

An extension of the scope of a case is a decision by the Director-General authorising investigation activities to be undertaken which fall outside the opening decision of the investigation or coordination case.

- Fact-finding mission [Art 5/11]

Fact-finding missions are missions conducted by OLAF in the Member States, in order to collect information or evidence, which do not require the involvement of the competent authorities of the Member States or the investigative powers of OLAF.

- Flagging[Art 11]

Commission Decision on the Early Warning System for the use of authorising officers of the Commission and the executive agencies.

- Forensic operation [Art 11]

Forensic operation is the activity of collecting digital or electronic data.

- Forensic examination [Work form]

Forensic examination is the technological systematic inspection of electronic equipment and its contents for information which may be relevant to an ongoing investigation and may eventually be used as evidence in court proceedings.

- Informant [Art 8]

An informant is a natural person who provides information of possible investigative interest to OLAF.

- Information of possible investigative interest [Art 1]

Information of possible investigative interest is all information received by OLAF or information gathered on OLAF's own initiative, that could be considered for the opening of an investigation or coordination case and which must be submitted to the selection procedure for analysis.

- Inspection of premises [Art 13]

Article 4(2) of Regulation 1073/99.

- Interviews[Art 16]

An interview is a formal dialogue with a person concerned or a witness in order to obtain evidence relevant to an investigation and which is always duly recorded.

- Investigative Policy Priorities (IPP) [Art 5]

Investigative Policy Priorities (IPP) are adopted on an annual basis by the Director-General within the context of the Annual Management Plan and set out the policy criteria for the opening of investigations or coordination cases.

- Legal provisions [Art 17]

Legal provisions refer to the applicable legal rules or arrangements under which OLAF carries out its investigative activities. Legal provisions cover all relevant EU Treaties and legislation including Regulations, Decisions, Interinstitutional Agreements and Agreements entered into with third countries including those which containing provisions on cooperation and mutual administrative assistance. Legal provisions also include relevant administrative arrangements entered into with competent authorities in third countries, international organisations or contracting parties; as well as those with the competent authorities of the Member States, EU institutions, bodies, offices or agencies.

- Opinion [Art 5/12/21]

An opinion is an advice on case-related matters provided by the Investigation Selection and Review Unit to the Director-General.

- On-the-spot check [Art 14]

Council Regulation 2185/96.

- Person concerned [Art 16]

A person concerned is a person suspected of having committed an irregularity or fraud affecting the financial or other interests of the EU, including for Members, officials or other servants serious matters relating to the discharge of professional duties, and who is therefore subject to investigation.

- Recommendation [Art 19]

Recommendations are proposals made by the Director-General in accordance with Art 9 of Regulation 1073/99, for action to be taken by relevant EU institutions, bodies, offices, agencies or competent authority of Member States, on the basis of the findings of the OLAF investigation or coordination case.

- Registry [Art 2]

The Registry is part of the Investigation Workflow Management Unit. The Registry allocates reference numbers to all documents handled by OLAF including OLAF case numbers (OF numbers), it is also responsible for the scanning and document management process.

- Source of the information [Art 5]

A source provides information of possible investigative interest to OLAF. A source may be an EU institution, body, office, agency, Member State, third country or international organisation. A source may also be a whistleblower or an informant. A source may provide information anonymously.

- Statement [Art 11]

A statement is a written record of evidence relevant to an investigation provided by a person within the framework of an OLAF case.

- Whistleblower [Art 8]

A whistleblower is an EU official who provides information to OLAF on any facts which give rise to a presumption of the existence of possible illegal activity or serious misconduct relating to the discharge of professional duties as provided for in Article 22a of the Staff Regulations of officials of the European Communities.

- Witness [Art 11]

A witness is natural person who provides evidence relevant to an investigation.

- Written act [Art 11]

A written act is an official instrument of the Director-General authorising and mandating the carrying out of investigative activities set out in Article 11.6 of the Instructions to Staff on Investigative Procedures.