Investigations by the European Anti-Fraud Office (OLAF)

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The present report presents the results of the evaluation of the application of Regulation (EU, EURATOM) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

The evaluation covers the period from 1 October 2013 (the date of entry into force of the Regulation) to December 2016.

The report sets out possible ways of **adapting and strengthening, where necessary, the legal framework for OLAF investigations** in the context of the recent adoption of the Directive on the fight against fraud to the Union's financial interests by means of criminal law and the forthcoming adoption, in the framework of enhanced cooperation between 20 Member States, of the Regulation on the establishment of the European Public Prosecutor's Office (EPPO).

Main conclusions of the evaluation: the evaluation has shown that the objectives pursued by Regulation 883/2013 remain relevant for the overarching objective of the protection of the Union's financial interests. To this end, OLAF performs specific tasks at EU level which could not be carried out at the national level alone.

The added value of OLAF investigations was confirmed during the consultation process of national and Union stakeholders. Evidence has shown that the **efficiency** of OLAF's case selection and investigations has considerably increased with the Regulation. Cooperation and information exchange between OLAF and its partners has been reinforced.

However, the assessment also unveiled **several shortcomings** related to the conduct of investigations that impact the effective and efficient application of the Regulation:

- OLAF exercises investigative powers stemming from various acts of Union law, including the Regulation. However, in various instances these acts make the application of these powers subject to conditions of national law, notably as regards on-the-spot checks and inspections of economic operators and digital forensic operations conducted in the territory of the Member States. Different interpretations of the relevant provisions, and differences in national law, lead to a fragmentation in the exercise of OLAF's powers in the Member States;
- the Regulation does not provide OLAF with tools to enforce its powers **in the case of refusal or obstruction** by persons concerned by investigations and witnesses;
- the need for and possibility of **better access to bank account information** under appropriate conditions, which could be central to uncovering many cases of fraud or irregularity and improve the possibility to investigate **VAT**. In this regard, OLAF's mandate should be clarified and strengthened;
- further clarity in the Regulation about the conditions for the conduct of **internal investigations** applicable in all other Union institutions, bodies, offices and agencies (IBOAs) could help better ensuring a uniform protection, and provide a framework in which to assess specific arrangements contained in the internal decisions;

- it should be possible to make further use of the possibilities for the **early transmission of information by OLAF** to other institutions, bodies, offices and agencies, in cases where parts of the facts of an investigation in progress might have already been established and could necessitate immediate precautionary measures without waiting for the completion of the investigation;
- there are large **differences in the follow-up to OLAF recommendations** across recipients, and sometimes important gaps between recommendations and follow-up. The most important shortcoming identified relate to the rules on the admissibility of OLAF-collected evidence in national judicial proceedings;
- the Regulation does not contain detailed provisions on the modalities of coordination or the procedures applicable in these so-called '**coordination cases**'. This results in a lack of legal certainty for OLAF and for the Member States that rely on OLAF's assistance;
- the Regulation applies in conjunction with other acts of EU law, on which the effective exercise of OLAF's mandate depends. **Certain inconsistencies between these closely linked legal acts**, which in some cases may lead to uncertainty and divergent interpretations.

Impact of the creation of the European Public Prosecutor's Office: the report noted that once the EPPO is established, OLAF's overall mandate will not change, but its operation will need to adapt in several ways.

The EPPO and OLAF will be called to cooperate closely. In this context, adaptations to the framework for OLAF investigations will have to be considered to avoid any risk of duplication of investigations into the same facts, and to provide for the necessary mechanisms for OLAF to perform its role of operational support.

This is why the **Commission will carry out an evaluation in the first half of 2018 which may lead to a proposal to amend Regulation 883/2013**, which should already be in force when the European Public Prosecutor's Office becomes operational.

The evaluation will focus on:

- **changes in the role and operation of OLAF** following the establishment of the European Public Prosecutor's Office: (i) the handling by OLAF of incoming information and the swift transmission of information to the EPPO of any criminal conduct in respect to which the latter may exercise; (ii) the handling by OLAF of cases referred to it by the EPPO for administrative follow-up.
- **possible solutions to improve the effectiveness of OLAF's investigative function** in order to ensure an equivalent level of protection across the Union: (i) to increase coherence in the application of investigative tools in Member States and in the institutions; (ii) changes to the rules on the admissibility of OLAF reports as evidence in the judicial proceedings of the Member States; (iii) revision of the duties to cooperate to ensure a coherent and effective framework at the various stages of the investigation; (iv) assessment of VAT investigative tools and the possibility to improve access to bank account information.

At a later stage, **a proposal potentially presented in 2018 could be followed by a more far-reaching process to modernise the framework for OLAF investigations**.

Larger issues relating to the overall coherence of the EU anti-fraud legal framework beyond Regulation 883/2013, as revealed by the evaluation, could also be part of this second step in the possible revision of the legal framework.