Basic information

1998/0329(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Fight against fraud: investigations by the European Anti-Fraud Office OLAF Repealed by 2006/0084(COD) **Subject** 8.70.04 Protecting financial interests of the EU against fraud	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
CONT Budgetary Control	BÖSCH Herbert (PSE)	20/01/1999

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets	TILLICH Stanislaw (PPE)	19/01/1999
JURI Legal Affairs, Citizens' Rights	THORS Astrid (ELDR)	24/02/1999
LIBE Civil Liberties and Internal Affairs	BONTEMPI Rinaldo (PSE)	20/01/1999

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2205	1999-10-08
Economic and Financial Affairs ECOFIN	2181	1999-05-25
Economic and Financial Affairs ECOFIN	2167	1999-03-15

Key events

Date	Event	Reference	Summary
01/12/1998	Legislative proposal published	COM(1998)0717	Summary
11/01/1999	Committee referral announced in Parliament, 1st reading		
15/03/1999	Resolution/conclusions adopted by Council		
20/04/1999	Vote in committee, 1st reading		Summary

20/04/1999	Committee report tabled for plenary, 1st reading	A4-0240/1999	
20/04/1999	Modified legislative proposal published	02383/2/1999	
28/04/1999	Modified legislative proposal published	COM(1999)0225	
03/05/1999	Debate in Parliament		
25/05/1999	Act adopted by Council after Parliament's 1st reading		
25/05/1999	Final act signed		
25/05/1999	End of procedure in Parliament		
31/05/1999	Final act published in Official Journal		

Technical information

Procedure reference	1998/0329(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by 2006/0084(COD)
Legal basis	Euratom Treaty A 203 EC Treaty (after Amsterdam) EC 280-p4
Stage reached in procedure	Procedure completed
Committee dossier	CONT/4/10685

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0240/1999 OJ C 279 01.10.1999, p. 0008	20/04/1999	
Text adopted by Parliament, 1st reading/single reading		T4-0426/1999 OJ C 279 01.10.1999, p. 0253-0291	06/05/1999	Summary

Council of the EU

Document type	Reference	Date	Summary
Modified legislative proposal	02383/2/1999 OJ C 131 12.05.1999, p. 0005	20/04/1999	
Follow-up document	N5-0031/2002 OJ C 234 30.09.2002, p. 0001-0040	30/09/2002	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1998)0717 OJ C 021 26.01.1999, p. 0010	01/12/1998	Summary
Supplementary legislative basic document	COM(1999)0140	17/03/1999	Summary
Supplementary non-legislative basic document	COM(1999)0225	28/04/1999	Summary
Follow-up document	COM(2003)0154	02/04/2003	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EU	Implementing legislative act	31999D0731(01) OJ C 220 31.07.1999, p. 0001-0002	19/07/1999	Summary
EU	Implementing legislative act	32001D0424(01) OJ C 120 24.04.2001, p. 0001-0002	04/04/2001	Summary
EU	Implementing legislative act	32003D0607(01) OJ C 134 07.06.2003, p. 0001-0002	08/04/2003	Summary
EU	Implementing legislative act	32005D0833 OJ L 312 29.11.2005, p. 0049-0050	04/11/2005	Summary
EDPS	Document attached to the procedure	N6-0004/2007 OJ C 091 26.04.2007, p. 0001	27/10/2006	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Regulation 1999/1073
OJ L 136 31.05.1999, p. 0001 — Summary

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

1998/0329(COD) - 28/04/1999

The European Commission presented the latest version of its proposed Regulation concerning investigations by the European Fraud Prevention Office (OLAF).

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

1998/0329(COD) - 19/07/1999 - Implementing legislative act

COMMUNITY MEASURE : Decision of the European Parliament, of the Council and of the Commission appointing the members of the Supervisory Committee of the European Anti-Fraud Office (OLAF). CONTENT : the following persons are hereby appointed as members of the Supervisory Committee of the European Anti-Fraud Office (OLAF) as from 1 August 1999: - Mireille DELMAS-MARTY; - Edmondo BRUTI-LIBERATI; - JosΘ Narciso da CUNHA RODRIGUES; - Raymond KENDALL; - Harald NOACK.

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

1998/0329(COD) - 27/10/2006 - Document attached to the procedure

Opinion of the European Data Protection Supervisor on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

The EDPS welcomes this proposal insofar as it makes more explicit the procedural guarantees of individuals concerned by OLAF investigations, including the protection of personal data of such individuals.

From the perspective of the protection of individuals' rights to the protection of their personal data and privacy, the EDPS considers that for the most part the proposal contains improvements vis-à-vis the current legal framework. In particular, certain measures aim to contribute to the respect of the right of information or confirm the application of the partial right of access and rectification in the context of OLAF investigations.

The EDPS welcomes the proposal's recognition that Regulation (EC) No 45/2001 applies to all data processing activities carried out in the context of OLAF investigations, as it will contribute to ensuring a consistent and homogeneous application of the rules regarding the protection of individuals' fundamental rights and freedoms with regard to the processing of personal information.

Although the EDPS is appreciative of the amendments aimed at boosting procedural and data protection rights outlined above, he is concerned by the fact that most of the proposed amendments do not reach the minimum data protection standards contained in Regulation (EC) No 45/2001. The EDPS is concerned that if the proposal could be deemed to take precedent over the application of the general data protection framework contained in Regulation (EC) No 45/2001, this would entail an unacceptable watering down of the data protection standards in the context of OLAF investigations. In the EDPS's opinion this is particularly worrisome in the light of the sensitive nature of the type of data that may be collected in the framework of OLAF investigations. In order to avoid this outcome, the EDPS requests the Community legislator to take into account the following issues and make the related amendments in the Proposal in order to address them:

- ***Shortcomings regarding the right of information in the context of OLAF investigations***: the amendment aim to provide information to individuals to ensure fair processing constitutes an indispensable safeguard which should not be unduly compromised, as the proposal does.

- ***Shortcomings regarding the right of access in the context of OLAF investigations***: to ensure effective access rights, the proposal should include a new provision recognising as a general principle the right of access to personal information gathered in the context of OLAF investigations.

- ***Shortcomings regarding the right of rectification in the context of OLAF investigations***: (i) a provision should be added stating that suspected individuals have a general right to have their views known regarding any piece of information that referred to them, except if an exception ex Article 20 of Regulation (EC) No 45/2001 applies.

In addition to the above, the EDPS is of the view that it would be appropriate for this proposal to include a new paragraph guaranteeing the confidentiality of whistleblowers.

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

1998/0329(COD) - 25/05/1999 - Final act

PURPOSE: laying down of rules concerning investigations conducted by the European Anti-Fraud Office (OLAF) with a view to combating fraud, corruption and all other illegal activites detrimental to the Communities' financial interests. COMMUNITY MEASURE: Regulation 1073/1999/EC of the European Parliament and the Council of Ministers concerning investigations conducted by the European Anti-Fraud Office. CONTENT: The new Fraud Prevention Office introduces the following important innovations: - The Office has its own right of initiative to carry out investigations and will be totally independent from instructions; - investigations can be carried out as well in the Member States as in all bodies, institutions and offices in the Community; - The Office will be strengthened by appointing well-experienced investigators - also from the Member States; - The Office's investigators will have access to all necessary information and will be able to cooperate directly with national justice authorities and Eu authorities; - The Director of OLAF will be nominated by the Commission in agreement with the Council and the European Parliament. His work will be monitored by a Supervisory Committee of 5 independent external personalities of high standing, who will also be appointed jointly by the Council, the European Parliament and the Commission; - The Director will neither take nor seek instructions from any government or any institution, body, office or agency in the performance of his duties with regard to the opening and carrying out of external and internal investigations or to the drafting of reports following such investigations. if the Director considers that a measure taken by the Commission calls his independence into question, he shall be entitled to bring an action against his institution before the Court of Justice; - Internal investigations carried out by OLAF must be conducted in accordance with the Treaty and in particular with the Protocol on the privileges and immunities of the European Communities, while respecting the Staff Regulations of officials and conditions of employment of other servants of the European Communities, and with full respect for human rights and fundamental freedoms, in particular the

principle of fairness, for the right of persons involved to exprress their views on the facts concerning them, and for the principle that the conclusions of an investigation may be based solely on elements which have evidential value; - OLAF must be guaranteed access to all premises of the institutions, bodies, offices and agencies and to all information and documents held by them; - the reciprocal exchange of information between the Office, the Member States and the relevant institutions, bodies, offices and agencies muct be organised, subject to rules of confidentiality where information is subject to professional secrecy, while ensuring that it enjoys the proper data protection; - the activities of the Office will be evaluated by the Commission after three years of the Office's operations: thisreport will be transmitted to the European Parliament and the Council, together, where appropriate, with proposals to modify or extend the Office's tasks. ENTRY INTO FORCE: 01/06/1999.

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

1998/0329(COD) - 06/05/1999 - Text adopted by Parliament, 1st reading/single reading

At first reading under codecision procedure, the European Parliament approved the amended proposal for a Council regulation concerning investigations conducted by the European Fraud Prevention Office (OLAF), subject to amendments. In particular, these require that all institutions, bodies and organs should be subject to a definite obligation to provide the Office with information. They also provide that if the Office's Director considers that a measure taken by the Commission calls his independence into question, he shall have recourse before the Court of Justice.

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

1998/0329(COD) - 30/09/2002 - Follow-up document

This report consists of the European Anti-Fraud Office (OLAF) Supervisory Committee's report from the period September 2001 to June 2002. This third activity report marks both the completion of the first Supervisory Committee's term of office and the end of the three-year period following which the institutions must examine how the system has operated in order to adapt or supplement it, where necessary. Having treated its last annual report as a general stock-taking exercise, the Committee has not formulated any proposals or recommendations, as it did in its first two reports, but has concentrated on presenting an assessment of progress in achieving the objectives of the Regulation and of OLAF's status. On the basis of this stocktaking exercise, the Committee feels that OLAF's tasks must now be consolidated so that it can be made to operate in a way that meets these objectives. This should pave the way for the establishment of the European Public Prosecutor, which the Committee considers as vital for the establishment of a complete, coherent system for protecting financial interests. In practice, this report demonstrates that OLAF does not fully enjoy the legal, administrative and budgetary autonomy that would allow it to set up structures offering an adequate guarantee of its independence and of the proper conduct of investigations. However, the Committee feels that, the decisive guidelines having been adopted, we can and must envisage consolidating OLAF's status, structure and mission, as a vital step towards achieving the aims laid down by the legislator. Consolidation should cover: - OLAF's administrative, budgetary and legal autonomy, with its status probably developing along similar lines to that of the European Ombudsman, - the operational level, i.e. the development of an investigation policy, scrutiny and control of the management of investigations and operations, checks on legality, the safeguarding of individual rights and effective follow-up, - the definition of OLAF's mission and how it relates to the spheres of responsibility of its partners (institutions and Member States), in order to develop, spell out and enhance its specific role as an independent investigative body seeking to protect financial interests, - the function and the status of the Supervisory Committee as an independent interinstitutional body. Lastly, a consolidation exercise of this kind, which could then be assessed by a management audit, would allow OLAF to function effectively and fulfil properly the mission assigned to it by the legislator. It would also prepare OLAF to take up its place in a complete, coherent system for protecting financial interests, the need for which no longer requires any demonstration.

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

1998/0329(COD) - 02/04/2003 - Follow-up document

In accordance with Article 15 of Parliament and Council Regulation 1073/1999/EC and Council Regulation (and Euratom) 1074/1999/EC on investigations carried out by the European Antifraud Office, the Commission shall transmit to the European Parliament and the Council a progress report on the Office's activities, accompanied by the Supervisory Committee's opinion, together, where appropriate, with proposals to modify or extend the Office's tasks. The object of the evaluation exercise is to come to an overall assessment of the Office's activities, supplementing the analyses conducted by the Office itself and the Supervisory Committee, by examining its functions, the means available and the difficulties encountered. Account is taken of the impact of anti-fraud activities on the protection of the Communities' interests, sound implementation of the budget and healthy and rigorous financial management. The exercise takes account of the impact of the reform on prevention, cooperation and deterrence/enforcement. There is also reference to the subsidiarity and proportionality principles, respect for fundamental human rights, transparency, and the costeffectiveness ratio (economies of scale). The interinstitutional dimension of the Office's activities (credibility of the institutions and of European integration) was also taken into account. This overall assessment should provide a means of weighing up the pros and cons of the structure that emerged from the 1999 reform. The recommendations contained in this report are proposals that have been put forward with a view to optimising the Office's work. Some of these proposals are for improvements to secondary legislation; others relate to OLAF's working practices and the arrangements for cooperation between it and its different partners, particularly at national level. The fact remains that, irrespective of the progress made in attaining the objectives of the reform, and of the benefits derived, the difficulties identified should not be underestimated. They centre mainly on the question of the Commission's political and legal responsibility vis-α-vis the Office and its operational activities, in conjunction with the Office's functional independence in the exercise of its activities, and the choices to be made regarding its budget and staffing policy. They also concern the view taken in some quarters that there is a risk of interference, based on possible suspicion of meddling by the Commission in the Office's internal investigation activities. Many of these difficulties also spring from the fact that the reform was set in motion immediately, from the duration of the transitional period and from the necessary re-assignment of the staff of the Office. The development of its operational activities, particularly with regard to internal investigations, may also have aggravated the difficulties. Several factors militate in favour of retaining the overall consistency of the system devised in 1999. Furthermore, the overall assessment of the Office's activities, three years on, suggests that the difficulties encountered in this transition period are gradually diminishing. In the

current situation, the consolidation of the Office is therefore a priority. Work on the Corpus Juris and the follow-upto it, the preparation of the Green Paper of the protection of the Community's financial interests and the Commission's proposals for the establishment of a European Prosecutor are a good example of the synergy offered by the proximity of work on the ground and preparation and negotiation of Commission initiatives. Internal reform initiatives, in the legislative sphere and elsewhere, and the contributions to the Convention on the future of the European Union are all visible proof of the benefits to the Commission of capitalising on these synergies within it.

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

1998/0329(COD) - 04/11/2005 - Implementing legislative act

LEGISLATIVE ACT : Decision 2005/833/EC,Euratom of the European Parliament, of the Council and of the Commission of 4 November 2005 appointing the members of the Supervisory Committee of the European Anti-Fraud Office (OLAF)

CONTENT : Regulations 1073/1999/EC and 1074/1999/Euratom provide that the Supervisory Committee of the European Anti-Fraud Office (OLAF) is to be composed of five independent outside persons who possess the qualifications required for appointment in their respective countries to senior posts relating to the Office's areas of activity. The members of the Supervisory Committee appointed with effect from 1 August 1999 have reached their maximum term of office. By common accord of the European Parliament, the Council and the Commission, the following persons are hereby appointed as members of the Supervisory Committee of the European Anti-Fraud Office (OLAF) as from 30 November 2005:

- Mr Peter STROMBERG,

- Mr Kalman GYORGYI,

- Ms Rosalind WRIGHT,

- Mr Luis LOPEZ SANZ-ARANGUEZ,

- Ms Diemut R. TEATO.

Should any of the above persons resign from the Supervisory Committee, die or become permanently incapacitated, they shall immediately be replaced by the first named person on the following list who has not yet been appointed to the Supervisory Committee:

- Mr Eugeniusz RUŚKOWSKI,

- Mr Albertus Hendrikus KORTHALS,

- Mr Jaroslav FENYK,

- Mr Stefano DAMBRUOSO.

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

1998/0329(COD) - 01/12/1998 - Legislative proposal

PURPOSE: to establish a European Fraud Investigation Office. CONTENT: Following the European Parliament's adoption of the Bosch report on UCLAF on 7th October, the Commission has made this proposal in line with its undertaking to do so by the beginning of December: - It is proposed that, once a seat has been designated, this Office be created as an autonomous body, independent of the Commission with its own legal personality. - Its main task will be to carry out internal (within the European institutions) and external (within Member States) fraud investigations, and also to make available its expertise to help the fight against fraud. - With regard to external investigations, the Commission may ask the Office to open an investigation, at the request of a Member State, the Office itself, or on its own initiative. Once started, the Commission may have no influence on an investigation. Following the Office's final report, follow up action will be taken by the Commission. - In the case of internal investigations, an institution may request the Office to conduct an investigation. The Office's final report will then be transmitted to that institution, in order for it to take appropriate follow-up action. - The Office's powers do not impinge on the Commission's rights of legislative initiative, coordination of anti-fraud activities, and the launching of investigations, or any other powers conferred on it by Treaty. - The Office will be headed by a Director, who will act as its legal representative, and appointing authority, and will implement its budget. The Director will be proposed by the Commission, and appointed by a Board of Management, comprising six independent experts (three designated by the EP, three by the Council), two Commission representatives, and one Court of Auditors representative. This Board will have disciplinary authority over the Director - The Commission and Member States will be required to provide the Office with any information relevant to a current investigation, while the Office is required to respect EU and national provisions on data protection and professional secrecy. - The Office's final report will have legal weight at an EU and national level. - Persons implicated by Office investigations will have the same right of appeal to the European Court of Justice as they currently do against the Commission. - During the third year of the Office's existence, the Commission will transmit to the EP and the Council a progress report on its activities containing, if necessary, proposals for the modification of its tasks.

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

1998/0329(COD) - 04/04/2001 - Implementing legislative act

COMMUNITY MEASURE : Decision of the European Parliament, of the Council and of the Commission appointing a member of the Supervisory Committee of the European Anti-fraud Office (OLAF). This document is no longer in force. CONTENT : Mr Alfredo José de Sousa is hereby appointed member of the Supervisory Committee of the European Anti-fraud Office (OLAF) until 31 July 2002.

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

1998/0329(COD) - 08/04/2003 - Implementing legislative act

COMMUNITY MEASURE : Decision of the European Parliament, the Council and the Commission renewing the term of office of the members of the Supervisory Committee of the European Anti-fraud Office (OLAF). CONTENT : the following are appointed members of the Supervisory Committee of the European Anti-fraud Office (OLAF) for a new term of three years: - Mr Edmondo BRUTI-LIBERATI; - Mr Alfredo JosΘ DE SOUSA; - Ms Mireille DELMAS-MARTY; - Mr Raymond KENDALL; - Mr Harald NOACK. This decision shall have effect as from 1 August 2002.

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

1998/0329(COD) - 17/03/1999 - Supplementary legislative basic document

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.