

Administrative Arrangements
between the European Central Bank and the European Anti-Fraud Office

These Administrative Arrangements (hereinafter referred to as the 'Arrangements') are aimed at ensuring the effectiveness and efficiency of internal and external investigations led by the European Anti-Fraud Office (hereinafter 'OLAF') as defined by Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹ and at streamlining and fostering good cooperation between OLAF and the European Central Bank (ECB) (hereinafter referred to as 'the Parties'). To this end, the Arrangements establish a framework for the practical cooperation between the Parties in line with their relevant legal framework, and without intending to modify any existing legal rules or to interfere with the legal frameworks governing OLAF² or the ECB.³

1. General provisions

- 1.1. The Parties will communicate information relevant to their respective mandates and discuss any questions of principle relating to these Arrangements between the ECB's Director of Internal Audit and OLAF's Director General.
- 1.2. The Parties will establish mechanisms of electronic exchange of information through secure e-mail or similar means.
- 1.3. When transmitting information related to any specific case to each other, the Parties will mark any correspondence so transmitted, with the classification applicable under the confidentiality regimes applied by the Parties. As regards OLAF, the classification will be 'OLAF-investigations/OLAF-enquête'. As regards the ECB, the classification will be 'ECB-Confidential (Personal)', unless specified otherwise by the ECB.

2. Initial information

- 2.1. In accordance with Article 3 of Decision EU/2016/456 (ECB/2016/3), the ECB will transmit, without delay, to OLAF any information that gives rise to a suspicion of the existence of possible cases of fraud, corruption and any other illegal activity affecting the financial interests of the Union.

For this purpose, the ECB will preferably use the template provided by OLAF in the Annex and designate one contact person in accordance with section 8. The ECB will also indicate which

¹ 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 248, 18.9.2013, p. 1).

² Article 325 of the Treaty on the Functioning of the European Union; Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (OJ L 136, 31.5.1999, p.20); Regulation (EU, Euratom) No 883/2013; Council Regulation (EURATOM, EC) No 2185/1996 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).

³ In particular: Article 13 of the Treaty on European Union; Article 282 of the Treaty on the Functioning of the European Union; Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank; Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63); Decision EU/2016/456 of the European Central Bank of [date month] 2015 concerning the terms and conditions for European Anti-fraud Office investigations of the European Central Bank, in relation to the prevention of fraud, corruption and any other illegal activities detrimental to the Union's financial interests (ECB/2016/3) (OJ L 79, 30.3.2016, p. 34).

elements contained in the initial information, if any, may reveal the identity of persons protected under the ECB's whistleblowing rules.

2.2. By way of derogation from point 2.1, the ECB may start its investigations into matters referred to in that point without previously informing OLAF, if both of the following conditions are met:

- the information relates to a potential illegal activity with an estimated financial impact of less than EUR 10 000;
- there is no pending OLAF case to which the information may directly relate.

The ECB will inform OLAF of such investigations in the framework of the regular meetings referred to in section 9.

3. Opening of an investigation

3.1. OLAF will acknowledge receipt of the initial information accordingly. Within one month following the receipt of the initial information from the ECB, OLAF will respond to the ECB whether or not an investigation has been opened. The ECB may assume that OLAF has decided to dismiss the case and that the ECB may deal with it under its own rules and procedures, if no such decision by OLAF's Director-General has been received by the ECB within this period.

3.2. In urgent cases, the Parties may agree that OLAF should take a decision on whether to open an investigation within a shorter period.

4. Preliminary actions and precautionary measures

4.1. Prior to being informed of the decision of OLAF's Director-General stating whether or not to open a case, the ECB will not undertake any activities that might compromise potential evidence. Before the ECB takes any necessary precautionary measures to secure evidence it will consult with the OLAF contact point designated in accordance with section 8.

4.2. Without prejudice to interim measures that may be necessary to protect the institutional interests of the ECB, such as a suspension from duties or a temporary reassignment, the ECB will refrain from informing the person concerned of initial evidence until he/she has received the notification from OLAF, or until OLAF has explicitly decided not to open a case, or has not transmitted a decision to this effect within the time-limit set out in section 3.

4.3. OLAF will, in accordance with Article 4(8) or 7(6) of Regulation (EU, Euratom) No 883/2013, inform the ECB without delay of any facts suggesting that it might be appropriate to take precautionary measures to protect the financial interest of the Union or its own institutional interests

5. Investigation reports addressed to the ECB

5.1. Following the closure of an internal investigation OLAF will transmit the Final Report and where appropriate the recommendations as well as any relevant related documents to the ECB.

5.2. OLAF final reports will include all findings and conclusions established in the course of an internal investigation. They will take into consideration the specific legal framework applicable to the ECB. To enable the ECB to directly follow up on OLAF reports they will in principle set out:

- the legal basis for the investigation;
- the procedural steps followed;

- the facts established, including any aggravating or extenuating circumstances identified during the investigation;
- their preliminary classification in law;
- the estimated financial impact of the established facts.

6. Exchange of Information with judicial authorities

- 6.1. Where OLAF forwards any information involving the ECB to the national judicial authorities, it will inform the ECB at the same time in accordance with Article 12 of Regulation (EU, Euratom) No 883/2013.
- 6.2. The parties will inform each other when either of them receives relevant information on actions taken by the national judicial authorities following information provided by OLAF.

7. Technical assistance, training and staff exchange

- 7.1. The Parties agree to develop one another's knowledge about the functioning of their respective institution or office. To this end and subject to the availability of resources, OLAF will invite ECB delegates to participate in suitable OLAF training courses, and the ECB will provide designated OLAF investigators with background training on its institutional features and regulatory framework. Subject to the availability of resources, the Parties will moreover provide each other with technical assistance, including the exchange of good practices and of any necessary technical information. This may include:
- Exchange of technical investigative tools;
 - Training on specific methods for the treatment and analysis of investigation data, threat assessment and risk analysis;
 - Exchange of IT equipment or IT knowledge for investigative purposes.

8. Contact persons

- 8.1. Notwithstanding the competence to discuss questions of principle relating to these Arrangements in accordance with section 1.1, the Parties will designate one contact person for each case on which initial information has been provided to OLAF. In addition to the specific tasks set out in these Arrangements. The designated contact persons will be responsible for keeping each other informed, for discussing case-related issues pertinent to the legitimate interests of either of the Parties and for observing the common objective to protect the financial interests of the Union and to safeguard the Union's interests against irregular conduct liable to result in administrative or criminal proceedings.

9. Regular meetings

- 9.1. The functioning of these Arrangements will be reviewed regularly in meetings to be arranged between the ECB's Director of Internal Audit and OLAF's Director General, or their delegates.
- 9.2. The agenda of the regular meetings will include:
- appraising the effectiveness of these practical arrangements and discussing further ways to enhance mutual cooperation;
 - state of play and provisional date of closure on pending cases of either of the Parties concerning the ECB;

- state of play for cases that have been transmitted to the ECB with a recommendation for follow-up (monitoring cases);
- transmission of information referred to in Article 3(1) of Decision EU/2016/456 (ECB/2016/3);
- review of good practices between the Parties.

10. Final provisions

- 10.1. These Arrangements may be reviewed at the request of the ECB or OLAF at any time.
- 10.2. The Parties will inform one another of changes to their regulatory framework which may have an impact on these Arrangements.
- 10.3. Two originals of these Arrangements are to be signed by the ECB and OLAF.

Signed in Frankfurt on 16 June 2016

For the European Central Bank,

For the European Anti-fraud Office,

[signed]

[signed]

Pedro Gustavo Teixeira
Director General Secretariat

Giovanni Kessler
Director-General

[signed]

Klaus Gressenbauer
Director Internal Audit

Annex

Template for the transmission of initial information

OLAF-Investigations/OLAF-enquête

ECB-Confidential (Personal)

Note for the attention of the Head of OLAF's Selection and Review Unit

Subject: Transmission of information giving rise to a suspicion of possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the European Union

This transmission relates to information giving rise to a suspicion of

fraud/corruption or any other illegal activity committed by an external party, namely: *[specify: name of contractor, tenderer, etc.]*

fraud/corruption or any other illegal activity committed by an ECB staff member, namely *[specify: name, position, etc.]*

The facts came to our attention

through an ECB staff member, or an employee of a service provider deployed at the ECB's premises on *[specify: date]*.

through an ECB staff member who delivered the initial information under the ECB's whistleblowing provisions on *[specify: date]*.

through a complaint/letter sent by *[specify: name of entity or person]* on *[specify: date]*.

other: *[explain and indicate date]*.

The suspicion concerns *[specify, e.g.: reimbursement of removal costs, medical/travelling expenses, allowances, supply, works or service contracts, etc.]*

Description of the possible case of fraud, corruption or other illegal activity and its context:

[This section should contain the following information if possible/relevant:

- *all relevant circumstances of the case and a description of the facts, including:*
 - o *identification of the contract/procurement procedure/etc.;*
 - o *references and dates of call for tender, etc.;*

- *description of the legal framework in which the suspected facts occurred;*
- *name and contact information of the suspected entities/persons;*
- *financial impact of the suspected facts;*
- *relations between the informant and the suspected entities/persons;*
- *possible sources of evidence (e.g. witnesses, documentation, electronic data, information available in ECB databases);*
- *reasons for suspecting a possible case of fraud, corruption or any other illegal activity;*
- *precautionary measures taken or suggested precautionary measures to be taken;*
- *information on possible urgency situations (payments to be done, potential time-barring).]*

ECB contact person: *[specify name, position, contact details]*

List of enclosures: *[please indicate, where relevant, how documents have been obtained (e.g. received from ... during an audit, by letter)]*

1) [...]

2) [...]

3) [...]