## Basic information

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|---|---|
| **2018/0170(COD)**<br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation | Procedure completed |
| Investigations by the European Anti-Fraud Office (OLAF): cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations<br><br>Amending Regulation (EU, Euratom) No 883/2013 2006/0084(COD)<br><br>**Subject**<br><br>7.40.04 Judicial cooperation in criminal matters<br>8.40.08 Agencies and bodies of the EU<br>8.70.04 Protecting financial interests of the EU against fraud | |

## Key players

European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| CONT Budgetary Control | MARINESCU Marian-Jean (EPP) | 26/09/2019 |
| | Shadow rapporteur<br><br>CHINNICI Caterina (S&D)<br><br>DLABAJOVÁ Martina (Renew)<br><br>RIVASI Michèle (Greens/EFA)<br><br>CZARNECKI Ryszard (ECR)<br><br>JALKH Jean-François (ID)<br><br>FLANAGAN Luke Ming (GUE/NGL) | |

| Former committee responsible | Former rapporteur | Appointed |
|---|---|---|
| CONT Budgetary Control | GRÄSSLE Ingeborg (PPE) | 08/06/2018 |

| Former committee for opinion | Former rapporteur for opinion | Appointed |
|---|---|---|
| JURI Legal Affairs | CAVADA Jean-Marie (ALDE) | 09/07/2018 |
| | | |

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|---|---|---|---|
| | LIBE Civil Liberties, Justice and Home Affairs | MACOVEI Monica (ECR) | 03/09/2018 |
| Council of the European Union | | | |
| European Commission | **Commission DG** | **Commissioner** | |
| | European Anti-Fraud Office (OLAF) | OETTINGER Günther | |

**Key events**

| Date | Event | Reference | Summary |
|---|---|---|---|
| 23/05/2018 | Legislative proposal published | COM(2018)0338 | Summary |
| 05/07/2018 | Committee referral announced in Parliament, 1st reading | | |
| 11/03/2019 | Vote in committee, 1st reading | | |
| 22/03/2019 | Committee report tabled for plenary, 1st reading | A8-0179/2019 | Summary |
| 16/04/2019 | Decision by Parliament, 1st reading | T8-0383/2019 | Summary |
| 16/04/2019 | Results of vote in Parliament | | |
| 08/10/2019 | Committee decision to open interinstitutional negotiations after 1st reading in Parliament | | |
| 09/10/2019 | Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 73) | | |
| 15/10/2020 | Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations | PE655.947 | |
| 08/12/2020 | Council position published | 10008/1/2020 | Summary |
| 14/12/2020 | Committee referral announced in Parliament, 2nd reading | | |
| 14/12/2020 | Vote in committee, 2nd reading | | |
| 14/12/2020 | Committee recommendation tabled for plenary, 2nd reading | A9-0263/2020 | Summary |
| 17/12/2020 | Decision by Parliament, 2nd reading | T9-0363/2020 | Summary |
| 17/12/2020 | Debate in Parliament | | |
| 22/12/2020 | End of procedure in Parliament | | |
| 23/12/2020 | Final act signed | | |
| 28/12/2020 | Final act published in Official Journal | | |

**Technical information**

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|---|---|
| **Procedure reference** | 2018/0170(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |

| | |
|---|---|
| **Legislative instrument** | Regulation |
| **Amendments and repeals** | Amending Regulation (EU, Euratom) No 883/2013 2006/0084(COD) |
| **Legal basis** | Euratom Treaty A 106a-pa<br>Treaty on the Functioning of the European Union TFEU 325-p4 |
| **Other legal basis** | Rules of Procedure EP 165 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | CONT/9/01460 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE626.774 | 11/01/2019 | |
| Committee opinion | LIBE | PE629.629 | 11/01/2019 | |
| Committee opinion | JURI | PE630.425 | 25/01/2019 | |
| Amendments tabled in committee | | PE634.719 | 13/02/2019 | |
| Committee report tabled for plenary, 1st reading/single reading | | A8-0179/2019 | 22/03/2019 | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T8-0383/2019 | 16/04/2019 | Summary |
| Text agreed during interinstitutional negotiations | | PE655.947 | 16/10/2020 | |
| Committee draft report | | PE660.342 | 25/11/2020 | |
| Committee recommendation tabled for plenary, 2nd reading | | A9-0263/2020 | 14/12/2020 | Summary |
| Text adopted by Parliament, 2nd reading | | T9-0363/2020 | 17/12/2020 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Council statement on its position | 05194/2020 | 04/12/2020 | |
| Council position | 10008/1/2020 | 08/12/2020 | Summary |
| Draft final act | 00062/2020/LEX | 23/12/2020 | |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2018)0338 | 23/05/2018 | Summary |
| Document attached to the procedure | SWD(2018)0251 | 24/05/2018 | |
| Commission response to text adopted in plenary | SP(2019)440 | 08/08/2019 | |
| Commission communication on Council's position | COM(2020)0805 | 08/12/2020 | |

**National parliaments**

| Document type | Parliament /Chamber | Reference | Date | Summary |
|---|---|---|---|---|
| Contribution | CZ_CHAMBER | COM(2018)0338 | 11/09/2018 | |
| Contribution | ES_PARLIAMENT | COM(2018)0338 | 28/09/2018 | |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| CofA | Court of Auditors: opinion, report | N8-0020/2019<br>OJ C 042 01.02.2019, p. 0001 | 15/11/2018 | Summary |

**Additional information**

| Source | Document | Date |
|---|---|---|
| European Commission | EUR-Lex | |

**Final act**

Regulation 2020/2223
OJ L 437 28.12.2020, p. 0049

# 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) - 22/03/2019 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Budgetary Control adopted the report by Ingeborg GRÄSSLE (EPP, DE) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations.

As a reminder, the proposed amendment to Regulation No 883/2013 is a consequence of the adoption of the European Public Prosecutor's Office and aims to ensure consistency in the legal framework for the protection of the Union's financial interests. It seeks to adapt the operation of OLAF to the establishment of the EPPO and enhance the effectiveness of OLAF’s investigative function.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows:

- recall that the European Public Prosecutor's Office will generally be responsible for criminal cases and will carry out administrative investigations to combat fraud, corruption and any other illegal activity or irregularity affecting the Union's financial interests;
- abolish the distinction between external and internal investigations, which has become obsolete, in particular with the new focus of OLAF on administrative irregularities and recovery ;
- the right of OLAF to have access without notice and without delay, where necessary to establish whether there has been fraud, corruption or any other illegal activity or irregularity affecting the financial interests of the Union, to all relevant information and data relating to the subject matter of the investigation, regardless of the type of medium on which they are stored;
-

possibility for OLAF to request from economic operators duly documented information processed in accordance with the regular standards of confidentiality and data protection. Economic operators should cooperate with the Office;
- remove priorities from the investigation policy and provide that the evaluation period preceding the decision to open an investigation may not exceed two months. If the informant who provided the underlying information is known, he or she shall be kept informed as appropriate;
- obligation on the Director-General to send the relevant information to the institution, body, office or agency concerned without delay if he decides not to open an investigation within the institutions despite sufficient suspicion suggesting the existence of acts of fraud, corruption or other illegal activities;
- obligation on the Director-General to inform the Supervisory Committee periodically about the cases in which he or she has decided not to open an investigation, indicating the reasons for that decision;
- improve the follow-up of the Director-General's recommendations by Member States and institutions, bodies, offices and agencies;
- faster closure of investigations: if an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating in detail the reasons for the delay and the remedial measures taken with a view to speeding up the investigation;
- creation of a right of access to the final report drawn up by OLAF for the persons concerned following its investigation, as well as to any relevant document insofar as they concern that person and if, where appropriate, neither the European Public Prosecutor nor the national judicial authorities object within six months;
- appointment of a controller of procedural guarantees by the Commission for a non-renewable five-year term;
- establishment of a complaints mechanism to monitor and ensure compliance with procedural guarantees in all OLAF activities;
- full protection for persons who report offences and offences against the Union's financial interests to the Office;
- the introduction of a right for data subjects to bring an action against the Commission for annulment of the investigation report sent to the national authorities or institutions;
- further promote the admissibility of OLAF reports in national judicial and administrative proceedings;
- notification without undue delay to the European Public Prosecutor's Office of any criminal behaviour in respect of which it could exercise its competence and obligation for OLAF to refrain from applying any measure likely to jeopardise any future investigations by the European Public Prosecutor's Office;
- obligation for the Member State to explain the reasons for its decision to OLAF when the latter makes judicial recommendations to the national prosecuting authorities in a Member State and these are not followed up; once a year, the Office shall draw up a report in order to report on the assistance provided by the Member States and the follow-up given to judicial recommendations.

Lastly, OLAF shall develop a procedural code for investigations to be applied by OLAF staff.

# 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) - 16/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 465 votes to 130, with 51 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations.

As a reminder, the proposed amendment to Regulation 883/2013 aims to adjust OLAF's functioning to take into account the creation of the European Public Prosecutor's Office and to strengthen the effectiveness of OLAF's investigative function.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal as follows:

- recall that OLAF will contribute to the design and development of methods to prevent and combat fraud, corruption and any other illegal activity or irregularity affecting the Union's financial interests;
- abolish the distinction between external and internal investigations, which has become obsolete, in particular with the new focus of OLAF on administrative irregularities and recovery ;
- the right of OLAF to have access without notice and without delay, where necessary to establish whether there has been fraud, corruption or any other illegal activity or irregularity affecting the financial interests of the Union, to all relevant information and data relating to the subject matter of the investigation, regardless of the type of medium on which they are stored;
- possibility for OLAF to request from economic operators duly documented information processed in accordance with the regular standards of confidentiality and data protection. Economic operators should cooperate with the Office;
- remove priorities from the investigation policy and provide that the evaluation period preceding the decision to open an investigation may not exceed two months. If the informant who provided the underlying information is known, he or she shall be kept informed as appropriate;
- obligation on the Director-General to send the relevant information to the institution, body, office or agency concerned without delay if he decides not to open an investigation within the institutions or not to carry out on-the-spot checks or inspections despite sufficient suspicion suggesting the existence of acts of fraud, corruption or other illegal activities;
- obligation on the Director-General to inform the Supervisory Committee periodically about the cases in which he or she has decided not to open an investigation, indicating the reasons for that decision;
- improve the follow-up of the Director-General's recommendations by Member States and institutions, bodies, offices and agencies;

- faster closure of investigations: if an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating in detail the reasons for the delay and the remedial measures taken with a view to speeding up the investigation;
- creation of a right of access to the final report drawn up by OLAF for the persons concerned following its investigation, as well as to any relevant document insofar as they concern that person and if, where appropriate, neither the European Public Prosecutor nor the national judicial authorities object within six months;
- appointment of a controller of procedural guarantees by the Commission after consulting the European Parliament and the Council for a non-renewable five-year term;
- establishment of a complaints mechanism to monitor and ensure compliance with procedural guarantees in all OLAF activities;
- full protection for persons who report offences and offences against the Union's financial interests to the Office;
- the introduction of a right for data subjects to bring an action against the Commission for annulment of the investigation report sent to the national authorities or institutions;
- further promote the admissibility of OLAF reports in national judicial and administrative proceedings;
- notification without undue delay to the European Public Prosecutor's Office of any criminal behaviour in respect of which it could exercise its competence and obligation for OLAF to refrain from applying any measure likely to jeopardise any future investigations by the European Public Prosecutor's Office;
- obligation for the Member State to explain the reasons for its decision to OLAF when the latter makes judicial recommendations to the national prosecuting authorities in a Member State and these are not followed up; once a year, the Office shall draw up a report in order to report on the assistance provided by the Member States and the follow-up given to judicial recommendations;
- meeting at least once a year between the Director General of the Office and the Head of the European Public Prosecutor's Office to discuss matters of common interest;
- OLAF to draw up a procedural code for investigations to be followed by the staff of the Office.

At the request of the European Parliament in the context of its rights relating to budgetary control, the Director General may send information on the Office's activities, while respecting the confidentiality of investigations and follow-up procedures.

# 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) - 23/05/2018 - Legislative proposal

PURPOSE: to propose new rules to facilitate cooperation between the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: with the adoption of Directive (EU) 2017/1371 of the European Parliament and of the Council and Council Regulation (EU) 2017/1939 , the Union has substantially strengthened the means available to protect the financial interests of the Union by means of criminal law.

**The European Public Prosecutor's Office** (EPPO) will have the power to carry out criminal investigations and bring indictments related to criminal offences affecting the Union budget, as defined in Directive (EU) 2017/1371, in the participating Member States.

**The European Anti-Fraud Office** (OLAF) conducts administrative investigations into administrative irregularities as well as into criminal behaviour. At the end of its investigations, it may make judicial recommendations to the national prosecution authorities, aimed at enabling indictments and prosecutions in the Member States. In future, in the Member States participating in the EPPO, it will report suspected criminal offences to the EPPO, and will collaborate with it in the context of its investigations.

In view of their common goal to preserve the integrity of the Union budget, **OLAF and the EPPO should establish and maintain a close relationship** based on sincere cooperation and aimed at ensuring the complementarity of their respective mandates and coordination of their action, in particular as regards the scope of the enhanced cooperation for the establishment on the EPPO.

The European Commission therefore proposes to amend Regulation (EU, Euratom) 883/2013 concerning investigations conducted by OLAF in order to ensure the highest level of protection of the Union's financial interests through synergies between the two bodies.

CONTENT: the proposed amendment to Regulation No 883/2013 is a consequence of the adoption of the European Public Prosecutor's Office and aims to **ensure consistency in the legal framework for the protection of the Union's financial interests**. It has three specific objectives: (i) adapt the operation of OLAF to the establishment of the EPPO; (i) enhance the effectiveness of OLAF’s investigative function; (iii) clarify and simplify selected provisions of Regulation No 883/2013.

As the revised Regulation should be in force by the time the EPPO becomes operational, the proposal therefore contains a **limited number of essential changes necessary in the short term to strengthen the framework for OLAF investigations**, in order to maintain a strong and fully functioning OLAF that complements the EPPO's criminal law approach with administrative investigations, but which do not entail a change to its mandate or powers.

To this end, the proposal introduces the necessary provisions into OLAF's legal framework as regards:

- OLAF's obligation to **report without undue delay to the EPPO** any conduct over which the latter may exercise its competence; the information provided to the European Public Prosecutor's Office shall be sufficiently substantiated and contain the necessary information;
- **non-duplication of investigations**: OLAF shall not open a parallel investigation into facts identical to those under investigation by the European Public Prosecutor's Office;
- the specific procedural rules applicable to requests from the European Public Prosecutor's Office to OLAF to **support or complement the work of the European Public Prosecutor's Office**.

The amendment also provides for a number of limited clarifications aimed at **enhancing the effectiveness of OLAF's administrative investigations**, based on the Commission's recent evaluation. The focus is on those areas where, at present, the lack of clarity in certain provisions of the existing Regulation hinders the effectiveness of OLAF's interventions.

The proposal:

- includes rules improving the performance of **on-the-spot checks and inspections**: the proposed amendments maintain the current powers and would provide a clearer framework for the application of national law, thus specifying more clearly the applicable safeguards and the rights of the operators concerned. The conduct by OLAF of on-the-spot checks and inspections, where economic operators submit to a check by OLAF, is subject to Union law alone. During on-the-spot checks, the economic operator concerned would have the right not to incriminate himself and to be assisted by a person of his choice;
- provides OLAF with **access to bank account information** and provides OLAF with the necessary tools to carry out its **VAT** checks. The proposal specifies the obligation of Member States to assist OLAF by transmitting information relating to bank accounts. It also allows OLAF to exchange information with the Eurofisc network;
- introduces a **principle of admissibility of OLAF reports** - subject only to a verification of authenticity – in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States. It specifies the role of the anti-fraud coordination services in the Member States in order to ensure that OLAF is provided with the assistance it needs for its investigations to be effective.

# 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) - 15/11/2018 - Court of Auditors: opinion, report

**OPINION No 8/2018 on the Commission's proposal on amending OLAF Regulation (EU, Euratom) No 883/2013 as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations.**

The Court of Auditors notes that the proposal reflects well the principles which govern the cooperation between OLAF and the EPPO: close cooperation, exchange of information, complementarity and non-duplication of work. However, certain weaknesses were identified in this respect.

The Court welcomes a limited number of targeted measures to help improve effectiveness:

- clarification as to when national and European law applies during OLAF on-the-spot checks, with the duty for national authorities to assist OLAF;
- access for OLAF to bank account information, although this will largely depend on the assistance provided by national authorities;
- strengthened admissibility of evidence collected by OLAF, albeit only in non-criminal cases;
- clarification that investigations into Value Added Tax (VAT) matters are included in OLAF's mandate.

The Court considers that the above changes do not resolve the overall issue of the effectiveness of OLAF's administrative investigations. Recognising this, the Commission plans to have a more comprehensive modernisation of the OLAF framework. However, there is currently neither a time-plan for such further reform of OLAF nor a clear identification of which issues would be addressed.

Given the proposal's limitations as regards the overall effectiveness of OLAF's investigations, the Court of Auditors recommends the legislative bodies to amend the proposal in order to:

- clarify that in cases when OLAF carries out administrative investigations on behalf of the EPPO, the standards of procedural guarantees foreseen in the EPPO Regulation apply and that the CJEU will remain competent to review OLAF's procedural acts in this context;
- specify the kind of information the Commission and OLAF need to receive from EPPO in order to properly fulfil their task of developing EU policies to counter fraud;
- ensure that when OLAF works on behalf of the EPPO, and it gathers sufficient evidence to prove an irregularity, OLAF forwards the information gathered without undue delay to the IBOAs to ensure the swift recovery of funds, unless the EPPO considers that the information would interfere with its investigation;
- expressly specify the status in national and EU courts of evidence collected by OLAF, and include an obligation for OLAF to forward all evidence supporting its final reports and recommendations to the bodies responsible for follow-up;
- provide more clarity on the minimum functions to be fulfilled by National anti-fraud coordination services (AFCOS), in particular as regards their role in coordinating Member States' anti-fraud action in relation to the EU's financial interests;
-

provide that OLAF's reports constitute acts that might ‘adversely affect the persons concerned’ and are therefore submitted to a review of the CJEU;
- clarify OLAF's role in cases involving EPPO-participating and non-participating Member States, taking into account any forthcoming legal instrument covering the subject of judicial cooperation between EPPO-participating and non-participating Member States.

The Court not only recommend amendments, but also stress the need for further action:

- in the short term, the Commission should address the overall issue of OLAF's effectiveness. This should involve reconsidering OLAF's role and responsibilities in combating fraud in EU spending. In this regard, OLAF could be given a strategic and oversight role in EU anti-fraud actions;
- in the medium term, the Commission should evaluate the cooperation between OLAF and the EPPO and, where appropriate, propose further legislative actions.

# 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) - 14/12/2020 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Budgetary Control adopted the recommendation for second reading contained in the report by Marian-Jean MARINESCU (EPP, RO) on the Council 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.

The committee responsible recommended that the European Parliament approve the Council's position at first reading without amendment.

The aim of the proposed Regulation is as follows:

- to adapt the functioning of the investigations of the European Anti-Fraud Office (OLAF) to the creation of the European Public Prosecutor's Office to ensure maximum complementarity, and

- to enhance the effectiveness of OLAF's investigative function in relation to specific issues, including on-the-spot checks, inspections, and assistance to national authorities, information on bank accounts, the admissibility of evidence gathered by OLAF, anti-fraud services and co-ordination activities.

# 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) - 17/12/2020 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution approving the Council's 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.

The aims of the proposed regulation are as follows:

- to adapt the functioning of the investigations of the European Anti-Fraud Office (OLAF) to the creation of the European Public Prosecutor's Office to ensure maximum complementarity, and

- to enhance the effectiveness of OLAF's investigative function in relation to specific issues, including on-the-spot checks, inspections, and assistance to national authorities, information on bank accounts, the admissibility of evidence gathered by OLAF, anti-fraud services and co-ordination activities.

The adaptation of Regulation (EU, Euratom) No 883/2013 should ensure 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.

The amending regulation:

- allows OLAF, in the course of its investigations, to have access to privately owned devices used for work purposes, if the Office has good reason to believe that their content could be important for the purposes of the investigation;

- reinforces OLAF's investigative powers by allowing the Office to request information on bank accounts;

- creates the function of 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;

- provides for the possibility for the data subject to request access to the final report from OLAF subject to the consent of the competent national authorities in charge of national procedures;

- reinforces the admissibility of OLAF reports as evidence in administrative proceedings and communication with OLAF on admissibility issues;

- provides for an improvement to order to allow OLAF to better monitor its cases and identify shortcomings.

# 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.