




# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2006/0084(COD) Procedure completed
Investigations by the European Anti-Fraud Office (OLAF) Repealing Regulation (EC) No 1073/1999 Amended by <a href="#">2016/0064(COD)</a> Amended by <a href="#">2018/0170(COD)</a>	<a href="#">1998/0329(COD)</a>
Subject 8.40.08 Agencies and bodies of the EU 8.70.04 Protecting financial interests of the EU against fraud	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>CONT</b> Budgetary Control		27/03/2007
		PPE-DE <a href="#">GRÄSSLE Ingeborg</a>	
		Shadow rapporteur	
		S&D <a href="#">BALČYTIS Zigmantas</a>	
		ALDE <a href="#">SKYLAKAKIS Theodoros</a>	
	Verts/ALE <a href="#">STAES Bart</a>		
	ECR <a href="#">CZARNECKI Ryszard</a>		
	NI <a href="#">EHRENHAUSER Martin</a>		
	Former committee responsible		
	<b>CONT</b> Budgetary Control		27/03/2007
		PPE-DE <a href="#">GRÄSSLE Ingeborg</a>	
	Former committee for opinion		
	<b>BUDG</b> Budgets	The committee decided not to give an opinion.	
	<b>JURI</b> Legal Affairs		14/09/2004
		PPE-DE <a href="#">GARGANI Giuseppe</a>	
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Agriculture and Fisheries</a>	<a href="#">3225</a>	25/02/2013
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3205</a>	04/12/2012
European Commission	Commission DG	Commissioner	
	<a href="#">European Anti-Fraud Office (OLAF)</a>	ŠEMETA Algirdas	

Key events			
24/05/2006	Legislative proposal published	<a href="#">COM(2006)0244</a>	Summary
05/09/2006	Committee referral announced in Parliament, 1st reading		
07/10/2008	Vote in committee, 1st reading		Summary
27/10/2008	Committee report tabled for plenary, 1st reading	<a href="#">A6-0394/2008</a>	
20/11/2008	Results of vote in Parliament		
20/11/2008	Debate in Parliament		
20/11/2008	Decision by Parliament, 1st reading	<a href="#">T6-0553/2008</a>	Summary
17/03/2011	Modified legislative proposal published	<a href="#">COM(2011)0135</a>	Summary
27/02/2013	Council position published	<a href="#">17427/1/2012</a>	Summary
14/03/2013	Committee referral announced in Parliament, 2nd reading		
18/06/2013	Vote in committee, 2nd reading		
19/06/2013	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A7-0225/2013</a>	Summary
02/07/2013	Debate in Parliament		
03/07/2013	Decision by Parliament, 2nd reading	<a href="#">T7-0308/2013</a>	Summary
11/09/2013	Final act signed		
11/09/2013	End of procedure in Parliament		
18/09/2013	Final act published in Official Journal		

Technical information	
Procedure reference	2006/0084(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealing Regulation (EC) No 1073/1999 <a href="#">1998/0329(COD)</a> Amended by <a href="#">2016/0064(COD)</a> Amended by <a href="#">2018/0170(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 325-p4
Stage reached in procedure	Procedure completed
Committee dossier	CONT/7/11553

Documentation gateway					
Legislative proposal		<a href="#">COM(2006)0244</a>	24/05/2006	EC	Summary
Document attached to the procedure		<a href="#">SEC(2006)0638</a>	24/05/2006	EC	

Document attached to the procedure		<a href="#">52007XX0426(01)</a> <a href="#">OJ C 091 26.04.2007, p. 0001</a>	27/10/2006	EDPS	Summary
Court of Auditors: opinion, report		<a href="#">N6-0011/2007</a> <a href="#">OJ C 008 12.01.2007, p. 0001</a>	06/12/2006	CofA	Summary
Committee draft report		<a href="#">PE409.747</a>	22/08/2008	EP	
Committee opinion	JURI	<a href="#">PE407.836</a>	10/09/2008	EP	
Amendments tabled in committee		<a href="#">PE412.174</a>	19/09/2008	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0394/2008</a>	27/10/2008	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0553/2008</a>	20/11/2008	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2008)7295</a>	12/12/2008	EC	
Document attached to the procedure		<a href="#">SEC(2011)0343</a>	17/03/2011	EC	
Modified legislative proposal		<a href="#">COM(2011)0135</a>	17/03/2011	EC	Summary
Document attached to the procedure		<a href="#">N7-0089/2011</a> <a href="#">OJ C 279 23.09.2011, p. 0011</a>	01/06/2011	EDPS	Summary
Court of Auditors: opinion, report		<a href="#">N7-0072/2011</a> <a href="#">OJ C 254 30.08.2011, p. 0001</a>	12/07/2011	CofA	Summary
Council statement on its position		<a href="#">06387/2013</a>	18/02/2013	CSL	
Council position		<a href="#">17427/1/2012</a>	27/02/2013	CSL	Summary
Commission communication on Council's position		<a href="#">COM(2013)0140</a>	08/03/2013	EC	Summary
Committee draft report		<a href="#">PE508.011</a>	30/04/2013	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A7-0225/2013</a>	19/06/2013	EP	Summary
Text adopted by Parliament, 2nd reading		<a href="#">T7-0308/2013</a>	03/07/2013	EP	Summary
Draft final act		<a href="#">00079/2013/LEX</a>	11/09/2013	CSL	
Follow-up document		<a href="#">COM(2017)0589</a>	02/10/2017	EC	Summary
Follow-up document		<a href="#">SWD(2017)0332</a>	02/10/2017	EC	
For information		<a href="#">N8-0018/2019</a> <a href="#">OJ C 404 09.11.2018, p. 0001</a>	02/10/2018	EC	

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

#### Final act

[Regulation 2013/883](#)  
[OJ L 248 18.09.2013, p. 0001](#) Summary

# Investigations by the European Anti-Fraud Office (OLAF)

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**PURPOSE :** to improve the operation of the European Anti-fraud Office (OLAF) with regard to its governance and the conduct of investigations.

**PROPOSED ACT :** Regulation of the European Parliament and of the Council.

**CONTENT :** this proposal replaces the proposal presented by the Commission on 10 February 2004, which is withdrawn. It takes into account the evaluation of the Office's activities in 2003, the special report by the Court of Auditors on the management of OLAF, and the public hearing on the reinforcement of OLAF organised at the European Parliament by the Committee on Budgetary Control in July 2005.

The proposal leaves the Office's institutional structure unchanged and aims solely to improve its operation in the existing framework. Its main points are as follows:

- Governance, cooperation between the institutions and the Supervisory Committee. There is a need for political governance regarding priorities related to investigative activities. Relations between the Supervisory Committee, the Office and the institutions and other bodies, offices and agencies should be reviewed and closer cooperation should be established. For this the Commission proposes that the Supervisory Committee meet, periodically or upon request, with representatives of the European Parliament, the Council and the Commission as part of a structured dialogue, without interfering in the course of investigations. This dialogue could also be the opportunity to discuss the definition of the Office's strategic priorities and programme of activities and the annual activity reports of the Committee and the Director-General of the Office. The aim of this structured dialogue is to exercise a political control function on the investigative activities and efficiency of the Office and the Committee, and to ensure that sound relations are maintained between the Office and the EC institutions and other bodies, offices and agencies, in particular as regards information flows.

- Guarantee of the rights of persons implicated. The proposals presented in February 2004 provide for procedural guarantees that are preserved in this proposal. Wherever possible, the proposal seeks to harmonise the procedures for internal and external investigations so as to simplify processing and boost certainty in the law. The Commission proposes including in the Regulation a detailed provision on the procedural guarantees to be respected in the conduct of internal and external investigations. The following additional guarantees were proposed in February 2004: provisions on information to be given by OLAF prior to an interview and on the establishment of minutes of the interview; right to be assisted by a person of one's choice at an interview; right not to incriminate oneself. These guarantees must be respected not only before the final report is drawn up but also before information is transmitted to the national authorities.

- Strengthening the review of investigations. Not only are the detailed provisions inserted concerning the procedural guarantees applicable to internal and external investigations, it is also necessary to have them enforced by enhanced review and to provide for the possibility of requests for opinions. This review would be undertaken by a Review Adviser exercising his function in the Office on an exclusive basis and in full independence. The enhanced review is applicable at all stages of an internal or external investigation, thereby guaranteeing a single set of review arrangements for all of the Office's investigation work. The provisions also establish a new arrangement for long-term investigations.

- Improving the information flow. The European institutions concerned by an OLAF investigation must be informed by OLAF in cases involving suspected wrongdoing of their officials and/or necessitating administrative action on their part so as to protect the interests of the Union. In addition, the institution or body concerned must also be informed when OLAF transmits information to the judicial authorities. In addition, the proposal aims at further strengthening cooperation between OLAF and the Member States, and provides that for the purposes of all its investigations the Office should be informed of action taken by national judicial authorities in response to information transmitted during an OLAF investigation or after its closure. With regard to flows of information between OLAF and informers, anybody in an institution who transmits information relating to fraud or irregularity cases to the Office will be informed whether an investigation has been opened on the basis of the information. Moreover, any person who has provided information to the Office relating to a suspected fraud or irregularity may, upon request, be informed by the Office that an investigation has been closed and, where appropriate, that a final report on the investigation has been sent to the competent authorities, provided that such information does not prejudice the rights of the person concerned, the effectiveness of the investigation and its follow-up or any confidentiality requirements.

- Strengthening OLAF's operational efficiency. Provisions are proposed that will allow OLAF to concentrate on its priority actions. It should be made clear that OLAF has discretion over whether or not to open investigations. More generally, the procedures for opening and closing investigations and the relationship between internal action by the European institutions and bodies, on the one hand, and OLAF investigations, on the other, are clarified. As long as an OLAF internal investigation is in progress, institutions, bodies, offices and agencies must not initiate parallel investigations.

- Improving the effectiveness of OLAF's investigations. It is proposed to clarify OLAF's powers of investigation in the context of external investigations into economic operators receiving Community funds on the basis of contracts, or grant agreements or decisions (direct expenditure). These clarifications will also help to enhance the efficacy of OLAF's investigations regarding indirect expenditure. Access to information held by economic operators in the context of internal investigations will also be facilitated.

- Term of office of the Director-General. To reinforce his independence, it has been found appropriate to provide that the Director-General of the Office will hold office for a non-renewable term.

Provision is made for the Director-General to refrain from transmitting information concerning criminal proceedings to national authorities regarding facts that may be liable to give rise to criminal proceedings if transmission is unwarranted on grounds of proportionality and the effectiveness of the prosecution.

# Investigations by the European Anti-Fraud Office (OLAF)

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**OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR** on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

This Proposal contains revisions to most of the articles of Regulation (EC) No 1073/1999, which sets forth the operational rules to be followed by those involved in OLAF investigations and, as such, constitutes the legal basis for OLAF's operational activities.

The EDPS welcomes this Proposal insofar as it makes more explicit the procedural guarantees of individuals concerned by OLAF

investigations, including the protection of personal data of such individuals. From the perspective of the protection of individuals' rights to the protection of their personal data and privacy, the EDPS considers that, for the most part, the Proposal contains improvements vis-à-vis the current legal framework. In addition, the EDPS welcomes the Proposal's recognition that [Regulation \(EC\) No 45/2001](#) applies to all data processing activities carried out in the context of OLAF investigations.

However, the EDPS is concerned by the fact that most of the proposed amendments do not reach the minimum data protection standards contained in Regulation (EC) No 45/2001. He is concerned that if the Proposal could be deemed to take precedent over the application of the general data protection framework contained in the Regulation, this would entail an unacceptable watering down of the data protection standards in the context of OLAF investigations. This is particularly worrisome in the light of the sensitive nature of the type of data that may be collected. In order to avoid this outcome, the EDPS requests the Community legislator to take into account the following issues and make the related amendments in the Proposal in order to address them:

1) Shortcomings regarding the right of information: providing information to individuals to ensure fair processing constitutes an indispensable safeguard which should not be unduly compromised. To avoid it, the Proposal should be amended as follows:

- Articles 7a2 first paragraph and 8a should include an explicit reference to Articles 11 and 12 of Regulation (EC) No 45/2001 in order to ensure fair processing;
- the limitation to the right of information of Articles 7a2 first paragraph and 8a second paragraph should be linked to the safeguards of Article 20 of Regulation (EC) No 45/2001.

2) Shortcomings regarding the right of access: a new provision should be added recognising as a general principle the right of access to personal information gathered in the context of OLAF investigations which could be inserted between the first and second paragraph of Article 7a.2. Such a provision could read as follows:

- Any person implicated in an investigation has the right to access personal data related to him/her which are gathered in the course of the investigation. Such right(s) may be subject to the limitations foreseen in Article 20 of Regulation (EC) No 45/2001.

3) Shortcomings regarding the right of rectification: restrictions to the right of rectification should only be provided to the extent that they are permitted under Regulation (EC) No 45/2001. The Proposal contains additional restrictions that should be avoided as follows:

- a provision should be added stating that suspected individuals have a general right to have their views known regarding any piece of information that referred to them, except if an exception under Regulation (EC) No 45/2001 applies. In particular, after having stated that any person implicated in an investigation has at any time the right to access personal data related to him/her gathered in the course of the investigation, it should be added that an individual has the subsequent right to make his views known on whether the personal data is inaccurate or incomplete;
- the EDPS suggests that the limitation to the right of access and rectification foreseen in Article 7a2, 3rd paragraph be linked to the guarantees of Article 20 Regulation (EC) No 45/2001.

Lastly, the EDPS is also of the view that it would be appropriate for this Proposal to include a new paragraph guaranteeing the confidentiality of whistleblowers.

## Investigations by the European Anti-Fraud Office (OLAF)

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The Court of Auditors has delivered its opinion on the proposed modifications concerning investigations conducted by the European Anti-Fraud Office (amending Regulation (EC) No 1073/1999).

To recall, the present proposal replaces an earlier proposal made by the Commission in 2004. The reason, in part, for replacing the 2004 proposal was to take account of recommendations made by OLAF as well as the conclusions of a public hearing on the reinforcement of OLAF organised by the European Parliament.

Requiring notification of an investigation: The Court notes that the new proposal has largely taken account of most of its observations in a previous opinion in June 2005 with the exception of one point. This concerns the non-notification of investigations on the pretext that secrecy is necessary to guarantee the efficiency of the investigation.

Review Advisor to monitor compliance with procedures: The Court welcomes this new requirement. At the same time the Court suggests that the role and responsibilities of the Review Advisor should be explicitly set out in the Regulation, as should the legality of investigative measures envisaged for this function. The Court reiterates the importance of the Review Advisor's strict independence and therefore expresses some concern that this independence may be compromised by the Director General's authority to instigate disciplinary measures. Further, the Review Advisor should no longer intervene once the results of an investigation have been transmitted to the authorities concerned.

The discretionary powers of the Director-General: The Court considers that the circumstances under which the proposed new discretionary powers of the Director-General can be exerted (with regard to deciding on whether or not to submit a final report to the judicial authorities of the Member States) needs to be more clearly established.

## Investigations by the European Anti-Fraud Office (OLAF)

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The Committee on Budgetary Control adopted a report drafted by Ingeborg GRÄSSLE (EPP-ED, DE), and amended the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

The main amendments adopted in the 1st reading of codecision procedure are as follows:

- as the methods of investigation provided for by the Regulation coincide with those previously provided for by Regulation (EC) No 2185/96, the committee wanted to define the same scope for Regulation (EC) No 1073/99 as for Regulation (EC) No 2185/96 as regards economic

operators, in order to improve the effectiveness of OLAF's investigations;

- Members recall the obligations incumbent on the competent authorities of the Member States to cooperate with OLAF during the stage preliminary to the opening of an investigation;

- Members provide for the systematic exchange of information between OLAF and Eurojust whenever a competent national authority receives from OLAF information on suspicions of fraud, corruption any other illegal activity, in the form of serious crime involving two or more Member States;

- the Office may conclude cooperation agreements with Eurojust and Europol. The aim of these agreements shall be to clarify the respective powers and responsibilities of these bodies and to define the cooperation between them within the framework of the area of freedom, of security and of justice. The Office may also conclude cooperation agreements with other international organisations;

- people who are under investigation by OLAF should be treated equally as regards procedural guarantees and legitimate rights, irrespective of whether the investigation is internal or external;

- anonymous information may also be taken into account if it constitutes sufficiently strong grounds for suspicion in order to open an investigation;

- the institutions should also be given the power to ask the Director General of OLAF to open an investigation. Prior to the opening and throughout the duration of an investigation, the institutions, bodies, offices and agencies shall provide the Office with immediate and automatic access to databases concerned with the management of Community funds and to any other base containing relevant data and information which will enable the Office to check that the information forwarded is accurate;

- the Office's employees shall be equipped for each intervention with a written authority issued by the Director General indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases;

- in view of certain difficulties encountered by OLAF in carrying out on-the-spot checks or inspections on the premises of economic operators, it is desirable to permit OLAF to request the necessary assistance from the Member State in accordance with the procedures laid down by Regulation 2185/96/EC;

- employees of the Office must ensure that the investigation is conducted in accordance with procedures which will enable items of evidence to be safeguarded and preserved. If necessary (where there is a risk that items of evidence will disappear) they may asked the competent authority of the Member State concerned to take any necessary precautionary or implementing measures;

- information concerning the involvement of officials must be communicated to the institution concerned as soon as possible. OLAF must be able to provide indications concerning the time limits within which precautionary or administrative measures must be taken;

- the committee felt that there was a need to tighten up the rules on the flow of information between the institutions and OLAF. If the institution finds that the information forwarded by OLAF should be the subject of an additional disciplinary procedure under the institution's exclusive competence, OLAF must be duly informed. If OLAF considers that this does not interfere with the conduct of its investigation the disciplinary inquiry is initiated to speed up the application of disciplinary measures;

- if an investigation is not completed within 18 months after it has been opened, the

Supervisory Committee shall be informed by the Director General of the reasons

which have prevented him from closing the investigation and shall issue an opinion on the extension (and where appropriate the subsequent conduct) of the investigation;

- illegal activities which may be the subject of a communication to OLAF should be confined to those which are detrimental to the financial interests of the Community. This clarifies the field of responsibility of OLAF;

- Community institutions, bodies, offices and agencies, as well as Member States, in accordance with their national law, are to forward to OLAF any document or information concerning current investigations, without any distinction between internal and external investigations;

- OLAF investigations must be conducted in accordance with certain procedural principles and individual rights. Members introduce new provisions stating that persons subject to investigation have the right to submit comments on the conclusions of the investigation's final report before it is adopted. It also lays down the exceptions in accordance with the national law applicable to investigations;

- following an investigation which has not produced results, the people concerned and, in the case of an official, the institution to which he belongs, should be informed of the conclusion of the investigation as soon as possible;

- to make it possible to provide objective information to European taxpayers and in order to guarantee freedom of the press, all EU bodies involved in the investigation must respect the principle of protecting journalists' sources in accordance with national legislation;

- in view of the lack of regular information forwarded to OLAF as part of the follow-up to its investigations, it is desirable to stipulate that the authorities are, twice a year, to forward a report on the progress made in acting on the reports forwarded by OLAF;

- in view of the growing importance of OLAF's external investigations, the committee wants to enable OLAF to forward final investigation reports to the competent authorities of third countries and to international organisations and to receive information on the action taken on them. The Commission should take all the necessary measures to enable such an exchange to take place;

- the forwarding of information to the competent authorities of the Member States must be subject to a review of legality. The Director General must consult the executive board of OLAF before taking his decision;

- the Director General of OLAF must inform the institutions concerned regularly about the results of investigations in order to comply with recent case law of the Court in this field;

- the institutions concerned by an investigation must maintain the confidentiality of investigations by OLAF and the competent authorities and safeguard the legitimate rights of the persons concerned;

- the Director General of the Office shall ensure that public information is given neutrally and impartially;

- Members' term of office should equal that of the Office's Director General, 5 years;
- a concertation procedure between the European Parliament, the Council and the Commission shall be established. This procedure enables the Community legislature, the budgetary authority and the Commission to discuss various aspects relating to fighting fraud. It makes it possible to identify the appropriate solutions (operational, legislative, institutional) to the difficulties encountered by OLAF in carrying out its remit;
- the European Parliament and the Council shall designate the Director General by common agreement on the basis of a list of 6 candidates put forward by the Commission. A call for applications shall be published in the Official Journal of the European Union;
- lastly, the Office shall adopt a 'procedural code for OLAF investigations' incorporating the judicial and procedural principles adopted under the regulation. It shall take account of the Office's operational practices.

## Investigations by the European Anti-Fraud Office (OLAF)

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The European Parliament adopted, by 450 votes to 8 with 11 abstentions, a legislative resolution, amending the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

The report had been tabled for consideration in plenary by Ingeborg GRÄSSLE (EPP-ED, DE) on behalf of the Committee on Budgetary Control.

Parliament wanted to improve the protection of fundamental rights of the persons concerned by investigations and strengthen cooperation with Member States. The main amendments ? adopted in the 1st reading of codecision procedure ? are as follows:

- a new recital states that it is necessary to provide a legal basis for adoption of a procedural code for OLAF investigations. The code should be published in the Official Journal of the European Union. ;
- Members provide for the systematic exchange of information between OLAF and Eurojust whenever a competent national authority receives from OLAF information on suspicions of fraud, corruption any other illegal activity, in the form of serious crime involving two or more Member States;
- the Office may conclude cooperation agreements with Eurojust and Europol. The aim of these agreements shall be to clarify the respective powers and responsibilities of these bodies and to define the cooperation between them within the framework of the area of freedom, of security and of justice. The Office may also conclude cooperation agreements with other international organisations;
- people who are under investigation by OLAF should be treated equally as regards procedural guarantees and legitimate rights, irrespective of whether the investigation is internal or external;
- checks on legality must be carried out by the Office, in particular prior to the opening and the closing of an investigation and prior to any forwarding of information to the Member States' competent authorities. Such checks will be carried out by legal experts who may play a judicial role within a Member State and who will work within the Office;
- in order to strengthen respect for procedural guarantees, any person who is under investigation by the Office should be able to lodge a complaint with the Supervisory Committee. Complaints will be dealt with by a Review Adviser acting in complete independence, appointed by the Director General, on a proposal of the Supervisory Committee. The Review Adviser will deliver his opinion within 30 working days and will forward it to the plaintiff, to the Director General of the Office and to the Supervisory Committee;
- anonymous information may also be taken into account if it constitutes sufficiently strong grounds for suspicion in order to open an investigation;
- the institutions should also be given the power to ask the Director General of OLAF to open an investigation. Prior to the opening and throughout the duration of an investigation, the institutions, bodies, offices and agencies shall provide the Office with immediate and automatic access to databases concerned with the management of Community funds and to any other base containing relevant data and information which will enable the Office to check that the information forwarded is accurate;
- the Office's employees shall be equipped for each intervention with a written authority issued by the Director General indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases;
- where Office employees nominated to carry out an on-the-spot check or inspection in accordance with the rules laid down in Regulation (Euratom, EC) No 2185/96 encounter resistance from an economic operator, the competent authority of the Member State concerned (previously identified by the Office as a contact point) shall be informed immediately. At the Office's request the competent authority of the Member State concerned shall provide them with the assistance which they require in order to carry out their task. Member State must ensure that the Office's employees are allowed access (under the same terms and conditions as its competent authorities and in compliance with national law) to information and documents relating to the facts which prove necessary for the on-the-spot checks and inspections to be carried out satisfactorily;
- where it is found that an investigation cannot be closed within 12 months after it has been opened, the Director-General of the Office may decide to extend the period by up to 6 months. The Director General of the Office shall ascertain the need for the investigation to be extended. Before taking this decision, the Director General shall inform the Supervisory Committee of the reasons preventing the investigation from being concluded and of the likely period of time needed for it to be completed;.
- if an investigation is not completed within 18 months after it has been opened, the Supervisory Committee shall be informed by the Director General of the reasons which have prevented him from closing the investigation and shall issue an opinion on the extension and, where appropriate, the subsequent running of the investigation. The Director General of the Office shall submit to the budgetary authority an annual report on the reasons which have prevented him from closing investigations within 30 months after they have been opened. The Supervisory Committee shall submit an opinion on those reasons to the budgetary authority;

- investigations shall be conducted objectively and impartially and in accordance with the principle of the presumption of innocence and the procedural guarantees set out in the procedural code for OLAF investigations;
- Parliament inserted a clause on the protection of journalistic sources: in order to make it possible to provide objective information to European taxpayers and to guarantee freedom of the press, all EU bodies involved in the investigation must respect the principle of protecting journalists' sources in accordance with national legislation;
- OLAF investigations must be conducted in accordance with certain procedural principles and individual rights. Members introduce new provisions stating that persons subject to investigation have the right to submit comments on the conclusions of the investigation's final report before it is adopted;
- following an investigation which has not produced results, the people concerned and, in the case of an official, the institution to which he belongs, should be informed of the conclusion of the investigation as soon as possible;
- employees of the Office must ensure that the investigation is conducted in accordance with procedures which will enable items of evidence to be safeguarded and preserved. If necessary (where there is a risk that items of evidence will disappear) they may ask the competent authority of the Member State concerned to take any necessary precautionary or implementing measures; employees of the Office may ask the competent authorities of third countries for assistance in the performance of their duties, pursuant to the provisions of the cooperation agreements concluded with those countries. They may also request assistance from international organisations in the performance of their duties, pursuant to the provisions of the agreements concluded with those organisations;
- reports drawn up following an internal investigation and any useful related documents shall be sent to the institution, body, office or agency concerned. The institution, body, office or agency shall take such action, in particular disciplinary or legal, on the internal investigations, as the results of those investigations warrant, and shall report thereon to the Director General of the Office. To that end they shall send the Director General of the Office, every 6 months or, where appropriate, within the time-limits that the Director General has set, a report on the progress made;
- the Director General of the Office shall report regularly, at least once a year to the European Parliament, the Council, the Commission and the Court of Auditors on the results of the investigations carried out by the Office, with due respect for the confidentiality of those investigations, the legitimate rights of the people involved and, where applicable, the national provisions applicable to judicial procedures.
- the European Parliament, the Council, the Commission and the Court of Auditors shall ensure that the confidentiality of the investigations carried out by the Office, the legitimate rights of the people concerned and, where there are judicial procedures, all national provisions applicable to those procedures, is preserved;
- a concertation procedure between the European Parliament, the Council and the Commission shall be established. This procedure enables the Community legislature, the budgetary authority and the Commission to discuss various aspects relating to fighting fraud. It makes it possible to identify the appropriate solutions (operational, legislative, institutional) to the difficulties encountered by OLAF in carrying out its remit;
- the Office shall adopt a "procedural code for OLAF investigations" incorporating the judicial and procedural principles adopted under the present regulation. It shall take account of the Office's operational practices.

## Investigations by the European Anti-Fraud Office (OLAF)

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**PURPOSE:** proposal to reform the European Anti-Fraud Office (OLAF).

**BACKGROUND:** the European Anti-Fraud Office (OLAF) was established in 1999. In 2006, the Commission put forward a proposal for amending Regulation 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) with a view to achieving better operational efficiency and improved governance for the Office. The proposal of the Commission was discussed both in the Council and the European Parliament. The latter adopted a resolution on 20 November 2008 in first reading under the co-decision procedure. It put forward approximately one hundred amendments to the Commission's proposal. Many amendments have been welcomed by the Commission.

At the request of the Czech Presidency of the Council (January-June 2009) the Commission presented in July 2010 a Reflection paper on the reform of the Office. This document outlines possible solutions to take forward the current legislative process. The European Parliament welcomed in October 2010 the Reflection paper and asked the Commission to take up the legislative procedure again. On 6 December 2010, the Council adopted conclusions on the Reflection paper put forward by the Commission.

The Commission has now prepared an amended proposal that takes into account the positions expressed so far and looks forward to achieving the current legislative reform as soon as possible.

**IMPACT ASSESSMENT:** no impact assessment was carried out.

**LEGAL BASIS:** Article 325 of the Treaty on the Functioning of the European Union, in conjunction with Article 106a of the Treaty establishing the European Atomic Energy Community.

**CONTENT:** the aim of the amended proposal is to improve the efficiency, effectiveness and accountability of OLAF, while safeguarding its investigative independence. The proposal also aims to ensure that the fundamental rights of the persons under investigation are fully respected and even strengthened. The Commission focuses on certain key areas.

Establishing better procedures for cooperation and information exchange between OLAF, the EU institutions and other relevant bodies, such as Europol and Eurojust. Instead of a formal structured dialogue between the Supervisory Committee and the institutions on the investigative function of the Office, a periodical exchange of views is now proposed to increase the Office's governance while respecting its operational independence. The exchange of views will be established between the European Parliament, the Council, the European Commission, with the participation of the Office and the Supervisory Committee. This exchange of views should contribute to the exchange of information and opinion between the stakeholders for an improved efficiency of the Office's activity. The exchange of views should not interfere with the conduct of investigations and it should relate to the strategic priorities for the Office's investigative policies, the reports on the activities of the Supervisory Committee and that of the Director-General of the Office, the relations between the Office and the EU institutions, bodies, offices and agencies; the relations between the Office and the competent authorities of the Member States and the effectiveness of the work of the



Office with regard to investigations and that of the Supervisory Committee. In line with the opinions expressed by the institutions, the exchange of views will be flexible: it will take place periodically or upon request of one of the above-mentioned institutions, the Office or the Supervisory Committee.

OLAF already has a cooperation arrangement with Eurojust, and the amended proposal gives OLAF the option of concluding administrative arrangements with Europol, as well as with third countries' competent authorities and with international organisations.

Facilitating improved relations between OLAF and Member State authorities in order to allow better on-the-ground investigations and greater follow-up on OLAF cases. The Commission proposes the following:

- an authority (anti-fraud coordination service) should be designated by each Member State to assist the Office in its collaboration with the national competent authorities. This does not mean that a new authority would be established. Experience shows that due to the different structures in each Member State, it is often very difficult for the Office to address the competent authority in a given Member State ;
- regular monitoring is especially important for internal investigations, to ensure that disciplinary action or other measures can be taken by IDOC or equivalent entities in other institutions, bodies, offices or agencies. It is therefore proposed that Member States report upon OLAF's request on the follow-up given to the information transmitted to them by OLAF. In order to avoid unnecessary administrative burden for Member States, the amended proposal provides that they will report to OLAF upon its request on the actions taken and progress made following transmission of information by OLAF. .

Clarifying OLAF's objectives and the role of the Director General, and looking at how OLAF's work can be carried out in a more efficient manner. Clear recommendations are set out on the duration of investigations and on the targeted use of OLAF resources. OLAF's Director General will continue to be ultimately responsible for deciding which investigations OLAF carries out. However, the Commission proposes that an internal body should be established within OLAF, to help with these decisions. The Director-General will consult the internal body when opening an investigation, before closing an investigation and whenever he deems necessary. To clarify the internal decision-making procedures with respect to the role of the Director-General of the Office, the Director-General may also delegate in writing the direct execution of investigations to individual members of the staff of the Office. The term of the Director-General should be non-renewable in order to reinforce his independence. To ensure continuity, and in light of recent experience, deputising rules are provided in the amended proposal. The Commission also proposes that:

- the Supervisory Committee should examine the length of investigations based on information supplied by the Office. In cases where investigations cannot be closed after 12 months, the Office should inform the Supervisory Committee of the reasons preventing the finalisation of the investigation at intervals of 6 months. This way, a continuous monitoring of the duration of investigations will be ensured until their closure;
- the institutions, bodies, offices and agencies whose member/staff member or budget is concerned by an investigation should be informed by the Office without undue delay. In that way, the institutions, bodies, offices and agencies may take precautionary administrative measures. It is their responsibility to ensure the best protection of the EU's financial interests and to avoid any continuation of an irregularity or potential increase of financial loss. Their information is therefore absolutely necessary. For exceptional cases, in which the confidentiality of the investigation cannot be ensured (for instance if the highest management or political level of an institution, office, body or agency is concerned), the Office should use appropriate alternative channels of information;
- the amended proposal further develops the *de minimis* approach of the 2006 proposal: with regard to the opening of investigations, the Office should take into account the investigation policy priorities and the need for efficient utilisation of OLAF's resources. With specific reference to internal investigations, OLAF should consider whether such investigations are best carried out by the institution, body, office or agency concerned, or by OLAF itself. Furthermore, in cases where OLAF, having carried out an internal investigation, considers that, in the light of the nature of the facts and the scale of the financial damage, internal measures allow for more appropriate follow-up, it should forward the case to the Investigation and Disciplinary Office of the Commission (IDOC) or to the institutions, bodies, office or agency concerned, instead of sending it to the competent national judicial authorities. Thus, the *de minimis* policy (cases where the Office decides not to open an investigation or not to forward its findings to the competent national judicial authorities) has been clarified in the amended proposal. When implementing the *de minimis* policy, the Office should apply precise guidelines, as proposed by the Council in its Conclusions of 6 December 2010;
- the distinction between internal and external investigations should be limited to the extent strictly necessary. This would facilitate the conduct of investigations. As experience has shown, investigations can start as external ones and later lead to internal investigations or vice versa. Under the current legal framework, persons concerned in internal investigations have a duty to cooperate with the Office according to the Staff Regulations or the Protocol on the Privileges and Immunities of the European Union. The Office's investigative powers are also more detailed in internal investigations. The procedural and fundamental rights of the persons concerned have to be fully respected, be it in an internal or an external investigation;
- the role of the Supervisory Committee is further clarified. It should expressly be mandated to monitor information exchanges between the Office and the institutions, bodies, offices and agencies and the developments regarding the application of procedural guarantees. It should also monitor in a general and systemic way the developments regarding the duration of investigations, without interfering with the conduct of investigations. Regarding the appointment of the members of the Supervisory Committee, a staggered renewal is envisaged to preserve its expertise. The Supervisory Committee should be consulted for the appointment of the Director-General and the designation of the deputising Director(s) and should be informed about transmissions to judicial authorities.

Strengthen the procedural rights of persons concerned by the Office's investigations: the amended proposal makes the procedural guarantees clearer and more transparent and to have them apply to all investigations conducted by the Office, both internal and external. These guarantees respect the fundamental rights recognised in particular by the Charter of Fundamental Rights of the Union. Common procedural rights for both internal and external investigations are provided by this proposal. These include the right for the person concerned by an investigation to make his/her views known before conclusions referring by name to him or her have been drawn; the right to be given a summary of the matters under investigations and to be invited to comment on these matters; the right to be assisted by a person of his/her choice during an interview; the right to use the EU language of his or her choice; the principle that any person concerned by an investigation shall be entitled to avoid self-incrimination. The practical application of these rights should be reflected in the Office's manual of procedures for investigations (OLAF manual) as adopted by the Director-General. In the proposal of 2006, the Commission proposed a Review Adviser to whom cases may be referred for his or her independent opinion regarding the procedural guarantees. In order to avoid overlapping with the tasks of the Supervisory Committee and to avoid additional formal structures while guaranteeing an effective, efficient, and independent handling of individual complaints, the Commission now proposes that a review procedure be set up, by the Director-General within the Office.

The person or persons entrusted with the review procedure should act in full independence. The Director-General of the Office will report to the institutions about the measures taken for the setting up of the review procedure.

As to the fundamental right to the protection of personal data, the amended proposal provides for clarification and more detailed provisions implementing the principles of Regulation (EC) No 45/2001, in particular the requirement that OLAF appoint a Data Protection Officer.

The Director-General should adopt, after consultation of the Supervisory Committee, the person or persons entrusted with the review procedure, and the Office's Data Protection Officer, and the OLAF manual of procedures. This manual shall provide guidelines on the practical application of the administrative investigations by the Office.

BUDGETARY IMPLICATIONS: the proposal has no impact on the EU budget.

## Investigations by the European Anti-Fraud Office (OLAF)

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OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (Euratom) No 1074/1999

The proposal was sent by the Council to the EDPS on 8 April 2011.

The importance of the Proposal and the EDPS advice: the Proposal includes provisions which have a strong impact on individuals' rights. OLAF will continue to collect and further process sensitive data relating to suspected offences, offences, criminal convictions as well as information that would serve to exclude individuals from a right, benefit or contract insofar as such information represents a particular risk to the rights and freedoms of the data subjects

The fundamental right to the protection of personal data is relevant not only for its own sake, but also has strong connections with other fundamental rights, such as non-discrimination and due process of law, including the right of defence in OLAF investigations.

The respect of due process has an impact on the validity of evidence and should be considered a priority by OLAF to reinforce its accountability.

It is therefore essential to ensure that, in carrying out its investigations, fundamental rights including the rights to data protection and privacy of the persons implicated therein are properly guaranteed.

The EDPS supports the objectives of the proposed amendments and, in this respect, welcomes the proposal. The EDPS particularly appreciates the introduction of the new Article 7(a) which is dedicated to the procedural guarantees afforded to individuals. In relation to individuals' rights to the protection of their personal data and privacy, the EDPS considers that on the whole the proposal contains improvements vis-à-vis the current situation.

Improving the proposal: despite the overall positive impression, the EDPS considers that from the point of view of the protection of personal data, the proposal could be further improved without jeopardising the objectives that it pursues. In particular, the EDPS is concerned that, because of the lack of coherence on certain aspects, the proposal may be interpreted as a *lex specialis* regulating the processing of personal data collected in the scope of OLAF investigations, which would take precedence over the application of the general data protection framework contained in Regulation (EC) No 45/2001. Thus, there is a risk that the data protection standards contained in the proposal could be interpreted *ex contrario* as being lower than those contained in the Regulation.

In order to avoid this outcome, the EDPS provides an analysis of the proposal which, on the one hand, describes its shortcomings and, on the other hand, suggests specific ways to improve upon them. The EDPS would also like to highlight a number of shortcomings that should be addressed by the modification of the text, and most importantly, the Proposal should:

- clearly mention the right to information of the different categories of data subjects, as well as the right of access and rectification in relation to all the phases of the investigations carried out by OLAF;
- clarify the relationship between the need for confidentiality of the investigations and the data protection regime applicable during the investigations: the EDPS suggests that the rights of the data subjects should be clearly defined and separated as well as possible exceptions due to confidentiality requirements, and that the safeguards provided for by Article 20 of Regulation (EC) No 45/2001 should be explicitly introduced;
- clarify OLAF's information policy to the public in relation to data protection;
- introduce specific provisions for the confidentiality of whistleblowers and informants;
- clarify the general data protection principles on the basis of which OLAF can transmit and receive information, including personal data, with other EU bodies and agencies, third countries and international organisations;

Strategic planning: besides all the specific points mentioned above, the EDPS would like to encourage the Commission to propose a more open approach to the EU data protection regime by OLAF. It would be the right moment for OLAF to develop a strategic planning of its data protection compliance by voluntarily clarifying the practical approach to the treatment of its numerous files containing personal data.

Accordingly, the EDPA suggests that the provisions of the Proposal should give the Director-General the task of ensuring that a strategic and comprehensive overview of the different processing operations of OLAF is carried out, kept up to date and made transparent, or at least that the need for this should be explained in a recital.

## Investigations by the European Anti-Fraud Office (OLAF)

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COURT OF AUDITORS OPINION No 6/2011 (pursuant to Article 325 TFEU) on the amended proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (Euratom) No 1074/1999

The Court of Auditors notes that the political guidelines formulated by the Commission's President to the effect that OLAF should be given full

independence outside the Commission have not been addressed. On the contrary, the draft Commission decision reinforces the Commission's role in the process of selecting OLAF's Director-General and restricts the Director-General's appointing-authority powers with regard to the Office's staff. The Court's observations take into account the recommendations made in previous opinions (see summary of 6/12/2006) of the Court as well as the findings of the audit of the Office, as set out in Special Report No 2/2011.

#### General observations

**A need to simplify and consolidate anti-fraud legislation:** the Court regrets that the Commission has not followed up the Court's repeated recommendation to simplify and consolidate the anti-fraud legislation currently in force and to address weaknesses in OLAF's powers and procedures in this context. Any such recasting should include the OLAF Regulation, Council Regulation No 2988/95 on the protection of the European Communities' financial interests and Council Regulation No 2185/96 concerning the on-the-spot checks and inspections carried out by the Commission. Without such a recasting, legal certainty is undermined due to the coexistence of overlapping, incoherent or even incompatible provisions which are difficult to understand and apply.

**A need to clearly define the notion of 'financial interests of the Union':** the Court reiterates its recommendation that the notion of 'the financial interests of the Union' which is central to all anti-fraud legislation should be clearly defined, and amended in the light of recent jurisprudence. Furthermore, it draws attention to the need to amend Council Regulation No 2988/95 in connection with the fight against VAT fraud.

**A need for independent control of the legality of investigations in progress:** the Court appreciates the proposal to introduce provisions for procedural guarantees and takes note of the proposal for an internal review procedure. It regrets, however, that the objective of independent control of the legality of investigative acts in progress will not be achieved under the Commission proposal. For such a control to be effective it must be carried out by a body or a person independent of OLAF which has the power to issue binding opinions. This control of investigative acts in progress is particularly necessary for cases where the persons concerned are not informed that they are subject to an investigation in order to preserve its confidentiality.

**A need for effective and equivalent protection of financial interests:** the new Article 325(4) TFEU now explicitly requires the European Parliament and the Council to adopt the necessary measures with a view to affording effective and equivalent protection of the financial interests of the Union in all the Union's institutions, bodies, offices and agencies. Currently OLAF's investigations are subject to differing conditions laid down in individual internal decisions by the Union's institutions, bodies, offices and agencies. The Court believes that such internal decisions may not necessarily be justifiable in all cases and may result in limiting the scope of OLAF's investigative activities and so jeopardising the effective and equivalent protection of the financial interests of the Union.

**A need for clear rules to investigate serious misconduct in non-financial matters:** since it is based on Article 325 TFEU, the scope of the OLAF Regulation is limited to investigations concerned with irregularities affecting the financial interests of the Union. There is a need for clear rules to investigate internal cases of serious misconduct which do not concern the financial interests of the Union but are liable to result in disciplinary and/or criminal proceedings, or in proceedings before the European Court of Justice. Existing legislation in this respect is very succinct and applies only to staff concerned by the Staff Regulations and the Conditions of Employment of Other Servants of the EU. The Court believes that the legislator ought to consider what options are available under the Treaty in order to ensure that all cases of serious misconduct are properly investigated.

**A need to keep the text concise, clear and consistent:** the Court considers that, taken as a whole, the amendments fail to ensure that the provisions of the OLAF Regulation are as concise, clear and consistent as possible. An example in this respect is the use of the terms 'the Office' and 'the Director-General of the Office' which does not seem to follow any particular logic and is further complicated by the introduction of specific provisions for delegating the Director-General's powers to other staff of the Office. The Court gives other examples of vague wording and unclear drafting.

#### Specific observations

**Priority of the core investigative function:** the Court recommends that a new wording of the OLAF Regulation should clearly stress the priority of OLAF's core investigative function over other tasks. OLAF's effectiveness critically depends on devoting a greater share of its resources to investigative activities.

**Clarification of key notions needed:** the proposal is incomplete as it does not correctly define all the required terms and certain definitions, such as 'administrative investigation' require amendment.

**Amendments to Regulation (EC) No 2185/96 are required,** in order for it to be consistent with the proposal, which extends the use that can be made of the procedures laid down in Regulation No 2185/96 to a number of situations which are not envisaged in the Regulation.

**Clarifying the importance of the Staff Regulations for internal investigations:** the Court recommends that text on internal investigations should contain a clear reference to the Staff Regulations given their importance for OLAF's internal investigations.

**Avoiding confusion with regard to the opening of investigations:** the proposed text on the opening of investigations contains complicated provisions that are vaguely worded, and need to be clarified, with particular references to the time frames proposed.

**Reinforcing procedural guarantees:** the Court makes several recommendations particularly with regard to the rights of witnesses who are interviewed.

**Internal review procedure:** the Court considers that the required complete independence in the post is not guaranteed as those entrusted with the review procedure remain under the authority of the Director-General. Furthermore, it is not clear whether, and when, the Supervisory Committee will receive copies of the opinion which the person in charge of a review of a case has submitted to the Director-General and of the reasoned reply which has been sent to the person concerned.

The Court suggests creating the function of a review officer, who should neither be appointed by the Director-General nor be subject to his authority.

**Cooperation with Eurojust, Europol and international organisations:** the Court recommends that objective criteria should be introduced to identify appropriate cases for collaboration, similar to those contained in the 'Practical Agreement on arrangements of cooperation between Eurojust and OLAF'.

**Clarifying the role of the Supervisory Committee:** the Court recommends that the Committee's monitoring should extend to exchanges of information between the Office and the authorities of the Member States, including the exchange of information through Eurojust. It also

recommends clarification that the Committee needs access to OLAF's case files in order to be able to detect instances of interference with the Office's independence.

The 'exchange of views procedure' may undermine investigative independence: such a procedure could be perceived as undermining the independence of the Director-General in defining the investigative priorities of the Office. Furthermore, such a procedure could evolve into a kind of de facto governing board of the Office without the responsibilities of those participating in it being clearly defined and without any indication of the procedural framework for such an exercise.

Clarifying the role of the Director-General: the Court sees no valid reasons for the Commission's proposal to delete from the text the obligation to report to the Court of Auditors on the findings of investigations carried out by the Office. It also draws attention to the risk that certain provisions in the proposal might result in diluting key responsibilities of the Director-General.

## Investigations by the European Anti-Fraud Office (OLAF)

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Council's position at first reading reflects the compromise reached during the negotiations between the European Parliament and the Council, with the support of the Commission. This compromise was confirmed by a letter to the Chairman of the Permanent Representatives Committee in which the Chairman of the Budget Control Committee indicated that he would recommend the members of that committee, and subsequently Plenary, to accept Council's position at first reading without amendments at European Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.

The tripartite discussions focussed, in particular, on the following key issues:

Investigation procedures: more detailed provisions were defined, clarifying the tasks and duties of the various stakeholders in the opening, conduct and closing of OLAF's investigations. Furthermore, the co-legislators agreed that OLAF's Director-General shall put in place an internal advisory and control procedure, including a legality check.

Role of OLAF's Director-General: the tasks, duties and the scope of action of OLAF's Director-General were more explicitly outlined, taking stock of the current practice and aiming at streamlining procedures, making them more transparent and reducing their duration. Moreover, in order to strengthen OLAF's independence, the once renewable five-year term under the current rules was replaced by a non-renewable seven-year term.

Specific reference to the applicable procedural guarantees: in line with the charter of fundamental rights of the EU, the procedural rights of persons concerned by OLAF's investigations, witnesses and informants were set out in the Regulation and further strengthened.

Role of the Supervisory Committee (SC): the SC's fundamental task - to ensure that OLAF exercises its mission in full independence - was reaffirmed. In addition to its current duties, the SC was also mandated to monitor the application of the procedural guarantees. With respect to its appointment, in order to preserve the continuity of the SC's action, the co-legislators agreed to introduce a five-year term and a staggered renewal of its members.

Information flows and cooperation arrangements: the compromise provides for : (i) improved rules in order to allow for a more timely and effective exchange of information during the various phases of the investigations; (ii) more clear reporting processes were set out, particularly on the follow-up given to the recommendations of OLAF's Director-General; (iii) Member States designation of a service ("the anti-fraud coordination service") to facilitate effective cooperation and exchange of information with OLAF; (iv) the possibility for OLAF to conclude administrative arrangements with Europol, Eurojust, third countries' competent authorities and international organisations.

Exchange of views: an agreement was reached on the introduction of a regular exchange of views between OLAF's Director-General, the European Parliament, the Council and the Commission.

Access to information in databases prior to the opening of an investigation: OLAF's right of immediate and unannounced access to information held by EU institutions, bodies, offices or agencies was extended to the stage prior to the opening of an investigation in order to assess the basis in fact of allegations.

## Investigations by the European Anti-Fraud Office (OLAF)

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The Commission presents its communication concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council 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 of the Council Regulation (Euratom) No 1074/1999.

The Commission can accept the amendments introduced by the Council to its proposal.

It is recalled that informal tripartite discussions took place from October 2011 to June 2012, with a view to reaching an agreement at the stage of Council's first reading.

On 4 December 2012 the Council confirmed its political agreement on the agreed text, and on 25 February 2013, the Council adopted its first reading position. All the amendments brought to the Commission amended proposal have been agreed during the informal tripartite discussions.

## Investigations by the European Anti-Fraud Office (OLAF)

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The Committee on Budgetary Control adopted the recommendation for second reading contained in the report by Ingeborg GRÄSSLE (EPP, DE) on the position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council 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.

The committee recommends that the European Parliament approves the position of the Council at first reading, as well as the joint statement by Parliament, the Council and the Commission annexed to the resolution.

The three institutions declare that each time the European Parliament, the Council and the Commission appoint new members of the new Supervisory Committee, they should also appoint those members to take office at the next partial replacement.

## Investigations by the European Anti-Fraud Office (OLAF)

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The European Parliament approved, at second reading of the ordinary legislative procedure, the position of the Council at first reading with a view to the adoption of a regulation of the European Parliament and of the Council 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.

Parliament also approved the joint statement made by the European Parliament, the Council and the Commission annexed to the legislative resolution which states that each time the European Parliament, the Council and the Commission appoint new members of the new Supervisory Committee they should also appoint those members to take office at the next partial replacement.

## Investigations by the European Anti-Fraud Office (OLAF)

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**PURPOSE:** to reform the European Anti-Fraud Office (OLAF) in order to strengthen the independence of OLAF, make the Offices investigative activities more effective, and improve cooperation and exchange of information between the different institutions and bodies that participate in its investigations.

**LEGISLATIVE ACT :** Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council 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

**CONTENT:** the Regulation aims to strengthen the procedural rights of persons concerned in OLAF investigations and to increase the efficacy of these investigations, as well as to improve cooperation with OLAFs partners (Union institutions and bodies, Member States, international organisations.) It also aims to define better the role of OLAFs Supervisory Committee and to establish an exchange of views at political level relating to the strategic priorities for the Offices investigation policies.

The main changes made in relation to the current rules are as follows:

**Investigation procedures:** the new Regulation clarifies the tasks and functions of the different actors involved in the opening, the carrying-out and the closing of OLAF investigations. The text provides that the Director-General of OLAF will put in place an internal advisory and control procedure, including a legality check.

**Role of the Director-General of OLAF:** the tasks, functions and scope of the Director-Generals work are set out in a more explicit manner. In order to strengthen OLAFs independence, its Director-General will henceforth be appointed for a non-renewable term of seven years, rather than a term of five years, which is renewable once, as in the present rules.

If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and the remedial measures envisaged with a view to speeding up the investigation.

**The application of procedural guarantees:** in accordance with the Charter of Fundamental Rights, the Regulation sets out and strengthens the procedural guarantees and rights of persons concerned or witnesses, in relation to current EU practices.

A person concerned by an investigation will have the right to make observations before conclusions referring by name to the person concerned are drawn up.

The person shall have the right to be assisted by a person of his choice during an interview, be entitled to use any of the official languages of the institutions of the Union, be given a record of the interview for approval or additional observations.

**Supervisory Committee:** the Supervisory Committees main task is to reinforce the Offices independence. In addition to its current functions, it will ensure the application of procedural guarantees.

**Strengthening cooperation:** the Regulation allows faster and more efficient exchange of information between OLAF and EU institutions and bodies, as well as with competent authorities of Member States, during the various stages of an investigation.

Member States must designate a service (the anti-fraud coordination service) to facilitate effective cooperation and exchange of information with the Office.

Furthermore, OLAF will be able to conclude administrative arrangements with Eurojust, Europol and the competent authorities in third countries and international organisations.

An exchange of views should take place once a year between the European Parliament, the Council and the Commission. Such exchange of views should cover, inter alia, the strategic priorities for investigation policies and the effectiveness of the work of the Office with regard to the performance of its mandate, without in any way interfering with the independence of the Office in the conduct of its investigations.

**ENTRY INTO FORCE:** 01/10/2013.

## Investigations by the European Anti-Fraud Office (OLAF)

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The present report presents the results of the evaluation of the application of Regulation (EU, EURATOM) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

The evaluation covers the period from 1 October 2013 (the date of entry into force of the Regulation) to December 2016.

The report sets out possible ways of adapting and strengthening, where necessary, the legal framework for OLAF investigations in the context of the recent adoption of the [Directive](#) on the fight against fraud to the Unions financial interests by means of criminal law and the forthcoming adoption, in the framework of enhanced cooperation between 20 Member States, of the [Regulation](#) on the establishment of the European Public Prosecutor's Office (EPPO).

Main conclusions of the evaluation: the evaluation has shown that the objectives pursued by Regulation 883/2013 remain relevant for the overarching objective of the protection of the Unions financial interests. To this end, OLAF performs specific tasks at EU level which could not be carried out at the national level alone.

The added value of OLAF investigations was confirmed during the consultation process of national and Union stakeholders. Evidence has shown that the efficiency of OLAFs case selection and investigations has considerably increased with the Regulation. Cooperation and information exchange between OLAF and its partners has been reinforced.

However, the assessment also unveiled several shortcomings related to the conduct of investigations that impact the effective and efficient application of the Regulation:

- OLAF exercises investigative powers stemming from various acts of Union law, including the Regulation. However, in various instances these acts make the application of these powers subject to conditions of national law, notably as regards on-the-spot checks and inspections of economic operators and digital forensic operations conducted in the territory of the Member States. Different interpretations of the relevant provisions, and differences in national law, lead to a fragmentation in the exercise of OLAF's powers in the Member States;
- the Regulation does not provide OLAF with tools to enforce its powers in the case of refusal or obstruction by persons concerned by investigations and witnesses;
- the need for and possibility of better access to bank account information under appropriate conditions, which could be central to uncovering many cases of fraud or irregularity and improve the possibility to investigate VAT. In this regard, OLAFs mandate should be clarified and strengthened;
- further clarity in the Regulation about the conditions for the conduct of internal investigations applicable in all other Union institutions, bodies, offices and agencies (IBOAs) could help better ensuring a uniform protection, and provide a framework in which to assess specific arrangements contained in the internal decisions;
- it should be possible to make further use of the possibilities for the early transmission of information by OLAF to other institutions, bodies, offices and agencies, in cases where parts of the facts of an investigation in progress might have already been established and could necessitate immediate precautionary measures without waiting for the completion of the investigation;
- there are large differences in the follow-up to OLAF recommendations across recipients, and sometimes important gaps between recommendations and follow-up. The most important shortcoming identified relate to the rules on the admissibility of OLAF-collected evidence in national judicial proceedings;
- the Regulation does not contain detailed provisions on the modalities of coordination or the procedures applicable in these so-called coordination cases. This results in a lack of legal certainty for OLAF and for the Member States that rely on OLAFs assistance;
- the Regulation applies in conjunction with other acts of EU law, on which the effective exercise of OLAFs mandate depends. Certain inconsistencies between these closely linked legal acts, which in some cases may lead to uncertainty and divergent interpretations.

Impact of the creation of the European Public Prosecutor's Office: the report noted that once the EPPO is established, OLAFs overall mandate will not change, but its operation will need to adapt in several ways.

The EPPO and OLAF will be called to cooperate closely. In this context, adaptations to the framework for OLAF investigations will have to be considered to avoid any risk of duplication of investigations into the same facts, and to provide for the necessary mechanisms for OLAF to perform its role of operational support.

This is why the Commission will carry out an evaluation in the first half of 2018 which may lead to a proposal to amend Regulation 883/2013, which should already be in force when the European Public Prosecutor's Office becomes operational.

The evaluation will focus on:

- changes in the role and operation of OLAF following the establishment of the European Public Prosecutor's Office: (i) the handling by OLAF of incoming information and the swift transmission of information to the EPPO of any criminal conduct in respect to which the latter may exercise; (ii) the handling by OLAF of cases referred to it by the EPPO for administrative follow-up.
- possible solutions to improve the effectiveness of OLAF's investigative function in order to ensure an equivalent level of protection across the Union: (i) to increase coherence in the application of investigative tools in Member States and in the institutions; (ii) changes to the rules on the admissibility of OLAF reports as evidence in the judicial proceedings of the Member States; (iii) revision of the duties to cooperate to ensure a coherent and effective framework at the various stages of the investigation; (iv) assessment of VAT investigative tools and the possibility to improve access to bank account information.

At a later stage, a proposal potentially presented in 2018 could be followed by a more far-reaching process to modernise the framework for OLAF investigations.

Larger issues relating to the overall coherence of the EU anti-fraud legal framework beyond Regulation 883/2013, as revealed by the evaluation, could also be part of this second step in the possible revision of the legal framework.