Investigations by the European Anti-Fraud Office (OLAF)

2006/0084(COD) - 24/05/2006 - Legislative proposal

PURPOSE : to improve the operation of the European Anti-fraud Office (OLAF) with regard to its governance and the conduct of investigations.

PROPOSED ACT : Regulation of the European Parliament and of the Council.

CONTENT : this proposal replaces the proposal presented by the Commission on 10 February 2004, which is withdrawn. It takes into account the evaluation of the Office's activities in 2003, the special report by the Court of Auditors on the management of OLAF, and the public hearing on the reinforcement of OLAF organised at the European Parliament by the Committee on Budgetary Control in July 2005.

The proposal leaves the Office's institutional structure unchanged and aims solely to improve its operation in the existing framework. Its main points are as follows:

- **Governance, cooperation between the institutions and the Supervisory Committee.** There is a need for political governance regarding priorities related to investigative activities. Relations between the Supervisory Committee, the Office and the institutions and other bodies, offices and agencies should be reviewed and closer cooperation should be established. For this the Commission proposes that the Supervisory Committee meet, periodically or upon request, with representatives of the European Parliament, the Council and the Commission as part of a structured dialogue, without interfering in the course of investigations. This dialogue could also be the opportunity to discuss the definition of the Office' s strategic priorities and programme of activities and the annual activity reports of the Committee and the Director-General of the Office. The aim of this structured dialogue is to exercise a political control function on the investigative activities and efficiency of the Office and the Committee, and to ensure that sound relations are maintained between the Office and the EC institutions and other bodies, offices and agencies, in particular as regards information flows.

- **Guarantee of the rights of persons implicated.** The proposals presented in February 2004 provide for procedural guarantees that are preserved in this proposal. Wherever possible, the proposal seeks to harmonise the procedures for internal and external investigations so as to simplify processing and boost certainty in the law. The Commission proposes including in the Regulation a detailed provision on the procedural guarantees to be respected in the conduct of internal and external investigations. The following additional guarantees were proposed in February 2004: provisions on information to be given by OLAF prior to an interview and on the establishment of minutes of the interview; right to be assisted by a person of one's choice at an interview; right not to incriminate oneself. These guarantees must be respected not only before the final report is drawn up but also before information is transmitted to the national authorities.

- **Strengthening the review of investigations.** Not only are the detailed provisions inserted concerning the procedural guarantees applicable to internal and external investigations, it is also necessary to have them enforced by enhanced review and to provide for the possibility of requests for opinions. This review would be undertaken by a Review Adviser exercising his function in the Office on an exclusive basis and in full independence. The enhanced review is applicable at all stages of an internal or external investigation, thereby guaranteeing a single set of review arrangements for all of the Office's investigation work. The provisions also establish a new arrangement for long-term investigations.

-**Improving the information flow.** The European institutions concerned by an OLAF investigation must be informed by OLAF in cases involving suspected wrongdoing of their officials and/or necessitating administrative action on their part so as to protect the interests of the Union. In addition, the institution or body concerned must also be informed when OLAF transmits information to the judicial authorities. In addition, the proposal aims at further strengthening cooperation between OLAF and the Member States, and provides that for the purposes of all its investigations the Office should be informed of action taken by national judicial authorities in response to information transmitted during an OLAF investigation or after its closure. With regard to flows of information between OLAF and informers, anybody in an institution who transmits information relating to fraud or irregularity cases to the Office will be informed whether an investigation has been opened on the basis of the information. Moreover, any person who has provided information to the Office relating to a suspected fraud or irregularity may, upon request, be informed by the Office that an investigation has been closed and, where appropriate, that a final report on the investigation has been sent to the competent authorities, provided that such information does not prejudice the rights of the person concerned, the effectiveness of the investigation and its follow-up or any confidentiality requirements.

- **Strengthening OLAF's operational efficiency.** Provisions are proposed that will allow OLAF to concentrate on its priority actions. It should be made clear that OLAF has discretion over whether or not to open investigations. More generally, the procedures for opening and closing investigations and the relationship between internal action by the European institutions and bodies, on the one hand, and OLAF investigations, on the other, are clarified. As long as an OLAF internal investigation is in progress, institutions, bodies, offices and agencies must not initiate parallel investigations.

- **Improving the effectiveness of OLAF's investigations.** It is proposed to clarify OLAF's powers of investigation in the context of external investigations into economic operators receiving Community funds on the basis of contracts, or grant agreements or decisions (direct expenditure). These clarifications will also help to enhance the efficacy of OLAF's investigations regarding indirect expenditure. Access to information held by economic operators in the context of internal investigations will also be facilitated.

- **Term of office of the Director-General.** To reinforce his independence, it has been found appropriate to provide that the Director-General of the Office will hold office for a non-renewable term.

Provision is made for the Director-General to refrain from transmitting information concerning criminal proceedings to national authorities regarding facts that may be liable to give rise to criminal proceedings if transmission is unwarranted on grounds of proportionality and the effectiveness of the prosecution.