

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2014/0173(COD) Awaiting committee decision
Investigations by the European Anti-Fraud Office (OLAF): controller of procedural guarantees	
Amending Regulation (EU, Euratom) No 883/2013	<a href="#">2006/0084(COD)</a>
Subject	8.70.04 Protecting financial interests of the EU against fraud

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>CONT</b> Budgetary Control		
	Former committee responsible		
	<b>CONT</b> Budgetary Control		
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>JURI</b> Legal Affairs		
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		
	<b>BUDG</b> Budgets	The committee decided not to give an opinion.	
	Former committee for opinion		
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		
Council of the European Union	<b>JURI</b> Legal Affairs		
	<b>BUDG</b> Budgets		
	Commission DG	Commissioner	
European Commission	<a href="#">European Anti-Fraud Office (OLAF)</a>	ŠEMETA Algirdas	
European Court of Auditors			

Key events			
11/06/2014	Legislative proposal published	<a href="#">COM(2014)0340</a>	Summary
03/07/2014	Committee referral announced in Parliament, 1st reading		

Technical information	
Procedure reference	2014/0173(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation (EU, Euratom) No 883/2013 <a href="#">2006/0084(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 325-p4

Mandatory consultation of other institutions	<a href="#">European Court of Auditors</a>
Stage reached in procedure	Awaiting committee decision
Committee dossier	CONT/9/00096

### Documentation gateway

Legislative proposal	<a href="#">COM(2014)0340</a>	11/06/2014	EC	Summary
Document attached to the procedure	SWD(2014)0183	11/06/2014	EC	
Court of Auditors: opinion, report	N8-0067/2014 <a href="#">OJ C 419 21.11.2014, p. 0001</a>	23/10/2014	CofA	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
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## Investigations by the European Anti-Fraud Office (OLAF): controller of procedural guarantees

**PURPOSE:** to strengthen the procedural guarantees in place for all persons under investigation by the European Anti-Fraud Office (OLAF).

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

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** [Regulation 883/2013](#) establishing a new legal framework on OLAF investigations entered into force on 1 October 2013. The Regulation brought substantial changes to OLAF's organisation and investigative procedures, in particular as regards reinforcing OLAF's governance and strengthening the procedural guarantees of persons concerned by OLAF investigations. These changes are currently being implemented.

In July 2013, the Commission adopted its [proposal on the European Public Prosecutor's Office](#) (EPPO) which includes a series of Union-level procedural safeguards. Together with that proposal, the Commission adopted a [Communication](#) in which it called for a step-by-step approach to accompany the establishment of the EPPO and further measures to strengthen OLAF's governance and enhance procedural safeguards in its investigations, even before the establishment of the EPPO.

**IMPACT ASSESSMENT:** the analysis of impacts found that the policy objectives could be reached most effectively by appointing an external Controller of procedural guarantees who would act on complaints and authorise certain investigative measures related to members of the institutions.

**CONTENT:** the proposal seeks to amend Regulation (EU, Euratom) No 883/2013 as regards the establishment of a Controller of procedural guarantees. It provides for the establishment of a Controller of procedural guarantees, who would be tasked with reviewing complaints lodged by persons concerned in OLAF investigations about the potential non-respect of their procedural guarantees. The Controller would also be responsible for authorising certain investigative measures related to members of EU institutions.

The Controller and his substitute shall be appointed by common accord of the European Parliament, the Council and the Commission for a non-renewable term of five years.

Reviewing complaints: when examining a complaint, the Controller would:

- review whether the notice period for inviting persons concerned to an interview was respected, without, however, taking any position on whether and how to conduct this interview;
- listen to both parties involved before issuing a non-binding recommendation to the Director-General of OLAF.

If the Director-General chooses not to follow the Controller's recommendation, he should state the reasons for doing so in a note attached to the final investigation report submitted to the national authorities.

**Expertise and independence:** given the nature of the tasks the Controller will be entrusted with, the position should be held by a person with senior legal expertise in the fields of fundamental rights and criminal law, and eligible to be appointed to judicial office in at least one Member State or in an EU Court. He should be able to perform his duties in complete independence and within the time limits foreseen in this Regulation. The Controller will also be subject to the requirements of Regulation 45/2001 on data protection.

**Investigative measures towards members of EU institutions:** a new measure is proposed, whereby the Director-General of OLAF must ask for the Controller's authorisation if OLAF intends to carry out an inspection of the professional offices of these members.

**BUDGETARY IMPLICATIONS:** The budgetary implications of this proposal are mainly related to human resources and administrative expenses. They are estimated at EUR 2.733 million for the period 2015-2020.

## Investigations by the European Anti-Fraud Office (OLAF): controller of procedural guarantees

OPINION No 6/2014 concerning a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 as regards the establishment of a Controller of procedural guarantees.

The Commission proposal, which is the subject of this Opinion, seeks to establish a Controller of procedural guarantees, tasked with two functions:

(a) reviewing complaints lodged by persons concerned about alleged violations of the procedural guarantees provided by the OLAF Regulation and issuing non-binding recommendations to the Director-General of OLAF on these complaints;

(b) authorising OLAF to inspect the professional office of a member of an EU institution at the premises of an EU institution during an internal investigation or to take copies of documents or of any data support located in this office.

Under the Commission proposal, the Controller and his substitute would be appointed by common accord of the European Parliament, the Council and the Commission and would exercise their functions in complete independence.

Overall, the Court of Auditors considers that the protection of individual rights, and therefore strong procedural guarantees for persons under investigation by OLAF, is of fundamental importance.

Ensuring full respect for individual rights not only enhances OLAF's credentials as an EU body in full consonance with the observance of the rule of law, but is also crucial for the ultimate effectiveness of OLAF investigations.

The amendments proposed by the Court in this Opinion seek to enhance such effectiveness:

Independent control of the legality of OLAF investigations in progress: the Court welcomes the fact that, under the current Commission proposal, the Controller's independence from OLAF would be guaranteed by an interinstitutional process for appointing him and, if necessary, relieving him of his duties.

The Court recommends to further enhance the independence of the Controller. Contrary to what is proposed in the draft regulation, neither the Controller nor his secretariat should be administratively attached to the Commission, nor to any of the other institutions involved in his appointment. Sufficient staff should be assigned to the Controller to carry out his tasks in an effective manner. The appropriations for the Controller and his secretariat should be entered under a specific budget line.

The Controller's scope of intervention in his advisory capacity: the Court recommends that the Controller should be empowered to deal with any alleged violation of the fundamental rights and procedural guarantees provided for under EU law in connection with ongoing OLAF investigations.

In cases where the Office derogates from its obligation to inform a person concerned that an investigation is ongoing, the Director-General should be required to seek the Controller's advice.

Prior authorisation for certain investigative measures by the Controller: the Court recommends that prior written authorisation should always be obtained from the Controller when the Office intends to carry out on-the-spot checks and inspections. It recommends that such prior authorisation should also be required in all cases which can seriously affect the rights of persons concerned and in particular where:

- the Director-General of OLAF intends to defer the provision of information to the institution to which the person concerned belongs;
- OLAF intends to draw up conclusions referring by name to a person concerned before giving that person the opportunity to comment on facts concerning him;
- the transmission of information about a person concerned to the national judicial authorities is envisaged by OLAF;
- OLAF intends to prolong an investigation beyond two years.