Fight against fraud: investigations by the European Anti-Fraud Office OLAF

2004/0038(CNS) - 10/02/2004 - Legislative proposal

PURPOSE : to amend Regulation 1074/1999/EC concerning investigation carried out by the European Anti-Fraud Office (OLAF.) PROPOSED ACT : Council Regulation. CONTENT : The Commission proposes certain changes to OLAF's operating procedures, following lessons learned from the Eurostat affair. In substance, the proposal has the following main objectives: - To strengthen OLAF's operational efficiency To achieve this objective, provisions are proposed that will allow OLAF to concentrate on the priorities to be fixed in its annual work programme. The later must also take into account the views expressed by the institutions, and in particular the Commission, on the priorities of anti-fraud policies and activities. OLAF has discretion over whether or not to open investigations, and therefore can pass on to the appropriate authorities the task of following up cases that are of minor significance or lie outside its priority activities. More generally, the procedures for opening and closing investigation and the relationship between internal action by the European institutions, on the one hand, and OLAF investigations, on the other, must be clarified. As long as OLAF is conducting an internal investigation, the institutions, bodies and agencies should not open parallel enquiries. On the other hand, there should be mechanisms ensuring that such institutions agencies learn quickly whether or not OLAF is conducting, or plans to open, an internal investigation on a given set of facts, and can take over without delay cases in which OLAF decides not to intervene. The proposed provisions will also give the Supervisory Committee increased oversight over long investigations: OLAF will have to report to the Committee on these after 12 months, justifying its decision to continue to pursue the case. For any extension of the investigation beyond 18 months, the opinion of the Committee would be needed before OLAF decided to continue. Institutions "concerned" by an investigation would also have to be informed of the reasons for OLAF's decision to extend it beyond 12 months. Where the delay caused the institution particular concern, it would be able to seek the opinion of the Committee. As in the past, the decision whether or not to open an investigation will remain with OLAF and the Office's functional independence will be scrupulously respected. - To improve the information flow between OLAF and the European institutions and bodies. The existing provisions of Regulation 1074/1999 are vague on whether or not, and to what extent, OLAF must pass on information to the institution or body concerned. However, such information is often indispensable for the European institutions. There will be a clear obligation for OLAF to inform the institution or body concerned. In addition, the institution, body or agency concerned must also be informed when OLAF forwards information to the judicial authorities. Furthermore, not only Member States but also the Commission may request the opening of external investigations and is to be informed of the results. -To ensure fully the rights of the individuals concerned For the sake of legal certainty, the Commission proposes to include in the Regulation a comprehensive provision on proceduralguarantees to be respected in internal and external investigations. These include provisions on information to be given by OLAF prior to an interview and on the establishment of minutes of the interview; the right to be assisted by a person of choice at an interview; and the right not to incriminate oneself. - To fill a number of gaps jeopardising the effectiveness of OLAF's investigations OLAF's powers of investigation will be clarified in the context of external investigations towards economic operators receiving Community funds on the basis of contract (direct expenditure), thus closing a legal lacuna which has become apparent in the present rules. OLAF should be granted improved access to information held by the European institutions and bodies that is related to external investigations. Access to information held by economic operators in the context of internal investigations should be facilitated accordingly. Finally, the proposal aims at further strengthening the smooth co-operation between OLAF and the Member States in the field of external investigation and the related information flow. -To enhance the role of the Office's Supervisory Committee It is proposed to strengthen the Committee's part in monitoring the application of Regulation 1074/1999, particularly in the area of the rights of the individuals, the length of investigations and as regards the information flow between OLAF and the European institutions and bodies. As regards

protection of individual rights, the individuals concerned will now be able to seek the opinion of the Committee. Similarly concerned institutions will have this facility as regards matters on which OLAF is required to inform them. FINANCIAL IMPLICATIONS : It is proposed that the number of members of OLAF's Supervisory Committee be increased from five to seven. Budget lines and headings: OLAF Budget 24.010600.03.0100 - Expenditure on the Members of the Supervisory Committee Period of application: from 2004, indeterminate duration - Members have a renewable three-year term of office. Financial impact of human resources and other administrative expenditure: EUR 1.331 million. This corresponds to an additional requirement of EUR 100 000. Staff to be assigned to management of the action using existing and/or additional resources: 9. The Committee's secretariat is to be attached administratively to the Commission. The OLAF and Commission establishment plans will have to be adjusted accordingly.