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

2014/0173(COD) - 11/06/2014 - Legislative proposal

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.