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## III

*(Preparatory acts)*

## COUNCIL

**POSITION (EU) No 2/2013 OF THE COUNCIL AT FIRST READING**

**with a view to the adoption of a Regulation of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999**

**Adopted by the Council on 25 February 2013**

(2013/C 89 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 325 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

(1) The Union institutions and the Member States attach great importance to the protection of the financial interests of the Union and to the fight against fraud, corruption and any other illegal activity affecting those interests. The Commission's responsibility in that connection is closely bound up with its duty to implement the budget pursuant to Article 317 of the Treaty on the Functioning of the European Union (TFEU) and the importance of action to that end is confirmed by Article 325 TFEU.

(2) All available means should be deployed fully to attain that objective, notably in the context of investigative duties devolving upon the Union, while the current distribution and balance of responsibilities between the Union and the Member States should be maintained.

(3) To reinforce the means available for combating fraud, while respecting the principle of each institution's internal organisational autonomy, the Commission, by Decision 1999/352/EC, ECSC, Euratom <sup>(3)</sup>, has established the European Anti-Fraud Office ("the Office") among its own services with responsibility for conducting administrative fraud investigations. The Commission has given the Office full independence to exercise its investigative function. Decision 1999/352/EC, ECSC, Euratom provides that for the purposes of investigations the Office is to exercise the powers conferred by Union law.

(4) Regulation (EC) No 1073/1999 of the European Parliament and of the Council <sup>(4)</sup> was adopted to regulate investigations conducted by the Office. In order to make the Office's investigative activities more effective, and in the light of the evaluations of its activities made by the Union institutions, in particular the Commission's evaluation report of April 2003 and the Special Reports No 1/2005 <sup>(5)</sup> and No 2/2011 <sup>(6)</sup> of the Court of Auditors concerning the management of the Office, there is a need to revise the current legal framework.

<sup>(1)</sup> OJ C 254, 30.8.2011, p. 1.

<sup>(2)</sup> Position of the European Parliament of 20 November 2008 (OJ C 16 E, 22.1.2010, p. 201) and position of the Council at first reading of 25 February 2013. Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...

<sup>(3)</sup> 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 20).

<sup>(4)</sup> Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 1).

<sup>(5)</sup> OJ C 202, 18.8.2005, p. 1.

<sup>(6)</sup> OJ C 124, 27.4.2011, p. 9.

- (5) The Office's mandate should comprise the conduct of investigations within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ("institutions, bodies, offices and agencies") and the exercise of the power of investigation conferred on the Commission by the relevant Union acts, as well as providing the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities. The Office should also contribute to the design and development of methods for preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the Union, based on its operational practice in this field.
- (6) The responsibility of the Office as set up by the Commission also extends beyond the protection of financial interests to include all activities relating to safeguarding Union interests against irregular conduct liable to result in administrative or criminal proceedings.
- (7) This Regulation should apply without prejudice to more extensive protection which may derive from the provisions of the Treaties.
- (8) Given the need to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union, the Office should be able to conduct internal investigations in all the institutions, bodies, offices and agencies.
- (9) In the context of external investigations, the Office should be entrusted with the exercise of the powers conferred on the Commission by Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities<sup>(1)</sup>. The Office should also be allowed to exercise the other powers conferred on the Commission to conduct on-the-spot checks and inspections in the Member States, notably for the purpose of detecting irregularities as required by Article 9 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests<sup>(2)</sup>.
- (10) The operational efficiency of the Office depends greatly on cooperation with the Member States. There is a need for the Member States to identify their competent authorities which are able to provide the Office with the assistance needed in the performance of its duties. In cases where a Member State has not set up a specialist department at national level with the task of coordinating the protection of the financial interests of the Union and the fight against fraud, a service (the anti-fraud coordination service) should be designated to facilitate effective cooperation and exchange of information with the Office.
- (11) The Office should have access to any relevant information held by the institutions, bodies, offices and agencies of the Union in connection with external investigations.
- (12) Investigations should be conducted in accordance with the Treaties and in particular with the Protocol (No 7) on the privileges and immunities of the European Union, while respecting the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>(3)</sup> ("the Staff Regulations") and the Statute for Members of the European Parliament, and with full respect for human rights and fundamental freedoms, in particular the principle of fairness, for the right of persons involved to express 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. To that end, the institutions, bodies, offices and agencies should lay down the terms and conditions under which internal investigations are to be conducted.
- (13) Internal investigations can be conducted only if the Office is guaranteed access to all premises of the institutions, bodies, offices and agencies and to all information and documents held by them.
- (14) The accuracy of the information sent to the Office in connection with its mandate should be assessed promptly. To that end, the Office, prior to the opening of an investigation, should have access to any relevant information in databases held by the institutions, bodies, offices or agencies, when this is indispensable for assessing the basis in fact of allegations.
- (15) The Office should be placed under precise obligations to inform the institutions, bodies, offices and agencies of investigations in progress where an official, other servant, member of an institution or body, head of office or agency, or staff member is concerned by the matter under investigation or where precautionary measures may be required in order to protect the financial interests of the Union.
- (16) Clear rules should be laid down which, while confirming the priority enjoyed by the Office for conducting internal investigations on matters affecting the financial interests of the Union, enable the institutions, bodies, offices and agencies quickly to conduct such investigations in cases where the Office decides not to intervene.

<sup>(1)</sup> OJ L 292, 15.11.1996, p. 2.

<sup>(2)</sup> OJ L 312, 23.12.1995, p. 1.

<sup>(3)</sup> OJ L 56, 4.3.1968, p. 1.

- (17) To ensure the independence of the Office in carrying out the tasks conferred on it by this Regulation, its Director-General should be able to open an investigation on his own initiative. Where the Office is conducting an investigation, the relevant institutions, bodies, offices or agencies should not conduct an investigation into the same facts in parallel, unless agreed otherwise with the Office.
- (18) Investigations should be conducted under the authority of the Director-General, in full independence from the institutions, bodies, offices and agencies and from the Supervisory Committee. To that end, the Director-General should be able to adopt guidelines on investigation procedures for the staff of the Office. Those guidelines should provide practical guidance to the staff of the Office on the conduct of investigations and the procedural guarantees and rights of persons concerned or witnesses, and details on the internal advisory and control procedures to be followed, including a legality check. In order to provide greater transparency with regard to the conduct of investigations, those guidelines should be available to the public on the Office's website. Those guidelines should not create or alter any rights or obligations arising under this Regulation.
- (19) In accordance with Article 21 of the Staff Regulations, the staff of the Office should conduct the investigations in accordance with the guidelines on investigation procedures and on the basis of individual instructions given by the Director-General in specific cases.
- (20) In accordance with the Staff Regulations, the staff of the Office should carry out their investigative tasks in full independence and should avoid conflicts of interest. Members of the staff of the Office should immediately inform the Director-General if an investigation concerns a matter in which they have any personal interest such as to impair, or to be seen as impairing, their independence, in particular if they are or have been involved in another capacity in the matter under investigation.
- (21) External and internal investigations by the Office follow, in part, distinct rules. However, the Office should be allowed, whenever necessary, to combine in one single investigation the aspects of an external and an internal investigation, without having to open two separate investigations.
- (22) It is necessary, in the interests of legal certainty, to specify the procedural guarantees applicable to investigations conducted by the Office, taking into account the administrative nature of those investigations.
- (23) The procedural guarantees and fundamental rights of persons concerned and of witnesses should be respected without discrimination at all times and at all stages of both external and internal investigations, in particular when information about ongoing investigations is provided. Provision of any information concerning investigations conducted by the Office to the European Parliament, the Council, the Commission or the Court of Auditors, whether bilaterally or as part of an exchange of views, should respect the confidentiality of investigations, the legitimate rights of the persons concerned and, where applicable, the national provisions governing judicial proceedings. Information transmitted or obtained during investigations should be treated in accordance with Union law on data protection. Exchanges of information should be governed by the principle of proportionality and by the need-to-know principle.
- (24) In order to strengthen the protection of the individual rights of persons under investigation, conclusions referring by name to a person concerned should not be drawn, at the final stage of an investigation, without that person being given the opportunity to comment on facts concerning him.
- (25) The Director-General should ensure that any information supplied to the public respects the legitimate rights of the persons concerned.
- (26) The Office and the institutions, bodies, offices and agencies involved in the investigation should protect freedom of expression, in accordance with the Charter of Fundamental Rights of the European Union, and journalistic sources.
- (27) It should be incumbent on the Director-General to ensure the protection of personal data and respect for confidentiality of information gathered in the course of investigations. Officials and other servants of the Union should be assured of legal protection equivalent to that provided for by the Staff Regulations.
- (28) To ensure that the findings of investigations conducted by the Office are taken into account and that the requisite follow-up action is taken, the reports should have the status of admissible evidence in administrative or judicial proceedings. To that end, those reports should be drawn up in a manner compatible with the rules governing administrative reports in the Member States.
- (29) Where it is found that facts brought to light by the final report on an internal investigation could give rise to criminal proceedings, the information to that effect should be transmitted to the national judicial authorities of the Member State concerned. In the recommendations accompanying the final investigation report, the Director-General should indicate whether, in the light of the nature of the facts and the scale of their financial impact, internal measures by the institution, body, office or agency concerned would allow for a more effective follow-up.

- (30) In cases where the Director-General transmits to the judicial authorities of the Member State concerned information obtained by the Office in the course of internal investigations, that transmission of information should be without prejudice to subsequent classification in law by the national judicial authority as to whether investigative proceedings are required.
- (31) It is for the competent authorities of the Member States or the institutions, bodies, offices or agencies, as the case may be, to decide what action should be taken on completed investigations on the basis of the final investigation reports drawn up by the Office.
- (32) In order to improve its efficiency, the Office should know how the results of its investigations have been followed up. Hence, the institutions, bodies, offices and agencies of the Union and, where appropriate, the competent authorities of the Member States should report to the Office, at its request, on the action taken, if any, on the basis of the information transmitted to them by the Office.
- (33) In view of the major benefits of strengthening cooperation between the Office, Eurojust, Europol and the competent authorities of the Member States, the Office should be able to conclude with them administrative arrangements which may, in particular, aim at facilitating practical cooperation and exchange of information on technical and operational matters, without creating any additional legal obligations.
- (34) In order to strengthen the cooperation between the Office, Eurojust and the competent authorities of the Member States in respect of deeds which may be the subject of a criminal investigation, the Office should inform Eurojust of, in particular, those cases of suspected fraud, corruption or any other illegal activity affecting the financial interests of the Union and involving serious forms of criminality. The transmission of information to the competent authorities of the Member States concerned should occur, as appropriate, before the information provided by them is transmitted by the Office to Eurojust or Europol, where such information is accompanied by an invitation to take specific criminal investigative action.
- (35) For the sake of successful cooperation between the Office, the relevant institutions, bodies, offices and agencies of the Union, the competent authorities of the Member States, the competent authorities in third countries, and international organisations, a mutual exchange of information should be organised. Such exchange of information should respect the principles of confidentiality and the rules on data protection laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(1)</sup>. In particular, the Office should verify that the recipient has the appropriate competence and that the transmission of information is necessary. Exchanges of information with Eurojust should be covered by Eurojust's mandate, which extends to coordination in transnational cases of serious crime.
- (36) Given the scale of the Union funds allocated to the external-aid sector, the number of investigations carried out by the Office in that sector and the existence of international cooperation for investigation purposes, the Office should be able, where appropriate in coordination with other competent services, to seek in the performance of its tasks, by means of administrative arrangements, practical assistance from the competent authorities in third countries and from international organisations, without creating any additional legal obligations.
- (37) The Office should enjoy independence in the discharge of its functions. To reinforce that independence, the Office should be subject to regular monitoring of its investigative functions by a Supervisory Committee, composed of outside independent persons who are highly qualified in the Office's areas of activity. The Supervisory Committee should not interfere with the conduct of ongoing investigations. Its duties should also include assisting the Director-General in discharging his responsibilities.
- (38) It is appropriate to specify the criteria and procedure for appointing the members of the Supervisory Committee and to further specify the tasks of the Supervisory Committee arising from its mandate.
- (39) A reserve list should be drawn up designating candidates who may replace members of the Supervisory Committee for the remainder of their term of office in the event that one or more of those members resigns, dies or becomes otherwise unable to perform his duties.
- (40) In order to ensure that the Supervisory Committee can carry out its mission efficiently, the independent functioning of its secretariat should be guaranteed by the Office.
- (41) An exchange of views should take place once a year between the European Parliament, the Council and the Commission. Such exchange of views should cover, *inter alia*, the strategic priorities for investigation policies and the effectiveness of the work of the Office with regard to the performance of its mandate, without in any way

<sup>(1)</sup> OJ L 8, 12.1.2001, p. 1.

- interfering with the independence of the Office in the conduct of its investigations. Preparation for the exchange of views should take place at technical level and should include, in so far as may be necessary, a preparatory meeting between the relevant services of the institutions concerned. When discussing the effectiveness of the work of the Office with regard to the performance of its mandate, the institutions participating in the exchange of views should be able to address statistical information concerning the follow-up given to the Office's investigations and to the information transmitted by the Office.
- (42) In order to ensure complete independence in the running of the Office, its Director-General should be appointed for a non-renewable term of seven years.
- (43) The function of the Director-General of the Office is particularly important also for the European Parliament and the Council. The person appointed as Director-General should enjoy the widest possible support and recognition from the European Parliament, the Council and the Commission. The Commission should therefore seek to achieve a common accord with the European Parliament and the Council in the framework of the consultation procedure.
- (44) A call for applications for the post of Director-General should be published in the *Official Journal of the European Union* at the latest six months before the end of the term of office of the Director-General in office. The call for applications should be prepared by the Commission on the basis of the outcome of close consultations with the European Parliament and the Council. It should specify the selection criteria, including the requirements which candidates should meet in order to be eligible for the post.
- (45) The Director-General should inform the Supervisory Committee periodically of those cases in which information has been transmitted to the judicial authorities of the Member States and of the total number of the Office's cases dealt with by the same judicial authorities of the Member States in question, by way of follow-up to an investigation conducted by the Office.
- (46) Experience from operational practice has shown that it would be useful to allow the Director-General to delegate the exercise of certain of his functions to one or more members of the staff of the Office.
- (47) The Director-General should put in place an internal advisory and control mechanism, including a legality check, with particular reference to the obligation to respect the procedural guarantees and fundamental rights of the persons concerned and the national law of the Member States concerned.
- (48) In order to ensure the Office's independence, the Commission should decide on appropriate delegations of the powers of the appointing authority to the Director-General.
- (49) This Regulation in no way diminishes the powers and responsibilities of the Member States to take measures to combat fraud, corruption and any other illegal activity affecting the financial interests of the Union. Entrusting to an independent Office the task of conducting external administrative investigations in this area is accordingly in full compliance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.
- (50) The Commission should assess the need for revision of this Regulation in the event that a European Public Prosecutor's Office is established.
- (51) This Regulation respects fundamental rights and complies, in particular, with the principles recognised in the Charter of Fundamental Rights of the European Union.
- (52) The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 1 June 2011 <sup>(1)</sup>.
- (53) Given the substantial number of amendments necessary, Regulation (EC) No 1073/1999 should be repealed and replaced by this Regulation.
- (54) Pursuant to Article 106a(1) of the Treaty establishing the European Atomic Energy Community (TEAEC), which extends the application of Article 325 TFEU to the European Atomic Energy Community (Euratom), the rules governing investigations conducted by the Office as regards the Union should also apply as regards Euratom. Pursuant to Article 106a(2) TEAEC, references to the Union in Article 325 TFEU must be taken as references to Euratom and references to the Union in this Regulation therefore include, when the context so requires, references to Euratom. Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) <sup>(2)</sup> should therefore be repealed,

<sup>(1)</sup> OJ C 279, 23.9.2011, p. 11.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 8.

HAVE ADOPTED THIS REGULATION:

*Article 1*

**Objectives and tasks**

1. In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Union and of the European Atomic Energy Community (hereinafter referred to collectively, when the context so requires, as "the Union"), the European Anti-Fraud Office established by Decision 1999/352/EC, ECSC, Euratom ("the Office") shall exercise the powers of investigation conferred on the Commission by:

- (a) the relevant Union acts; and
- (b) the relevant cooperation and mutual assistance agreements concluded by the Union with third countries and international organisations.

2. The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their action aimed at protecting the financial interests of the Union against fraud. The Office shall contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the Union. The Office shall promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field of the protection of the financial interests of the Union, and shall support joint anti-fraud actions undertaken by Member States on a voluntary basis.

3. This Regulation shall apply without prejudice to:

- (a) Protocol (No 7) on the privileges and immunities of the European Union attached to the Treaty on European Union and to the Treaty on the Functioning of the European Union;
- (b) the Statute for Members of the European Parliament;
- (c) the Staff Regulations;
- (d) Regulation (EC) No 45/2001.

4. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ("institutions, bodies, offices and agencies"), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, it shall investigate serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices

and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations (hereinafter collectively referred to as "officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members").

5. For the application of this Regulation, competent authorities of the Member States and institutions, bodies, offices or agencies may establish administrative arrangements with the Office. Those administrative arrangements may concern, in particular, the transmission of information and the conduct of investigations.

*Article 2*

**Definitions**

For the purposes of this Regulation:

- (1) "financial interests of the Union" shall include revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them;
- (2) "irregularity" shall mean "irregularity" as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;
- (3) "fraud, corruption and any other illegal activity affecting the financial interests of the Union" shall have the meaning applied to those words in the relevant Union acts;
- (4) "administrative investigations" ("investigations") shall mean any inspection, check or other measure undertaken by the Office in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation; those investigations shall not affect the powers of the competent authorities of the Member States to initiate criminal proceedings;
- (5) "person concerned" shall mean any person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and who is therefore subject to investigation by the Office;
- (6) "economic operator" shall have the meaning applied to that term by Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96;
- (7) "administrative arrangements" shall mean arrangements of a technical and/or operational nature concluded by the Office, which may in particular aim at facilitating the cooperation and the exchange of information between the parties thereto, and which do not create additional legal obligations.



*Article 3***External investigations**

1. The Office shall exercise the power conferred on the Commission by Regulation (Euratom, EC) No 2185/96 to carry out on-the-spot checks and inspections in the Member States and, in accordance with the cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in the Member States and, in accordance with the cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

2. With a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or decision or a contract concerning Union funding, the Office may, in accordance with the provisions and procedures laid down by Regulation (Euratom, EC) No 2185/96, conduct on-the-spot checks and inspections on economic operators.

3. During on-the-spot checks and inspections, the staff of the Office shall act, subject to the Union law applicable, in compliance with the rules and practices of the Member State concerned and with the procedural guarantees provided for in this Regulation.

At the request of the Office, the competent authority of the Member State concerned shall provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2). If that assistance requires authorisation from a judicial authority in accordance with national rules, such authorisation shall be applied for.

The Member State concerned shall ensure, in accordance with Regulation (Euratom, EC) No 2185/96, that the staff of the Office are allowed access, under the same terms and conditions as its competent authorities and in compliance with its national law, to all information and documents relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently.

4. Member States shall, for the purposes of this Regulation, designate a service ("the anti-fraud coordination service") to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, in accordance with national law, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation.

5. During an external investigation, the Office may have access to any relevant information, including information in databases, held by the institutions, bodies, offices and agencies, connected with the matter under investigation, where necessary in order to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. For that purpose Article 4(2) and (4) shall apply.

6. Where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the competent Commission services.

Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities of the Member States concerned shall ensure that appropriate action is taken, in which the Office may take part, in compliance with national law. Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of information as referred to in the first subparagraph of this paragraph.

*Article 4***Internal investigations**

1. In the areas referred to in Article 1, the Office shall carry out administrative investigations within the institutions, bodies, offices and agencies ("internal investigations").

Those internal investigations shall be conducted in accordance with the conditions set out in this Regulation and in the decisions adopted by the respective institution, body, office or agency.

2. Provided that the provisions referred to in paragraph 1 are complied with:

(a) the Office shall have the right of immediate and unannounced access to any relevant information, including information in databases, held by the institutions, bodies, offices and agencies, and to their premises. The Office shall be empowered to inspect the accounts of the institutions, bodies, offices and agencies. The Office may take a copy of, and obtain extracts from, any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearance;

(b) the Office may request oral information, including through interviews, and written information from officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members.

3. In accordance with the provisions and procedures laid down by Regulation (Euratom, EC) No 2185/96, the Office may carry out on-the-spot checks and inspections at the premises of economic operators in order to obtain access to information relevant to the matter under internal investigation.

4. The institutions, bodies, offices and agencies shall be informed whenever staff of the Office conduct an internal investigation on their premises or consult a document or request information held by them. Without prejudice to Articles 10 and 11, the Office may at any time forward to the institution, body, office or agency concerned the information obtained in the course of internal investigations.

5. The institutions, bodies, offices and agencies shall put in place appropriate procedures and take necessary measures to ensure at all stages the confidentiality of internal investigations.

6. Where internal investigations reveal that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, the institution, body, office or agency to which that person belongs shall be informed.

In cases where the confidentiality of the internal investigation cannot be ensured using the usual channels of communication, the Office shall use appropriate alternative channels for transmitting information.

In exceptional cases, the provision of such information may be deferred on the basis of a reasoned decision by the Director-General, which shall be transmitted to the Supervisory Committee after the closure of the investigation.

7. The decision to be adopted by each institution, body, office or agency as provided for in paragraph 1 shall include, in particular, a rule concerning a duty on the part of officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members to cooperate with and supply information to the Office, while ensuring the confidentiality of the internal investigation.

8. Where, before a decision has been taken whether or not to open an internal investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the institution, body, office or agency concerned. Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.

Where necessary, the Office shall also inform the competent authorities of the Member State concerned. In this case, the procedural requirements laid down in the second and third subparagraphs of Article 9(4) shall apply. If the

competent authorities decide to take any action on the basis of the information transmitted to them, in accordance with national law, they shall, upon request, inform the Office thereof.

#### Article 5

### Opening of investigations

1. The Director-General may open an investigation when there is a sufficient suspicion, which may also be based on information provided by any third party or anonymous information, that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The decision by the Director-General whether or not to open an investigation shall take into account the investigation policy priorities and the annual management plan of the Office established in accordance with Article 17(5). That decision shall also take into account the need for efficient use of the Office's resources and for proportionality of the means employed. With regard to internal investigations, specific account shall be taken of the institution, body, office or agency best placed to conduct them, based, in particular, on the nature of the facts, the actual or potential financial impact of the case, and the likelihood of any judicial follow-up.

2. The decision to open an external investigation shall be taken by the Director-General, acting on his own initiative or following a request from a Member State concerned or any institution, body, office or agency of the Union.

The decision to open an internal investigation shall be taken by the Director-General, acting on his own initiative or following a request from the institution, body, office or agency within which the investigation is to be conducted or from a Member State.

3. While the Director-General is considering whether or not to open an internal investigation following a request as referred to in paragraph 2, and/or while the Office is conducting an internal investigation, the institutions, bodies, offices or agencies concerned shall not open a parallel investigation into the same facts, unless agreed otherwise with the Office.

4. Within two months of receipt by the Office of a request as referred to in paragraph 2, a decision whether or not to open an investigation shall be taken. It shall be communicated without delay to the Member State, institution, body, office or agency which made the request. Reasons shall be given for a decision not to open an investigation. If, on the expiry of that period of two months, the Office has not taken any decision, the Office shall be deemed to have decided not to open an investigation.

Where an official, other servant, member of an institution or body, head of office or agency, or staff member, acting in accordance with Article 22a of the Staff Regulations, provides information to the Office relating to a suspected fraud or irregularity, the Office shall inform that person of the decision whether or not to open an investigation in relation to the facts in question.

5. If the Director-General decides not to open an internal investigation, he may without delay send any relevant information to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be informed of the action taken.

6. If the Director-General decides not to open an external investigation, he may without delay send any relevant information to the competent authorities of the Member State concerned for action to be taken where appropriate, in accordance with its national rules. Where necessary, the Office shall also inform the institution, body, office or agency concerned.

#### Article 6

##### Access to information in databases prior to the opening of an investigation

1. Prior to the opening of an investigation, the Office shall have the right of access to any relevant information in databases held by the institutions, bodies, offices or agencies when this is indispensable in order to assess the basis in fact of allegations. That right of access shall be exercised within the time-limit, to be set by the Office, required for a prompt assessment of the allegations. In exercising that right of access, the Office shall respect the principles of necessity and proportionality.

2. The institution, body, office or agency concerned shall sincerely cooperate by allowing the Office to obtain any relevant information under conditions to be specified in the decisions adopted under Article 4(1).

#### Article 7

##### Investigations procedure

1. The Director-General shall direct the conduct of investigations on the basis, where appropriate, of written instructions. Investigations shall be conducted under his direction by the staff of the Office designated by him.

2. The staff of the Office shall carry out their tasks on production of a written authorisation showing their identity and their capacity. The Director-General shall issue such authorisation indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases.

3. The competent authorities of the Member States shall, in conformity with national rules, give the necessary assistance to enable the staff of the Office to fulfil their tasks effectively.

The institutions, bodies, offices and agencies shall ensure that their officials, other servants, members, heads and staff members provide the necessary assistance to enable the staff of the Office to fulfil their tasks effectively.

4. Where an investigation combines external and internal elements, Articles 3 and 4 shall apply respectively.

5. Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case.

6. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall without delay inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:

- (a) the identity of the official, other servant, member of an institution or body, head of office or agency, or staff member concerned and a summary of the facts in question;
- (b) any information that could assist the institution, body, office or agency concerned in deciding whether it is appropriate to take precautionary administrative measures in order to protect the financial interests of the Union;
- (c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority, in accordance with the national rules applicable to investigations.

The institution, body, office or agency concerned may at any time decide to take, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence, and shall inform the Office without delay of such decision.

7. Where necessary, it shall be for the competent authorities of the Member States, at the Office's request, to take the appropriate precautionary measures under their national law, in particular measures for the safeguarding of evidence.

8. 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 the reasons and the remedial measures envisaged with a view to speeding up the investigation.

*Article 8***Duty to inform the Office**

1. The institutions, bodies, offices and agencies shall transmit to the Office without delay any information relating to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union.

2. The institutions, bodies, offices and agencies and, in so far as their national law allows, the competent authorities of the Member States shall, at the request of the Office or on their own initiative, transmit to the Office any document or information they hold which relates to an ongoing investigation by the Office.

3. The institutions, bodies, offices and agencies and, in so far as their national law allows, the competent authorities of the Member States shall transmit to the Office any other document or information considered pertinent which they hold relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

*Article 9***Procedural guarantees**

1. In its investigations the Office shall seek evidence for and against the person concerned. Investigations shall be conducted objectively and impartially and in accordance with the principle of the presumption of innocence and with the procedural guarantees set out in this Article.

2. The Office may interview a person concerned or a witness at any time during an investigation. Any person interviewed shall have the right to avoid self-incrimination.

The invitation to an interview shall be sent to a person concerned with at least 10 working days' notice. That notice period may be shortened with the express consent of the person concerned or on duly reasoned grounds of urgency of the investigation. In the latter case, the notice period shall not be less than 24 hours. The invitation shall include a list of the rights of the person concerned, in particular the right to be assisted by a person of his choice.

The invitation to an interview shall be sent to a witness with at least 24 hours' notice. That notice period may be shortened with the express consent of the witness or on duly reasoned grounds of urgency of the investigation.

The requirements referred to in the second and third subparagraphs shall not apply to the taking of statements in the context of on-the-spot checks and inspections.

Where, in the course of an interview, evidence emerges that a witness may be a person concerned, the interview shall be ended. The procedural rules provided for in this paragraph and in paragraphs 3 and 4 shall immediately apply. That witness shall be informed forthwith of his rights as a person concerned and shall receive, upon request, a copy of the records of any statements made by him in the past. The Office may not use that person's past statements against him without giving him first the opportunity to comment on those statements.

The Office shall draw up a record of the interview and give the person interviewed access to it so that the person interviewed may either approve the record or add observations. The Office shall give the person concerned a copy of the record of the interview.

3. As soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings falling within the remit of a national judicial authority.

4. Without prejudice to Articles 4(6) and 7(6), once the investigation has been completed and before conclusions referring by name to a person concerned are drawn up, that person shall be given the opportunity to comment on facts concerning him.

To that end, the Office shall send the person concerned an invitation to comment either in writing or at an interview with staff designated by the Office. That invitation shall include a summary of the facts concerning the person concerned and the information required by Articles 11 and 12 of Regulation (EC) No 45/2001, and shall indicate the time-limit for submitting comments, which shall not be less than 10 working days from receipt of the invitation to comment. That notice period may be shortened with the express consent of the person concerned or on duly reasoned grounds of urgency of the investigation. The final investigation report shall make reference to any such comments.

In duly justified cases where it is necessary to preserve the confidentiality of the investigation and/or entailing the use of investigative proceedings falling within the remit of a national judicial authority, the Director-General may decide to defer the fulfilment of the obligation to invite the person concerned to comment.

In cases referred to in Article 1(2) of Annex IX to the Staff Regulations, failure on the part of the institution, body, office or agency to respond within one month to the request of the Director-General for deferral of the fulfilment of the obligation to invite the person concerned to comment shall be deemed to constitute a reply in the affirmative.

5. Any person interviewed shall be entitled to use any of the official languages of the institutions of the Union. However, officials or other servants of the Union may be required to use an official language of the institutions of the Union of which they have a thorough knowledge.

#### Article 10

##### Confidentiality and data protection

1. Information transmitted or obtained in the course of external investigations, in whatever form, shall be protected by the relevant provisions.

2. Information transmitted or obtained in the course of internal investigations, in whatever form, shall be subject to professional secrecy and shall enjoy the protection afforded by the rules applicable to the Union institutions.

3. The institutions, bodies, offices or agencies concerned shall ensure that the confidentiality of the investigations conducted by the Office is respected, together with the legitimate rights of the persons concerned, and, where judicial proceedings have been initiated, that all national rules applicable to such proceedings have been adhered to.

4. The Office may designate a Data Protection Officer in accordance with Article 24 of Regulation (EC) No 45/2001.

5. The Director-General shall ensure that any information provided to the public is given neutrally and impartially, and that its disclosure respects the confidentiality of investigations and complies with the principles set out in this Article and in Article 9(1).

In accordance with the Staff Regulations, staff of the Office shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public, and shall continue to be bound by that obligation after leaving the service.

#### Article 11

##### Investigation report and action to be taken following investigations

1. On completion of an investigation by the Office, a report shall be drawn up, under the authority of the Director-General. That report shall give an account of the legal basis for the investigation, the procedural steps followed, the facts established and their preliminary classification in law, the estimated financial impact of the facts established, the respect of the procedural guarantees in accordance with Article 9 and the conclusions of the investigation.

The report shall be accompanied by recommendations of the Director-General on whether or not action should be taken. Those recommendations shall, where appropriate, indicate any disciplinary, administrative, financial and/or judicial action by

the institutions, bodies, offices and agencies and by the competent authorities of the Member States concerned, and shall specify in particular the estimated amounts to be recovered, as well as the preliminary classification in law of the facts established.

2. In drawing up such reports and recommendations, account shall be taken of the national law of the Member State concerned. Reports drawn up on that basis shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall have the same evidentiary value as such reports.

3. Reports and recommendations drawn up following an external investigation and any relevant related documents shall be sent to the competent authorities of the Member States concerned in accordance with the rules relating to external investigations and, if necessary, to the competent Commission services.

4. Reports and recommendations drawn up following an internal investigation and any relevant related documents shall be sent to the institution, body, office or agency concerned. That institution, body, office or agency shall take such action, in particular of a disciplinary or legal nature, as the results of the internal investigation warrant, and shall report thereon to the Office, within a time-limit laid down in the recommendations accompanying the report, and, in addition, at the request of the Office.

5. Where the report drawn up following an internal investigation reveals the existence of facts which could give rise to criminal proceedings, that information shall be transmitted to the judicial authorities of the Member State concerned.

6. At the request of the Office, the competent authorities of the Member States concerned shall, in due time, send to the Office information on action taken, if any, following the transmission by the Director-General of his recommendations in accordance with paragraph 3, and following the transmission by the Office of any information in accordance with paragraph 5.

7. Without prejudice to paragraph 4, if, on completion of an investigation, no evidence has been found against the person concerned, the Director-General shall close the investigation regarding that person and inform that person within 10 working days.

8. Where an informant who has provided the Office with information leading or relating to an investigation so requests, the Office may notify that informant that the investigation has been closed. The Office may, however, refuse any such request if it considers that it is such as to prejudice the legitimate interests of the person concerned, the effectiveness of the investigation and of the action to be taken subsequent thereto, or any confidentiality requirements.

#### Article 12

### Exchange of information between the Office and the competent authorities of the Member States

1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may transmit to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time to enable them to take appropriate action in accordance with their national law.

2. Without prejudice to Articles 10 and 11, the Director-General shall transmit to the judicial authorities of the Member State concerned information obtained by the Office, in the course of internal investigations, concerning facts which fall within the jurisdiction of a national judicial authority.

In accordance with Article 4 and without prejudice to Article 10, the Director-General shall also transmit to the institution, body, office or agency concerned the information referred to in the first subparagraph of this paragraph, including the identity of the person concerned, a summary of the facts established, their preliminary classification in law and the estimated impact on the financial interests of the Union.

Article 9(4) shall apply.

3. The competent authorities of the Member State concerned shall, without prejudice to their national law, inform the Office in due time, on their own initiative or at the request of the Office, of the action taken on the basis of the information transmitted to them under this Article.

4. The Office may provide evidence in proceedings before national courts and tribunals in conformity with national law and the Staff Regulations.

#### Article 13

### Cooperation of the Office with Eurojust and Europol

1. Within its mandate to protect the financial interests of the Union, the Office shall cooperate, as appropriate, with Eurojust and with the European Police Office (Europol). Where necessary in order to facilitate that cooperation, the Office shall agree with Eurojust and Europol on administrative arrangements. Such working arrangements may concern exchange of operational, strategic or technical information, including personal data and classified information and, on request, progress reports.

Where this may support and strengthen coordination and cooperation between national investigating and prosecuting authorities, or where the Office has forwarded to the competent authorities of the Member States information giving grounds for suspecting the existence of fraud, corruption or any other illegal activity affecting the financial interests of the

Union in the form of serious crime, it shall transmit relevant information to Eurojust, within the mandate of Eurojust.

2. The competent authorities of the Member States concerned shall be informed, in a timely manner, by the Office in cases where information provided by them is transmitted by the Office to Eurojust or Europol.

#### Article 14

### Cooperation with third countries and international organisations

1. Administrative arrangements may be agreed, as appropriate, by the Office with competent authorities in third countries and with international organisations. The Office shall coordinate its action as appropriate with the competent Commission services and with the European External Action Service, in particular before agreeing such arrangements. Such arrangements may concern exchange of operational, strategic or technical information, including, on request, progress reports.

2. The Office shall inform the competent authorities of the Member States concerned before information provided by them is transmitted by the Office to competent authorities in third countries or to international organisations.

The Office shall keep a record of all transmissions of personal data, including the grounds for such transmissions, in accordance with Regulation (EC) No 45/2001.

#### Article 15

### Supervisory Committee

1. The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office's independence in the proper exercise of the competences conferred upon it by this Regulation.

The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General in accordance with Article 7(8).

The Supervisory Committee shall address to the Director-General opinions, including where appropriate, recommendations on *inter alia* the resources needed to carry out the investigative function of the Office, on the investigative priorities of the Office and on the duration of investigations. Those opinions may be delivered on its own initiative, at the request of the Director-General or at the request of an institution, body, office or agency, without however interfering with the conduct of investigations in progress.

The institutions, bodies, offices or agencies shall be provided with a copy of opinions delivered pursuant to the third subparagraph.

In duly justified situations, the Supervisory Committee may ask the Office for additional information on investigations, including reports and recommendations on closed investigations, without however interfering with the conduct of investigations in progress.

2. The Supervisory Committee shall be composed of five independent members having experience in senior judicial or investigative functions or comparable functions relating to the areas of activity of the Office. They shall be appointed by common accord of the European Parliament, the Council and the Commission.

The decision appointing the members of the Supervisory Committee shall also include a reserve list of potential members to replace members of the Supervisory Committee for the remainder of their term of office in the event of the resignation, death or permanent incapacity of one or more of those members.

3. The term of office of members of the Supervisory Committee shall be five years and shall not be renewable. Three and two members shall be replaced alternately in order to preserve the Supervisory Committee's expertise.

4. On expiry of their term of office, members of the Supervisory Committee shall remain in office until they are replaced.

5. If a member of the Supervisory Committee ceases to fulfil the conditions governing the performance of his duties, or if he has been found guilty of serious misconduct, the European Parliament, the Council and the Commission may, by common accord, relieve him of his duties.

6. In accordance with the applicable Commission rules, members of the Supervisory Committee shall receive a daily allowance and shall be reimbursed for expenses incurred by them in the course of their duties.

7. In carrying out their duties, the members of the Supervisory Committee shall neither seek nor take instructions from any government or any institution, body, office or agency.

8. The Supervisory Committee shall appoint its chair. It shall adopt its own rules of procedure, which shall, before adoption, be submitted to the European Parliament, the Council, the Commission and the European Data Protection Supervisor for information. Meetings of the Supervisory Committee shall be convened on the initiative of its chair or the Director-General. It shall hold at least 10 meetings per year. The Supervisory Committee shall take its decisions by a majority of its

component members. Its secretariat shall be provided by the Office, in close consultation with the Supervisory Committee.

9. The Supervisory Committee shall adopt at least one report on its activities per year, covering in particular the assessment of the Office's independence, the application of procedural guarantees and the duration of investigations. Those reports shall be sent to the European Parliament, the Council, the Commission and the Court of Auditors.

The Supervisory Committee may submit reports to the European Parliament, the Council, the Commission and the Court of Auditors on the results of the Office's investigations and the action taken on the basis of those results.

#### Article 16

##### Exchange of views with the institutions

1. The European Parliament, the Council and the Commission shall once a year meet the Director-General for an exchange of views at political level to discuss the Office's policy relating to methods of preventing and combating fraud, corruption or any other illegal activity affecting the financial interests of the Union. The Supervisory Committee shall participate in the exchange of views. Representatives of the Court of Auditors, Eurojust and/or Europol may be invited to attend on an ad hoc basis upon request of the European Parliament, the Council, the Commission, the Director-General or the Supervisory Committee.

2. The exchange of views may relate to:

- (a) the strategic priorities for the Office's investigation policies;
- (b) the opinions and activity reports of the Supervisory Committee provided for under Article 15;
- (c) the reports of the Director-General under Article 17(4) and, as appropriate, any other reports by the institutions relating to the mandate of the Office;
- (d) the framework of the relations between the Office and the institutions, bodies, offices and agencies;
- (e) the framework of the relations between the Office and the competent authorities of the Member States;
- (f) the relations between the Office and the competent authorities in third countries as well as international organisations in the framework of the arrangements referred to in this Regulation;
- (g) the effectiveness of the work of the Office with regard to the performance of its mandate.

3. All institutions participating in the exchange of views shall ensure that the exchange of views does not interfere with the conduct of investigations in progress.

4. The institutions participating in the exchange of views shall take into account in their actions the opinions expressed in that exchange. The Director-General shall provide, in the reports referred to in Article 17(4), information on the actions, if any, taken by the Office.

#### Article 17

##### Director-General

1. The Office shall be headed by a Director-General. The Director-General shall be appointed by the Commission, in accordance with the procedure specified in paragraph 2. The term of office of the Director-General shall be seven years and shall not be renewable.

2. In order to appoint a new Director-General, the Commission shall publish a call for applications in the *Official Journal of the European Union*. Such publication shall take place at the latest six months before the end of the term of office of the Director-General in office. After a favourable opinion has been given by the Supervisory Committee on the selection procedure applied by the Commission, the Commission shall draw up a list of suitably qualified candidates. After consultation with the European Parliament and the Council, the Commission shall appoint the Director-General.

3. The Director-General shall neither seek nor take 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-General considers that a measure taken by the Commission calls his independence into question, he shall immediately inform the Supervisory Committee, and shall decide whether to bring an action against the Commission before the Court of Justice.

4. The Director-General shall report regularly to the European Parliament, the Council, the Commission and the Court of Auditors on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and of informants, and, where appropriate, national law applicable to judicial proceedings.

5. The Director-General shall each year determine, within the context of the annual management plan, the investigation policy priorities of the Office and shall, prior to their publication, forward them to the Supervisory Committee.

The Director-General shall keep the Supervisory Committee periodically informed of the Office's activities, the implementation of its investigative function and the action taken by way of follow-up to investigations.

The Director-General shall inform the Supervisory Committee periodically:

- (a) of cases in which the recommendations made by the Director-General have not been followed;
- (b) of cases in which information has been transmitted to judicial authorities of the Member States;
- (c) on the duration of investigations in accordance with Article 7(8).

6. The Director-General may delegate in writing the exercise of certain of his functions under Article 5, Article 7(2), Article 11(7) and Article 12(2) to one or more members of the staff of the Office, specifying the conditions and limits governing such delegation.

7. The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating *inter alia* to the respect of procedural guarantees and fundamental rights of the persons concerned and of the national law of the Member States concerned, with particular reference to Article 11(2).

8. The Director-General shall adopt guidelines on investigation procedures for the staff of the Office. Those guidelines shall be in accordance with this Regulation and shall cover, *inter alia*:

- (a) the conduct of investigations;
- (b) the procedural guarantees;
- (c) details on the internal advisory and control procedures, including the legality check;
- (d) data protection.

Those guidelines, and any modification thereto, shall be adopted after the Supervisory Committee has been given the opportunity to submit its observations thereon and shall then be transmitted for information to the European Parliament, the Council and the Commission, and published for information purposes on the Office's website in the official languages of the institutions of the Union.

9. Before imposing any disciplinary penalty on the Director-General, the Commission shall consult the Supervisory Committee.

The imposition of any disciplinary penalty on the Director-General shall be the subject of a reasoned decision, which shall be forwarded for information to the European Parliament, the Council and the Supervisory Committee.



10. Any reference to the "Director" of the Office in any legal text shall be read as a reference to the Director-General.

#### Article 18

##### Financing

The total appropriations for the Office, including for the Supervisory Committee and its secretariat, shall be entered under a specific budget line within the section of the general budget of the European Union relating to the Commission and shall be set out in detail in an Annex to that section.

The establishment plan of the Office, including the secretariat of the Supervisory Committee, shall be annexed to the establishment plan of the Commission.

#### Article 19

##### Evaluation report

By ... (\*) the Commission shall submit to the European Parliament and the Council an evaluation report on the application of this Regulation. That report shall be accompanied by an opinion of the Supervisory Committee and shall state whether there is a need to amend this Regulation.

#### Article 20

##### Repeal

Regulation (EC) No 1073/1999 and Regulation (Euratom) No 1074/1999 are hereby repealed.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

For the European Parliament  
The President

...

For the Council  
The President

...

References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex II.

#### Article 21

##### Entry into force and transitional provisions

1. This Regulation shall enter into force on the first day of the month following its publication in the *Official Journal of the European Union*.

2. Article 15(3) shall apply to the duration of the term of office of the members of the Supervisory Committee in office at the date of entry into force of this Regulation. Immediately after the entry into force of this Regulation, the President of the European Parliament shall choose by lot, from amongst the members of the Supervisory Committee, two members whose duties are to end, by way of derogation from the first sentence of Article 15(3), upon expiry of the first 36 months of their term of office. Two new members shall be appointed automatically for a term of office of five years to replace the outgoing members, on the basis and in the order of the list set out in Article 1(2) of Decision No 2012/45/EU, Euratom of the European Parliament, the Council and the Commission of 23 January 2012 appointing the members of the Supervisory Committee of the European Anti-Fraud Office (OLAF) <sup>(1)</sup>. Those new members shall be the first two persons whose names appear in that list.

3. The third sentence of Article 17(1) shall apply to the duration of the term of office of the Director-General in office at the date of entry into force of this Regulation.

(\*) 4 years from the date of entry into force of this Regulation.

<sup>(1)</sup> OJ L 26, 28.1.2012, p. 30.

## ANNEX I

## REPEALED REGULATIONS (REFERRED TO IN ARTICLE 20)

Regulation (EC) No 1073/1999 of the European Parliament and of the Council

(OJ L 136, 31.5.1999, p. 1)

Council Regulation (Euratom) No 1074/1999

(OJ L 136, 31.5.1999, p. 8)

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## ANNEX II

## CORRELATION TABLE

Regulation (EC) No 1073/1999 and Regulation (Euratom) No 1074/1999	This Regulation
Article 1(1)	Article 1(1)
Article 1(2)	Article 1(2)
—	Article 1(3)
Article 1(3)	Article 1(4)
—	Article 1(5)
—	Article 2, point 1
—	Article 2, point 2
—	Article 2, point 3
Article 2	Article 2, point 4
—	Article 2, point 5
—	Article 2, point 6
—	Article 2, point 7
Article 3, first paragraph	Article 3(1), first subparagraph
Article 3, second paragraph	Article 3(1), second subparagraph
—	Article 3(2)
—	Article 3(3), second subparagraph
—	Article 3(3), third subparagraph
—	Article 3(4)
—	Article 3(5)
—	Article 3(6)
Article 4(1), first subparagraph	Article 4(1), first subparagraph
Article 4(1), second subparagraph	Article 4(1), second subparagraph
Article 4(2)	Article 4(2)
Article 4(3), first subparagraph	Article 4(3)
Article 4(3), second subparagraph	—
Article 4(4)	Article 4(4), first sentence
—	Article 4(5)
Article 4(5), first subparagraph	Article 4(6), first subparagraph
—	Article 4(6), second subparagraph
Article 4(5), second subparagraph	Article 4(6), third subparagraph
Article 4(6), point (a)	Article 4(7)

Regulation (EC) No 1073/1999 and Regulation (Euratom) No 1074/1999	This Regulation
Article 4(6), point (b)	—
—	Article 4(8)
—	Article 5(1)
Article 5, first paragraph	Article 5(2), first subparagraph
Article 5, second paragraph	Article 5(2), second subparagraph
—	Article 5(3)
—	Article 5(4)
—	Article 5(5)
—	Article 5(6)
—	Article 6
Article 6(1)	Article 7(1)
Article 6(2)	Article 7(2), first sentence
Article 6(3)	Article 7(2), second sentence
Article 6(4)	Article 3(3), first subparagraph
—	Article 7(4)
Article 6(5)	Article 7(5)
Article 6(6)	Article 7(3)
—	Article 7(6)
—	Article 7(7)
—	Article 7(8)
Article 7(1)	Article 8(1)
Article 7(2)	Article 8(2)
Article 7(3)	Article 8(3)
—	Article 9
Article 8(1)	Article 10(1)
Article 8(2), first subparagraph	Article 10(2)
Article 8(2), second subparagraph	—
Article 8(3)	—
Article 8(4)	—
—	Article 10(4)
—	Article 10(5)
Article 9(1)	Article 11(1), first subparagraph
—	Article 11(1), second subparagraph
Article 9(2)	Article 11(2)
Article 9(3)	Article 11(3)

Regulation (EC) No 1073/1999 and Regulation (Euratom) No 1074/1999	This Regulation
Article 9(4)	Article 11(4)
—	Article 11(5)
—	Article 11(6)
—	Article 11(7)
—	Article 11(8)
Article 10(1)	Article 12(1)
Article 10(2)	Article 12(2), first subparagraph
—	Article 12(2), second subparagraph
—	Article 12(2), third subparagraph
Article 10(3)	Article 4(4), second sentence
—	Article 12(3)
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—	Article 15(1), second subparagraph
Article 11(1), second subparagraph	Article 15(1), third subparagraph
—	Article 15(1), fourth subparagraph
—	Article 15(1), fifth subparagraph
Article 11(2)	Article 15(2), first subparagraph
—	Article 15(2), second subparagraph
Article 11(3)	Article 15(3)
Article 11(4)	Article 15(4)
—	Article 15(5)
—	Article 15(6)
Article 11(5)	Article 15(7)
Article 11(6)	Article 15(8)
Article 11(7)	Article 17(5), third subparagraph
Article 11(8)	Article 15(9)
—	Article 16
Article 12(1)	Article 17(1)
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Article 12(3), first subparagraph	Article 17(3)
Article 12(3), second subparagraph	Article 17(4)

Regulation (EC) No 1073/1999 and Regulation (Euratom) No 1074/1999	This Regulation
Article 12(3), third subparagraph	Article 10(3)
—	Article 17(5), first subparagraph
—	Article 17(5), second subparagraph
—	Article 17(6)
—	Article 17(7)
—	Article 17(8)
Article 12(4), first sentence	Article 17(9), first subparagraph
Article 12(4), second sentence	Article 17(9), second subparagraph
—	Article 17(10)
Article 13	Article 18
Article 14	—
Article 15	Article 19
—	Article 20
Article 16	Article 21(1)
—	Article 21(2)
—	Article 21(3)
—	Annex I
—	Annex II

## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

On 5 July 2006, the Commission submitted to the Council its 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) <sup>(1)</sup>.

During its Plenary session on 20 November 2008, the European Parliament adopted its position at first reading and the accompanying legislative resolution <sup>(2)</sup>.

On 6 July 2010, the Commission issued a reflection paper on the reform of OLAF <sup>(3)</sup>, with the purpose to identify convergent and divergent points in the views expressed by the European Parliament and the Council on the Commission's initial proposal, and to achieve consensus on the main issues at stake.

As a result of thorough discussions within its Working Party on Combating Fraud, the Council issued on 6 December 2010 conclusions on the Commission's reflection paper <sup>(4)</sup>.

Following this reflection process, the Commission submitted on 18 March 2011 an amended 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) and repealing Council Regulation (Euratom) No 1074/1999.

The European Parliament established its negotiating mandate on the Commission's amended proposal by reaffirming its position at first reading on the Commission's initial proposal.

Opinions were delivered by the European Court of Auditors on 12 July 2011 <sup>(5)</sup> and by the European Data Protection Supervisor on 1 June 2011 <sup>(6)</sup>.

In accordance with paragraphs 16 to 18 of the Joint Declaration on Practical Arrangements for the Codecision Procedure <sup>(7)</sup>, the Presidency, operating under a mandate from the Permanent Representatives Committee <sup>(8)</sup>, negotiated with the European Parliament, in the context of informal tripartite discussions which took place from October 2011 to June 2012, with a view to reaching an agreement at the stage of Council's first reading.

On 25 July 2012, the Permanent Representatives Committee endorsed the compromise text agreed at the last informal trilogue of 8 June. This agreement was also confirmed by the European Parliament's Committee on Budgetary Control (CONT) on 8 October, following which its Chairman sent a letter to the Chairman of the Permanent Representatives Committee confirming that, should the Council adopt that text, he would recommend Plenary to accept Council's first reading position without amendments.

Subsequently, at its meeting on 4 December, the Council confirmed the political agreement on the agreed text as set out in documents 16546/12 and 12735/12 ADD1.

<sup>(1)</sup> Doc. 11281/06.

<sup>(2)</sup> Doc. 15961/08.

<sup>(3)</sup> Doc. SEC(2010) 859.

<sup>(4)</sup> Doc. 16833/10.

<sup>(5)</sup> OJ C 254, 30.8.2011, p. 1.

<sup>(6)</sup> OJ C 279, 23.9.2011, p. 11.

<sup>(7)</sup> OJ C 145, 30.6.2007, p. 5.

<sup>(8)</sup> Doc. 12140/11 ADD1.

## II. OBJECTIVE OF THE PROPOSAL

The purpose of the Regulation is to amend Regulation (EC) No 1073/1999, which is the basic legal act regulating investigations conducted by OLAF.

The proposal aims mainly at strengthening OLAF's independence, increasing the efficiency and effectiveness of OLAF's investigations and improving the cooperation and the exchange of information between the various institutions and authorities involved in the different phases of the investigations.

## III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

On the basis of the Commission's amended proposal, the European Parliament and the Council have conducted negotiations with a view to concluding an agreement at the stage of Council's position at first reading.

The tripartite discussions focussed, in particular, on the following key issues, and the text of the Council's position fully reflects the compromise reached between the co-legislators, as endorsed by the Permanent Representatives Committee in July 2012 and approved by CONT in October 2012:

### **Investigation procedures**

More detailed provisions were defined, clarifying the tasks and duties of the various stakeholders in the opening, conduct and closing of OLAF's investigations. Furthermore, the co-legislators agreed that OLAF's Director-General shall put in place an internal advisory and control procedure, including a legality check.

### **Role of OLAF's Director-General**

The tasks, duties and the scope of action of OLAF's Director-General were more explicitly outlined, taking stock of the current practice and aiming at streamlining procedures, making them more transparent and reducing their duration. Moreover, in order to strengthen OLAF's independence, the once renewable five-year term under the current rules was replaced by a non-renewable seven-year term.

### **Specific reference to the applicable procedural guarantees**

In line with the charter of fundamental rights of the EU, the procedural rights of persons concerned by OLAF's investigations, witnesses and informants were set out in the Regulation and further strengthened with respect to the current practice in EU bodies.

### **Role of the Supervisory Committee (SC)**

The SC's fundamental task - to ensure that OLAF exercises its mission in full independence - was reaffirmed. In addition to its current duties, the SC was also mandated to monitor the application of the procedural guarantees. With respect to its appointment, in order to preserve the continuity of the SC's action, the co-legislators agreed to introduce a five-year term and a staggered renewal of its members.

### **Information flows and cooperation arrangements**

Rules were improved in order to allow for a more timely and effective exchange of information between OLAF and EU institutions, offices, bodies and agencies, as well as with Member States' competent authorities, during the various phases of the investigations. More clear reporting processes were set out, particularly on the follow-up given to the recommendations of OLAF's Director-General. It was also agreed that Member States would designate a service ("the anti-fraud coordination service") to facilitate effective cooperation and exchange of information with OLAF.

Furthermore, the co-legislators clearly set out in the Regulation the possibility for OLAF to conclude administrative arrangements with Europol, Eurojust, third countries' competent authorities and international organisations.



**Exchange of views**

An agreement was reached on the introduction of a regular exchange of views between OLAF's Director-General, the European Parliament, the Council and the Commission. Such meetings at political level would cover, *inter alia*, the strategic priorities for OLAF's investigation policies and the effectiveness of OLAF's work with regard to the performance of its mandate, without in any way interfering with OLAF's independence in the conduct of its investigations.

**Access to information in databases prior to the opening of an investigation**

OLAF's right of immediate and unannounced access to information held by EU institutions, bodies, offices or agencies was extended to the stage prior to the opening of an investigation in order to assess the basis in fact of allegations.

**IV. CONCLUSION**

Council's position at first reading reflects the compromise reached during the negotiations between the European Parliament and the Council, with the support of the Commission. This compromise was confirmed by a letter from the CONT Chairman to the Chairman of the Permanent Representatives Committee dated 12 October 2012. In this letter, the CONT Chairman indicated that he would recommend CONT members, and subsequently Plenary, to accept Council's position at first reading without amendments at European Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.

The Council believes that its position at first reading represents a balanced package and that, once adopted, the new Regulation will make a significant contribution to an increased protection of the Union's financial interests and to fight against fraud, corruption and any other illegal activity affecting those interests.

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**Commission statement**

"The Commission confirms that the Office has declared that it will at all times act in compliance with the Protocol No 7 on the Privileges and Immunities of the European Union and the Statute for Members of the European Parliament, fully respecting the freedom and independence of Members as provided for in Article 2 of the Statute."

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**Commission statement**

"The Commission intends to maintain the current powers of the Director-General of the European Anti-fraud Office to lay down the conditions and detailed arrangements for recruiting at the Office, in particular as to the length of contracts and their renewals."

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**Statement by the European Parliament, the Council and the Commission**

"Each time the European Parliament, the Council and the Commission appoint new members of the new Supervisory Committee they should also appoint those members to take office at the next partial replacement."

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