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

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On 01/12/98, the Commission presented a proposal for a Council Regulation establishing a European Fraud Investigation Office, the purpose being to set up an autonomous body, with its own legal personality and without any form of subordination to the Commission, to carry out external and internal investigations as part of the fight against fraud affecting the Community budget. During discussions of this proposal in the European Parliament and the Council, it emerged that the proposed approach did not meet with broad support and that there was a clear preference for maintaining a Fraud Prevention Office within the Commission, while guaranteeing its independence in discharging its fraud investigation function. The Commission has decided to follow this new approach and is accordingly presenting an amended proposal. The Commission's amended proposal takes a new approach, whereby it is no longer the Community legislative which is to set up an independent body outside the Commission, but the Commission itself which is to establish the Office among its own departments. As a result, the provisions laying down the legal framework for the external independent body have been deleted, either because they serve no purpose under the new approach or because they will be included mutatis mutandis in the internal Commission decision establishing the Office. The amended proposal lays down clearly the function of the Office as being to carry out external and internal administrative fraud investigations. The amended proposal now provides that the Office will carry out fraud investigations internal to the institutions and bodies. Contrary to the provisions of the original proposal, the institutions and bodies can no longer choose whether or not to confer this task on the Office. The proposal now lays down the powers enjoyed by the Office vis-à-vis all the institutions and bodies: it has access to premises, information and all documents. The conditions and procedures for internal investigations, in particular the rights and obligations of officials and the related guarantees will be laid down by internal decisions of each institution and body, the content of which should be largely identical as a result of the Interinstitutional Agreement, pending amendment of the Staff Regulations. In practice, the Office's independence in discharging its investigative function is enshrined in the right granted to its Director to open an external or internal investigation on his own initiative. Member States may also ask for an external investigation to be opened and each institution and body may ask the Office to carry out an internal investigation in its departments. The Office's independence is further enshrined in the right to transmit information obtained during internal investigations direct to the judicial authorities of the Member State in question, without having to ask for the prior agreement of the institution or body concerned. The Office's independence is also guaranteed by the procedure for appointing its Director and by the provision that he may not seek or take any instructions in carrying out his duties. As the Office will not be a body with its own legal personality, it cannot have a board of management. However, the Commission feels that the Office should be assisted by a supervisory committee, made up of independent persons who are experts in the Office's field of activity. This committee will monitor the workof the Office, reporting its findings to the institutions, and assist the Office by formulating opinions. Finally, for the purposes of reviewing the legality of the Office's activities in connection with external investigations, the remedies provided for by the EC Treaty (in particular Articles 173 and 178) may be pursued against the Commission. However, special provisions are still necessary for internal investigations, pending amendment of the staff regulations, as a normal appeal to the appointing authority under Article 90 of the Staff Regulations would have no legal force in view of the Office's independence, which prohibits the institutions and bodies from giving it instructions. It is therefore proposed that provision be made for appeals to the Director of the Office, with the possibility of subsequent referral to the Court of Justice in accordance with the procedures laid down in Articles 90 and 91 of the staff regulations.