

LIFECYCLE OF AN OLAF INVESTIGATION

What happens after an on-the-spot check?

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WHAT IS AN IRREGULARITY AFFECTING THE EU'S FINANCIAL INTERESTS?

- **ANY infringement of a provision of Community law**
 - resulting from an **act or omission** by an economic operator
 - prejudicing the budget of (or managed by) the Communities, either by **reducing or losing revenue accruing from own resources** or by an **unjustified item of expenditure**.

○ *(Article 1(2) of Regulation 2988/95)*

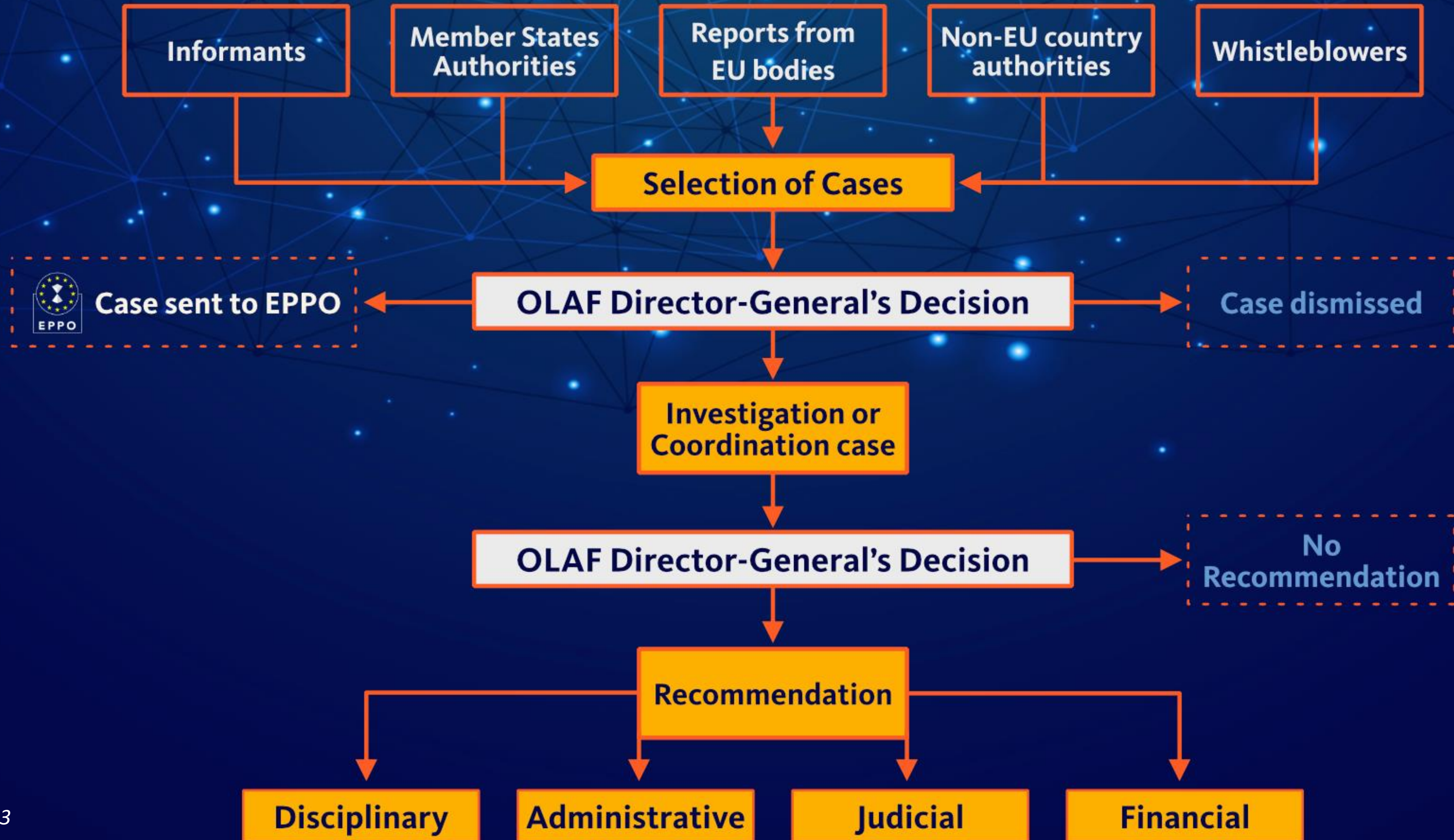
Irregularity

Fraud

OLAF INVESTIGATIONS

- ▶ **Internal investigations:** fraudulent or corrupt behaviour of all EU-staff and members of the EU institutions, including Members of the European Institutions
- ▶ **External investigations:** into beneficiaries of EU funds/economic operators (commercial companies, NGO's, contractors and subcontractors, etc.) - EU and worldwide
- ▶ **Coordination:** OLAF contribution to investigations carried out by national authorities or EU bodies

INVESTIGATIVE CYCLE



EXAMPLES OF ALLEGATIONS

- ❑ Mismanagement of a project funded by the EU
- ❑ Not following the applicable rules for procurement
- ❑ Undervaluation of goods resulting in customs and tax evasion
- ❑ Favouritism by EU staff during procedures for selection of personnel
- ❑ MEP concluding contracts with imaginary parliamentary assistants in order to receive their salaries

SELECTION

- **What is 'selection'?**
- **Who does it?**
- **Why do we need it?**



Information received /year	app. 4.000
Selections opened/year	app. 1.000 - 1.200
Cases (investigation/coordination) opened/year	app. 300

WHAT HAPPENS AFTER THE OPENING OF AN INVESTIGATION



Negative opinion → Dismissal decision of DG, information to IBOAs/Authorities, reporting to EPPO*, etc.



Positive opinion → Opening decision of DG

- ❖ Preliminary actions (information note to relevant IBOAs, investigative plan, further collection of documentation from authorities / open sources/ data bases etc.);
- ❖ On-the-spot checks with or without digital forensic operations;
- ❖ Interviews;
- ❖ Possibility for the access to bank account information;
- ❖ Opportunity to provide comments;
- ❖ Final Report and Proposed Recommendations;
- ❖ Monitoring

ON-THE-SPOT CHECKS AND INSPECTIONS

(art. 3 – 4 Reg. 883/2013 & 2185/1996)

Where ?

- At economic operator to obtain relevant information
- Economic operator usually not informed

How? Cooperation and support of the National authorities

- National authority notified in good time of object, purpose and legal basis
- Officials of national authority usually accompany OLAF officials throughout the OTSC
- In case of resistance of access to premises: the National authorities should assist OLAF in the conduct of the OTSC, in accordance to national law

Result? Report drawn up

- Copy to national authority
- Copy to economic operator

Third countries and International Organisations

- On the basis of legal provisions in force

WHAT IF THE ECONOMIC OPERATOR RESISTS THE OTSC?

- ❖ **OLAF conducts on-the-spot check in accordance with Reg.**

- 883/2013 and 2185/1996**

- *Economic operators shall cooperate with the Office in the course of its investigations. (Art. 3, par. 3)*
- *At the request of the Office, the competent authority of the Member State concerned shall, without undue delay, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2) (Art. 3, par. 5)*

- ❖ **If cooperation, ONLY the above EU Regulations applicable**

- ❖ **In case of resistance:**

The competent authorities shall afford the staff of the Office the necessary assistance, so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay, in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law, such authorisation shall be applied for (Art. 3, par. 6)

FORENSIC OPERATIONS

Within the framework of an inspection or on-the-spot check

- Technical inspection, acquisition and examination of digital media
- Conducted by OLAF's forensic experts, under the supervision of the investigators in charge

Preparation

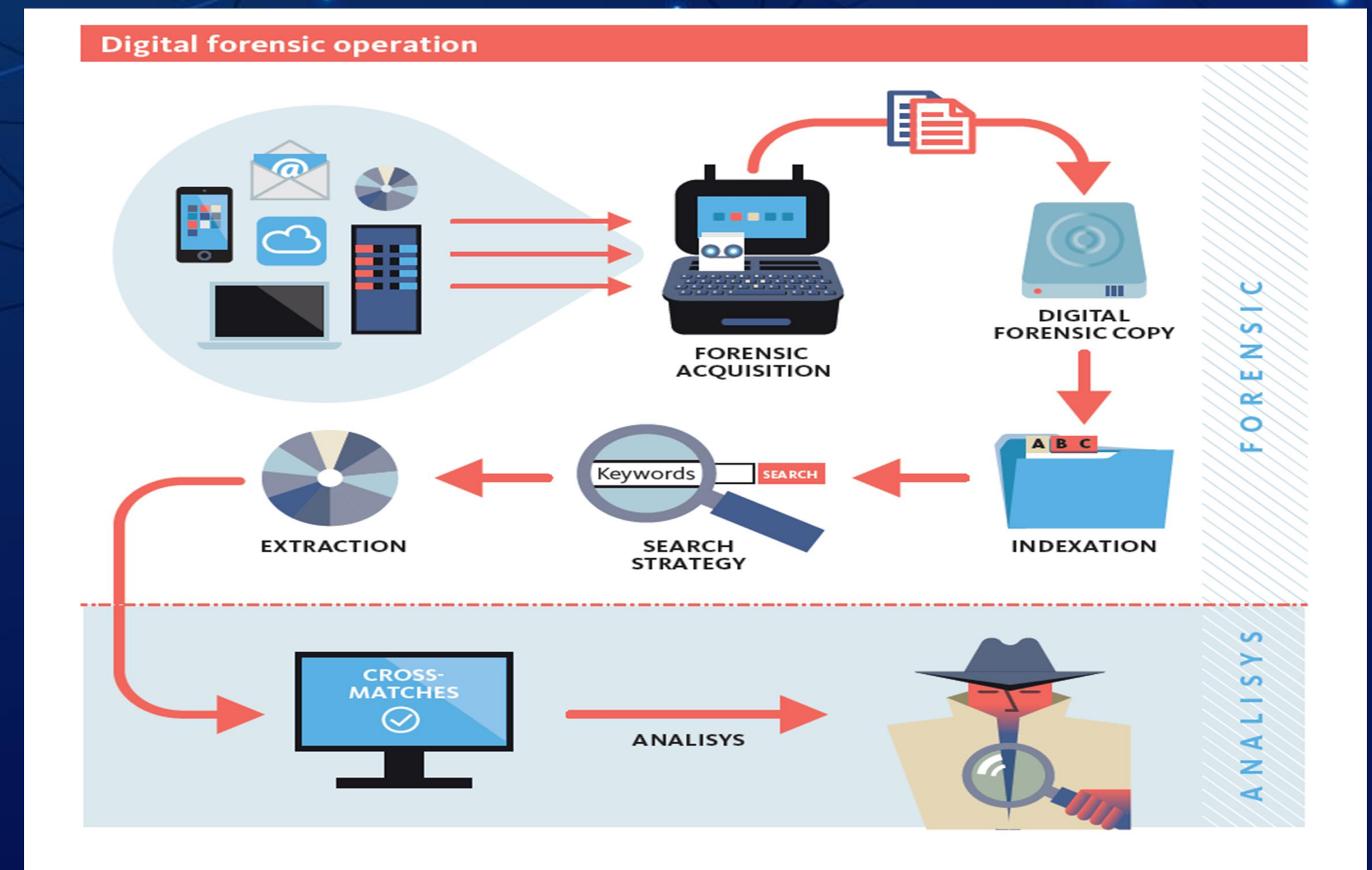
- Preceded by preliminary identification of digital media concerned
- For on-the-spot checks: to be carried out in compliance with national legal provisions

Limitation

- To extract only data necessary and relevant to the investigation concerned

Report drawn up and signed by participants

- Separate report on forensic activities during inspection/on-the-spot check



INTERVIEWS

(Art. 3, 4, 9 Reg. 883/2013)

Invitation to the interview

- At least 24 hours' notice, when witness, possibility to shorten with express consent
- At least 10 days' notice, when Person Concerned, possibility to shorten with express consent
- Invitation shall include the list of rights (applicable to Persons concerned)

Rights

- Presumption of innocence (applicable to Persons concerned)
- Not to incriminate him/herself
- Use an official EU language
- Assistance by a person of choice (applicable to Persons concerned)
- Approve of the interview record or make comments
- Receive a copy of the interview record (may be provided later) (applicable to Persons Concerned)

EU officials: duty to cooperate

Change if witness becomes "person concerned" during the interview

OPPORTUNITY TO COMMENT

When ?

- Once the investigation has been completed
- **Prior** to drawing conclusions

What ?

- Inform the person concerned of **facts** concerning him/her (interview/in writing)
- Invite him/her to comment

Why ?

- To strengthen the protection of the individual under investigation
- Not to draw conclusions referring to a person without his/her commenting first

Deferral possible only*

- To preserve the confidentiality of the investigation
- To preserve national or EPPO judicial proceedings

FINAL REPORT

- Legal basis for the investigation
- Procedural steps followed
- Facts established
- Preliminary classification in law
- Estimated financial impact
- Respect of the **procedural guarantees**
- Conclusions
- Legal review



(Article 11 Reg. 883/2013)

RECOMMENDATIONS

Recommendations of OLAF's Director General for actions

Disciplinary

- ✓ breach of Staff Regulations, Ethical Rules

Financial

- ✓ recovery of EU funds

Judicial

- ✓ to open a case under national judicial authority or to take the OLAF final report into consideration in ongoing proceedings

Administrative

- ✓ to put in place or improve procedures

MONITORING

Monitoring

- Half-yearly or yearly
- Contact with the institution concerned
- Contact with the national authorities

Authorities of Member States shall inform the Office in due time of the actions taken on the basis of the information transmitted to them by OLAF

(Art. 12.3 Regulation n°883/2013)

EXAMPLES OF FRAUD

EU Expenditure

- Stolen construction aid for infrastructure projects (e.g. bridges and power stations,...)
- Any type of "false claims". E.g. Claiming financing for goods that were never produced, trees that were never planted, food parcels for the most deprived people that were never delivered...
- And very often: Attempts to influence public procurement processes (either through outright corruption, by submitting false documents or by collusion among tenderers)



THE REALITY OF OUR WORK

- Official seat of a Bulgarian company that had won two EU-funded contracts to provide basic food supplies to the most vulnerable in Romania, found in the OTSC.
- Total worth of the case: about **27 million euro**
- Entirely recovered thanks to OLAF's investigation. OLAF worked closely with the Romanian judicial authorities, and those responsible were eventually convicted.
- Organised crime: shell companies; bribing unaware people in need to lend their names in exchange for small amounts of money; corruption of the responsible Romanian Paying Agency.
- After conclusion of contracts the criminals disappeared with the money, which they tried to launder via a complex circuit including Cyprus, the British Virgin Islands, and Hong Kong.

[the case is also described in the OLAF report 2016]



EXAMPLES OF FRAUD

Protecting EU funds by preventing losses

- An Italian region had earmarked over €330 million from the European Social Fund (ESF) and the European Regional Development Fund (ERDF) for a social assistance scheme.
- Regulations of ESF and ERDF funds did not allow the use of the funds for that purpose.
- OLAF sent a financial recommendation to the Directorate-General for Employment, Social Affairs and Inclusion of the European Commission that it should undertake all appropriate measures to prevent the amount of €331'067'557 from being unduly spent.



**€330 million
prevented from being
unduly spent**

HOW TO REPORT?

BY POST :

- European Anti-Fraud Office (OLAF)
European Commission 1049 Brussels

OLAF Fraud Notification System (FNS) :

- Anonymous
- Available in any of the 24 EU languages
- With secured document transmission



THANK YOU!

Any Questions?

For more about OLAF:

- **Go to our website: olaf.europa.eu**
- **Follow us on Twitter: [@EUAntiFraud](https://twitter.com/EUAntiFraud)**
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