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) - 22/03/2019 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Budgetary Control adopted the report by Ingeborg GRÄSSLE (EPP, DE) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations.

As a reminder, 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 seeks to adapt the operation of OLAF to the establishment of the EPPO and enhance the effectiveness of OLAF’s investigative function.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows:

- recall that the European Public Prosecutor's Office will generally be responsible for criminal cases and will carry out administrative investigations to combat fraud, corruption and any other illegal activity or irregularity affecting the Union's financial interests;
- abolish the distinction between external and internal investigations, which has become obsolete, in particular with the new focus of OLAF on administrative irregularities and recovery ;
- the right of OLAF to have access without notice and without delay, where necessary to establish whether there has been fraud, corruption or any other illegal activity or irregularity affecting the financial interests of the Union, to all relevant information and data relating to the subject matter of the investigation, regardless of the type of medium on which they are stored;
- possibility for OLAF to request from economic operators duly documented information processed in accordance with the regular standards of confidentiality and data protection. Economic operators should cooperate with the Office;
- remove priorities from the investigation policy and provide that the evaluation period preceding the decision to open an investigation may not exceed two months. If the informant who provided the underlying information is known, he or she shall be kept informed as appropriate;
- obligation on the Director-General to send the relevant information to the institution, body, office or agency concerned without delay if he decides not to open an investigation within the institutions despite sufficient suspicion suggesting the existence of acts of fraud, corruption or other illegal activities;
- obligation on the Director-General to inform the Supervisory Committee periodically about the cases in which he or she has decided not to open an investigation, indicating the reasons for that decision;
- improve the follow-up of the Director-General's recommendations by Member States and institutions, bodies, offices and agencies;

- faster closure of investigations: if an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating in detail the reasons for the delay and the remedial measures taken with a view to speeding up the investigation;
- creation of a right of access to the final report drawn up by OLAF for the persons concerned following its investigation, as well as to any relevant document insofar as they concern that person and if, where appropriate, neither the European Public Prosecutor nor the national judicial authorities object within six months;
- appointment of a controller of procedural guarantees by the Commission for a non-renewable five-year term;
- establishment of a complaints mechanism to monitor and ensure compliance with procedural guarantees in all OLAF activities;
- full protection for persons who report offences and offences against the Union's financial interests to the Office;
- the introduction of a right for data subjects to bring an action against the Commission for annulment of the investigation report sent to the national authorities or institutions;
- further promote the admissibility of OLAF reports in national judicial and administrative proceedings;
- notification without undue delay to the European Public Prosecutor's Office of any criminal behaviour in respect of which it could exercise its competence and obligation for OLAF to refrain from applying any measure likely to jeopardise any future investigations by the European Public Prosecutor's Office;
- obligation for the Member State to explain the reasons for its decision to OLAF when the latter makes judicial recommendations to the national prosecuting authorities in a Member State and these are not followed up; once a year, the Office shall draw up a report in order to report on the assistance provided by the Member States and the follow-up given to judicial recommendations.

Lastly, OLAF shall develop a procedural code for investigations to be applied by OLAF staff.