

ACTIVITY REPORT OF THE CONTROLLER OF PROCEDURAL GUARANTEES FOR 2024

(C/2025/4511)

Foreword

This is the third annual report of my activities as the Controller of procedural guarantees. My role, as enshrined in the OLAF Regulation, is to handle complaints about OLAF's compliance with procedural guarantees and alleged infringements of the rules applicable to OLAF investigations, as raised by those who are the subject of such investigations, whom we call 'persons concerned'. This includes potential breaches of procedural requirements and fundamental rights.



Before the post of Controller was created, people being investigated by OLAF had very few options if they wished to complain to an independent body or authority about OLAF's handling of an investigation. The only options were to file a complaint to the European Ombudsman for maladministration or try to trigger the Commission's non-contractual liability, under very strict conditions.

To remedy this shortcoming, amendments to the OLAF Regulation of 2020 put in place a proper complaints mechanism that gives every person concerned the possibility to lodge a complaint with the Controller.

Through this newly established independent administrative remedy, the Controller is gradually but steadily adjusting and aligning the principles of effective judicial protection with the principles of effective administrative protection. The Controller always takes into account fundamental rights stemming from the Charter of Fundamental Rights of the EU, alongside the specific procedural guarantees that govern OLAF's activities, and the general legal principles and EU Courts' jurisprudence applicable to OLAF investigations.

For the Controller, it is important that the complaints mechanism becomes not only an effective remedy for persons concerned, but also increases the overall transparency of OLAF's activities. If having an efficient and effective anti-fraud body, capable of safeguarding the EU's financial interests, is a 'must have' for the EU and for taxpayers, it is equally important that OLAF investigations into possible fraud are conducted in full compliance with fundamental rights and procedural guarantees.

That said, to better understand the role of the Controller and the limitations of this new function, it is important to bear in mind that the Controller does not act as a judge who assesses the legality of OLAF's decisions and acts. Rather, the Controller's mission is to find and propose solutions to the issues raised by complainants. By proposing solutions and ultimately making recommendations to the Director-General of OLAF, the Controller sets out to solve the issues at stake and improve, in a forward-looking manner, OLAF's administrative and investigative practices.

I hope this report will help raise awareness of the kind of issues that are at the heart of the complaints made by those concerned. At the same time, I hope it will increase OLAF's accountability and people's trust in the system the EU has put in place to tackle fraud.

I am happy to report that we met all our objectives in 2024 despite the increased number of complaints received. In that respect, I am grateful for the legal support that the Secretariat provided me.

In this report, you will find out more about our work and the results we achieved operating the complaints mechanism.

I am convinced that the complaints mechanism has already become an essential safeguard for persons concerned and will further grow into its role of ensuring that OLAF's activities comply with the relevant procedural guarantees and rules on investigations.

Prof Dr Julia LAFFRANQUE

Controller of procedural guarantees

Contents

	<i>Page</i>
Foreword	1
1. The Controller's mission and mandate	4
2. The complaints mechanism	5
3. Overview of the complaints submitted in 2024	5
4. The three steps of an effective complaint handling procedure	9
4.1 Admissibility	9
4.2 Adversarial procedure	10
4.3 Closing decisions	11
5. Overview of the Controller's main findings	11
5.1 Right of defence	11
5.1.1 The right of an EU official to be informed that they are a person concerned	12
5.1.2 Opportunity to comment on the statement of facts	12
5.2 Reasonable duration of OLAF's investigations	13
5.3 Duplication of investigations (<i>ne bis in idem</i> principle)	14
5.4 Impartiality in the conduct of OLAF investigators	15
5.5 The right to be informed of the closure of an investigation and the means of notification used in correspondence with persons concerned	17
6. Consultation on the draft Guidelines on Investigation Procedures for OLAF Staff (GIPs)	18
7. Relations with stakeholders	18
8. Administrative and legal support	19
9. Contacting the Controller and submitting a complaint	19

1. The Controller's mission and mandate

The Controller of procedural guarantees is a function created by Regulation (EU, Euratom) 2020/2023 of the European Parliament and of the Council ⁽¹⁾ amending Regulation (EU, Euratom) 883/2013 of the European Parliament and of the Council ⁽²⁾ ('the OLAF Regulation'). The Controller's role is to protect the procedural guarantees and fundamental rights of persons concerned ⁽³⁾ in investigations carried out by the European Anti-Fraud Office (OLAF). **Dr Julia Laffranque** was appointed on 3 May 2022 as the first Controller, for a non-renewable term of five years. She is assisted by the Secretariat of the Supervisory Committee ('the Secretariat').

According to Article 9a(8) of the OLAF Regulation, the Controller

shall monitor the Office's compliance with procedural guarantees referred to in Article 9, as well as the rules applicable to investigations by the Office. The Controller shall be responsible for handling complaints referred to in Article 9b.

The Controller carries out her tasks in **complete independence** and does not take instructions from anyone in the performance of her duties ⁽⁴⁾. Given that persons concerned cannot in principle seek judicial recourse against OLAF's acts or omissions during an investigation, the possibility to complain to the Controller is of great importance. A complainant can turn to the Controller, within the strict deadlines set out in Article 9b of the OLAF Regulation, to seek an independent and thorough assessment of their complaint.

In handling complaints submitted **by persons concerned** regarding OLAF's **compliance with procedural guarantees and the rules applicable to investigations**, the Controller does not seek to substitute her own assessment for that of OLAF on how to conduct an investigation or assess evidence, or on what conclusions to reach. Instead, her role is to either:

- **provide reassurance** that OLAF has acted in conformity with the rules set out in its legal framework (if the Controller finds that no breach has occurred); or
- invite OLAF to take action to resolve the complaint, by making a **proposal for a solution** whenever she finds a breach of the procedural guarantees or the rules applicable to investigations.

If no solution can be found, as a second step the Controller makes a **recommendation** to OLAF on how to resolve the complaint.

The Controller assesses complaints in an **adversarial procedure**. Particular attention is paid to the Charter of Fundamental Rights of the European Union ⁽⁵⁾, the general principles of EU law and the relevant case-law of the EU Courts ⁽⁶⁾. The Controller does not and cannot interfere with the conduct of the OLAF investigation ⁽⁷⁾.

⁽¹⁾ Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations (OJ L 437, 28.12.2020, p. 49, ELI: <http://data.europa.eu/eli/reg/2020/2223/oj>).

⁽²⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 347, 20.10.2020, p. 1).

⁽³⁾ A 'person concerned' is any natural person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the EU and who is therefore subject to investigation by OLAF. Complaints submitted by persons other than persons concerned, including witnesses and informants, fall outside the Controller's mandate.

⁽⁴⁾ Article 9a(6) of the OLAF Regulation.

⁽⁵⁾ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, p. 391, available at: [C_2012326EN.01039101.xml](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012326EN.01039101.xml).

⁽⁶⁾ The Court of Justice of the European Union (CJEU) consists of two courts: the Court of Justice and the General Court.

⁽⁷⁾ Article 9b(6) of the OLAF Regulation.

2024 has been a challenging year, given the increasing number of complaints received and the complexity of the legal issues they raised. Although the Controller cannot refer in this report to individual cases being investigated by OLAF, and must ensure their confidentiality even after the cases are closed ⁽⁸⁾, this report provides a useful summary of the kind of issues about which persons concerned have complained. The report also describes how these concerns have been dealt with, and explains how the complaints mechanism worked and the results it achieved.

2. The complaints mechanism

Since the beginning of her activity in October 2022, the Controller has had the opportunity to deal with several interesting legal questions. These are progressively laying the foundation for the emergence of a solid conceptual framework for assessing complaints. Considering the number of complaints handled and the variety of the legal questions raised, 2024 was both a challenging and successful year. Complaints were handled not only as swiftly as possible, but also as thoroughly and comprehensively as possible.

To better understand how the complaints mechanism functions, it is important to bear in mind that through this mechanism the Controller has **privileged, direct access** ⁽⁹⁾ to the OLAF case file of the relevant investigation. This form of access to the OLAF case file is of paramount importance: it reassures complainants that the Controller is able to look thoroughly into OLAF's investigative activities, even in cases where some of the relevant information may be confidential and cannot be disclosed to the complainant. The Controller often performs a delicate balancing act between the confidentiality of the OLAF investigation on the one hand, and the adversarial character of the complaints mechanism on the other.

In 2024 the Controller completed the assessment of 3 complaints submitted in 2023.

Additionally, **23 new complaints were submitted in 2024** by natural and legal persons. During the reporting year the Controller completed her assessment for 22 of them. The one remaining complaint was submitted shortly before the end of the year and was declared admissible. A decision on it was reached in early 2025.

3. Overview of the complaints submitted in 2024

Most of the 23 complaints received by the Controller in 2024 were submitted by persons concerned in OLAF *internal* investigations (15) ⁽¹⁰⁾, while 8 related to *external* investigations ⁽¹¹⁾ (Figure 1). Most of the complaints were submitted in English, with other languages (Spanish, Romanian and Czech) also used (Figure 2). Some 18 complaints were submitted by natural persons, 2 by a natural person (both on their own behalf and on behalf of the legal person they represented), and 3 by legal persons (Figure 3). During the reporting year, some complainants submitted more than one complaint: the total of number of persons complaining in 2024 was therefore 12: 9 natural persons and 3 legal entities (Figure 3). None of the complaints received were submitted with legal representation.

⁽⁸⁾ Article 9a(9) of the OLAF Regulation.

⁽⁹⁾ Article 8(1) and (2) of the Decision of the Controller of procedural guarantees adopting implementing provisions for the handling of complaints ('Controller's implementing provisions' or 'Implementing provisions'), available at: https://supervisory-committee-olaf.europa.eu/controller-procedural-guarantees/about-controller/legal-framework_en.

⁽¹⁰⁾ 'Internal investigations' are investigations conducted by OLAF within European institutions, bodies, offices and agencies established by or on the basis of the EU Treaties, the purpose of such investigations being to fight fraud, embezzlement, corruption and any other illegal activity affecting the EU's financial interests. To that end, OLAF investigates: (i) serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the EU liable to result in disciplinary or, as the case may be, criminal proceedings; or (ii) an equivalent failure to discharge obligations by members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations (Articles 1(4) and 4 of the OLAF Regulation).

⁽¹¹⁾ 'External investigations' are investigations that OLAF conducts pursuant to Article 3 of the OLAF Regulation. OLAF's mandate covers all EU expenditure (i.e. structural funds, agricultural policy and rural development, direct expenditure and external aid) and a substantial part (but not all) of the EU's revenue (mainly customs duties and agricultural duties).

Figure 1

Types of OLAF investigations complained about in 2024

Types of OLAF investigations complained against

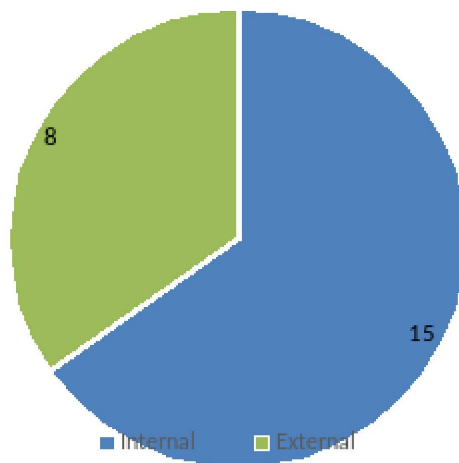


Figure 2

Languages of the complaints submitted in 2024

Languages of the complaints

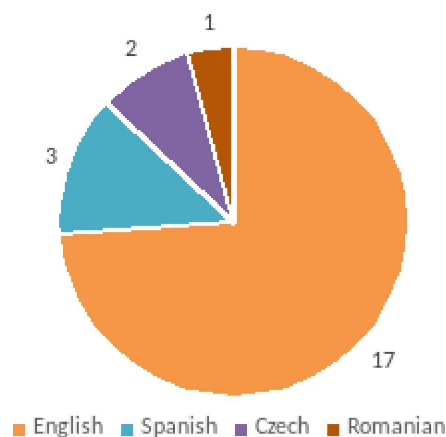
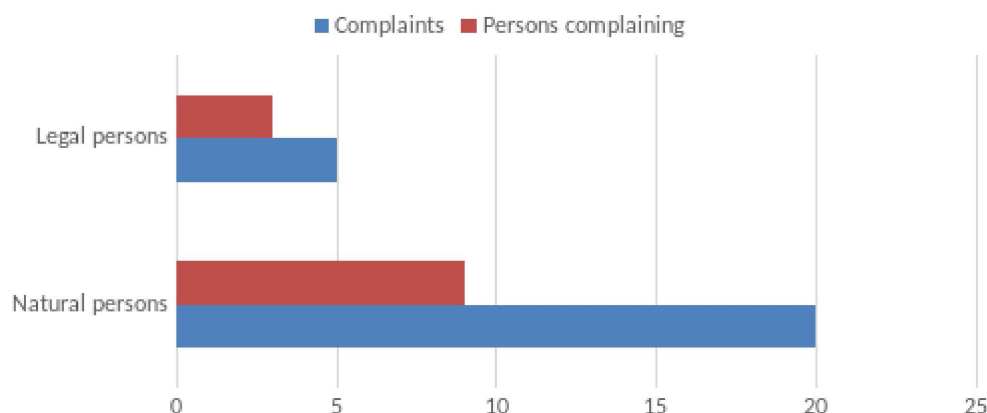


Figure 3

Persons complaining and number of complaints

In most 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 (Figure 4). These complaints concerned: (i) the complainants' right to be heard and the effective exercise of their right to submit observations on facts concerning them (Article 9(4) of the OLAF Regulation); (ii) the right to be informed of being a person concerned (Article 9(3) of the OLAF Regulation); (iii) breaches of the principles of fairness, objectivity and impartiality in the conduct of investigations (Article 9(1) of the OLAF Regulation); and (iv) the duration of the investigations (Article 41(1) of the Charter of Fundamental Rights) (Figure 5). Complainants also complained about the rules applicable to OLAF investigations⁽¹²⁾, in particular concerning the opening of OLAF investigations, the conduct of on-the-spot checks and the means of notifying persons concerned (Figure 6).

Figure 4

Subject matter of the complaints submitted in 2024**Subject matter of the complaints**

⁽¹²⁾ These include the rules set out in the OLAF Regulation, as well as those contained in various texts, including Council Regulation (Euratom, EC) No 2185/96 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), the Guidelines on investigations for OLAF staff (GIPs) and the Guidelines on Digital Forensic Procedures for OLAF Staff.

Figure 5

Analysis of the different allegations regarding procedural guarantees, as raised in 2024 (including admissible and inadmissible complaints)

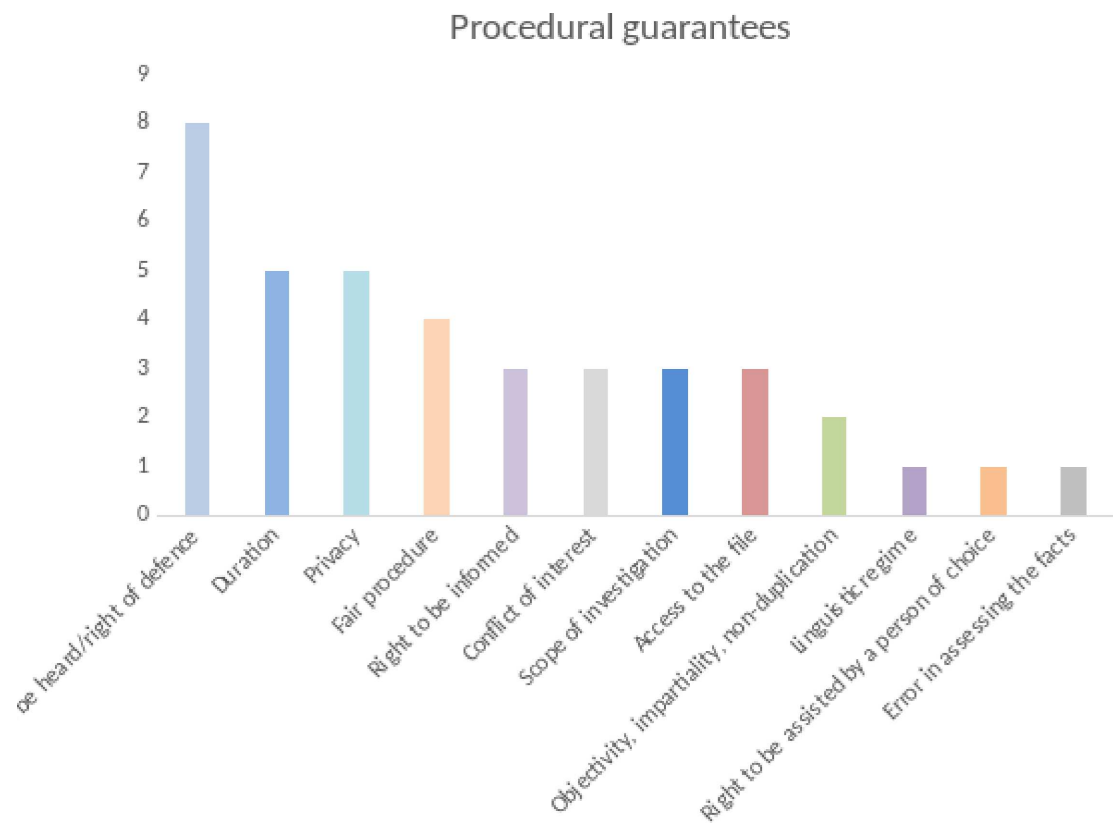


Figure 6

Analysis of allegations regarding the rules applicable to investigations



4. The three steps of an effective complaint handling procedure

The Controller deals with complaints in a **fair, independent and impartial** manner. The procedure, in line with the OLAF Regulation and the Controller's implementing provisions, involves two stages: (i) assessing **admissibility** of a complaint; (ii) assessing the **substantive arguments** raised by complainants. Where the Controller finds breaches, depending on the issues at stake, she may invite OLAF to resolve the complaint. She does this via a proposal for a solution and, if necessary, issue a recommendation to OLAF.

4.1 Admissibility

The Controller must decide on the admissibility of a complaint within **10 working days** of its date of receipt. The conditions for admissibility are set out in paragraphs 1 and 2 of Article 9b of the OLAF Regulation and Article 5 of the implementing provisions. For a complaint to be admissible, it should be lodged **within one month of the complainant becoming aware of the relevant facts** that constitute an alleged infringement of the procedural guarantees or the rules on investigation. **In any event, the complaint should be lodged no more than one month after the closure of the investigation.**

In 2024, the Controller assessed the admissibility of all pending complaints within the prescribed time limit. She declared 7 complaints admissible, 3 partially admissible, and 13 inadmissible (Figure 7).

The reasons for inadmissibility were the following:

- in 7 cases the complainants failed to meet the time limits set in Article 9b(2);
- in 3 cases the Controller found the complaints manifestly without merits;
- in 2 cases the complaints were submitted by persons who were not persons concerned;
- in 1 case the complaint was unsubstantiated, making it impossible for the Controller to conduct an assessment of the merits;
- finally, the remaining complaint concerned an administrative procedure which was not an OLAF investigation (Figure 8).

Figure 7

Admissibility of complaints received in 2024

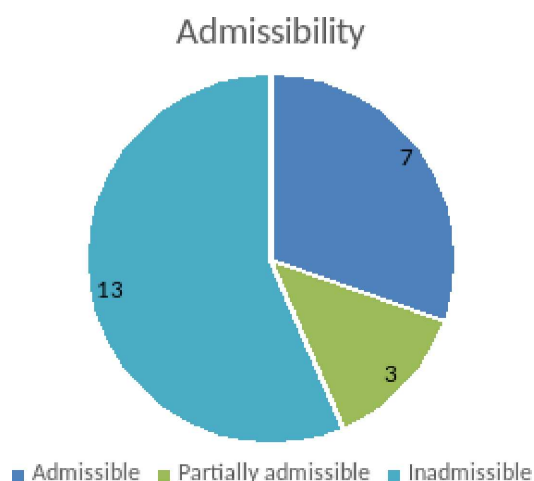
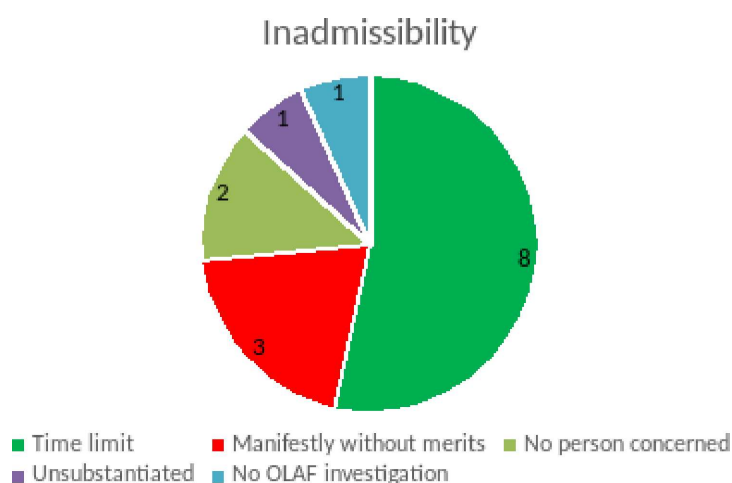


Figure 8

Grounds for inadmissibility of complaints received in 2024 (including partially admissible complaints)



When examining the admissibility of complaints, the Controller follows an approach that seeks to respect both the wording and the aims of the relevant provisions of the OLAF Regulation.

As in the previous year, in 2024 a few cases were declared inadmissible because OLAF's investigation had been closed more than a month before the moment the complainant submitted their claims to the Controller. As recalled above, for closed investigations the OLAF Regulation sets an additional stricter admissibility condition: **the complaint has to be submitted no more than one month after the closure of the investigation, regardless of the moment the complainant becomes aware of the relevant facts** (Article 9b(2) of the OLAF Regulation).

The Controller acknowledges that this undoubtedly restrictive condition applicable to closed investigations exists to preserve both: (i) the effectiveness of any eventual follow-up procedure at national or EU level; and (ii) the effectiveness of her own proposals for solutions and recommendations in the specific case at hand. Indeed, the Controller's input would be of little use in closed cases, where there may be ongoing follow-up procedures before the relevant national or EU authorities. In such rare cases, the Controller considers that persons concerned can only pursue their grievances before these authorities, by making use of the available judicial or administrative remedies.

As confirmed by the figures for 2024, admissibility remains an important 'gatekeeper' in the Controller's complaints mechanism. In all instances where complaints or allegations were found inadmissible, the Controller explained in detail to the complainant the legal basis and the reasons for her decision.

The Controller acknowledges that the above-mentioned admissibility condition, coupled with the absence of any provision obliging OLAF to inform the person concerned of the closure of cases with findings, could lead to persons concerned being deprived of the possibility to bring their complaint before the Controller. The Controller therefore considers that **the strict time limit for submitting complaints**, especially (but not limited to) the case of closed investigations, **is an issue that will deserve careful consideration in the context of the evaluation and possible subsequent revision of the OLAF Regulation**.

4.2 Adversarial procedure

After completing the preliminary assessment, the Controller invited OLAF to provide its views on the 10 complaints declared admissible or partially admissible. The Controller then sent OLAF's replies to the complainants and invited them to comment on OLAF's views.

As a matter of principle, the Controller endeavours to give the fullest possible effect to the **principle of adversarial proceedings**. Thus, both parties were given the opportunity to state their case and submit supporting documents. In principle, they were also informed of each other's submissions and could comment on them. That said, in duly justified cases the Controller decided to derogate from this principle and allow the confidential treatment of information submitted by OLAF in line with Article 7(2) of the implementing provisions. In particular, the Controller applied this clause to protect the confidentiality and efficiency of investigations in cases where OLAF's replies would reveal its working methods or prevent it from collecting the necessary evidence, or even jeopardise the overall investigative strategy. In such cases, the Controller agreed with OLAF that the latter would provide:

- (i) a non-confidential version of OLAF's replies to be sent to the complainant, so that the latter could understand the reasons underpinning OLAF's conduct and thus be in a position to challenge OLAF's reply and provide counter-arguments; and
- (ii) a confidential, more detailed version to further explain the reasons put forward by OLAF in the non-confidential version.

This balanced solution allowed the Controller to conduct a thorough assessment of all relevant cases while complying with her **obligation to ensure the confidentiality of OLAF investigations**.

Therefore, although complainants are not entitled to receive all pieces of information, they can trust that the Controller will carry out an independent and thorough examination of the case.

4.3 *Closing decisions*

By the end of 2024, the Controller had taken a **closing decision on a total of 12 complaints**: 3 complaints from 2023 and 9 admissible complaints submitted in 2024. In all of them the Controller found no breach of the complainants' procedural guarantees. The Controller assessed a variety of allegations and further developed the conceptual framework for assessing complaints. Moreover, 2.5 years of activity have shown the importance of the Controller's assessment: a closing decision, indeed, does not solely serve the purpose of **inviting OLAF to make up for shortcomings in an investigation**, should breaches be found. A closing decision where the Controller finds no breach after an adversarial procedure and thorough legal assessment, in turn, **reinforces the legitimacy of the OLAF investigation at hand and provides an important learning opportunity for complainants**.

In a few complaints, despite finding no breach in the specific case, problematic practices were detected. In these cases, the Controller signalled this to OLAF, inviting it to take her findings into account in its future investigations and possibly take action, so to avoid possible breaches of procedural guarantees of persons concerned in similar cases.

5. Overview of the Controller's main findings

In 2024, the Controller dealt with a variety of arguments raised by complainants concerning their procedural guarantees and the rules applicable to OLAF investigations. With the Controller's privileged access to the case files of the relevant investigations, she was in a position to assess every complaint on the basis of all available evidence and information.

The Controller considers that the conceptual framework progressively being established via her closing decisions provides clear guidance for OLAF's investigative activities, whether in the form of proposals for solutions or *obiter dicta*.

In accordance with the principle of confidentiality, the Controller cannot disclose the substance of the OLAF investigations. While respecting said principle, in the paragraph below the Controller provides an overview of the most compelling arguments raised by complainants and how she tackled them.

5.1 *Right of defence*

The breach of the right of the defence in an OLAF investigation was the most frequently invoked allegation the Controller had to assess during the reporting year. The variety of supporting arguments raised enables the Controller to assess many of the nuances of this pivotal procedural right.

5.1.1 The right of an EU official to be informed that they are a person concerned

Under Article 9(3) of OLAF Regulation, **as soon as an investigation reveals that an EU staff member may be a person concerned in an OLAF investigation, that staff member has to be informed to that effect**, as long as this does not prejudice the conduct of investigation or any investigative proceedings falling within the remit of a national judicial authority. Similarly, Article 9(2) of the Guidelines on investigations for OLAF staff (the 'GIPs') ⁽¹³⁾ requires OLAF to inform officials and other EU staff members 'at the earliest opportunity' of their possible implication in an open investigation. This right to be informed is an important procedural guarantee for the official concerned and is intrinsically linked to the right of defence.

In one case, the Controller analysed the specific procedural step of **OLAF's identification of a person as 'person concerned'**. In internal investigations in particular, the status of 'person concerned' in an OLAF investigation is a key element in the investigative process and a precondition for exercising the right of defence in the investigation concerning that person. The status of person concerned, indeed, affords the person a number of procedural guarantees and binds OLAF to specific rules under the OLAF Regulation. Therefore, establishing the precise moment when this status is formalised has practical consequences.

In the case in point, the Controller noted that while the complainant's name was already mentioned in the Director-General's decision opening the investigation, OLAF formally identified the complainant as a 'person concerned' in the OLAF Case Management System (OCM) at a later stage, namely six months later.

In her work on the case, the Controller examined OLAF's practice with regard to the 'identification of the person concerned' in internal investigations. The Controller's analysis focused on the practice of distinguishing between the naming of a person concerned in an opening decision and the subsequent recording of that information in the OCM. For the Controller, encoding the status of an already identified person concerned in the OCM is a purely internal step which should not entail substantive considerations, and which, as such, should be done in a timely manner. Thus, the Controller considers that **whenever the opening decision of the Director-General refers by name to a person, this person should be considered from that moment a 'person concerned' within the meaning of Article 2(5) of the OLAF Regulation**. This triggers the obligation of OLAF, under Article 9(3) of the OLAF Regulation, either to inform the person that they are a person concerned, or, in justified cases, to defer such information.

In the case in question, the late identification as person concerned of the person under investigation did not affect their procedural rights. However, the Controller considered the practice not line with Articles 2(5) and 5(1) of the OLAF Regulation and Article 6 of the GIPs. In the Controller's opinion, such a practice does not foster legal certainty and, under different circumstances, may give rise to a breach of the procedural rights of the persons concerned.

This issue had already been raised by the Controller in her discussions with the Director-General concerning the ongoing revision of the GIPs ⁽¹⁴⁾. In this context, she suggested that in cases where the Director-General's opening decision names a specific person, OLAF must identify the person concerned in the OCM immediately, i.e. at the same time as the opening decision. The Controller trusts OLAF will take due account of the suggestions made and take appropriate measures.

5.1.2 Opportunity to comment on the statement of facts

Under Article 9(4) of the OLAF Regulation, once the investigation has been completed and before conclusions referring by name to a person concerned are drawn up, OLAF must give that person the opportunity to comment on facts concerning them. Article 9(4) further specifies how this opportunity is to be granted, i.e. by providing a summary of facts.

⁽¹³⁾ Guidelines on Investigation Procedures for OLAF Staff, 11 October 2021, available at: https://anti-fraud.ec.europa.eu/guidelines-investigations-olaf-staff_en.

⁽¹⁴⁾ See below para. 6 'Consultation on the draft Guidelines on Investigation Procedures for OLAF Staff (GIPs)'.

According to the EU Courts' case-law, the right to be heard forms part of the rights of defence, and the respect for those rights is a general principle of EU law ⁽¹⁵⁾. The EU Courts specify that the right to be heard affords the person the opportunity to articulate their views effectively during an administrative procedure, and before any decision liable to adversely affect their interests is taken ⁽¹⁶⁾. Moreover, the right to be heard pursues a dual objective. First, to enable the relevant authority to examine the case and establish the facts as precisely and correctly as possible, and second, to ensure that the person concerned is in fact protected and can submit information related to their personal circumstances and argue in their favour ⁽¹⁷⁾. The opportunity to comment on OLAF's summary of facts is the expression of the right to be heard in the context of the OLAF investigations and an essential procedural guarantee for the persons concerned.

For the Controller, it is of the utmost importance that persons concerned can exercise their right to comment on the facts concerning them in a **meaningful manner**. This means that persons concerned should have the necessary information that would allow them to provide comments and defend themselves.

In one case, the complainant argued that they could not exercise effectively the right to be heard, since OLAF did not give them access to all documents related to the facts set out in the summary of facts.

In principle, one would expect OLAF to provide to the person concerned a copy of the documents they need so they can comment on the summary of facts. That said, the Controller found that in this case, the specific information reported in the summary of facts was purely factual in nature and not related to, or resulting from, any specific document which should have been shared with the complainant. Thus, the Controller concluded that the summary of facts provided the complainant with sufficiently detailed and contextualised information to understand the scope of the investigation and be able to provide meaningful replies on the specific facts mentioned in it. In light of the above, the Controller found that **the information OLAF provided to the complainant was sufficient to allow them to exercise their right to be heard**.

In another case the complainant argued that the Final Case Report did not include some of the complainant's comments and explanations provided in their reply when they had the opportunity to comment on OLAF's summary of facts. The complainant also maintained that OLAF had not granted them the opportunity to comment on certain facts set out in the Final Case Report.

In this case the Controller found no breach of the complainant's rights, as the **Final Case Report directly or indirectly referred to the complainant's main comments**. In addition, **OLAF also annexed the complainant's full reply to the Final Case Report addressed to the institution concerned**. The Controller found that the practice of annexing to its Final Report addressed to an EU institution, body or agency, or national authority, a copy of all the comments made by the person concerned on OLAF's summary of facts: i) strengthens the right to be heard, and ii) creates the necessary degree of transparency to enable the recipient of OLAF's Final Report to decide the appropriate follow-up to said report and the recommendations made in it.

Finally, the Controller also recalls in this context that, according to the jurisprudence of the EU Courts, there is no provision giving the person concerned the right to express their views on the conclusions which could be drawn by OLAF, in the context of its final investigation report ⁽¹⁸⁾.

5.2 Reasonable duration of OLAF's investigations

In a number of complaints, the Controller assessed whether OLAF had breached its obligation to act within a reasonable period of time.

⁽¹⁵⁾ Judgment of 19 October 2022, *Sistem ecologica v Commission*, T-81/21, ECLI:EU:T:2022:641, paragraph 103; judgment of 14 June 2016, *Marchiani v Parliament*, C-566/14, ECLI:EU:C:2016:437, paragraph 51 and the case-law cited.

⁽¹⁶⁾ Judgment of 4 June 2020, *EEAS v De Loecker*, C-187/19 P, ECLI:EU:C:2020:444, paragraph 68.

⁽¹⁷⁾ Judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, joined cases C-129/13 and C-130/13, ECLI:EU:C:2014:2041, paragraph 38; judgment of 11 December 2014, *Boudjlida*, C-249/13, ECLI:EU:C:2014:2431, paragraphs 37 and 59.

⁽¹⁸⁾ See judgment of 6 June 2019, *Dalli v Commission*, T-399/17, ECLI:EU:T:2019:384, paragraph 144.

The obligation to conduct administrative procedures within a reasonable period of time is a general principle of EU law, part of the right to good administration enshrined in Article 41(1) of the Charter of Fundamental Rights ⁽¹⁹⁾. Thus, investigations conducted by OLAF must be concluded within a reasonable period of time.

The Controller recalled that **while Article 7(5) of the OLAF Regulation does not prescribe any specific period for completing an investigation, it establishes a clear link between the reasonableness of the duration of an OLAF investigation and the specific circumstances of the case.** The Controller also referred to the well-established case-law of the EU Courts, according to which it is not possible to determine or quantify a particular time-period that can be considered as 'reasonable' ⁽²⁰⁾. Instead, the circumstances of each case must be considered, in particular: i) the complexity of the case; ii) the volume of documents examined by OLAF during the investigation and the volume of documents in the case file; iii) the amount and complexity of investigative steps; and iv) the conduct of the parties involved ⁽²¹⁾. For the EU Courts, assessing what constitutes 'reasonable duration' of an investigation does not require all the above-mentioned criteria to be evaluated, but it can be based on just one criterion in relation to the circumstances of the case ⁽²²⁾.

Through her privileged access to the OCM, **the Controller carefully analysed the case file of the investigations concerned. She focused in particular on the i) number, nature and continuity of investigative activities carried out by OLAF, ii) the volume of information handled, iii) the legal and technical issues involved as well as all other specific characteristics of each case.** The Controller concluded that these investigations were conducted in a continuous and systematic way and that the length of these investigations was proportionate to each case's circumstances and complexity. Based on these considerations, the Controller found that OLAF did not breach the right of the complainants to have their affairs handled within a reasonable period of time.

In these cases, the Controller's decisions shed light on the complexity of these investigations and reassured complainants that there had been no breach of their fundamental right to have their affairs handled in a reasonable time.

5.3 Duplication of investigations (*ne bis in idem* principle) ⁽²³⁾

In one case, the Controller was asked to assess whether OLAF is entitled to continue a complementary (administrative) investigation once the European Public Prosecutor's Office (EPPO) has dismissed its criminal investigation for lack of evidence or whether this continuation breaches the *ne bis in idem* principle.

In this case the complainant was a person concerned in an OLAF investigation, which highlighted possible criminal relevance of some conducts, leading the EPPO to open a criminal investigation on the same facts. The complainant argued that OLAF should have discontinued the complementary investigation immediately after the EPPO informed them that the criminal investigation was closed due to lack of evidence. For the complainant, there was a substantial overlap in the factual and legal basis of OLAF's investigation with that of the discontinued EPPO proceeding. The Controller conducted her assessment in light of the relevant procedural provisions allowing OLAF to conduct complementary investigations ⁽²⁴⁾.

⁽¹⁹⁾ Article 41(1) of the EU Charter of Fundamental Rights reads as follows: 'Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.'

⁽²⁰⁾ Judgment of 8 July 2008, *Franchet and Byk v Commission*, T-48/05, ECLI:EU:T:2008:257, paragraph 274; judgment of 18 May 2017, *Panzeri v European Parliament*, T-166/16, ECLI:EU:T:2017:347, paragraph 104; judgment of 29 June 2022, *LA International Cooperation Srl v Commission*, T-609/20, ECLI:EU:T:2022:407, paragraph 51.

⁽²¹⁾ Judgment *Panzeri v European Parliament*, T-166/16, cit.; judgment of 21 May 2014, *Catinis v Commission*, T-447/11, ECLI:EU:T:2014:267; judgment of 13 January 2010, *A. and G. v Commission*, joined Cases F-124/05 and F-96/06, EU:F:2010:2.

⁽²²⁾ Judgment of 15 October 2022, *Limburgse Vinyl Maatschappij and Others v Commission*, joined Cases C 238/99 P, C 244/99 P, C 245/99 P, C 247/99 P, C 250/99 P to C 252/99 P and C 254/99 P, ECLI:EU:C:2002:582, paragraphs 187-188.

⁽²³⁾ The *ne bis in idem* principle was invoked by complainants as a broadly understood term encompassing duplication of investigations of various nature, possibly ongoing. The term, therefore, for purposes of conciseness and consistency with the language used by complainants, is used here in this vein and not in the strictly understood way of (i) two sets of proceedings of criminal nature, (ii) concerning the same facts, (iii) against the same offender, and (iv) with a final decision, as enshrined in Article 50 of the ECHR and Article 4 of Protocol 7 of the ECHR.

⁽²⁴⁾ The relevant provisions in the OLAF Regulation are the following: Article 12f 'complementary investigations', Article 12d 'Non-duplication of investigations'. See also Article 12 of the GIPs 'Complementary investigations'.

As a first remark, the Controller noted that Article 12f(1) of the OLAF Regulation explicitly allows OLAF to open and conduct a complementary investigation, in parallel with an EPPO investigation, into the same facts. Thus, the Controller highlighted the **inherently different nature and purpose of OLAF administrative investigations and the EPPO's criminal investigations**. While OLAF aims to determine whether an administrative irregularity has occurred and to recommend, if necessary, the appropriate administrative/financial/disciplinary measures to be taken, the EPPO carries out criminal investigations, which might lead to criminal sanctions.

While OLAF's complementary investigations are conducted 'in consultation with the EPPO on an ongoing basis' ⁽²⁵⁾, OLAF carries out these investigations independently and 'in accordance with its [own] mandate' ⁽²⁶⁾. This means that complementary investigations are conducted under the direction of the DG of OLAF, in accordance with the procedures applicable to the conduct of OLAF investigations, established by the OLAF Regulation and specified in the GIPs. Thus, OLAF remains responsible for the conduct of complementary investigations.

The Controller also recalled the case-law of the EU Courts, which clarifies that the criterion to assess the existence of the same offence is the identity of the material facts, understood as the existence of a set of concrete circumstances that are inextricably linked together, and which resulted in the final acquittal or conviction of the person concerned ⁽²⁷⁾. As a result, **the fact that the criminal investigation is dismissed, does not as such constitute an exemption of liability on the administrative level, possibly leading to recommendations**. Furthermore, the Controller noticed that there are no provisions either in the OLAF or the EPPO Regulations, nor in the GIPs or the working arrangements between OLAF and the EPPO, requiring OLAF to close the complementary investigation if the EPPO has closed its own criminal investigation.

Therefore, the Controller concluded that, by not closing its complementary administrative investigation immediately after the EPPO's dismissal of its criminal investigation, OLAF did not breach the *ne bis in idem* principle.

In another case the Controller had to assess whether OLAF opened an internal investigation in duplication of a disciplinary procedure that was carried out and concluded by the relevant disciplinary body on allegedly similar facts. The Controller found that the scopes of the two procedures did not overlap. In that respect, the Controller found that the disciplinary procedure concerned the failure to declare a conflict of interest in a procurement procedure, whereas the OLAF investigation concerned potential misconduct and potential collusion in a public procurement procedure. In this regard, the Controller clarified the **different nature and potential outcomes of the closed disciplinary procedure and the OLAF investigation**. Therefore, the complainant could be reassured that no duplication was taking place, so there was no risk of being sanctioned twice for the same misconduct.

5.4 **Impartiality in the conduct of OLAF investigators**

Under Article 9(1) of the OLAF Regulation OLAF investigations must be conducted objectively and impartially and in accordance with the principle of presumption of innocence and the applicable procedural guarantees. The principle of impartiality is also a general principle of EU law and a core element of the right to good administration under Article 41(1) of the EU Charter of Fundamental Rights.

The obligation to act impartially in the context of administrative actions and decision-making within the EU applies to each person who contributes to the activity of the institution concerned, and is intended to guarantee equal treatment. Such a requirement is intended, among other things, to avoid a situation where there could be a conflict of interest on the part of officials or agents acting on behalf of those institutions and bodies.

In one case, the Controller was asked to assess whether the prior acquaintance between the person concerned and a member of the investigation team could amount to a conflict of interest. The complainant considered that the previous professional or personal connection could affect the objectivity of the investigator and the impartiality and fairness of the investigation.

⁽²⁵⁾ Article 12(f)(1) of Regulation 883/2013.

⁽²⁶⁾ Articles 12e(1) and 12f(1) of Regulation 883/2013; Article 101(3) of Regulation 2017/1939; Article 12(2) GIPs.

⁽²⁷⁾ Judgment of 2 September 2021, *LG and MH (Autoblanchiment)*, Case C-790/19, ECLI:EU:C:2021:661, para. 77-80.

The Controller assessed the complainant's argument in light of the solid conceptual framework already developed in previous decisions on similar matters and in line with the consolidated jurisprudence of the EU Courts.

First, the Controller recalled that according to the relevant case-law the requirement for impartiality applies also in the context of the civil service ⁽²⁸⁾. In that regard, Article 11a of the Staff Regulations contains specific rules designed to ensure that officials can carry out their duties without conflicts of interest interfering with the fulfilment of their mission ⁽²⁹⁾. According to paragraph 1 of that article, officials must not, when carrying out their duties, deal with a matter in which, directly or indirectly, they have any personal interest that could impair their independence, in particular, family and financial interests.

Second, the Controller recalled that the principle of impartiality, as defined above by the EU Courts' case-law, has two aspects: subjective and objective impartiality. The requirement for **subjective impartiality** means that no member of the institution concerned may show bias or personal prejudice. The requirement for **objective impartiality** means that there must be sufficient guarantees to exclude any legitimate doubt as to any bias on the part of the institution concerned ⁽³⁰⁾. Finally, **impartiality** must be observed both **in fact and in appearance**. According to the case-law, the concept of a conflict of interest does not only relate to a situation in which a public official has a private interest which has actually influenced the impartial and objective performance of their official duties, but also to a situation in which the interest identified may, in the eyes of the public, appear to influence the impartial and objective performance of their official duties ⁽³¹⁾. Subjective impartiality is presumed in the absence of evidence to the contrary ⁽³²⁾. However, for objective impartiality, it is not required that the staff member concerned had actual bias towards the alleged victim. It is sufficient that there exists a legitimate doubt that cannot be dispelled ⁽³³⁾.

It is in the light of the above-mentioned principles that the alleged lack of impartiality or conflict of interest of a member of the OLAF investigation's team was assessed.

Concerning the requirement for subjective impartiality, the Controller found that the complainant did not adduce any concrete element or evidence that could justify their claims. Regarding the lack of objective impartiality or the existence of perceived conflict of interest, the Controller recalled that both these notions arise when there are no sufficient guarantees in place to exclude any legitimate doubt regarding alleged bias by OLAF staff. In that regard, the Controller stressed that internal working arrangements and hierarchical supervision within OLAF are such to exclude the possibility of an investigator making any decision autonomously. In fact, the OLAF investigation teams carry out their activities under the supervision and approval of the Head of Unit, the Review Team, and ultimately the Director-General of OLAF. In particular, the Review Team, comprising staff who are experts in law and investigative procedures, supervises OLAF's investigations at different stages of the procedure and carries out a legality check relating, among other things, to the respect of procedural guarantees and fundamental rights of the persons concerned, including their right to have their affairs handled impartially and in accordance with the presumption of innocence ⁽³⁴⁾.

The Controller therefore concluded that **a simple element of familiarity, be it a professional relationship or even one of personal nature, is not sufficient as such to prove an actual or potential conflict of interest on the part of the investigator**. The Controller also concluded that **the procedural guarantees put in place by OLAF were sufficient**, within the meaning of the case-law of the EU Courts, to exclude any legitimate doubts on any alleged bias or perceived conflict of interest on the part of OLAF staff.

⁽²⁸⁾ Judgment of 21 October 2021, *Parliament v UZ*, C-894/19 P, ECLI:EU:C:2021:863, paragraph 51 ss.

⁽²⁹⁾ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ P 045, 14.6.1962, p. 1385, ELI: [http://data.europa.eu/eli/reg/1962/31\(1\)/2021-01-01](http://data.europa.eu/eli/reg/1962/31(1)/2021-01-01)).

⁽³⁰⁾ Judgment of 25 February 2021, *Dalli/Commission*, C-615/19 P, ECLI:EU:C:2021:133, paragraph 112, and the case-law cited.

⁽³¹⁾ Judgment of 15 July 2015, *Parliament v Dennekamp*, Case T-115/13, ECLI:EU:T:2015:497, paragraph. 92.

⁽³²⁾ Judgment of 8 February 2018, *Institute for Direct Democracy in Europe v Parliament*, T-118/17, not published, ECLI:EU:T:2018:76, paragraph 27 and the case-law cited.

⁽³³⁾ Judgment of 20 October 2021, *Kerstens v Commission*, T-220/20, ECLI:EU:T:2021:716, paragraph 42 and the case-law cited.

⁽³⁴⁾ See Article 17(7) of the OLAF Regulation.

In another case, which involved a phone call between an investigator and the person concerned, the complainant claimed that the investigator's tone during the call was accusatory and breached the principle of presumption of innocence. In the complainant's view this behaviour showed the OLAF staff member's bias against them and impacted the impartiality of the investigation.

The Controller recalled that her assessment on whether OLAF had infringed the procedural rights of the person concerned in the context of an ongoing investigation was based on facts that could be verified. In this case, the complainant's allegation concerned the perceived 'tone' of a phone conversation between them and OLAF, and the interpretation of statements made over the phone by OLAF. Without any written record or track of the said oral exchange between the parties and with conflicting testimonies from both parties, the Controller was unable to verify the content, or assess the veracity of the allegations raised by the complainant.

However, in this case the Controller took the opportunity to reiterate the **absolute importance of corresponding with persons concerned with the utmost politeness and neutrality, in line with the principles of good administration**. This should be the case regardless of the specific means of communication used by OLAF, but is particularly crucial in oral communication. The Controller considers this essential so as not to impair the perception of impartiality of OLAF investigators on the part of persons concerned.

5.5 *The right to be informed when an investigation is closed and the means of notification used in correspondence with persons concerned*

In 2022, one of the first complaints that the Controller took a decision on concerned the right to be informed of being a person concerned under Article 9(3) of the OLAF Regulation. The Controller found that there had been a breach of the complainant's right to be promptly informed, since the email that OLAF had sent to inform the complainant that they had become a person concerned never reached them ⁽³⁵⁾. In that decision, the Controller referred to established case-law to point out that for important notifications, OLAF should have a procedure in place to ensure they are received by the intended recipients. In response to the Controller's invitation to OLAF to improve its practice, in early 2023 it adopted internal instructions on the means of notification to be used in correspondence with persons concerned.

In 2024, the Controller had the opportunity to return to this important issue. Article 11(7) of the OLAF Regulation requires OLAF to inform a person concerned of the closure of an investigation where no evidence has been found against that person, within 10 working days of the completion of the investigation. In the investigation at hand, OLAF notified the person concerned of the closure of the investigation without findings via encrypted email, explicitly requesting the person to confirm receipt of the email. The person concerned did not do so. Considering the short time limit for OLAF to inform the person concerned, OLAF decided to also notify the person concerned by hand delivery. The latter subsequently complained to the Controller, considering this in-person interaction as an inappropriate and coercive practice on the part of the OLAF investigators.

The Controller assessed this case in light of the relevant provisions, including the OLAF Regulation, the GIPs, the above-mentioned OLAF internal instructions on the means of notification to be used in correspondence with persons concerned, as well as the case-law of the EU Courts.

The Controller reckoned that OLAF enjoys a degree of discretion concerning the means of communication used to notify persons concerned about information, which should be guided by the principle of effectiveness. OLAF needs to ensure and be able to demonstrate that the means of communication used effectively enable persons concerned to become aware of the information sent to them ⁽³⁶⁾. In that regard, the Controller recalled that OLAF's internal instructions on the means of notification to be used in correspondence with persons concerned give OLAF the possibility to hand over notification letters to persons concerned. This is particularly the case when OLAF's previous attempts to reach people concerned by

⁽³⁵⁾ See paragraph '3.5.2 Proposing solutions' of the Controller's 2022 Activity report, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2023_248_R_0001.

⁽³⁶⁾ See the case-law of the CJEU on service of administrative letters and decisions, applicable by analogy to OLAF letters. See in particular judgment of 6 December 2012, *Evropaiki Dynamiki v Commission*, T-167/10, ECLI:EU:T:2012:651, paras. 49-51.

other means – such as emails or registered letters – were unsuccessful. The Controller noted that OLAF does not have to resort to all the means of notification mentioned in the internal instructions, nor to use them in the specific order indicated in them. Thus, it is for the investigative team to choose the means they deem the most effective, as long as their purpose is attained. **In cases where the means chosen proved ineffective, it is at the discretion of the investigative unit to make use of any other available tool to effectively inform the person concerned of a communication.**

In the case at hand, the Controller established that **OLAF had diligently notified the person concerned via email and then, in light of the circumstances** (that it had a short deadline to do so, and that the complainant did not provide any confirmation of receipt, leaving OLAF unaware of whether the complainant had effective knowledge of the information sent), **proportionally proceeded to a hand delivery notification.** This is in line with the applicable rules and the obligation of OLAF to effectively inform the person concerned of their procedural guarantees under Article 11(7) of the OLAF Regulation.

6. Consultation on the draft Guidelines on Investigation Procedures for OLAF Staff (GIPs)

Article 9b(9) of the OLAF Regulation provides that the Director-General of OLAF ‘may request the opinion of the Controller on any matter related to procedural guarantees or fundamental rights that falls within the Controller’s mandate’.

On this legal basis, in November 2023 the Director-General of OLAF asked the Controller’s opinion on the draft revised text of the Guidelines on Investigation Procedures for OLAF Staff, particularly on the provisions referring to the procedural guarantees and fundamental rights falling under the Controller’s mandate.

The Controller welcomed the opportunity to be consulted on this important matter. She took stock from her experience in handling at the time almost 40 complaints submitted by persons concerned since the start of her mandate. Having tackled diverse legal issues raised during her mandate and benefited from the privileged access to the case files of the related OLAF investigations, she acquired a unique insight into and an understanding of OLAF’s investigative practices. In particular, the Controller could closely assess the way OLAF strives to ensure compliance with the procedural guarantees of those under investigation and the rich and ever evolving jurisprudence of the EU Courts and of the European Court of Human Rights.



In her opinion, the Controller only focused on those articles of the draft revised GIPs that referred to, and concerned specifically, OLAF’s compliance with the procedural guarantees of a person concerned.

The opinion was sent to the DG of OLAF on 3 June 2024. **The Controller considers that the final adoption of the GIPs would highly benefit from action being taken as regards the observations presented in her opinion.**

7. Relations with stakeholders

The Controller considers it important to maintain regular contact with the EU institutions, the Director-General of OLAF, and other stakeholders to obtain feedback about the role of the Controller and, ultimately, to increase the protection of the procedural guarantees and fundamental rights of the persons concerned in investigations carried out by OLAF.

On 23 May 2024, the Controller met the **Director-General of OLAF, the OLAF investigators and the OLAF management** for a discussion about the complaints mechanism, the experience gained in the first period of activity as well as pathways for improvements. This was the first time the Controller met all OLAF staff members, and the meeting proved to be a success given the high number of people who attended and the fruitful exchange, in which both general and practical questions were tackled.

On 5 September 2024, the Controller presented her Annual Report for 2023 to the **European Parliament's Committee for Budgetary Control**. She presented the report to the **EU Council's Working Party on Combating Fraud** on 13 September 2024, and had an exchange of views with its members on her role and the protection of the procedural guarantees of those under investigation by OLAF.

On 15 October 2024, the Controller attended the 'OLAF 25 years Gala Dinner'.

Finally, the Controller also maintained **regular exchanges and fruitful working relations with the Director-General of OLAF**, based on mutual trust and good cooperation. In this vein, and reflecting the good practices and cooperation already in place, in September 2024, the DG of OLAF sent to the Controller the draft working arrangements between OLAF and the Controller. These are currently under discussion and will be adopted in 2025.

8. Administrative and legal support

To ensure resources are used efficiently, the OLAF Regulation entrusted the Secretariat of the Supervisory Committee with the task of providing legal and administrative support to the Controller.

This choice is further justified by the complementarity of the missions and the common goals pursued by the Controller and the Supervisory Committee. The Secretariat ensures continuity, ongoing communication, and smooth cooperation with both the complainants and OLAF.

A dedicated team of highly qualified staff in the Secretariat, acting under the direction of its Head, provided valuable advice and assistance to the Controller while respecting professional secrecy and confidentiality.



9. Contacting the Controller and submitting a complaint

The Controller can be reached via email or by post at the following addresses:

OLAF-FMB-Controller-Procedural-Guarantees@ec.europa.eu

Controller of Procedural Guarantees / Secretariat of the Supervisory Committee of OLAF
Rue Joseph II, 30
1049 Brussels, Belgium

To submit a complaint to the Controller complainants are kindly asked to

- a. Fill in the form
- b. Send it via email or post to the addresses above

For more information, please consult the website:

https://supervisory-committee-olaf.europa.eu/controller-procedural-guarantees_en
