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) - 15/11/2018 - Court of Auditors: opinion, report

OPINION No 8/2018 on the Commission's proposal on amending OLAF Regulation (EU, Euratom) No 883/2013 as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations.

The Court of Auditors notes that the proposal reflects well the principles which govern the cooperation between OLAF and the EPPO: close cooperation, exchange of information, complementarity and non-duplication of work. However, certain weaknesses were identified in this respect.

The Court welcomes a limited number of targeted measures to help improve effectiveness:

- clarification as to when national and European law applies during OLAF on-the-spot checks, with the duty for national authorities to assist OLAF;
- access for OLAF to bank account information, although this will largely depend on the assistance provided by national authorities;
- strengthened admissibility of evidence collected by OLAF, albeit only in non-criminal cases;
- clarification that investigations into Value Added Tax (VAT) matters are included in OLAF's mandate.

The Court considers that the above changes do not resolve the overall issue of the effectiveness of OLAF's administrative investigations. Recognising this, the Commission plans to have a more comprehensive modernisation of the OLAF framework. However, there is currently neither a time-plan for such further reform of OLAF nor a clear identification of which issues would be addressed.

Given the proposal's limitations as regards the overall effectiveness of OLAF's investigations, the Court of Auditors recommends the legislative bodies to amend the proposal in order to:

- clarify that in cases when OLAF carries out administrative investigations on behalf of the EPPO, the standards of procedural guarantees foreseen in the EPPO Regulation apply and that the CJEU will remain competent to review OLAF's procedural acts in this context;
- specify the kind of information the Commission and OLAF need to receive from EPPO in order to properly fulfil their task of developing EU policies to counter fraud;
- ensure that when OLAF works on behalf of the EPPO, and it gathers sufficient evidence to prove an irregularity, OLAF forwards the information gathered without undue delay to the IBOAs to ensure the swift recovery of funds, unless the EPPO considers that the information would interfere with its investigation;
- expressly specify the status in national and EU courts of evidence collected by OLAF, and include an obligation for OLAF to forward all evidence supporting its final reports and recommendations to the bodies responsible for follow-up;

- provide more clarity on the minimum functions to be fulfilled by National anti-fraud coordination services (AFCOS), in particular as regards their role in coordinating Member States' anti-fraud action in relation to the EU's financial interests;
- provide that OLAF's reports constitute acts that might ‘adversely affect the persons concerned’ and are therefore submitted to a review of the CJEU;
- clarify OLAF's role in cases involving EPPO-participating and non-participating Member States, taking into account any forthcoming legal instrument covering the subject of judicial cooperation between EPPO-participating and non-participating Member States.

The Court not only recommend amendments, but also stress the need for further action:

- in the short term, the Commission should address the overall issue of OLAF's effectiveness. This should involve reconsidering OLAF's role and responsibilities in combating fraud in EU spending. In this regard, OLAF could be given a strategic and oversight role in EU anti-fraud actions;
- in the medium term, the Commission should evaluate the cooperation between OLAF and the EPPO and, where appropriate, propose further legislative actions.