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) - 08/12/2020 - Council position

The Council adopted its position at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations (OLAF).

The proposed Regulation aims to:

- adapt the OLAF Regulation in order to ensure good cooperation between OLAF and the European Public Prosecutor's Office, which should be operational at the beginning of 2021;

- remedy the main shortcomings affecting the effectiveness of OLAF's investigations, such as lack of access to banking tranactions, the admissibility of OLAF reports and recommendations in national proceedings;

- clarify certain procedural provisions to enable OLAF to conduct its investigations more effectively.

Synergies between OLAF and the European Public Prosecutor's Office

The adaptation of Regulation (EU, Euratom) No 883/2013 should make it possible to guarantee the maximum level of protection of the EU’s financial interests through synergies between the two bodies, while ensuring close cooperation, exchange of information, complementarity and avoiding duplication.

To this end, the Office and the European Public Prosecutor's Office should establish and maintain a close relationship based on the principle of loyal cooperation and aimed at ensuring the coordination of their actions, in particular as regards the scope of the enhanced cooperation for the establishment of the European Public Prosecutor's Office.

This relationship would aim at ensuring that all available means are used to protect the EU’s financial interests through the support the Office provides to the European Public Prosecutor's Office and the complementarity of their respective mandates.

External and internal investigations

The Council's position allows OLAF, during its investigations, access to privately owned devices used for work purposes, if the Office has good reason to suspect that their content could be relevant to the investigation.

In external investigations, access would take place under the same conditions and to the same extent as national authorities can do to investigate private devices. In internal investigations, access would be based on internal rules to be adopted by each institution, body, office or agency concerned in respect of its staff and members of the institution respectively.

Access to bank account transactions

The Council’s position strengthens OLAF's investigative powers by allowing the Office to request information on bank accounts and, where strictly necessary, on transactions, with the cooperation of national authorities, under the same conditions as those applicable to competent national authorities and subject to a reasoned request justifying the appropriateness and proportionality of such a request.

Controller of procedural guarantees

The Council's position creates an independent function, namely a controller of procedural guarantees, administratively attached to the Supervisory Committee and appointed by the Commission after consultation of the European Parliament and the Council. The Supervisor would be responsible for examining complaints from those concerned by the investigation and could make recommendations to OLAF on how to resolve the problem raised in the complaint.

Access to OLAF reports

The person concerned is allowed to request access to OLAF's final report under the condition that explicit consent is given within a period of 12 months by the relevant national authorities who conduct the ensuing national proceedings and in compliance with the applicable rules on confidentiality and data protection.

Admissibility of evidence

The Council's position reinforces the admissibility of OLAF reports as evidence in administrative proceedings and communication with OLAF on admissibility problems.

The Office's support for the European Public Prosecutor's Office

During an investigation carried out by the European Public Prosecutor's Office, and at the request of the latter, OLAF, in accordance with its mandate, should support or complement the action of the European Public Prosecutor's Office.

When providing support to the EPPO, the Office shall refrain from performing acts or measures which could jeopardise the investigation or prosecution.

To protect the admissibility of evidence gathered in proceedings as well as fundamental rights and procedural guarantees, the Council position obliges the European Public Prosecutor's Office to cooperate closely with OLAF to ensure that procedural standards are respected.

Follow-up reporting from Member State authorities to OLAF

The Council’s position foresees an improvement has been foreseen in order to allow OLAF to better monitor its cases and identify shortcomings.