Investigations by the European Anti-Fraud Office (OLAF): cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations

2018/0170(COD) - 23/05/2018 - Legislative proposal

PURPOSE: to propose new rules to facilitate cooperation between the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office.

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: with the adoption of Directive (EU) 2017/1371 of the European Parliament and of the Council and Council Regulation (EU) 2017/1939, the Union has substantially strengthened the means available to protect the financial interests of the Union by means of criminal law.

The European Public Prosecutor's Office (EPPO) will have the power to carry out criminal investigations and bring indictments related to criminal offences affecting the Union budget, as defined in Directive (EU) 2017/1371, in the participating Member States.

The European Anti-Fraud Office (OLAF) conducts administrative investigations into administrative irregularities as well as into criminal behaviour. At the end of its investigations, it may make judicial recommendations to the national prosecution authorities, aimed at enabling indictments and prosecutions in the Member States. In future, in the Member States participating in the EPPO, it will report suspected criminal offences to the EPPO, and will collaborate with it in the context of its investigations.

In view of their common goal to preserve the integrity of the Union budget, **OLAF and the EPPO should establish and maintain a close relationship** based on sincere cooperation and aimed at ensuring the complementarity of their respective mandates and coordination of their action, in particular as regards the scope of the enhanced cooperation for the establishment on the EPPO.

The European Commission therefore proposes to amend Regulation (EU, Euratom) 883/2013 concerning investigations conducted by OLAF in order to ensure the highest level of protection of the Union's financial interests through synergies between the two bodies.

CONTENT: the proposed amendment to Regulation No 883/2013 is a consequence of the adoption of the European Public Prosecutor's Office and aims to **ensure consistency in the legal framework for the protection of the Union's financial interests**. It has three specific objectives: (i) adapt the operation of OLAF to the establishment of the EPPO; (i) enhance the effectiveness of OLAF’s investigative function; (iii) clarify and simplify selected provisions of Regulation No 883/2013.

As the revised Regulation should be in force by the time the EPPO becomes operational, the proposal therefore contains a **limited number of essential changes necessary in the short term to strengthen the**

framework for OLAF investigations, in order to maintain a strong and fully functioning OLAF that complements the EPPO's criminal law approach with administrative investigations, but which do not entail a change to its mandate or powers.

To this end, the proposal introduces the necessary provisions into OLAF's legal framework as regards:

- OLAF's obligation to **report without undue delay to the EPPO** any conduct over which the latter may exercise its competence; the information provided to the European Public Prosecutor's Office shall be sufficiently substantiated and contain the necessary information;
- **non-duplication of investigations**: OLAF shall not open a parallel investigation into facts identical to those under investigation by the European Public Prosecutor's Office;
- the specific procedural rules applicable to requests from the European Public Prosecutor's Office to OLAF to **support or complement the work of the European Public Prosecutor's Office**.

The amendment also provides for a number of limited clarifications aimed at **enhancing the effectiveness of OLAF's administrative investigations**, based on the Commission's recent evaluation. The focus is on those areas where, at present, the lack of clarity in certain provisions of the existing Regulation hinders the effectiveness of OLAF's interventions.

The proposal:

- includes rules improving the performance of **on-the-spot checks and inspections**: the proposed amendments maintain the current powers and would provide a clearer framework for the application of national law, thus specifying more clearly the applicable safeguards and the rights of the operators concerned. The conduct by OLAF of on-the-spot checks and inspections, where economic operators submit to a check by OLAF, is subject to Union law alone. During on-the-spot checks, the economic operator concerned would have the right not to incriminate himself and to be assisted by a person of his choice;
- provides OLAF with **access to bank account information** and provides OLAF with the necessary tools to carry out its **VAT** checks. The proposal specifies the obligation of Member States to assist OLAF by transmitting information relating to bank accounts. It also allows OLAF to exchange information with the Eurofisc network;
- introduces a **principle of admissibility of OLAF reports** - subject only to a verification of authenticity – in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States. It specifies the role of the anti-fraud coordination services in the Member States in order to ensure that OLAF is provided with the assistance it needs for its investigations to be effective.