



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.2.2004
COM(2004) 103 final

2004/0035 (COD)

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)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Motivation and objectives

The various elements of the legal framework under which the European Anti-Fraud Office (OLAF) carries out its investigations were adopted by the legislature in 1999. 'Regulation 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigations conducted by OLAF' (hereinafter Regulation 1073/1999) constitutes a key instrument in this context, as it lays down the modalities of both internal and external OLAF investigations.

In April 2003, the Commission approved a first evaluation of the Office's activities,¹ which also contained a set of recommendations aimed at further enhancing OLAF's operations. However, subsequent developments, in particular, lessons learned from the Eurostat affair, revealed a series of additional shortcomings that the Commission's evaluation report had not yet addressed in a comprehensive manner. One of the additional issues identified was the need for more substantive and quicker exchange of information between the Commission and the Office. In this respect, the Commission and OLAF prepared, as a first step, a Memorandum of Understanding in order to ensure a timely exchange of information with respect to OLAF internal investigations in the Commission². It became clear, nevertheless, that the issue of an improved information flow had to be put into a broader context, in terms of institutional coverage (with a view to ensuring coherent treatment across all European institutions and bodies) as well as in terms of substance. In addition, only a proposal for legislative action could provide the necessary democratic legitimacy of the rules to be established.

At the end of 2003, the Commission therefore committed itself to preparing an appropriate legislative proposal and to submit it to the legislature. This approach was supported by the European Parliament in its resolution on the evaluation of the activities of the European Anti-Fraud Office of 4 November 2003³ as well as in its resolution of 29 January 2004 on the action taken by the Commission further to the discharge for the 2001 financial year⁴.

In substance, the proposal has the following main objectives:

- To strengthen OLAF's operational efficiency

To achieve this objective, provisions are proposed that will allow OLAF to concentrate on the priorities to be fixed in its annual work programme, after opinion of the Supervisory Committee. It goes without saying that the work programme should also take into account the views expressed by the institutions, and in particular the Commission, on the priorities of anti-fraud policies and activities. Based on the principle that action is taken as appropriate, it should be clarified that OLAF has discretion over whether or not to open investigations, and therefore can pass on to the appropriate authorities the task of following up cases that are of minor significance or lie outside its priority activities.

¹ COM(2003) 154 final.

² SEC(2003) 871 consolidated

³ COM(2003) 154 – 2002/2237 (INI)

⁴ COM(2003) 651 – C5-0536/2003 – 2003/2200 (DEC)

More generally, the procedures for opening and closing investigation and the relationship between internal action by the European institutions and bodies, on the one hand, and OLAF investigations, on the other, must be clarified. As long as OLAF is conducting an internal investigation, the institutions, bodies and agencies should not open parallel enquiries (see amendment to Article 1 (3)). On the other hand, there should be mechanisms ensuring that such institutions, bodies and agencies learn quickly whether or not OLAF is conducting, or plans to open, an internal investigation on a given set of facts, and can take over without delay cases in which OLAF decides not to intervene (see amendments to Article 5).

The proposed provisions would also give the Supervisory Committee increased oversight over long investigations: OLAF would have to report to the Committee on these after 12 months, justifying its decision to continue to pursue the case. For any extension of the investigation beyond 18 months, the opinion of the Committee would be needed before OLAF decided to continue. Institutions “concerned” by an investigation would also have to be informed of the reasons for OLAF’s decision to extend it beyond 12 months. Where the delay caused the institution particular concern, it would be able to seek the opinion of the Committee.

As in the past, the decision whether or not to open an investigation will remain with OLAF and the Office’s functional independence will be scrupulously respected.

- To improve the information flow between OLAF and the European institutions and bodies

The existing provisions of Regulation 1073/1999 are vague on whether or not, and to what extent, OLAF must pass on information to the institution or body concerned. However, such information is indispensable for the European institutions to exercise their political responsibility in cases involving suspected wrongdoing of their officials and / or necessitating administrative action on their part so as to protect the interests of the Union. In these cases, there should therefore be a clear obligation for OLAF to inform the institution or body concerned (see new paragraph 5a in Article 6). In addition, the institution, body or agency concerned must also be informed when OLAF forwards information to the judicial authorities.

Furthermore, it appears appropriate that not only Member States but also the Commission, as guardian of the Treaty, may request the opening of external investigations and is to be informed of the results (see amendments to Article 5(2) and 9(3)).

- To ensure fully the rights of the individuals concerned

For the sake of legal certainty, the Commission proposes to include in the Regulation a comprehensive provision on procedural guarantees to be respected in internal and external investigations (see new Article 7a). These guarantees build on, and complement, provisions existing in the Interinstitutional Agreement on internal investigations (and the various individual decisions implementing it) and in the future revised Staff Regulations. Following their incorporation in the regulation itself, there will be a uniform set of basic guarantees applying for all investigations conducted by OLAF, be they internal or external. As compared to the

Interinstitutional Agreement on internal investigations, the following guarantees are added:

- Provisions on information to be given by OLAF prior to an interview and on the establishment of minutes of the interview;
- Right to be assisted by a person of choice at an interview;
- Right not to incriminate oneself.

These guarantees should be observed not only prior to the preparation of a final report but also prior to the transmission of information to national authorities pursuant to Article 10 (see amendment to Article 10(3)).

- To fill a number of gaps jeopardising the effectiveness of OLAF's investigations
 - In line with the recommendations contained in the evaluation report, it is proposed to clarify OLAF's powers of investigation in the context of external investigations towards economic operators receiving Community funds on the basis of contract (direct expenditure), thus closing a legal lacuna which has become apparent in the present rules.
 - OLAF should be granted improved access to information held by the European institutions and bodies that is related to external investigations. Access to information held by economic operators in the context of internal investigations should be facilitated accordingly.
 - Finally, the proposal aims at further strengthening the smooth co-operation between OLAF and the Member States in the field of external investigation and the related information flow.

- To enhance the role of the Office's Supervisory Committee

The Commission takes the view that OLAF could benefit from improved involvement of the Office's Supervisory Committee. Therefore, it is proposed to strengthen the Committee's part in monitoring the application of Regulation 1073/1999, particularly in the area of the rights of the individuals, the length of investigations and as regards the information flow between OLAF and the European institutions and bodies. As regards protection of individual rights, the individuals concerned will now be able to seek the opinion of the Committee. Similarly concerned institutions will have this facility as regards matters on which OLAF is required to inform them.

Related legal provisions

It should be noted that the Commission is proposing, in parallel, amendment of Regulation 1074/1999, i.e. the legal framework for OLAF investigations carried out under the Community law covered by the Euratom Treaty.

Legal basis

The Commission proposal is aimed at amending existing Regulation 1073/1999 and is therefore based on Article 280 of the Treaty establishing the European Community.

Subsidiarity and proportionality

The amending Regulation is fully compatible with the principle of subsidiarity. Like the original Regulation 1073/1999, this amending Regulation in no way reduces the powers and responsibilities of the Member States for taking measures to combat fraud affecting the Communities' financial interests. OLAF's means of action in external investigations are clarified and strengthened only on isolated points where legal loopholes have been found in the operation of the existing system and where only more effective intervention by OLAF can ensure that it can conduct reliable external investigations which can be used by the authorities of the Member States. In addition the basic procedural guarantees need to be extended to external investigations (new Article 7a) in order to provide a uniform legal framework for all OLAF investigations, thereby dispelling any uncertainty about the correct treatment of persons concerned by investigations (e.g. officials of an institution whose involvement could become apparent in the course of an external investigation). As clear rules, enshrined in Community legislation itself, are required on the above matters in the interests of effective OLAF action within a framework of legal certainty, these rules also comply with the principle of proportionality.

Fundamental rights

As confirmed by the Court of Justice (judgment of 10 July 2003, Case C-11/00 *Commission v ECB*, p. 139), Regulation 1073/99 in its original form already reflects the firm determination of the legislative authority to make any powers granted to OLAF subject to full respect for human rights and fundamental freedoms. In the light of a number of questions that have arisen in connection with OLAF's practices, it would seem appropriate to make the procedural guarantees even stronger than in the present arrangements and to have them apply to all investigations conducted by OLAF, both internal and external. Given that these investigations are merely preparatory and their conclusions do not themselves make formal allegations but may in some cases give rise to administrative or criminal proceedings, these guarantees respect the fundamental rights enshrined in the Charter of Fundamental Rights of the Union, and even go beyond the minimum standard of protection that would be required by the Charter.

Budgetary impact

It is proposed that the number of members of OLAF's Supervisory Committee be increased from five to seven. The impact on the Community budget is further explained in the financial statement attached to the proposal.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 1073/1999 concerning investigations conducted
by the European Anti-Fraud Office (OLAF)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 280 thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the Court of Auditors,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

Whereas:

- (1) Clear rules should be laid down which, while confirming the priority enjoyed by the European Anti-fraud Office ('the Office') for conducting internal investigations, establish mechanisms enabling the institutions, bodies, offices and agencies to quickly take back the investigation of cases in which the Office decides not to intervene.
- (2) It needs to be made clear that the decision to open an investigation is left to the discretion of the Office, which may, even if there are sufficiently serious suspicions, decide not to open an investigation in cases of minor importance or not falling within the priority areas of action set annually by the Office. Such cases will then be handled, in the case of internal investigations, by the institution, body, office or agency concerned, or, in the case of external investigations, by the authorities of the Member States in accordance with their Community obligations and pursuant to their national law.
- (3) The Office must be placed under precise obligations to inform the institutions, bodies, offices and agencies in good time of investigations in progress where a member, manager, official or other servant is personally involved in the matter under investigation or where administrative measures may be required in order to protect the Union's interests.

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

- (4) In order to make the Office's action more effective and in the light of the evaluation of its activities in the first three years since the entry into force of Regulation No 1073/99, certain aspects need clarifying and certain loopholes closing as regards the investigation measures the Office can take in conducting its investigations. The Office must be given the power to carry out the inspections and checks provided for 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 irregularities⁷ in connection with internal investigations and in cases of fraud linked to contracts concerning Community funding, and have access to information held by the institutions, bodies, offices and agencies of the Union in connection with external investigations. The Member States must implement appropriate procedures to apply enforcement measures on economic operators who oppose inspection measures carried out under Regulation (Euratom, EC) No 2185/96.
- (5) It has been found necessary, for the sake of legal certainty, to clarify the procedural guarantees applicable in internal or external investigations conducted by the Office, without prejudice to more extensive protection which may be available under the rules of the Treaties, the provisions of the Staff Regulations and any relevant national provisions, with due account for the fact that these investigations are merely preparatory and their conclusions do not themselves make formal allegations but may in some cases give rise to administrative or criminal proceedings.
- (6) The role of the Supervisory Committee should be extended in order to strengthen the governance of the Office while enhancing its independence, ensuring proper application by the Office of Regulation (EC) No 1073/99 and in particular guaranteeing full respect for individual rights. The composition of the Supervisory Committee should be adapted to this enhanced role.
- (7) Regulation (EC) No 1073/99 should be amended accordingly.
- (8) The amendments to be made to Regulation No 1073/1999 in no way reduce the powers and responsibilities of the Member States for taking measures to combat fraud affecting the Communities' financial interests. The Office's means of action in external investigations are clarified and strengthened only on isolated points where legal loopholes have been found in the existing system and where only more effective intervention by the Office can ensure that it can conduct reliable external investigations which can be used by the authorities of the Member States. In addition procedural guarantees need to be extended to external investigations in order to provide a uniform legal framework for all investigations conducted by the Office. This Regulation therefore complies fully with the principle of subsidiarity enshrined in Article 5 of the Treaty and the principle of proportionality enshrined in the same Article.
- (9) This Regulation respects fundamental rights and complies with the principles enshrined in particular in the Charter of Fundamental Rights of the European Union,

⁷ OJ L 292, 15.11.1996, p. 2.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1073/1999 is amended as follows:

1) Article 1 is amended as follows:

a) In paragraph 3, the following second subparagraph is added:

“While the Office is conducting an investigation within the meaning of this Regulation, the institutions, bodies, offices and agencies shall not open an administrative investigation in the exercise of their administrative autonomy on the same matter.”

b) The following paragraph 4 is added:

“4. The Director of the Office shall each year, after securing the opinion of the Supervisory Committee, determine the work programme and the investigation policy priorities of the Office.”

2) Article 3 is replaced by the following:

“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 inspections and checks in the Member States and, in accordance with the cooperation agreements in force, in third countries.

As part of its investigative function, the Office shall carry out the inspections and checks 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 agreements in force, in third countries.

2. With a view to establishing that there has been fraud, corruption or other illegal activity within the meaning of Article 1, in connection with a contract concerning Community funding or funding managed by the Communities, the Office may, in accordance with the procedures laid down by Regulation (Euratom, EC) No 2185/96, conduct investigations into economic operators concerned by such funding.

3. During an external investigation and where strictly necessary in order to establish that fraud, corruption or any other illegal activity within the meaning of Article 1 has occurred, the Office may, at its request, be given access to any relevant information held by the institutions, bodies, offices and agencies connected with the matter under investigation. Article 4(2) and (4) shall apply.

4. When the Office is in possession of information suggesting that fraud or any other illegal activity within the meaning of Article 1 exists, the Director of the Office may pass on this information to the competent authorities of the Member States concerned and, without prejudice to the sectoral rules referred to in paragraph 1, these authorities may conduct investigations in accordance with the national law applicable, in which the staff of the Office

may take part. The competent authorities of the Member States concerned shall inform the Director of the Office of the findings made on the basis of this information.”

3) Article 4 is amended as follows:

a) Paragraph 3 is replaced by the following:

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

b) Paragraph 5 is deleted.

4) Article 5 is replaced by the following:

“Article 5

Opening of investigations

1. The Office may open an investigation when sufficiently strong suspicions exist that acts of fraud or corruption or other illegal acts within the meaning of Article 1 have been committed. The decision whether or not to open an investigation shall take account of the investigation policy priorities set in accordance with Article 1(4).

2. The decision to open external investigations shall be taken by the Director of the Office, acting on his own initiative or following a request from a Member State concerned or the Commission.

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

3. When an institution, body, office or agency is planning to open an investigation in the exercise of their administrative autonomy, it shall ask the Office whether an internal investigation is being conducted into the matter. The Office shall state within 15 working days following this request whether an investigation is open. If none is open, paragraph 4 shall apply. No reply shall mean that the Office has decided not to open an investigation.

4. The decision whether or not to open an investigation shall be taken within two months of receipt by OLAF of a request as referred to in paragraph 2 or 3. The institution, body, office, agency or Member State which made the request shall be informed of the decision.

When an official or other servant of an institution, body, office or agency supplies information direct to the Office in accordance with Article [22a] of the Staff Regulations, the Office shall inform that person of its decision whether or not to open an investigation into the matter in question.

Reasons shall be given for any decision not to open an investigation.

5. If the Office decides, at its own discretion, not to open an internal investigation, it shall without delay send the evidence available to the institution, body, office or agency concerned, agreeing with the institution, body, office or agency on any appropriate measures to protect the confidentiality of the source of these items of information.

If the Office decides, at its own discretion, not to open an external investigation, Article 3(4) shall apply.”

5) Article 6 is amended as follows:

a) The following paragraph 5a is inserted:

“5a. As soon as investigations reveal that a member, manager, official or other servant of an institution, body, office or agency may be involved, or show that it might be appropriate to take precautionary or administrative measures to protect the interests of the Union, the institution, body, office or agency concerned shall be informed of the investigation in progress. The information supplied shall include the following:

(a) the identity of the person or persons under investigation and a summary of the matter;

(b) any information that may assist the institution, body, office or agency in deciding whether administrative measures need to be taken to protect the interests of the Union;

(c) any special measures of confidentiality recommended.

The institution, body, office or agency shall decide whether any precautionary or administrative measures are required, with due account being taken of the importance of guaranteeing the effectiveness of the conduct of the investigation and of the specific measures of confidentiality recommended by the Office.”

b) Paragraph 6 is replaced by the following:

“6. The Member States shall ensure that their competent authorities, in conformity with national provisions, give the necessary support to enable the Office's employees to fulfil their task. To this end they shall apply, at the request of the Office, appropriate procedures to submit economic operators to enforcement measures including penalty payments, in cases of failure to comply with the second and third paragraphs of Article 5 of Regulation (Euratom, EC) No 2185/96. The institutions and bodies shall ensure that their members and staff afford the necessary assistance to enable the Office's employees to fulfil their task; the offices and agencies shall ensure that their managers and staff do likewise.”

c) The following paragraph 7 is added:

“7. Where it is found that an investigation cannot be closed within 12 months after it has been opened, the Director of the Office may decide to extend the investigation by up to six months. The decision shall state the reasons why the investigation has to be extended. The Director shall send the decision to the Supervisory Committee and inform the institution, body, office or agency concerned of it, with the reasons on which it is based. In duly substantiated cases the Director may decide, after obtaining the opinion of the Supervisory Committee, to allow a further extension of six months. The Director shall inform the institution, body, office or agency concerned of his decision, with the reasons on which it is based. If necessary such extension decisions may be repeated on the same terms.”

6) The following Articles 7a and 7b are inserted:

“Article 7a

Procedural guarantees

1. In its investigation the Office shall seek evidence for and against the person concerned.
2. Whenever an investigation reveals that a member, manager, official or other servant of an institution, body, office or agency or an economic operator may be involved in a matter, the person concerned shall be informed provided that this does not hinder the conduct of the investigation.

At all events no conclusions referring by name to a natural or legal person may be drawn on completion of an investigation if the person concerned has not been given the opportunity to comment on all matters concerning him/her; the person concerned must be given a summary of such matters in the invitation to the interview. The person concerned may be assisted by a person of his/her choice, who can in no way be involved in the matter under investigation. A natural person concerned shall be entitled to avoid self-incrimination.

In cases where strict secrecy must be maintained for the sake of the investigation and where investigation methods have to be employed which come under a national judicial authority or, in the case of an external investigation, a competent national authority, the Director of the Office may decide to defer the obligation to ask the person concerned to comment. He shall notify in advance the Supervisory Committee, which may give an opinion. In the case of an internal investigation, the Director shall take that decision in agreement with the institution, body, office or agency to which the person concerned belongs.

3. The invitation to any interview, whether with a witness or with a person concerned within the meaning of paragraph 2, must be sent with eight working days’ notice; this notice may be reduced with the agreement of the person to be interviewed. The invitation shall include a list of the rights of the person interviewed. The Office shall draw up a record of the interview and shall give the person interviewed access to it so that he/she may either approve the record or add observations.

When, in the course of the interview, it transpires that the person interviewed may be involved in the facts under investigation, the procedural rules provided for in paragraph 2 shall apply at once.

4. The procedural guarantees provided for in this Article shall apply without prejudice:
 - (a) to more extensive protection which may be available under the rules of the Treaties and any relevant national provisions;
 - (b) to rights and obligations under the Staff Regulations, in particular the duty of loyalty to the Communities.

Article 7b

Information about decisions to close a case and take no further action

If, on completion of an investigation, no evidence has been found against a suspected member, manager, official or other servant of an institution, body, office or agency or against an economic operator, the investigation into that person shall be closed and no further action taken, by decision of the Director of the Office, who shall inform the person concerned and, where appropriate, the institution, body, office or agency in writing.”

7) In Article 8, paragraph 3 is replaced by the following:

“3. The Director shall ensure that the Office's employees and the other persons acting under his authority observe the Community and national provisions on the protection of personal data, in particular those provided for in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000.”(*)

(*) OJ L 8, 12.1.2001, p. 1.

8) Article 9 is amended as follows:

a) Paragraph 1 is replaced by the following:

“1. On completion of an investigation carried out by the Office, the latter shall draw up a report, under the authority of the Director, containing a list of all the stages in the procedure, the legal basis, the facts established, the offence concerned, the financial loss, if any, and the findings of the investigation, including the recommendations of the Director of the Office on the action that should be taken.”

b) Paragraph 3 is replaced by the following:

“3. Reports drawn up following an external investigation and any useful related documents shall be sent to the competent authorities of the Member States in question in accordance with the rules relating to external investigations and, where appropriate, to the Commission. The competent authorities of the Member States in question, in so far as is compatible with national law, shall inform the Director of the Office of the action taken on the findings of external investigations sent to them.”

9) Article 10 is amended as follows:

a) Paragraph 2 is replaced by the following:

“2. Without prejudice to Articles 8, 9 and 11, the Director of the Office shall forward to the judicial authorities of the Member State concerned the information obtained by the Office during internal investigations into matters liable to result in criminal proceedings. He shall first inform the institution, body, office or agency concerned; the information shall include the identity of the person concerned, a summary of the facts established, the preliminary legal evaluation and any financial loss.

Before forwarding the information referred to in the first subparagraph, the Office shall give the person concerned by the investigation the opportunity to comment on the matters concerning him/her subject to the conditions and in accordance with the arrangements set out in the second and third subparagraphs of Article 7a(2).”

- b) Paragraph 3 is deleted.
- 10) Article 11 is replaced by the following:

“Article 11

Supervisory Committee

1. The Supervisory Committee shall reinforce the Office's independence by regular monitoring of the implementation of the investigative function. It shall ensure that individual rights are respected and shall take account of the need to safeguard the Union's interests.

The Supervisory Committee shall give its opinion on the decisions of the Director of the Office in the cases provided for in this Regulation. It shall, at the request of the Director or on its own initiative, deliver opinions to the Director concerning the activities of the Office, without however interfering with the conduct of investigations in progress. It shall also deliver opinions concerning procedural guarantees, at the request of the persons concerned, and about informing the institutions, bodies, offices or agencies concerned, at their request. All opinions given shall be sent to the Director of the Office and to the person requesting the opinion. The institution, body, office or agency concerned shall be given a copy. The Committee shall, where appropriate, indicate any parts of the opinion that need to be treated in confidence.

2. The Supervisory Committee shall be composed of seven independent outside persons who possess the qualifications required for appointment in their respective countries to senior posts relating to the Office's areas of activity, appointed by common accord of the European Parliament, the Council and the Commission. The Committee shall set one of its members the task of preparing its proceedings concerning observance by the Office of individual rights.

3. The term of office of members shall be three years and shall be renewable once.

4. On expiry of their term of office, members shall remain in office until their appointments are renewed or until they are replaced.

5. In carrying out their duties, they shall neither seek nor take instructions from any government or any institution, body, office or agency. They shall treat the files submitted to them and their deliberations in strict secrecy.

6. The Supervisory Committee shall appoint its chairman. It shall adopt its own rules of procedure. It shall hold at least 10 meetings per year. It shall take its decisions by a majority of its members. Its secretariat shall be provided by the Commission.

7. The Director shall keep the Committee regularly informed of the Office's activities, its investigations, the results thereof and the action taken on them. The Director shall inform the Committee of cases where the institution, body, agency or office concerned has failed to act on the recommendations made by it. The Director shall inform the Committee of cases requiring information to be forwarded to the judicial authorities of a Member State.

8. The Supervisory Committee shall adopt at least one report on its activities per year which it shall send to the institutions. The 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 thereon.”

11) Article 13 is replaced by the following:

“Article 13

Financing

The appropriations for the Office, the total amount of which shall be entered under a special budget heading within the section of the general budget of the European Communities relating to the Commission, shall be set out in detail in an Annex to that section.

The posts allocated to the Office shall be listed in an Annex to the Commission's establishment plan.”

12) Article 14 is replaced by the following:

“Article 14

Judicial review

The Supervisory Committee shall be given a copy of any complaint made under Article [90a] of the Staff Regulations and shall deliver an opinion to the Director of the Office on such complaint.

The provisions of the first subparagraph and of Articles [90a and 91] of the Staff Regulations shall apply by analogy to the staff of the institutions, bodies, offices and agencies who are not subject to the Staff Regulations.”

Article 2

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Fight against fraud

Activit(y/ies): Supervision of the European Anti-Fraud Office

TITLE OF ACTION: AMENDMENT OF REGULATIONS (EC) NO 1073/1999 AND (EURATOM) NO 1074/1999

1. BUDGET LINE(S) + HEADING(S)

OLAF Budget

24.010600.03.0100 – Expenditure on the Members of the Supervisory Committee

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment

2.2. Period of application:

From 2004, indeterminate duration – Members have a renewable three-year term of office

2.3. Overall multiannual estimate of expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

(€ million to three decimal places)

	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. years	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

Commitments							
Payments							

Subtotal a+b							
Commitments							
Payments							

- (c) Overall financial impact of human resources and other administrative expenditure
(see points 7.2 and 7.3)

Commitments/ payments	1.331						
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TOTAL a+b+c							
Commitments	1.331						
Payments	1.331						

This corresponds to an additional requirement of €100 000.

2.4. Compatibility with financial programming and financial perspective

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:

- Proposal has no financial implications (involves technical aspects regarding implementation of a measure).

OR

- Proposal has financial impact – the effect on revenue is as follows:

(€ million to one decimal place)

Budget line	Revenue	Prior to action (Year n-1)	Situation following implementation of action							
			Year n	n+1	n+2	n+3	n+4	n+5		
	<i>a) Revenue in absolute terms</i>									
	<i>b) Change in revenue</i>	Δ								

3. BUDGET CHARACTERISTICS

Type of expenditure	New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective	
Non-comp	Non-diff	NO	NO	NO	No 5

4. LEGAL BASIS

Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office (OLAF); Article 4.

Parliament and Council Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF); Article 11.

Amendment of these Regulations: Article 280 EC and Article 203 Euratom

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

On 2 April 2003 the Commission adopted the evaluation report on the Office's activities which it subsequently sent to the other institutions and bodies, with the Opinion of the Supervisory Committee. The proposals for amendment of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999, which in particular recommend reinforcement of the Supervisory Committee, are the follow-up action to that report and the address by President Romano Prodi in the European Parliament on 18 November 2003 (on the state of the Union and the Commission's legislative programme and work programme for 2004), following on from his address of 25 September 2003.

The European Parliament, by resolution of 4 December 2003 on the Commission report, also supported reinforcement of the Supervisory Committee.

In its conclusions of 22 December 2003 on the Commission report, the Council welcomed the Opinion of the Supervisory Committee and asked it to continue its work of securing OLAF's independence, stressing the importance of compliance with the rules on protection of fundamental rights.

The Supervisory Committee, under the proposals for amendment of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999, would give opinions in a larger number of situations (concerning decisions by the Director of the Office, in particular as regards new extensions of investigation deadlines, complaints from individuals, procedural guarantees requested by persons concerned and information for the institutions and bodies at their request).

The effect of this reinforcement will be a corresponding rise in the appropriations needed.

These appropriations are to cover the Committee members' new term of office.

5.2. Actions envisaged and budget intervention arrangements

For the exercise of the new functions of the Supervisory Committee mentioned under 5.1, the number of members is to be raised from 5 to 7. The frequency of meetings (the Regulations impose at least ten each year) should rise with the foreseeable intensification of activities and relationships as a result of the new responsibilities.

One member should be responsible in particular for supervising OLAF's respect for individual rights.

What this means in budgetary terms is:

- an increase in the aggregate annual attendance allowance (basis for calculation: €420 per member and per day; two-day meeting each month; 12 meetings a year + same amounts for preparation of meetings);
- increase in the aggregate annual daily-subsistence allowance (basis for calculation: €84.06 per member and per day);
- increase in the aggregate annual transport allowance (1st class rail or business class air fare; journey from place of residence to the place of the meeting – Brussels or Luxembourg; average cost of €1000 euros per member and per meeting) and hotel (basis for calculation: €120.54 per member and per day);
- an increase, more substantial in the first year, in certain costs (equipment, particularly IT, communication/telecommunications, ancillary expenditure, in particular for special missions) with an aggregate allocation estimated at €40 000.

Aggregate increase calculated on this basis (see point 7.3): €100 000 (in addition to the €200 000 in the 2004 budget).

Certain expenditure (transport in particular) cannot be determined precisely until the place of origin of all the members is known.

5.3. Methods of implementation

Direct management by the Commission.

The status of members of the Committee is unchanged.

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

No impact

6.1.1. Financial intervention

Commitments (in € million to three decimal places)

Breakdown	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. years	Total
Action 1							
Action 2							
etc.							
TOTAL							

6.1.2. *Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)*

	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. years	Total
1. Technical and administrative assistance							
(a) Technical assistance offices							
(b) Other technical and administrative assistance: - intra muros: - extra muros: <i>of which for construction and maintenance of computerised management systems</i>							
Subtotal 1							
2. Support expenditure							
(a) Studies							
(b) Meetings of experts							
(c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)

No impact

Commitments (in € million to three decimal places)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1...n)	Average unit cost	Total cost (total for years 1...n)
	1	2	3	4=(2x3)
TOTAL COST				

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

When the proposals for amendment of the Regulations are adopted, the necessary adjustments will have to be made to transfer the posts, persons and appropriations from OLAF to the Commission (amending budget for 2004 or preliminary draft budget for 2005).

7.1. Impact on human resources

For the moment there is no plan to schedule additional resources for the secretariat's new administrative tasks. Eight posts are currently assigned to the Supervisory Committee (1 A.2, 1 A.5, 1 B.3, 1 C.3, 1A.5T and 3A.7T) + 1 auxiliary. The theoretical impact of the increased workload corresponding to the Committee's new tasks is estimated at three posts from within existing resources.

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	2	4	6	
	B	1		1	
	C	1		1	
Other human resources		1		1	
Total		5	4	9	

According to the proposals for amendment of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999 (Article 11(6)), the Committee's secretariat is to be attached administratively to the Commission. The OLAF and Commission establishment plans will have to be adjusted accordingly.

7.2. Overall financial impact of human resources

See 7.1.

No increase in staff, but Supervisory Committee posts and appropriations to be transferred to the Commission.

Type of human resources	Amount (€)	Method of calculation *
Officials	459 000	Real cost for the three posts occupied + average cost for the 5 vacant posts + operating expenditure (rent, electricity, cleaning, security, supplies)
Temporary staff	492 000	
Other human resources (specify budget line)	50 000	Real cost + operating expenditure (rent, electricity, cleaning, security, supplies)
Total	1 001 000	

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
24.010600.030100 – Expenditure on the Members of the Supervisory Committee It is proposed that this line (€200 000 entered in 2004) be transferred from OLAF to the Commission (specific line in area 24)	300 000 €	This represents the €200 000 entered in the 2004 budget plus the €100 000 connected with the reinforcement of the Supervisory Committee. See 5.2
24.010600.010102 Outside staff and other management expenditure (missions)	30 000	Missions for the secretariat of the Supervisory Committee
Total	330 000 €	

The amounts are total expenditure for 12 months.

I.	Annual total (7.2 + 7.3)	€1 331 000
II.	Duration of action	years
III.	Total cost of action (I x II)	€

This corresponds to an additional requirement of €100 000.

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

In its conclusions of 22 December 2003 the Council asked the Commission to amplify the evaluation report on the activities of OLAF by the end of 2004. The Council states that it will evaluate the situation of OLAF in the light of future reports.

8.2. Arrangements and schedule for evaluation

An external management audit of the Office is planned (the Council conclusions mentioned at 5.1 and 8.1 refer to a two-year time-frame).

The Supervisory Committee reports on its activities each year.

9. ANTI-FRAUD MEASURES

Implementation in accordance with the new Financial Regulation.

Application of Regulation (EC) No 1073/1999.