



EUROPEAN
COURT
OF AUDITORS



Luxembourg, 22 May 2019
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ADMINISTRATIVE ARRANGEMENT

between the **European Court of Auditors** and the **European Anti-Fraud Office**

- HAVING REGARD TO Decision No 98-2004 of the Court of Auditors concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Communities' financial interests;
- HAVING REGARD TO Decision No 99-2004 of the Court of Auditors concerning the rules concerning arrangements for cooperation by the Members of the Court in internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Communities' financial interests;
- HAVING REGARD TO Decision No 43-2017 on cooperation between the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) concerning cases of suspected fraud identified by the ECA during its audit work or provided to it as unsolicited denunciations from third parties;
- HAVING REGARD TO Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) 1073/1999 of the European Parliament and of the Council and the Council Regulation (Euratom) 1074/1999¹ (hereinafter "the OLAF Regulation"), and in particular its Article 1(5).

The European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) hereby agree to the following Administrative Arrangement (hereinafter "Arrangement") in relation to OLAF cases.

ECA fully respects OLAF's independence in exercising the powers of investigation conferred on it, while OLAF recognises the need for ECA to receive in a timely and appropriate manner the information that enables it to take action, where appropriate, to protect the interests of the Union.

¹ OJ L 248, 18.9.2013, p. 1.

A. GENERAL PROVISIONS

1. Purpose and scope of the Arrangement

- 1.1. This Arrangement aims to provide a structured framework for co-operation between ECA and OLAF and facilitate their timely exchange of information under the OLAF Regulation and ECA Decisions No 98-2004 and No 99-2004. It takes account of the OLAF Guidelines on Investigation Procedures for OLAF staff, which were adopted by the Director-General of OLAF on 18 September 2013 and entered into force on 1 October 2013, and in particular of definitions and terminology contained therein.
- 1.2. This Arrangement, which only concerns the relations between OLAF and ECA, is not intended to create any additional rights and obligations and is without prejudice to the provisions governing the mandate of OLAF².
- 1.3. This Arrangement concerns the exchange of information between ECA and OLAF and does not affect the provisions relating to the transmission of information to the person(s) concerned by an OLAF investigation, which fall within the exclusive remit of OLAF, as specified in the OLAF Regulation.

2. Contact persons

- 2.1. OLAF will address information to the following persons, unless ECA designates other permanent or ad-hoc contact persons in accordance with Sections 2.2 and 2.3:
 - (a) information related to internal investigations where the person concerned is a Member of ECA or the Secretary General, to the President of ECA;
 - (b) information related to internal investigations other than those referred to in point (a), to the Secretary-General;
 - (c) information related to investigations based on information that ECA communicated to OLAF pursuant to Article 2 of ECA Decision No 43-2017
 - (d) and information other than that referred to in points (a) and (b), to the Head of the ECA's Legal Service.

² In particular, Article 325 of the Treaty on the Functioning of the EU; Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing OLAF (OJ L 136, 31. 5. 1999, p.20); Council Regulation (Euratom, EC) No 2185/1999 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p.2); Council Regulation (EC, Euratom) No 2988/1995 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1); Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39); Commission Decision (EU) 2018/1962 of 11 December 2018 laying down internal rules concerning the processing of personal data by the European Anti-Fraud Office (OLAF) in relation to the provision of information to data subjects and the restriction of certain of their rights in accordance with Article 25 of Regulation (EU) 2018/1725 of the European Parliament and of the Council (OJ L 315, 12.12.2018, p. 41); Article 22a of the Staff Regulations concerning whistleblowing obligations.

- 2.2. ECA and OLAF will designate their respective permanent contact persons for the exchange of information in accordance with this Arrangement. They will notify each other of such designation by means of exchange of letters at the time of signature of this Arrangement. Any subsequent change of the designated contact persons will be notified without delay in writing.
- 2.3. Where ECA and OLAF, respectively, designate an ad-hoc contact person for a particular OLAF case, they will notify each other without delay.

3. Marking

- 3.1. When exchanging information related to any specific investigation, ECA and OLAF will ensure that the marking and handling requirements³ are respected. OLAF and ECA will use encrypted electronic communication means where possible.

B. PROVISIONS FOR OLAF'S CASE SELECTION

4. Initial information

Articles 3(6), 4(8), 5(5), 5(6) and 8(1) of the OLAF Regulation

- 4.1. ECA will, without delay, transmit to OLAF any information and evidence relating to possible cases of fraud, corruption and any other illegal activity detrimental to the financial interests of the Union which come to its attention. This will include any case of suspicion of fraud, corruption or any other illegal activity affecting the financial interests of the Union identified by ECA during its audit work and any information concerning alleged fraud, corruption or any other illegal activity affecting the financial interests of the Union received from third parties (denunciation).
- 4.2. For the purpose of transmission referred to in Section 4.1., ECA will use the template set out in Annex 1 to ECA's Directorate of Audit Quality Control Guideline on how to deal with suspected fraud. ECA will consult with OLAF on any intended modifications to this template.
- 4.3. OLAF will acknowledge receipt of the initial information.
- 4.4. Where, following the assessment of initial information provided by ECA, the Director-General of OLAF decides to dismiss a case, OLAF will respond to ECA explaining the reasons which warranted the dismissal. ECA may seek further information from OLAF via the contact person referred to in Section 2, in particular for the purposes of Articles 2 and 5 of ECA Decision No 43-2017.
- 4.5. OLAF will inform ECA of the opening and closing of internal investigations involving Members and staff of other institutions, bodies, offices or agencies based on information or evidence identified by ECA during its audit work and provided in accordance with Section 4.1. OLAF will inform ECA at the same time as the institutions, bodies, offices and agencies concerned, insofar as

³ As described in Annex 1A of the Security Notice 01 – The use and application of markings of the European Commission (DG HR and Security), entitled "OLAF Investigations, Handling Instructions".



transmitting such information does not jeopardise a possible OLAF investigation or interests of a third party.

5. EU staff cases of low priority for OLAF

- 5.1. The categories of cases listed in Annex 1 cover activities of ECA staff and other servants which usually do not lead to the opening of an OLAF investigation (hereinafter "cases of low priority").
- 5.2. For cases of low priority, it is presumed that OLAF does not intend to open an investigation. For that reason, ECA is not required to transmit the information on such cases to OLAF before it decides to initiate its own enquiry, unless ECA is aware of a related OLAF investigation or where OLAF explicitly states that it intends to submit a case or group of cases for a selection process.
- 5.3. Information on cases of low priority investigated by ECA should be provided in the form of an anonymised list in the framework of the regular meetings held under Section 23 of this Arrangement.

6. EU staff cases of potentially low priority for OLAF

- 6.1. The categories of cases listed in Annex 2 cover activities of ECA staff and other servants which probably do not lead to the opening of an OLAF investigation (hereinafter "cases of potentially low priority").
- 6.2. ECA will inform OLAF of such cases prior to opening its own enquiries using the template referred to in Section 4.2. OLAF will assess such information promptly and respond to ECA as soon as possible.
- 6.3. Where no decision is taken within two months of the receipt of the information, ECA may assume that OLAF has decided to dismiss the case. ECA may request information on the state of the OLAF selection process triggered by the transmission of information by ECA as provided for in Section 6.2. .

C. COMMON PROVISIONS FOR OLAF'S CASE SELECTION AND INVESTIGATIONS

7. Access to relevant information in ECA's databases

Articles 3(5), 4(2)(a) and 6(1) of the OLAF Regulation

- 7.1. Assistance to OLAF to access relevant information in ECA's databases will be provided by a contact person designated in accordance with Section 2.
- 7.2. Upon a request addressed to the contact person specifying the relevant information needed, ECA will promptly provide OLAF with an immediate access to the relevant information in ECA databases in accordance with Articles 3(5) and 4(2)(a) of the OLAF Regulation or secure such information for later collection.
- 7.3. Upon a request addressed to the contact person specifying the relevant information needed and the reasons why the access prior to the opening of an



investigation is indispensable to assess the factual basis of allegations, ECA will promptly provide OLAF with access to the relevant information in ECA's databases within the time-limit specified by OLAF in its request, in accordance with Article 6(1) of the OLAF Regulation.

- 7.4. If OLAF encounters difficulties in accessing the relevant information in ECA databases, it will raise this issue with the Secretary-General.

8. Duty to cooperate and supply information to OLAF

Article 8 of the OLAF Regulation

- 8.1. Prior to the opening of an investigation OLAF may contact ECA through the contact person in accordance with Section 2 to obtain information and relevant documentation for the purposes of a selection process. OLAF will also keep the contact person informed of any subsequent exchange of information with the competent ECA staff.
- 8.2. OLAF may submit a written request to ECA to provide all information pursuant to Article 8(2) of the OLAF Regulation necessary for OLAF to carry out its investigation. When requesting such information, OLAF will state the purpose of the request, the kind of information that is required, and the time limit within which the information is to be provided.
- 8.3. The contact person in accordance with Section 2 will assist OLAF upon request in identifying the competent person within ECA.
- 8.4. When ECA communicates information to OLAF, it will respect the right of informants as set out in Article 3 of ECA Decision No 43-2017.

9. Precautionary measures

Articles 4(8), 7(6), 8(1) of the OLAF Regulation

- 9.1. Where ECA is aware of possible cases of fraud, corruption and any other illegal activity detrimental to the financial interests of the Union and OLAF has not yet taken a decision on whether or not to open an investigation, ECA will avoid undertaking any activities which may compromise potential evidence and will consult OLAF before taking any precautionary measures, unless immediate action is required.
- 9.2. Where, during an investigation, it appears that appropriate precautionary measures may be necessary in order to protect the financial interests of the Union, in particular to prevent any continuous wrongdoing, OLAF informs ECA thereof without delay in accordance with Article 7(6) of the OLAF Regulation.

This information includes:

- (a) the identity of the official or staff member concerned, if any;
- (b) summary of the facts in question;
- (c) any information that could assist ECA in deciding whether it is appropriate to take precautionary administrative measures in order to protect the financial interests of the Union;
- (d) any special measures of confidentiality recommended, in particular in



cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in external investigations, within the competence of a national authority, in accordance with the national rules applicable to investigations.

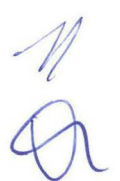
- 9.3. During an investigation, ECA may, at any time, decide to take appropriate precautionary measure in close cooperation with OLAF. OLAF will provide any information that could assist ECA in deciding whether it is appropriate to take such precautionary measures. Further to ECA's request, it will provide additional information without delay, unless such information could be detrimental to the investigation.
- 9.4. Depending on the progress of the investigation, OLAF will inform ECA immediately when the conditions requiring the precautionary measures cease to apply.

D. SPECIFIC PROVISIONS ON OLAF'S INTERNAL INVESTIGATIONS

10. Notifications on internal investigations involving ECA Members or staff

Article 4(6) of the OLAF Regulation

- 10.1. OLAF will inform ECA of investigations where it has become apparent that an ECA Member or staff member may be a person concerned. The notification will include the following elements:
 - (a) OLAF case reference of the internal investigation;
 - (b) the nature of the source of information;
 - (c) the identity of the persons concerned;
 - (d) a brief description of the case;
 - (e) whether the person concerned has been informed of the investigation;
 - (f) suggested precautionary measures;
 - (g) any other information that may assist ECA in deciding whether to take measures to protect its interests.
- 10.2. Where, in exceptional cases, OLAF decides to defer provision of information concerning internal investigations to ECA, it will inform ECA as soon as the specific reasons for such a deferral no longer exist. A reasoned decision will be provided to the OLAF Supervisory Committee in accordance with Article 4(6) third subparagraph of the OLAF Regulation.
- 10.3. Where the person concerned has not yet been informed of the investigation, ECA will abstain from providing any information to the person concerned; it will only share such information with other persons where necessary on a need to know basis. OLAF will inform ECA as soon as the reasons for the deferral set forth in Section 10.2. no longer exist and in any case no later than at the time when it informs the person concerned of the investigation.



11. Access to ECA premises to conduct an OLAF inspection

Articles 3(5), 4 (2) a and 4(4) of the OLAF Regulation

- 11.1. OLAF will inform the Secretary-General in writing of its intention to access ECA premises to conduct an OLAF inspection sufficiently in advance, at the latest at the time of OLAF's visit. Whenever an investigation is to be carried out on the premises of ECA occupied by its Secretary-General or a Member of ECA, OLAF will inform the President.
- 11.2. The information referred to in Section 11.1. will include a copy of the written authorisation issued by the Director-General of OLAF, indicating OLAF's case reference, the subject matter, the purpose of the investigation and the legal basis to conduct the investigation.
- 11.3. ECA Security Service will, at OLAF's request, provide assistance necessary to gain access to ECA premises to conduct an OLAF inspection. Competent ECA staff will, at OLAF's request, provide technical assistance necessary to take a copy of or obtain extracts from the contents of any data medium held by ECA in accordance with Article 4(2)(a) of OLAF Regulation. OLAF will address its requests for assistance to the contact person referred to in Section 2.

12. Transmission to judicial authorities of the Member States

Articles 11(5) and 12(2) of the OLAF Regulation

- 12.1. Where OLAF transmits to a judicial authority of a Member State information on an internal investigation which falls within the jurisdiction of that authority, it will inform ECA thereof in accordance with Article 12(2) of the OLAF Regulation.

13. Deferral of opportunity to comment

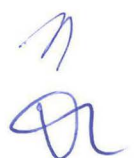
Article 9(4) third and fourth subparagraph of the OLAF Regulation

- 13.1. Where OLAF considers it necessary to defer the fulfilment of the obligation to invite the person concerned to comment on the facts concerning him in accordance with Article 9(4) of the OLAF Regulation, it will transmit a request for deferral to ECA outlining the reasons for the need to maintain absolute secrecy and requesting the agreement of the Secretary-General or, where the Secretary-General or a Member of ECA is the person concerned, the President.
- 13.2. ECA will reply promptly and in any event within one month. Failure to respond within this deadline will be deemed to constitute a reply in the affirmative.

14. Closure of internal investigations involving ECA Members and staff

Article 11(4) of the OLAF Regulation

- 14.1. Following the closure of an investigation involving an ECA Member or staff member, OLAF will transmit the Final Report and the recommendations as well as any relevant related documents to ECA.
- 14.2. Whenever an internal investigation is closed without recommendation for



action to be taken, OLAF will transmit the Final Report to ECA.

- 14.3. Whenever a recommendation is transmitted by OLAF to the judicial authorities of a Member State, OLAF will inform ECA when it receives information relevant for ECA on actions taken by the national judicial authorities.

15. Follow-up given to recommendations on cases involving ECA Members and staff

Article 11(4) of the OLAF Regulation

- 15.1. In order to follow up on disciplinary recommendations, whenever the Secretary- General decides to ask OLAF to supplement its report, it will address a note to the Director-General of OLAF.
- 15.2. ECA will inform OLAF of the actions taken by ECA resulting from the recommendations accompanying OLAF Final Reports within the reporting period set out in the recommendation. Subsequently, OLAF will request information annually on the progress of actions taken following the recommendations or, where appropriate, their final outcome. If no actions are taken, the information will contain a brief description of the reasons.

E. SPECIFIC PROVISIONS ON OLAF'S EXTERNAL INVESTIGATIONS

16. Information relevant to OLAF's external investigations

Articles 3(5), 5(4), 7(6) and 10 of the OLAF Regulation

- 16.1. Upon OLAF's request, ECA will promptly provide all required information, in principle within fifteen working days, or as soon as possible in cases where information is not readily available. Where information cannot be provided within fifteen working days, ECA will inform OLAF about the estimated time when the reply can be expected. On request, ECA will provide all necessary assistance to OLAF staff. This assistance is subject to strict confidentiality requirements and the protection of OLAF's investigation while ensuring the possibility to adopt precautionary measures in order to protect the financial interests of the Union and to ensure sound financial management.
- 16.2. OLAF will inform ECA of the outcome of its external investigations opened on the basis of initial information provided by ECA on the basis of its audit work. To that end OLAF will provide, where appropriate, information on the results of the investigation. ECA may seek further information from OLAF via the contact person referred to in Section 2, in particular for the purposes of Articles 2 and 5 of ECA Decision No 43-2017.

17. Follow-up to OLAF external investigations

- 17.1. ECA will inform OLAF of the follow-up given to the recommendations accompanying OLAF Final Reports within the reporting period set out in the recommendation. ECA will also inform OLAF of the final outcome of the actions taken.



F. SPECIFIC PROVISIONS ON CO-OPERATION WITH COMPETENT NATIONAL AUTHORITIES

18. Waivers

- 18.1. Whenever the request to grant an authorisation pursuant to Article 19 of the Staff Regulations refers explicitly to an OLAF investigation, ECA may consult OLAF when needed, and will inform OLAF of its related decision. The same process will be applied for requests concerning waivers of inviolability of ECA premises and archives.

19. Requests for assistance

- 19.1. Where necessary, OLAF will forward to ECA any request for assistance from national authorities or international organisations. ECA will reply to OLAF without delay or, where appropriate, directly to the requesting authority or organisation. In the latter case, OLAF should be informed.

20. Joining a case as a civil party

- 20.1. Where it might be possible for ECA to join in national criminal proceedings as a civil party (*'partie civile'*), OLAF will inform ECA without delay. ECA will inform OLAF of its subsequent decision without delay.

G. SPECIFIC PROVISIONS ON NON-OPERATIONAL COOPERATION

21. Training and workshops

- 21.1. ECA and OLAF will cooperate on training in areas of common interest, as appropriate:
- (a) Training programmes of ECA and OLAF will be open to participation of the staff of the other party;
 - (b) ECA and OLAF will exchange trainers and organise joint training activities.
- 21.2. ECA and OLAF will organise an annual workshop to exchange best practice, to explore matters of common interest and to enhance practical cooperation.

22. Exchange of staff

- 22.1. ECA and OLAF will exchange staff as appropriate.



H. FINAL PROVISIONS

23. Meetings

- 23.1. Meetings between ECA and OLAF will take place on a regular basis, as appropriate.

24. Review of the Arrangement

- 24.1. This Arrangement may be reviewed at the request of ECA or OLAF at any time. Either ECA or OLAF may also terminate the Arrangement by notifying the other in a timely manner.
- 24.2. Annexes 1 and 2 may be amended by an agreement between the Secretary-General of ECA and the Director-General of OLAF.

25. Application

- 25.1. This Arrangement takes effect on the date of signature by ECA and OLAF.

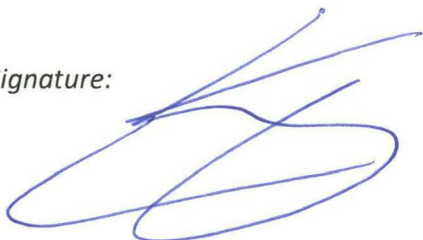
*For the European Court of Auditors,
the Secretary-General*

*For the European Anti-Fraud Office,
the Director-General*

Name: **Eduardo RUIZ GARCÍA**

Name: **Ville ITÄLÄ**

Signature:



Signature:



Date: **22-05-2019**

Date: **22-05-2019**

ANNEX 1

Cases of low priority

- Unauthorised absence (Articles 59 and 60 of the Staff Regulations), including violation of rules on working conditions (including, for example, flexitime, sick leave or part time work);
- Failure to declare gainful employment of the spouse where there is no financial impact (Article 13 of the Staff Regulations) or a possible conflict of interest;
- Unauthorised external activity or assignment where there is no financial impact (Article 12b of the Staff Regulations) or a possible conflict of interest;
- Acceptance of gifts, favours or payments of any kind (Article 11 of the Staff Regulations) for cases involving sums below EUR 1000);
- Matters which have already been the subject of a completed OLAF investigation and which have led to a final report with a disciplinary recommendation.

A handwritten signature in blue ink, consisting of a stylized 'M' or 'N' shape followed by a circular flourish.

ANNEX 2

Cases of potentially low priority

- Undeclared gainful employment of the spouse (Article 13 of the Staff Regulations), where it may adversely affect the Union's financial interests;
- Unauthorised engagement in an outside activity or carrying out of any assignment outside the institutional framework of ECA (Article 12b of the Staff Regulations), where it may adversely affect the Union's financial interests;
- Undeclared occupational activity after leaving the service (Article 16 of the Staff Regulations);
- Irregularities committed with a view to obtaining financial entitlements where the facts warrant an investigation (PMO cases);
- Conflict of interest situations where a prejudice the financial interests of the Union has not been identified;
- Misappropriation of goods of a value below EUR 1000;
- With regard to ECA staff not subject to the Staff Regulations, small-scale fraud in relation to reimbursement of expenses or any other payment or any other small-scale illegal activity detrimental to the interests of the European Union such as theft or misappropriation of ECA material, i.e. where the unauthorised payment or, in general, the financial damage to the European Union's interests does not exceed EUR 1000 and where no forgery of official documents is involved.

