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**COMMISSION STAFF WORKING PAPER**

**Interoperability of the different legal bases granting investigative powers to OLAF**

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### Interoperability of the different legal bases granting investigative powers to OLAF

#### 1. THE EUROPEAN PARLIAMENT'S REQUEST

In its resolution of 19 February 2008 on protection of financial interests, the European Parliament called on “OLAF to submit, as a matter of urgency, an analysis of the interoperability of the different legal bases granting investigative powers to it in the context of the 2007 OLAF annual activity report, in view to possibly integrating the findings of this analysis into the future revision of the OLAF Regulation”<sup>1</sup>. It was deemed to be inappropriate to include such an analysis in OLAF’s annual activity report for 2007. However, it was agreed that the Commission services (OLAF) would prepare the requested analysis and transmit it to the European Parliament by May 2008.

In order to satisfy the request, the context of the sentence cited-above should be examined. It first recalls that both arms of the legislature have voiced the need for “streamlining the current legal bases”<sup>2</sup> and for grouping “together in a single regulation” OLAF’s investigatory powers<sup>3</sup>. The sentence in question seems to be a logical consequence of these elements, since it is linked to them with the word “therefore”.

The Parliament’s request is aimed at exploring whether the different legal bases granting investigative powers to OLAF are in fact compatible with each other and are being applied in a homogenous manner. Should it be concluded that these legislative instruments are not interoperable, it may be necessary to modify the legal framework.

#### 2. THE DIFFERENT LEGAL INSTRUMENTS GRANTING INVESTIGATIVE POWERS TO OLAF

The legal framework defining the EU’s efforts to fight against fraud and to protect the financial interests has been developing in various phases and is of a composite nature. As to the first pillar, Commission Decision 1999/352<sup>4</sup> creates OLAF, and delegates to it the Commission’s powers to execute all operational activities relating to safeguarding Community interests against irregular conduct. Regulation (EC)

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<sup>1</sup> A6-0009/2008 of 21 January 2008, paragraph 59.

<sup>2</sup> Letter of 2 April 2007 of the Council’s working party on fight against fraud to the OLAF’s Director.

<sup>3</sup> P6\_TA(2006)0277, paragraph 30.

<sup>4</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). Legal basis: Article 218 EC and Article 131 Euratom.

1073/1999<sup>5</sup> (and Council Regulation (Euratom) 1074/1999<sup>6</sup>, substantively identical to 1073/1999 for matters under the Euratom Treaty) refers in its Article 1 to this Decision and confers on OLAF new powers to conduct internal investigations and the Commission's powers to conduct external anti-fraud investigations.

The Interinstitutional Agreement between the European Parliament, the Council and the Commission establishes the manner in which members, officials and other staff of the institutions are to collaborate with OLAF in its internal investigations<sup>7</sup>. Based on a Model Decision — which comprises the reference to Regulation (EC) 1073/1999 —, the Community organs have adopted internal decisions concerning the terms and conditions for internal investigations conducted by OLAF<sup>8</sup>.

As to external investigations, Council Regulation (EC) 2988/95<sup>9</sup> establishes general rules on Community controls and administrative measures and penalties for financial irregularities. Council Regulation (Euratom, EC) 2185/96<sup>10</sup> empowers the Commission to conduct on-the-spot checks and inspections on the premises of economic operators.

On the one hand, Regulation 2185/96 empowers the Commission to carry out on-the-spot checks and inspections on the premises of economic operators who may have been involved in, or concerned by, an irregularity, when “there are reasons to think that irregularities have been committed,” and when (1) they involve economic operators acting in several Member States, (2) the situation in a Member State requires such a check to be strengthened in a case, or (3) at the request of a Member State. On the other hand, OLAF is empowered to conduct, inter alia, external administrative investigations, as defined in Article 2 of Regulation 1073/1999. When adopting Regulation 1073/1999, the legislator transferred to OLAF the powers in relation to external investigations hitherto conferred on the Commission by the Community legislature. This concerned, inter alia, on-the-spot checks and inspections provided for by Regulation 2185/96<sup>11</sup>.

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<sup>5</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>6</sup> Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 8).

<sup>7</sup> Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF), (OJ L 136, 31.5.1999, p. 15).

<sup>8</sup> As far as the Commission is concerned, see Commission Decision 1999/396/EC, ECSC, Euratom of 2 June 1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests (OJ L 149, 16.6.1999, p. 57).

<sup>9</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

<sup>10</sup> 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 (OJ L 292, 15.11.1996, p. 2).

<sup>11</sup> See the Explanatory Memorandum to the Proposal for a Council Regulation (EC, Euratom) establishing a European Fraud Investigation Office, COM(1998)717 final, paragraph 9.

As to the third pillar, it is difficult to consider “simplification” of the anti-fraud legislation without taking into account its penal law aspects<sup>12</sup>. These instruments are enumerated in Annex I.

Specific instruments that apply to the various sectors of the Community budget establish a legal basis for investigating irregularities in those sectors<sup>13</sup>. These sectoral instruments are listed in Annex II.

### 3. ANTI-FRAUD LEGISLATION IN THE PIPELINE

On 30 May 2001, the Commission transmitted to the Community legislator a Proposal<sup>14</sup> for a Directive on the criminal law protection of the Community’s financial interests. On 29 November 2001, the European Parliament adopted a favourable opinion<sup>15</sup>, putting forward 31 amendments under the co-decision procedure at first reading. The Council has not formulated a common position yet.

On 28 September 2004, the Commission tabled a Proposal<sup>16</sup> for a Regulation on mutual administrative assistance for the protection of the financial interests of the Community against fraud and any other illegal activities. It received a favourable opinion<sup>17</sup> from the European Parliament on 23 June 2005. The Council has not reached an agreement yet.

On 4 July 2006, the Commission submitted a Proposal<sup>18</sup> for a Regulation amending Regulation 1073/1999 concerning investigations conducted by OLAF. It is being currently discussed in the Committee on Budgetary Control.

The adoption of these pieces of legislation will ultimately bring about important changes to the European anti-fraud legal framework.

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<sup>12</sup> See, in particular, findings of the European Court of Justice in its judgment of 13 September 2005 in Case C-176/03 *Commission v Council* [2005] ECR I-7879, which annulled the Framework Decision 2003/80/JHA on the protection of the environment through criminal law. According to the judgment, the Community may take measures relating to the criminal law of the Member States which it considers necessary in order to ensure that the rules it lays down on environmental protection are fully effective. This case-law may inspire first-pillar legislation in the field of fight against fraud.

<sup>13</sup> See Article 9(2) of Regulation 2988/95.

<sup>14</sup> Proposal for a Directive of the European Parliament and of the Council on the criminal law protection of the Community’s financial interests - COM(2001)272 - 2001/0115/COD; amended by COM(2002)577.

<sup>15</sup> A5-0390/2001 of 8 November 2001.

<sup>16</sup> Proposal for a Regulation of the European Parliament and of the Council on mutual administrative assistance for the protection of the financial interests of the Community against fraud and any other illegal activities - COM/2004/0509 final - ACC 2004/0172; amended by COM/2006/0473 final - COD 2004/0172.

<sup>17</sup> A6-0156/2005 of 25 May 2005.

<sup>18</sup> 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) {SEC(2006) 638}- COM/2006/0244 final - COD 2006/0084.

#### 4. INTEROPERABILITY OF REGULATIONS 2185/96 AND 1073/1999

In order to focus on the core problems touched by the Musotto Report, it is appropriate to concentrate on the two main legal instruments conferring investigative powers on OLAF — i.e. Regulations 2185/96 and 1073/1999.

The detailed analysis of interoperability between these two instruments is presented in Annex III.

As regards the methodology to follow, first, it had to be established whether the two legislative instruments regulate (Y) or not (N) 14 topics<sup>19</sup>. Therefore, the answers given in column “Overlap” determine whether the subject-matters are comparable at all. In case of a negative answer (N), in the absence of comparable elements, no further analysis could be carried out. The “peaceful coexistence” of incomparable rules is interpreted as an instance of interoperability, since no conflict between such norms is conceivable.

“Homogeneity” is understood as identical or essentially identical rules in the two Regulations. Rules marked with X in this column are perfectly interoperable.

“Compatibility” means the existence of different albeit comparable rules which do not mutually exclude each other. Such rules are regarded to be interoperable. However, should the two legal instruments be merged, a choice between the two rules would have to be made.

The last column of the table in Annex III summarises the results of the previous columns.

#### 5. CONCLUSIONS

The existing legal framework is of a composite nature and there is no evidence showing that OLAF would be unable, due to legislative incompatibilities, to carry out its tasks. This does not preclude a future “simplification” of anti-fraud legislation.

Finally, on the basis of the analysis carried out in Annex III, it may be concluded that Regulations 2185/96 and 1073/1999 are mutually consistent<sup>20</sup>.

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<sup>19</sup> The topics cover the main procedural aspects of any administrative investigation.

<sup>20</sup> The practical aspects of their implementation and the level of co-operation with the national authorities are discussed in OLAF’s Second Report on the application of Council Regulation (Euratom, EC) No 2185/96 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 and in the Guidelines attached thereto, presented to the Parliament in parallel with this working paper.

## ANNEX I

### Third-pillar instruments containing anti-fraud provisions

Currently the PFI Convention<sup>21</sup> establishes a common definition of fraud and other serious offences that damage the Communities' financial interest, enshrining the principle of a specific offence in the criminal laws of the Member States. The First Protocol<sup>22</sup> to the PFI Convention defines active and passive corruption of a Community or national official that damages the Communities' financial interest, and requires the Member States to adopt measures making them criminal offences. The ECJ Protocol<sup>23</sup> to the PFI Convention confers on the Court of Justice jurisdiction, pursuant to the conditions laid down in the Protocol, to give preliminary rulings on the interpretation of the PFI Convention and the First Protocol to that Convention. The Second Protocol<sup>24</sup> to the PFI Convention requires the Member States to take the necessary measures: to establish money laundering as a criminal offence; to establish that legal persons can be held liable for fraud, active corruption and money laundering, and when found liable, to ensure that they may be punished by effective, proportionate and dissuasive sanctions; and to enable the confiscation of the proceeds of fraud<sup>25</sup>. The

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<sup>21</sup> Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests (OJ C 191, 29.07.1992, p. 61).

<sup>22</sup> Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests (OJ C 313, 23.10.1996, p. 2).

<sup>23</sup> Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests (OJ C 151, 20.5.1997, p. 2).

<sup>24</sup> Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Communities' financial interests (OJ C 221, 19.7.1997, p. 12).

<sup>25</sup> These instruments are not yet in force with respect to all Member States. The Commission has proposed the "communitarisation" of these instruments, including the main elements of the Second Protocol. See Proposal for a Directive of the European Parliament and of the Council on the criminal-law protection of the Community's financial interests (COM/2001/0272 final - COD 2001/0115) (OJ C 240E, 28.8.2001, p. 125) and Amended proposal for a European Parliament and Council Directive on the criminal-law protection of the Community's financial interests (presented by the Commission pursuant

Convention on corruption<sup>26</sup> defines active and passive corruption committed by a Community or national official outside the context of fraud against the Communities' financial interest, and requires the Member States to adopt measures making them criminal offences.

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to Article 250 (2) of the EC-Treaty) (COM/2002/0577 final - COD 2001/0115) (OJ C 71E, 25.3.2003, p. 1).

<sup>26</sup> Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2).



## **ANNEX II**

### **Sectoral instruments containing anti-fraud provisions**

The sectors covered by anti-fraud legislation providing for the possibility of conducting on-the-spot checks or internal investigations by OLAF include own resources<sup>27</sup>, mutual assistance on customs and agricultural matters<sup>28</sup>, the Common Agricultural Policy<sup>29</sup>, the Structural Funds and the Cohesion Fund<sup>30</sup>, internal policies and research<sup>31</sup>, the European

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<sup>27</sup> Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ L 130, 31.5.2000, p. 1).

<sup>28</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1). A first-reading compromise has been reached on amending this Regulation (COD 2006/0290).

<sup>29</sup> Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005, p. 1).

<sup>30</sup> Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25).

<sup>31</sup> Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) (OJ L 391, 30.12.2006, p. 1).

Refugee Fund<sup>32</sup>, environment<sup>33</sup>, pre-accession<sup>34</sup>, MEDA<sup>35</sup>, the Solidarity Fund<sup>36</sup>, the European Development Fund<sup>37</sup>. A number of Commission Regulations lay down rules as to the reporting of irregularities.

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<sup>32</sup> 2006/401/EC: Commission Decision of 20 January 2006 laying down detailed rules for the implementation of Council Decision 2004/904/EC as regards Member States management and control systems, and rules for the administrative and financial management of projects co-financed by the European Refugee Fund (OJ L 162, 14.6.2006, p. 20).

<sup>33</sup> Agreement between the European Community and the Swiss Confederation concerning the participation of Switzerland in the European Environment Agency and the European Environment Information and Observation Network – Protocol (OJ L 90, 28.3.2006, p. 37).

<sup>34</sup> Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (OJ L 210, 31.7.2006, p. 82).

<sup>35</sup> Council Regulation (EC) No 2698/2000 of 27 November 2000 amending Regulation (EC) No 1488/96 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (OJ L 311, 12.12.2000, p. 1).

<sup>36</sup> Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund (OJ L 311, 14.11.2002, p. 3).

<sup>37</sup> Financial regulation of 27 March 2003 applicable to the 9th European Development Fund (OJ L 83, 1.4.2003, p. 1).

### ANNEX III

#### Interoperability of Regulations 2185/96 and 1073/1999 as regard investigative powers of OLAF vis-à-vis economic operators

	2185/96	1073/1999	Overlap	Homogeneity	Compatibility	Interoperability
Actor (Subject)	Commission <sup>38</sup>  <i>“This Regulation lays down the additional general provisions within the meaning of Article 10 of Regulation (EC, Euratom) No 2988/95 which are applicable to on-the-spot administrative checks and inspections carried out by the Commission in order to protect the financial interests of the Communities against irregularities as defined in Article 1 (2) of the said Regulation. ...” (Article 1)</i>	OLAF  <i>“In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Community, [OLAF] shall exercise the powers of investigation conferred on the Commission by the Community rules and Regulations and agreements in force in those areas.” (Article 1(1))</i>	Y		X	Y
Objectives	Protect the financial interests of the Communities against irregularities  <i>“This Regulation lays down the additional general provisions within the meaning of Article 10 of Regulation (EC, Euratom) No 2988/95 which are applicable to on-the-spot administrative checks and inspections carried out by the Commission in order to protect the financial interests of the Communities against irregularities as defined in Article 1 (2) of the said Regulation....” (Article 1)</i>	Step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the EC  <i>“In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Community, [OLAF] shall exercise the powers of investigation conferred on the Commission by the Community rules and Regulations and agreements in force in those areas.” (Article 1(1))</i>	Y		X	Y
Scope	On-the-spot administrative checks and inspections  <i>“This Regulation lays down the additional general provisions within the meaning of Article 10 of Regulation (EC, Euratom) No 2988/95 which are applicable to <b>on-the-spot administrative checks and inspections</b> carried out by the Commission in order to protect</i>	External investigations  <i>“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</i>	Y		X	Y

<sup>38</sup> Article 3 of Regulation 1073 provides that OLAF shall exercise the power conferred on the Commission by Regulation 2185 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.

	<i>the financial interests of the Communities against irregularities as defined in Article 1 (2) of the said Regulation...</i> ” (Article 1)	agreements in force, in third countries. ...” (Article 3)  <b>Internal investigations</b>  <i>Under the conditions and 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 concerned, in order to obtain access to information relating to possible irregularities which such operators might hold.” (Article 4(3))</i>				
Preparatory phase	<b>In close cooperation with the national authorities</b>  <i>“On-the-spot checks and inspections shall be prepared and conducted by the Commission in close cooperation with the competent authorities of the Member State concerned, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. ...” (Article 4)</i>	-	N			Y
Opening	-	<b>By decision of OLAF’s Director</b>  <i>“External investigations shall be opened by a <b>decision of the Director of the Office</b>, acting on his own initiative or following a request from a Member State concerned.</i>  <i>Internal investigations shall be opened by a <b>decision of the Director of the Office</b>, acting on his own initiative or following a request from the institution, body, office or agency within which the investigation is to be conducted.” (Article 5)</i>	N			Y
Written authorisation required	<b>Yes</b>  <i>“... Commission inspectors shall exercise their powers on production of a <b>written authorization</b> showing their identity and position, together with a document indicating the subject-matter and purpose of the on-the-spot check or inspection. ...” (Article 6(1))</i>	<b>Yes</b>  <i>“2. The Office’s employees shall carry out their tasks on production of a <b>written authorisation</b> showing their identity and their capacity.</i>  <i>3. The Office’s employees shall be equipped for each intervention with a <b>written authority</b> issued by the Director indicating the subject matter of the investigation.” (Article 6(2) and (3))</i>	Y	X		Y
Access to the premises of economic	<b>Yes</b>  <i>“...In order to make it easier for the Commission to carry out such checks and inspections, economic operators shall be required to grant <b>access to premises</b>, land,</i>	<b>External investigations:</b>  OLAF exercises power to carry out on-the spot	Y	X		Y

operators	<i>means of transport or other areas, used for business purposes. ...” (Article 5)</i>	<p>Checks and inspections under Regulation 2185/96.</p> <p><i>“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. ...” (Article 3)</i></p> <p>Internal investigations:</p> <p>OLAF may carry out on-the-spot inspections at the premises of economic operators concerned, in accordance with Regulation 2185/96</p> <p><i>“Under the conditions and 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 concerned, in order to obtain access to information relating to possible irregularities which such operators might hold.” (Article 4(3))</i></p>				
Assistance by national authorities in case of resistance	<p>National authorities give assistance, acting in accordance with national rules</p> <p><i>“Where the economic operators [...] resist an on-the-spot check or inspection, the Member State concerned, acting in accordance with national rules, shall give Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection. ...” (Article 9)</i></p>	<p>National authorities, in conformity with national provisions, give the necessary support</p> <p><i>“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. The institutions and bodies shall ensure that their members and staff afford the necessary assistance to enable the Office’s agents to fulfil their task; the offices and agencies shall ensure that their managers and staff do likewise.” (Article 6(6))</i></p>	Y	X		Y
Flow of information to national authorities	<p>Commission reports to national authority any fact or suspicion relating to an irregularity</p> <p><i>“The Commission shall report as soon as possible to the competent authority of the State within whose territory an on-the-spot check or inspection has been performed any fact or</i></p>	<p>In case of external investigations</p> <p><i>“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</i></p>	Y		X	Y <sub>40</sub>

<sup>39</sup>

Since this Article applies without prejudice to Regulation 2185/96, Article 8(2) of Regulation 2185/96 fully applies.

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In practice, OLAF always reports irregularities to national authorities. However, the two Regulations currently do not fully satisfy the needs of OLAF to receive a systematic information feedback from national authorities.

	<p>suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission shall be required to <b>inform</b> the aforementioned authority of the result of such checks and inspections.” (Article 8(2))</p>	<p>investigations.”(Article 9(3))</p> <p>“<b>Without prejudice</b> to Articles 8, 9 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may at any time forward to the competent authorities of the Member States concerned information obtained in the course of external investigations.” (Article 10(1)<sup>39</sup>)</p> <p>In case of internal investigations</p> <p>“Without prejudice to Articles 8, 9 and 11 of this Regulation, 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. Subject to the requirements of the investigation, he shall simultaneously inform the Member State concerned.” (Article 10(2)).</p>				
Use of reports as evidence	<p>Admissible evidence in administrative or judicial proceedings</p> <p>“Commission inspectors shall ensure that in drawing up their reports account is taken of the procedural requirements laid down in the national law of the Member State concerned. The material and supporting documents [...] shall be annexed to the said reports. The reports thus prepared shall constitute <b>admissible evidence</b> 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 be of identical value to such reports. ...” (Article 8(3))</p>	<p>Admissible evidence in administrative or judicial proceedings</p> <p>“In drawing up such reports, account shall be taken of the procedural requirements laid down in the national law of the Member State concerned. Reports drawn up on that basis shall constitute <b>admissible evidence</b> 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 be of identical value to such reports.” (Article 9(2))</p>	Y	X		Y
Confidentiality	<p>Professional secrecy</p> <p>“Information communicated or acquired in any form under this Regulation shall be covered by <b>professional secrecy</b> and protected in the same way as similar information is protected by the national legislation of the Member State that received it and by the corresponding provisions applicable to the Community institutions. ...” (Article 8(1))</p>	<p>Professional secrecy</p> <p>“Information forwarded or obtained in the course of internal investigations, in whatever form, shall be subject to <b>professional secrecy</b> and shall enjoy the protection given by the provisions applicable to the institutions of the European Communities. ...” (Article 8(2))</p>	Y	X		Y
Data protection	<p>Commission inspectors comply with Community and national provisions on the protection of personal data</p> <p>“The Commission shall ensure that, when implementing this Regulation, its inspectors comply with Community and national provisions on the protection of personal data ...”</p>	<p>OLAF staff observe Community and national provisions on the protection of personal data</p> <p>“The Director shall ensure that the Office’s employees and the other persons acting under his authority observe the Community and national</p>	Y	X		Y

	(Article 8(4))	<i>provisions on the protection of personal data ...” (Article 8(3))</i>				
Judicial review <sup>41</sup>	-	<p><b>In case of internal investigations</b></p> <p><i>“[...] any official or other servant of the European Communities may submit to the Director of the Office a complaint by virtue of this Article against an act adversely affecting him committed by the Office as part of an internal investigation, in accordance with the procedures laid down in Article 90(2) of the Staff Regulations. Article 91 of the Staff Regulations shall apply to decisions taken with regard to such complaints.” (Article 14)</i></p>	N			Y
Reporting to Community institutions	-	<p><b>Yes</b></p> <p><i>“...The Director 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, whilst respecting the confidentiality of those investigations, the legitimate rights of the persons concerned and, where appropriate, national provisions applicable to judicial proceedings. ...” (Article 12(3))</i></p>	N			Y

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<sup>41</sup> Independently of specific provisions of secondary law, remedies under the EC Treaty (e.g. Article 288 EC) are available.