







Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Awaiting Council 1st reading position / budgetary conciliation convocation
Investigations by the European Anti-Fraud Office (OLAF): cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations Amending Regulation (EU, Euratom) No 883/2013 2006/0084(COD) Subject 7.40.04 Judicial cooperation in criminal matters 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
	CONT Budgetary Control	 MARINESCU Marian-Jean	26/09/2019
		Shadow rapporteur	
		 CHINNICI Caterina	
		 DLABAJOVÁ Martina	
		 RIVASI Michèle	
		 FLANAGAN Luke Ming	
		ECR CZARNECKI Ryszard	
		GUE/NGL FLANAGAN Luke Ming	
	Former committee responsible		
	CONT Budgetary Control		08/06/2018
		PPE GRÄSSLE Ingeborg	
	Former committee for opinion		
	JURI Legal Affairs		09/07/2018
		ALDE CAVADA Jean-Marie	
	LIBE Civil Liberties, Justice and Home Affairs		03/09/2018
		ECR MACOVEI Monica	
Council of the European Union European Commission	Commission DG European Anti-Fraud Office (OLAF)	Commissioner OETTINGER Günther	

Key events			

23/05/2018	Legislative proposal published	COM(2018)0338	Summary
05/07/2018	Committee referral announced in Parliament, 1st reading/single reading		
11/03/2019	Vote in committee, 1st reading/single reading		
22/03/2019	Committee report tabled for plenary, 1st reading/single reading	A8-0179/2019	Summary
16/04/2019	Results of vote in Parliament		
16/04/2019	Decision by Parliament, 1st reading/single reading	T8-0383/2019	Summary
08/10/2019	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		

Technical information

Procedure reference	2018/0170(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation (EU, Euratom) No 883/2013 2006/0084(COD)
Legal basis	Euratom Treaty A 106a-pa; Treaty on the Functioning of the EU TFEU 325-p4
Modified legal basis	Rules of Procedure EP 159
Stage reached in procedure	Awaiting Council 1st reading position / budgetary conciliation convocation
Committee dossier	CONT/8/13248

Documentation gateway

Legislative proposal		COM(2018)0338	23/05/2018	EC	Summary
Document attached to the procedure		SWD(2018)0251	24/05/2018	EC	
Court of Auditors: opinion, report		N8-0020/2019 OJ C 042 01.02.2019, p. 0001	15/11/2018	CofA	Summary
Committee draft report		PE626.774	11/01/2019	EP	
Committee opinion	LIBE	PE629.629	11/01/2019	EP	
Committee opinion	JURI	PE630.425	25/01/2019	EP	
Amendments tabled in committee		PE634.719	13/02/2019	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0179/2019	22/03/2019	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0383/2019	16/04/2019	EP	Summary
Commission response to text adopted in plenary		SP(2019)440	08/08/2019		

PURPOSE: to propose new rules to facilitate cooperation between the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office.

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: with the adoption of [Directive \(EU\) 2017/1371](#) of the European Parliament and of the Council and [Council Regulation \(EU\) 2017/1939](#), the Union has substantially strengthened the means available to protect the financial interests of the Union by means of criminal law.

The European Public Prosecutor's Office (EPPO) will have the power to carry out criminal investigations and bring indictments related to criminal offences affecting the Union budget, as defined in Directive (EU) 2017/1371, in the participating Member States.

The European Anti-Fraud Office (OLAF) conducts administrative investigations into administrative irregularities as well as into criminal behaviour. At the end of its investigations, it may make judicial recommendations to the national prosecution authorities, aimed at enabling indictments and prosecutions in the Member States. In future, in the Member States participating in the EPPO, it will report suspected criminal offences to the EPPO, and will collaborate with it in the context of its investigations.

In view of their common goal to preserve the integrity of the Union budget, OLAF and the EPPO should establish and maintain a close relationship based on sincere cooperation and aimed at ensuring the complementarity of their respective mandates and coordination of their action, in particular as regards the scope of the enhanced cooperation for the establishment of the EPPO.

The European Commission therefore proposes to amend [Regulation \(EU, Euratom\) 883/2013](#) concerning investigations conducted by OLAF in order to ensure the highest level of protection of the Union's financial interests through synergies between the two bodies.

CONTENT: the proposed amendment to Regulation No 883/2013 is a consequence of the adoption of the European Public Prosecutor's Office and aims to ensure consistency in the legal framework for the protection of the Union's financial interests. It has three specific objectives: (i) adapt the operation of OLAF to the establishment of the EPPO; (ii) enhance the effectiveness of OLAF's investigative function; (iii) clarify and simplify selected provisions of Regulation No 883/2013.

As the revised Regulation should be in force by the time the EPPO becomes operational, the proposal therefore contains a limited number of essential changes necessary in the short term to strengthen the framework for OLAF investigations, in order to maintain a strong and fully functioning OLAF that complements the EPPO's criminal law approach with administrative investigations, but which do not entail a change to its mandate or powers.

To this end, the proposal introduces the necessary provisions into OLAF's legal framework as regards:

- OLAF's obligation to report without undue delay to the EPPO any conduct over which the latter may exercise its competence; the information provided to the European Public Prosecutor's Office shall be sufficiently substantiated and contain the necessary information;
- non-duplication of investigations: OLAF shall not open a parallel investigation into facts identical to those under investigation by the European Public Prosecutor's Office;
- the specific procedural rules applicable to requests from the European Public Prosecutor's Office to OLAF to support or complement the work of the European Public Prosecutor's Office.

The amendment also provides for a number of limited clarifications aimed at enhancing the effectiveness of OLAF's administrative investigations, based on the Commission's recent evaluation. The focus is on those areas where, at present, the lack of clarity in certain provisions of the existing Regulation hinders the effectiveness of OLAF's interventions.

The proposal:

- includes rules improving the performance of on-the-spot checks and inspections: the proposed amendments maintain the current powers and would provide a clearer framework for the application of national law, thus specifying more clearly the applicable safeguards and the rights of the operators concerned. The conduct by OLAF of on-the-spot checks and inspections, where economic operators submit to a check by OLAF, is subject to Union law alone. During on-the-spot checks, the economic operator concerned would have the right not to incriminate himself and to be assisted by a person of his choice;
- provides OLAF with access to bank account information and provides OLAF with the necessary tools to carry out its VAT checks. The proposal specifies the obligation of Member States to assist OLAF by transmitting information relating to bank accounts. It also allows OLAF to exchange information with the Eurofisc network;
- introduces a principle of admissibility of OLAF reports - subject only to a verification of authenticity in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States. It specifies the role of the anti-fraud coordination services in the Member States in order to ensure that OLAF is provided with the assistance it needs for its investigations to be effective.

2018/0170(COD) - 15/11/2018 Court of Auditors: opinion, report

OPINION No 8/2018 on the Commission's proposal on amending OLAF Regulation (EU, Euratom) No 883/2013 as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations.

The Court of Auditors notes that the proposal reflects well the principles which govern the cooperation between OLAF and the EPPO: close cooperation, exchange of information, complementarity and non-duplication of work. However, certain weaknesses were identified in this respect.

The Court welcomes a limited number of targeted measures to help improve effectiveness:

- clarification as to when national and European law applies during OLAF on-the-spot checks, with the duty for national authorities to assist OLAF;
- access for OLAF to bank account information, although this will largely depend on the assistance provided by national authorities;
- strengthened admissibility of evidence collected by OLAF, albeit only in non-criminal cases;
- clarification that investigations into Value Added Tax (VAT) matters are included in OLAF's mandate.

The Court considers that the above changes do not resolve the overall issue of the effectiveness of OLAF's administrative investigations. Recognising this, the Commission plans to have a more comprehensive modernisation of the OLAF framework. However, there is currently neither a time-plan for such further reform of OLAF nor a clear identification of which issues would be addressed.

Given the proposal's limitations as regards the overall effectiveness of OLAF's investigations, the Court of Auditors recommends the legislative bodies to amend the proposal in order to:

- clarify that in cases when OLAF carries out administrative investigations on behalf of the EPPO, the standards of procedural guarantees foreseen in the EPPO Regulation apply and that the CJEU will remain competent to review OLAF's procedural acts in this context;
- specify the kind of information the Commission and OLAF need to receive from EPPO in order to properly fulfil their task of developing EU policies to counter fraud;
- ensure that when OLAF works on behalf of the EPPO, and it gathers sufficient evidence to prove an irregularity, OLAF forwards the information gathered without undue delay to the IBOAs to ensure the swift recovery of funds, unless the EPPO considers that the information would interfere with its investigation;
- expressly specify the status in national and EU courts of evidence collected by OLAF, and include an obligation for OLAF to forward all evidence supporting its final reports and recommendations to the bodies responsible for follow-up;
- provide more clarity on the minimum functions to be fulfilled by National anti-fraud coordination services (AFCOS), in particular as regards their role in coordinating Member States' anti-fraud action in relation to the EU's financial interests;
- provide that OLAF's reports constitute acts that might adversely affect the persons concerned and are therefore submitted to a review of the CJEU;
- clarify OLAF's role in cases involving EPPO-participating and non-participating Member States, taking into account any forthcoming legal instrument covering the subject of judicial cooperation between EPPO-participating and non-participating Member States.

The Court not only recommend amendments, but also stress the need for further action:

- in the short term, the Commission should address the overall issue of OLAF's effectiveness. This should involve reconsidering OLAF's role and responsibilities in combating fraud in EU spending. In this regard, OLAF could be given a strategic and oversight role in EU anti-fraud actions;
- in the medium term, the Commission should evaluate the cooperation between OLAF and the EPPO and, where appropriate, propose further legislative actions.

2018/0170(COD) - 22/03/2019 Committee report tabled for plenary, 1st reading/single reading

The Committee on Budgetary Control adopted the report by Ingeborg GRÄSSLE (EPP, DE) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations.

As a reminder, the proposed amendment to Regulation No 883/2013 is a consequence of the adoption of the European Public Prosecutor's Office and aims to ensure consistency in the legal framework for the protection of the Union's financial interests. It seeks to adapt the operation of OLAF to the establishment of the EPPO and enhance the effectiveness of OLAF's investigative function.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows:

- recall that the European Public Prosecutor's Office will generally be responsible for criminal cases and will carry out administrative investigations to combat fraud, corruption and any other illegal activity or irregularity affecting the Union's financial interests;
- abolish the distinction between external and internal investigations, which has become obsolete, in particular with the new focus of OLAF on administrative irregularities and recovery ;
- the right of OLAF to have access without notice and without delay, where necessary to establish whether there has been fraud, corruption or any other illegal activity or irregularity affecting the financial interests of the Union, to all relevant information and data relating to the subject matter of the investigation, regardless of the type of medium on which they are stored;
- possibility for OLAF to request from economic operators duly documented information processed in accordance with the regular standards of confidentiality and data protection. Economic operators should cooperate with the Office;
- remove priorities from the investigation policy and provide that the evaluation period preceding the decision to open an investigation may not exceed two months. If the informant who provided the underlying information is known, he or she shall be kept informed as appropriate;
- obligation on the Director-General to send the relevant information to the institution, body, office or agency concerned without delay if he decides not to open an investigation within the institutions despite sufficient suspicion suggesting the existence of acts of fraud, corruption or other illegal activities;
- obligation on the Director-General to inform the Supervisory Committee periodically about the cases in which he or she has decided not to open an investigation, indicating the reasons for that decision;
- improve the follow-up of the Director-General's recommendations by Member States and institutions, bodies, offices and agencies;
- faster closure of investigations: 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 in detail the reasons for the delay and the remedial measures taken with a view to speeding up the investigation;

- creation of a right of access to the final report drawn up by OLAF for the persons concerned following its investigation, as well as to any relevant document insofar as they concern that person and if, where appropriate, neither the European Public Prosecutor nor the national judicial authorities object within six months;
- appointment of a controller of procedural guarantees by the Commission for a non-renewable five-year term;
- establishment of a complaints mechanism to monitor and ensure compliance with procedural guarantees in all OLAF activities;
- full protection for persons who report offences and offences against the Union's financial interests to the Office;
- the introduction of a right for data subjects to bring an action against the Commission for annulment of the investigation report sent to the national authorities or institutions;
- further promote the admissibility of OLAF reports in national judicial and administrative proceedings;
- notification without undue delay to the European Public Prosecutor's Office of any criminal behaviour in respect of which it could exercise its competence and obligation for OLAF to refrain from applying any measure likely to jeopardise any future investigations by the European Public Prosecutor's Office;
- obligation for the Member State to explain the reasons for its decision to OLAF when the latter makes judicial recommendations to the national prosecuting authorities in a Member State and these are not followed up; once a year, the Office shall draw up a report in order to report on the assistance provided by the Member States and the follow-up given to judicial recommendations.

Lastly, OLAF shall develop a procedural code for investigations to be applied by OLAF staff.

2018/0170(COD) - 16/04/2019 Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 465 votes to 130, with 51 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations.

As a reminder, the proposed amendment to Regulation 883/2013 aims to adjust OLAF's functioning to take into account the creation of the European Public Prosecutor's Office and to strengthen the effectiveness of OLAF's investigative function.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal as follows:

- recall that OLAF will contribute to the design and development of methods to prevent and combat fraud, corruption and any other illegal activity or irregularity affecting the Union's financial interests;
- abolish the distinction between external and internal investigations, which has become obsolete, in particular with the new focus of OLAF on administrative irregularities and recovery ;
- the right of OLAF to have access without notice and without delay, where necessary to establish whether there has been fraud, corruption or any other illegal activity or irregularity affecting the financial interests of the Union, to all relevant information and data relating to the subject matter of the investigation, regardless of the type of medium on which they are stored;
- possibility for OLAF to request from economic operators duly documented information processed in accordance with the regular standards of confidentiality and data protection. Economic operators should cooperate with the Office;
- remove priorities from the investigation policy and provide that the evaluation period preceding the decision to open an investigation may not exceed two months. If the informant who provided the underlying information is known, he or she shall be kept informed as appropriate;
- obligation on the Director-General to send the relevant information to the institution, body, office or agency concerned without delay if he decides not to open an investigation within the institutions or not to carry out on-the-spot checks or inspections despite sufficient suspicion suggesting the existence of acts of fraud, corruption or other illegal activities;
- obligation on the Director-General to inform the Supervisory Committee periodically about the cases in which he or she has decided not to open an investigation, indicating the reasons for that decision;
- improve the follow-up of the Director-General's recommendations by Member States and institutions, bodies, offices and agencies;
- faster closure of investigations: 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 in detail the reasons for the delay and the remedial measures taken with a view to speeding up the investigation;
- creation of a right of access to the final report drawn up by OLAF for the persons concerned following its investigation, as well as to any relevant document insofar as they concern that person and if, where appropriate, neither the European Public Prosecutor nor the national judicial authorities object within six months;
- appointment of a controller of procedural guarantees by the Commission after consulting the European Parliament and the Council for a non-renewable five-year term;
- establishment of a complaints mechanism to monitor and ensure compliance with procedural guarantees in all OLAF activities;
- full protection for persons who report offences and offences against the Union's financial interests to the Office;
- the introduction of a right for data subjects to bring an action against the Commission for annulment of the investigation report sent to the national authorities or institutions;
- further promote the admissibility of OLAF reports in national judicial and administrative proceedings;
- notification without undue delay to the European Public Prosecutor's Office of any criminal behaviour in respect of which it could exercise its competence and obligation for OLAF to refrain from applying any measure likely to jeopardise any future investigations by the European Public Prosecutor's Office;
- obligation for the Member State to explain the reasons for its decision to OLAF when the latter makes judicial recommendations to the national prosecuting authorities in a Member State and these are not followed up; once a year, the Office shall draw up a report in order to report on the assistance provided by the Member States and the follow-up given to judicial recommendations;
- meeting at least once a year between the Director General of the Office and the Head of the European Public Prosecutor's Office to discuss matters of common interest;
- OLAF to draw up a procedural code for investigations to be followed by the staff of the Office.

At the request of the European Parliament in the context of its rights relating to budgetary control, the Director General may send information on the Office's activities, while respecting the confidentiality of investigations and follow-up procedures.