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

2014/0173(COD) - 23/10/2014 - Court of Auditors: opinion, report

**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.