



**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**

THE EUROPEAN COURT OF AUDITORS

HAVING REGARD TO	the Treaty of the European Union, and in particular Article 4 §3 and having regard to the Treaty on the Functioning of the European Union, and in particular Articles 287 and 325 thereof;
HAVING REGARD TO	Decision N°202017 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	the discussion held by the Court of Auditors at its meeting of 14 September 2017,
WHEREAS	by its Decision of 28 April 1999 ¹ the Commission established within its own departments a European Anti-Fraud Office ("OLAF");
WHEREAS	OLAF's responsibilities were set out in greater detail in Regulation (EU, EURATOM) No 883/2013 ² concerning investigations conducted by the European Anti-Fraud Office (OLAF).

HAS DECIDED:

Article 1

This decision applies to the treatment by the ECA of:

- any case of suspicion of fraud, corruption or other illegal activity affecting the financial interests of the Union (hereafter 'suspected fraud') identified by the ECA during its audit work;

¹ OJ L 136, 31.5.1999, p. 20.

² OJ L 248, 18.9.2013, p. 16

- any unsolicited information received by the ECA from third parties indicating the possibility of suspected fraud; and
- any requests made by OLAF relating to the ECA's audit work, not linked to alinea 1 and 2 above.

This decision applies without prejudice to the provisions of Articles 22a and 22b of the Staff Regulation.

Article 2

For each case of suspected fraud the President shall send details to the Director-General of OLAF, requesting that OLAF:

- acknowledges receipt of the information;
- informs the ECA when it decides to open an investigation, or comes to the decision not to investigate including the underlying reasons; and
- informs the ECA of any subsequent change in the investigative status of the case.

When the case of suspected fraud sent to OLAF arises from the ECA's audit work and concerns an activity in a Member State, then the President shall inform the head of the national audit institution concerned, with copy to the ECA's Member of that Member State.

Article 3

When the information communicated to OLAF has been provided by an informant who has requested that his/her identity not be disclosed, the ECA shall inform OLAF thereof. If OLAF asks the ECA to identify the person who provided the information, the ECA will do so only after having obtained his/her agreement.

For cases of suspected fraud identified during the ECA's audit work, the ECA shall not inform the EU's institution, agency or other body that it has communicated the details to OLAF, unless the specific circumstances require otherwise and OLAF has been consulted on whether the institution, agency or other body concerned can be informed. However, the ECA shall communicate the resulting irregularity (without reference to fraud) to the auditee following its standard audit approach, along with its other findings.

Article 4

When OLAF requires additional information on individual cases, which have been formally transmitted by the President, this shall be addressed at operational (auditor) level, by the contact person(s) designated for the case in question. The name(s) of the ECA contact person(s) shall be communicated to OLAF.

When OLAF addresses the ECA for information or documentation regarding its audit work but not linked to cases of suspected fraud forwarded under Article 2, then the President – in cooperation with the Director of the audit chamber concerned – shall ensure that any relevant material is sent to the Director-General of OLAF.

Article 5

The President shall request annually from OLAF an update of the status of the open cases previously communicated by the ECA, including any available information on the results of the cases closed during the year.

The President shall prepare an annual report - taking account of the information received from OLAF - covering the cooperation with OLAF for consideration by the ECA's college.

Article 6

After notifying a case of suspected fraud identified during its audit work, the ECA will continue with the related audit task in accordance with its normal practice, unless this risks disrupting any OLAF investigation into the case. If the ECA is made aware of any ongoing OLAF investigation into an area it plans to audit, the President may request more information from OLAF to determine what impact this could have.

Article 7

The President is assisted by the Legal Service which coordinates fraud-related matters throughout the institution, and liaises with OLAF at operational level.

Article 8

This Decision cancels and replaces Decision No 20-17 of 23 March 2017. It shall enter into force on 1 October 2017.

Luxembourg, 14.9.2017

For the Court of Auditors

Klaus-Heiner Lehne

President