Investigations by the European Anti-Fraud Office (OLAF)

2006/0084(COD) - 07/10/2008

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.