

Regulation on the European Anti-Fraud Office (OLAF) – Evaluation**JUNE 2024**

The International Trademark Association (INTA) offers the following comments in the “Call for evidence” for the “Regulation on the European Anti-Fraud Office (OLAF) Evaluation” in connection with Article 19 (1) (Regulation (EU, Euratom) No 883/2013 which governs the work of the European Anti-Fraud Office and requires the Commission to undertake an evaluation on the application and impact of this Regulation.

The International Trademark Association is a global association of brand owners and professionals dedicated to supporting trademarks and complementary intellectual property (IP) to foster consumer trust, economic growth, and innovation, and committed to building a better society through brands. Members include nearly 6,500 organizations, representing more than 34,350 individuals (trademark owners, professionals, and academics) from 185 countries, who benefit from the Association’s global trademark resources, policy development, education and training, and international network. Founded in 1878, INTA, a not-for-profit organization, is headquartered in New York City, with offices in Beijing, Brussels, Santiago, Singapore.

Anticounterfeiting is a priority for INTA and the association has an anticounterfeiting committee which is dedicated to the enforcement of anticounterfeiting procedures worldwide. The Anticounterfeiting Committee evaluates treaties, laws, and regulations related to anticounterfeiting and enforcement, develops and advocates strong policies to protect against infringement, creates guidelines, resources and research on counterfeit-related issues and promotes counterfeit education and awareness with all relevant stakeholders. The Committee comprises of nearly 350 volunteers from 70 countries worldwide, including jurisdictions of the EU member states.

The INTA Anticounterfeiting Committee is one of the most populated committees and regularly organizes engagements between rights owners and law enforcement officials for training and knowledge sharing.

INTA welcomes the opportunity to provide comments in relation to the European Anti-Fraud Office (OLAF), an organisation which INTA members value and frequently partner with in the fight against counterfeit products entering the European Market. INTA’s comments are focused on specific areas where members have experience of working with OLAF.

OLAF ASSESSMENT AREA**Assess OLAF’s powers to:**

- (i) **conduct independent administrative investigations to protect the EU’s financial interests;**

This will include an examination as to whether any aspects of OLAF’s powers, and the implementation thereof, have impacted the take-up of OLAF’s financial, administrative, disciplinary and judicial recommendations by the relevant authorities.

INTA Comments:

- INTA members have confirmed that both rights owners and their appointed legal representatives have engaged with OLAF in various counterfeit cases across multiple industries including food and beverages, personal care products, sportswear, fashion apparel and footwear, pharmaceutical, toys and tobacco. Within these cases, OLAF has also often considered the wider public safety aspects, demonstrating its multifaceted approach. These cases have spanned both EU and non-EU contexts. Members report that OLAF’s assistance has been invaluable in conducting investigations and ensuring enforcement through the seizures of large volumes of counterfeit goods especially in

complex cases. INTA welcomes OLAF's approach to build and develop cases that involve multiple rights owners being targeted by organized crime groups so that the overall enforcement impact is greater.

- INTA members report that OLAF's effectiveness can depend on the level of cooperation with law enforcement officials at the country level and support measures and procedures that would enhance this cooperation further, especially when cases are multi-jurisdictional and cross-border. INTA welcomed the European Commission's adopted Recommendation to combat counterfeiting and strengthen IPR Enforcement published in March 2024 and the focus on developing specialized units to tackle Intellectual Property-related crimes and greater coordination by competent authorities within Member states. This would enhance and strengthen OLAF's role in counterfeit cases where financial investigations are necessary as counterfeit cases are often linked to invoice and paper-trail fraud and VAT and tax avoidance which impacts the integrity of the budget of European Union.
- INTA members also report that OLAF has been instrumental in taking the lead on cases on behalf of brand owners across multiple jurisdictions. OLAF representatives have frequently leveraged their connections with local enforcement officers and customs authorities to enable deeper investigations and ongoing monitoring of suspicious shipments which may continue over months, even years, as organized crime groups seek to exploit system and border weaknesses. INTA would therefore recommend OLAF's powers continue to be supported by the European Commission and the Member State's relevant authorities. Furthermore, as counterfeiting is frequently international in nature, INTA would also recommend that OLAF continues to be able to engage and seek cooperation with law enforcement and other authorities of third countries.

Assess OLAF's powers in the context of:

- (i) on-the-spot checks and inspections;**
- (ii) newly introduced tools such as access to bank accounts and access to privately-owned devices; and**
- (iii) compliance with procedural guarantees.**

- INTA members report that OLAF's ability to follow the money trail is crucial for successful investigations and that OLAF's investigations have been highly effective in gathering evidence and signals of fraudulent activity relating to counterfeiting cases. With OLAF's ability to conduct on-the-spot checks and inspections as well as access to electronic devices and bank accounts, members report that OLAF's investigators have been able to identify the different *modus operandi* of sophisticated criminal networks that are involved in counterfeiting distribution within Europe and their links within non-EU countries. This has helped develop a deeper understanding of the challenges and risks involved in investigating such cases and how to tackle them, but also how to identify similar cases much faster that employ the same criminal methods.

Therefore INTA supports the continuation of OLAF's powers for investigations to continue to be at the forefront of tackling complex counterfeiting cases across various industries that impact the EU's budget and the safety and health of its citizens.

INTA supports the role of the European Anti-Fraud Office (OLAF) within Europe, which extends beyond fraud investigations with the detection and disruption of sophisticated counterfeiting cases. OLAF actively contributes to public safety and cross-border cooperation between rights owners and law enforcement authorities and INTA would welcome measures to strengthen OLAF's ability to continue to foster collaboration amongst all stakeholders involved in disrupting counterfeiting. Finally, INTA is supportive of additional powers and measures

that can enhance OLAF's role in intellectual property infringement cases and its investigative remit in order to meet the challenges of counterfeiting as it evolves and operates within both the online and offline environments.

INTA welcomes the opportunity to provide further comments in relation to European Anti-Fraud Office (OLAF) as part of this evaluation.

For any questions or requests, please contact the following: Tat-Tienne Louembe Chief Representative Officer, Europe and IGOs (tlouembe@inta.org) and Alastair Gray, Director of Anticounterfeiting (agray@inta.org).