

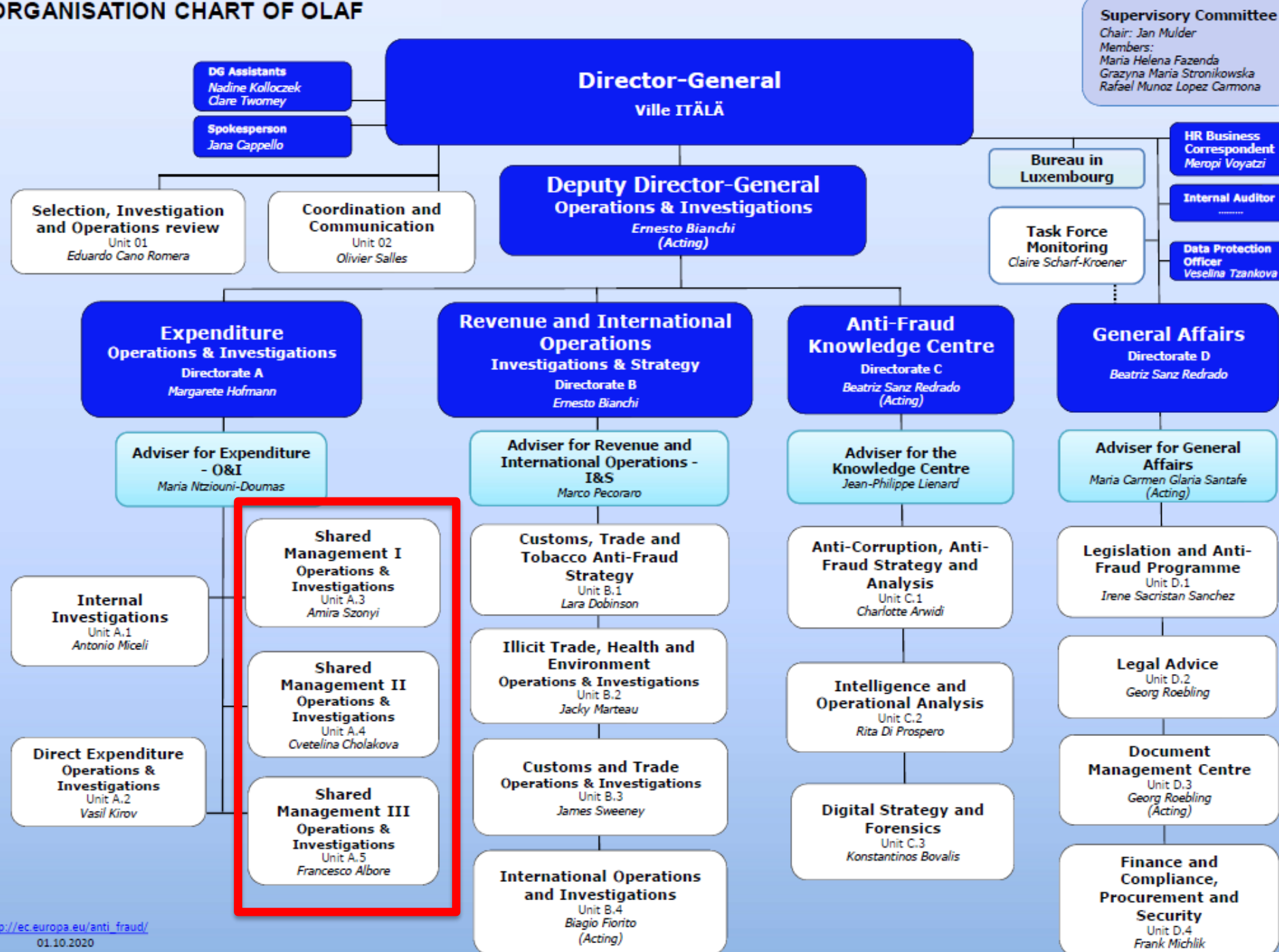
# OLAF and Interreg Programmes

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# Role of OLAF

- The European Anti-Fraud Office (OLAF) is the EU body mandated to detect, investigate and stop fraud with EU funds.
- Carrying out independent investigations into fraud and corruption involving EU funds.
- OLAF can investigate matters relating to fraud concerning **all EU expenditure** - Structural Funds, agricultural policy and rural development funds, direct expenditure and external aid and **some areas of EU revenue**
- Types of investigations – internal, external and coordination, the last two being particularly relevant to Interreg projects

# ORGANISATION CHART OF OLAF



# Investigative units involved in Interreg cases (shared management)

- Unit A.3: Czech Republic, Denmark, Hungary, Ireland, Poland, Slovakia, Sweden, the United Kingdom, Albania, Kosovo and Turkey.
- Unit A.4: Austria, Belgium, Croatia, Estonia, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Slovenia, Spain, Portugal, as well as the Republic of North Macedonia, Montenegro, Serbia, Bosnia and Herzegovina.
- Unit A.5: Bulgaria, Cyprus, Greece, Italy and Romania.



# How OLAF works

- Start of investigations
  - based on information received by different sources
  - national authorities or other EU institutions (e.g. from audits)
  - anonymous or named sources via letters / OLAF's website
  - own initiative based on available information
- Treatment of confirmed / unconfirmed cases
  - cases are opened on the basis of the concept for sufficient suspicion
  - a dedicated unit in OLAF is handling all incoming information
  - once sufficient suspicion is established, the case is transferred to an investigative unit
- Precautionary measures
  - to safeguard EU financing

# What we do

- **Coordination cases** - OLAF contributes to investigations carried out by national authorities by facilitating the gathering and exchange of information and contacts
- **Could be potentially useful for Interreg projects!**
- **External investigations** - administrative investigations outside the EU institutions and bodies for the purpose of detecting fraud or other irregular conduct by natural or legal persons.
- Drawing up the final reports and **proposing recommendations** in relation to the investigations and coordination cases.
- The **Monitoring Phase** of these cases including the monitoring of the implementation of recommendations of a judicial, financial and administrative nature.



# Results from the investigations

- OLAF recommendations at the closure of external investigations
  - Financial recommendations
  - Administrative recommendations (case specific / weaknesses in the management and control systems)
  - Judicial recommendations
- Precautionary measures (to prevent funds being spent before the end of the projects)
- Financial recommendations are addressed to the financing DGs
- Judicial recommendations are addressed to the judicial authorities of the Member States
- The financing DGs are taking action and reporting back to OLAF
- Monitoring of the results

# Typical life-line of an external investigation

- Source of information
- Assessment
- Opening of a case (internal decision)
- Preliminary actions
- On-the-spot checks at economic operators
- Interviews with witnesses, persons concerned
- Forensic operations
- Opportunity to provide comments
- Closure of an investigation:
  - Investigative Unit issues a Final Report
  - Opinion from a reviewer
- Director General approves the final report and issues recommendations (financial, MCS improvements, judicial)





# Preliminary actions

- Contacts with the MS Authorities (AFCOS, Prosecutors Office etc.);
- Requests for project/operation documentation;
- Analysis of the documentation;
- Requests to third parties (Tax Authorities, Police etc.)
- Operational meetings between DGs / Managing Authorities / AFCOS



# The investigative process

The investigative unit gathers evidence using *inter alia* the following means:

- Collecting documents and information in any format which can be used as evidence
- Gathering evidence in the framework of operational meetings
- Taking statements from any person able to provide relevant information
- Carrying out fact-finding missions in Member States
- Taking samples for scientific examination
- Conducting interviews with persons concerned or witnesses
- Carrying out inspections of premises
- Carrying out on-the-spot checks
- Carrying out digital forensic operations
- Carrying out investigative missions in third countries

# On-the-spot checks - cooperation

- On-the-spot checks and inspections are prepared and conducted by the Commission in close cooperation with the competent authorities of the Member State concerned
- The MS Authorities are notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the Member State concerned may participate in the on-the-spot checks and inspections.
- In addition, if the Member State concerned so wishes, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Member State's competent authorities.
- Notification to the economic operator **(examples)**

# Execution of an on-the-spot check

- National Legislation applies
- Reg. 883/2013, art. 3.3, external investigations:
- During on-the-spot checks and inspections, the staff of the Office shall act, subject to the Union law applicable, in compliance with the rules and practices of the Member State concerned and with the procedural guarantees provided for in this Regulation.
- Reg. 2185/1996, art. 6
- Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.

# Execution of an on-the-spot check

- Economic Operator
- **Who can be checked?**
- Art 5.1 Reg (EC) 2185/96
- On-the-spot checks shall be carried out by OLAF on economic operators to whom Community administrative measures and penalties pursuant to Article 7 of Reg. 2988/95 may be applied, where there are reasons to think that irregularities have been committed.
- Where strictly necessary in order to establish whether an irregularity exists, OLAF may carry out on-the-spot checks on other economic operators concerned, in order to have access to pertinent information held by those operators on facts subject to on-the-spot checks and inspections.



# Execution of an on-the-spot check

- **Economic Operators**

- Natural and legal persons
- Companies
- Associations
- NGOs
- Public establishments
- Local authorities
- Private house partially used for business purposes

# Execution of an on-the-spot check

- **Other Economic Operators**
- Where strictly necessary in order to establish whether an irregularity exists
- In order to have access to pertinent information – held by those operators - on facts subject to on-the-spot checks and inspections
- Suppliers
- Insurers
- Shipping companies
- Accountants

# Execution of an on-the-spot check / Access

- **The list (neither exhaustive nor restrictive)**
- On-the-spot checks and inspections may concern, in particular:
- Professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by economic operators,
- Computer data,
- Production, packaging and dispatching systems and methods,
- Physical checks as to the nature and quantity of goods or completed operations
- The taking and checking of samples,
- The progress of works and investments for which financing has been provided, and the use made of completed investments,
- Budgetary and accounting documents,
- The financial and technical implementation of subsidized projects.



# Interviews with persons concerned and witnesses

- OLAF may interview a person concerned or a witness at any time during an investigation.
- The invitation to an interview shall be sent to a person concerned with at least 10 working days' notice. That notice period may be shortened with the express consent of the person concerned or on duly reasoned grounds of urgency of the investigation. In the latter case, the notice period shall not be less than 24 hours;
- The Office shall draw up a record of the interview and give the person interviewed access to it so that the person interviewed may either approve the record or add observations. The Office shall give the person concerned a copy of the record of the interview.

# Opportunity to comment

- Once the investigation has been completed and before conclusions referring by name to a person concerned are drawn up, that person shall be given the opportunity to comment on facts concerning him.
- That invitation shall include a summary of the facts concerning the person concerned.
- The final investigation report shall make reference to any such comments;
- In duly justified cases where it is necessary to preserve the confidentiality of the investigation, the Director-General may decide to defer the fulfilment of the obligation to invite the person concerned to comment.

# Final Report

- Legal basis for the investigation;
- The procedural steps followed;
- The facts established and their preliminary classification in law;
- The estimated financial impact of the facts established;
- Conclusions of the investigation;
- Reports drawn up on that basis shall constitute **admissible evidence in administrative or judicial proceedings of the Member State** in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. (art 11 Regulation 883/2013)

# Examples for irregularities / fraud

- Procurement irregularities: [Commission Guidance from 14 May 2019](#)
- Implementation irregularities, e.g. inflated construction prices: Calculation of standard construction costs based on national databases
- Implementation irregularities, e.g. inflated supply contracts (often fraud): tracing supply chains to establish actual costs
- False or falsified documents (for the purposes of procurement, for the eligibility of a project proposal, for the absence of double financing, for implementation of project activities, invoices)
- Conflicts of interest (selection of contractors)
- Creation of artificial suppliers
- Inflated staff costs, false timesheets
- Subcontracting

# More detailed examples of findings

- **Public procurement deficiencies**

- Restrictive selection criteria
- Discriminatory selection criteria
- Change in selection criteria, resulting in the exclusion of bidders
- Contractors selected do not respect the requirements of the selection criteria
- Contractors selected despite not meeting the requirements of the beneficiary (award criteria)
- Rigged specifications
- Collusive bidding
- Submission of false documents attesting certain requirements
- Conflicts of interest
- Unjustified award criteria
- Collusion contracting authority / contractors
- Inflated costs



# Red flags - procurement

- Only one or abnormally low number of bidders
- Similarity between specifications and winning contractor's product
- Complaints from other bidders
- Unusual or unreasonable specifications
- The buyer defines an item using brand name
- Winning bid is too high compared to cost estimates, published price lists, similar works or services or industry averages
- Persistent high prices by all bidders
- Rotation of winning bidders by region, job, type of work
- Losing bidders hired as subcontractors

# Red flags – procurement (continued)

- Unusual bid patterns (e.g. the bids are exact percentage apart, winning bid just under threshold of acceptable prices, exactly at budget price, too high, too close, too far apart, round numbers, incomplete, etc)
- Apparent connections between bidders, e.g. common addresses, personnel, phone numbers
- Contractor includes subcontractors in its bid which are competing for the main contract
- Qualified contractors fail to bid and become subcontractors or low bidder withdraws and becomes a subcontractor
- Certain companies always bid against each other, others never do
- Losing bidders cannot be located in the Internet, business directories, have no address etc (fictitious)

# Red flags – conflicts of interest

- Unexplained or unusual favouritism of a particular contractor
- Continued acceptance of high priced, low quality work
- Contracting employee fails to file or complete conflict of interest declaration
- Contracting employee declines promotion to a non-procurement position
- Contracting employee appears to conduct side business
- Close socialisation between a contracting employee and service or product provider



**Thank you**  
**Questions?**