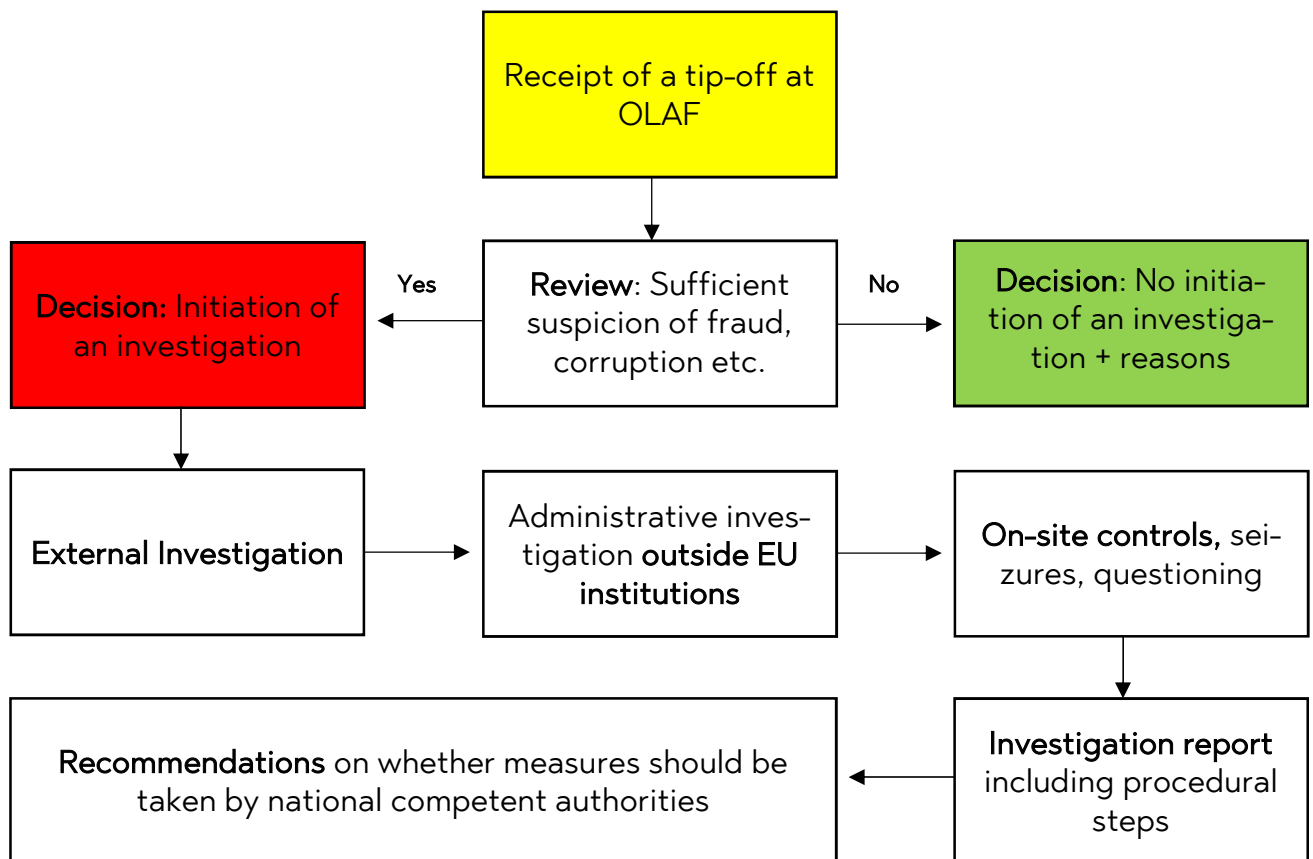


External Investigations by OLAF – Mandate and Procedures

26 November 2020

OLAF operates in cases of fraud, corruption and offences affecting the financial interests of the EU. OLAF’s power to investigate is not limited to investigation internal to the EU institutions and bodies, but it can also conduct external investigations. Such external investigations are administrative in nature and serve to detect fraud or other offences committed by natural or legal persons.

Figure: Conduct of an external OLAF Investigation



Initiation of an Investigation

The Director General of OLAF may, on his own initiative or at the request of a Member State, initiate an external investigation when there are reasonable grounds to suspect fraud, corruption or any other illegal activity by natural or legal persons affecting the financial interests of the EU. In order to determine whether grounds for such a suspicion exist, OLAF will undertake an initial assessment of any evidence that comes to the attention of the Office. OLAF has the right to access all relevant information contained

in the databases of the EU institutions, bodies, offices and agencies that is essential to verify the accuracy of the allegations. In exercising the right of access, the Office is required to respect the principles of necessity and proportionality.

Within two months, the Director General will decide whether to initiate the external investigation. If the decision is preceded by a request, the decision is immediately communicated to the requesting Member State. When OLAF has not decided within the two-month period, it is deemed not to open an investigation. In such a case, the Director General may nonetheless provide the competent authorities of the Member State concerned with all the relevant information in order to enable national authorities to act themselves, if necessary, in accordance with their national legislation.

Conduct of an Investigation

The investigation is conducted by OLAF staff under the authority of the Director General, possibly on the basis of written instructions. The competent authorities of the Member States provide assistance to ensure that the tasks are carried out effectively. Specifically, they are present during searches.

In order to detect fraud, corruption or any other illegal activity, OLAF can carry out controls and investigations at the premises of the natural and legal persons concerned. In this context, OLAF has the power to take precautionary measures in cooperation with the competent national authorities and in accordance with the procedural rules in force in the Member States. These concern the preservation of evidence, e.g. the seizure of documents and objects, as well as the questioning of involved persons and witnesses. Article 7 of Regulation (EU, EURATOM) No. 883/2013 provides the legal basis for such action. Regulations (EC, EURATOM) Nos. 2988/95 and 2185/96 lay down further general European guidelines on on-site investigations in the EU Member States.

Investigation Report

After concluding the investigation, a report is issued under the authority of the Director General. The report describes the legal basis of the investigation, the procedural steps taken and the facts established during the investigation. It also offers a preliminary legal assessment. The report is accompanied by recommendations as to whether the competent authorities of the Member States should take legal, financial, disciplinary or administrative measures. OLAF subsequently monitors the implementation of these measures by requesting the competent authorities of the Member States concerned to inform the Office within a reasonable time of any action taken following the recommendations. Although OLAF reports are not legally binding, they are often used as evidence in national judicial proceedings and in post-clearance recovery cases. In this regard, the lack of binding effect does not preclude OLAF reports from having an impact on the follow-up measures taken by Member States.

Procedural Guarantees and Data Protection

When conducting the investigation, OLAF must respect procedural guarantees and data protection requirements. In particular, it is important to bear in mind that the purpose of an investigation by OLAF is not only to establish incriminating facts but also facts that exonerate. Investigations must be conducted objectively, impartially and in accordance with the presumption of innocence. In addition, the relevant criminal and administrative procedural rules of the Member States apply.

Involved persons and witnesses questioned by OLAF staff have the right not to provide information that could incriminate them. OLAF also keeps a record of the questioning and grants access to interviewed persons so that they can confirm the transcript or add comments (see Article 8 (2) of Regulation (EU, EURATOM) No. 883/2013). The involved persons are informed about the facts concerning them and are given the opportunity to provide comments during an interview or in writing (see Article 18 of OLAF's [Guidelines on Investigation Procedures for OLAF Staff](#)).

Information provided or obtained in the course of an external investigation is subject to the relevant European and national data protection legislation. The OLAF Data Protection Officer has to ensure the confidentiality of the investigation and the legitimate rights of the persons concerned. In this context, the Director General is responsible for ensuring that information is disclosed to the public in a neutral and impartial manner without breaching the confidentiality of the investigation.

BLOMSTEIN advises you on all matters relating to OLAF investigations and compliance. [Roland M. Stein](#) and [Leonard von Rummel](#) will be pleased to assist you at any time.