Investigations by the European Anti-Fraud Office (OLAF)

2006/0084(COD) - 20/11/2008 - Text adopted by Parliament, 1st reading/single reading

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 asked the competent authority of the Member State concerned to take any necessary precautionary or implementing measures; es si -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.