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Delegations will find attached document COM(2016) 113 final.

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2016/0064 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EU, EURATOM) No 883/2013, as regards the secretariat of the
Supervisory Committee of the European Anti-Fraud Office (OLAF)**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

The Supervisory Committee of the European Anti-Fraud Office was established by Regulation 1073/99 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹. Article 15(1) of the new OLAF Regulation 883/2013 of 11 September 2013² states that its tasks should be to "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" and, in particular, to "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 its work, the Supervisory Committee is supported by a secretariat. Currently, this secretariat is provided by the OLAF, in accordance with Article 15(8) of the OLAF Regulation which states that the secretariat of the Supervisory Committee "shall be provided by the Office, in close consultation with the Supervisory Committee". Article 18 of the Regulation places the budgetary appropriations for the Supervisory Committee and its secretariat within the budget line of the Office and provides that the establishment plan of the Office includes that of the Supervisory Committee and of its secretariat.

However, in the recent past some concerns have been voiced about possible conflicts of interest and calls have been made for a strengthened legal independence as regards the management of the Committee's budget and secretariat. Thus, in its Annual Activity Reports of 2013 and 2014³, the Supervisory Committee underlined the importance of its independent and effective functioning which requires an independent and adequately staffed secretariat. It stressed that the exercise of the Appointing Authority powers by OLAF's Director-General, including decisions on promotions and transfers, could potentially lead to conflicts of interest. It called for its budget and that of its secretariat to be specified in a separate line of the OLAF budget.

The European Parliament called several times on the Commission to take measures to reinforce the independent functioning of OLAF's Supervisory Committee secretariat, such as in its report on the discharge procedure for 2013⁴ or in its resolution on the OLAF Supervisory Committee's annual report 2014⁵.

¹ OJ L 136, 31.5.1999, p. 1.

² Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 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, OJ L 248 18.9.2013 p.1.

³ http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2013/scar_2013_supcom_en.pdf;
http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2015/scar_2014_supcom_en.pdf.

⁴ European Parliament decision of 29 April 2015 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2013, Section III – Commission and executive agencies (2014/2075(DEC)),
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0118>.

⁵ Resolution of 10 June 2015 on the OLAF Supervisory Committee's annual report 2014,
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0226+0+DOC+XML+V0//EN>.

The issue has also been addressed in the Exchange of Views with the institutions established by Article 16 of the OLAF Regulation. During the exchange held on 28 September 2015, representatives from the European Parliament stressed again the need to strengthen the independent functioning of the Supervisory Committee's secretariat.

On 18 December 2015, the Commission adopted an amendment to its Decision 1999/352⁶ in order to move the responsibility for the implementation of the budgetary appropriations for the Members from the Director-General of OLAF to the Commission. The Commission subsequently delegated this responsibility to the Director of its Payments Office (PMO). This decision applied as from 1 January 2016.

The objective of this decision was to avoid the appearance that the Members of the Supervisory Committee might not be in a position to ensure their mandate properly. This decision could, however, not achieve a full legal separation of the Committee's secretariat and budget from the Office. In order to separate the management of the Committee's secretariat from the management of the Office and to avoid any impression that OLAF can impair the functioning of the support to the Committee's Members, it is necessary to modify Regulation 883/2013 to foresee that the secretariat of the Supervisory Committee will be provided directly by the Commission. This modification will not affect the independence and operational functioning of the Supervisory Committee and of its Secretariat, who will continue to benefit from the same rights and be subject to the same obligations as before. In particular, OLAF's Data Protection Officer (DPO) will continue to cover the processing of data by the secretariat and the secretariat's staff will continue to be subject to the same confidentiality rules. Article 19 of Regulation 883/2013 provides that the Commission shall submit to the European Parliament and to the Council an evaluation report on the application of the Regulation by 2 October 2017, which shall also state whether the Regulation needs to be amended. Given the importance of a proper functioning of the Supervisory Committee and the need to avoid the impression that this functioning could be impaired by its institutional framework it seems important to adapt the Regulation on this point – and strictly on this point - as soon as possible and in any case before the overall evaluation of the Regulation takes place.

Once the revised Regulation will enter into force, another technical amendment will have to be made to the OLAF Decision in order to bring it formally in line with the new legal framework.

Consistency with existing policy provisions in the policy area

The proposed Regulation amends Regulation 883/2013 which already provides for the independence of OLAF's Supervisory Committee. In particular paragraphs 2, 3 and 7 of Article 15 guarantee the Committee's independence by providing for a special, interinstitutional appointment procedure and specific conditions for the exercise of the members' mandates. The Commission Decision C(2015)2418 has further defined this framework by transferring the management of the budgetary appropriations for the Supervisory Committee from OLAF to the Commission (PMO).

⁶ Commission Decision C(2015)2418 amending Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office (OLAF), OJ L333/148 of 19 December 2015, p148).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

The proposal is based on Art. 325 TFEU on combating fraud, which also provides the legal basis for Regulation 883/2013.

Subsidiarity and proportionality

This proposal has no impact on Member States' powers and responsibilities for combating fraud affecting the financial interests of the EU. It only concerns the management of OLAF's Supervisory Committee, which rules are currently laid down in an EU Regulation. In addition, the above-mentioned action is strictly limited to what is necessary in order to attain the proposed objectives, which is compliant with the principle of proportionality.

Choice of the instrument

Regulation 883/2013 needs to be amended through the same type of instrument, i.e.a Regulation.

3. BUDGETARY IMPLICATIONS

The proposed Regulation will not require any new human or administrative resources and will have no financial impact. It will only transfer the management of the budgetary appropriations concerning the secretariat of OLAF's Supervisory Committee within the Commission.

4. OTHER ELEMENTS

Detailed explanation of the specific provisions of the proposal

Under the new proposed Regulation, the secretariat of the Supervisory Committee will be provided by the Commission, and no longer by OLAF (Article 15(8)).

The budgetary appropriations for the secretariat of the Supervisory Committee will be moved from the budget line and the establishment plan of OLAF to that of the Commission (Article 18).

Finally, the proposal amends the wording of paragraphs 4 and 5 of Article 10 so that the competence of OLAF's Data Protection Officer (DPO) will continue to cover the processing of data by the secretariat. Also, the secretariat's staff will continue to be subject to the same confidentiality rules as before.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU, EURATOM) No 883/2013, as regards the secretariat of the Supervisory Committee of the European Anti-Fraud Office (OLAF)

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,

Having regard to 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,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Supervisory Committee of the European Anti-Fraud Office ('the Office') is tasked with regularly monitoring the implementation by the Office of its investigative function, in order to reinforce the Office's independence.
- (2) The framework for the implementation of the budgetary appropriations relating to the Members of the Supervisory Committee should be set up in a way which avoids any appearance of a possible interference of the Office in their duties. Regulation (EC, EURATOM) No 883/2013 should be adapted in order to allow for such a framework. The secretariat of the Supervisory Committee should be provided directly by the Commission, independently from the Office. The Commission should refrain from interfering with the functions of the Supervisory Committee.
- (3) Where the Office appoints a Data Protection Officer in accordance with Article 10(4) of Regulation 883/2013, that Data Protection Officer should continue to be competent for the processing of data by the secretariat of the Supervisory Committee.
- (4) Confidentiality obligations for the staff of the secretariat of the Supervisory Committee should continue to apply.
- (5) 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....],

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU, EURATOM) No 883/2013 is amended as follows:

(1) Article 10 is amended as follows:

(a) in paragraph 4, the following subparagraph is added:

"The Data Protection Officer shall be competent for the processing of data by the Office and the secretariat of the Supervisory Committee."

(b) in paragraph 5, the second subparagraph is replaced by the following:

"In accordance with the Staff Regulations, the staff of the Office and the staff of the secretariat of the Supervisory Committee shall refrain from any unauthorised disclosure of information received in the exercise of their functions, 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."

(2) In Article 15(8), the last sentence is replaced by the following:

"Its secretariat shall be provided by the Commission, independently from the Office and in close cooperation with the Supervisory Committee. The Commission shall refrain from interfering with the functions of the Supervisory Committee."

(3) Article 18 is replaced by the following:

"Article 18

Financing

The total appropriations for the Office 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 appropriations for the Supervisory Committee and its secretariat shall be entered into the section of the general budget of the European Union relating to the Commission.

The establishment plan of the Office shall be annexed to the establishment plan of the Commission. The establishment plan of the Commission shall include the secretariat of the Supervisory Committee."

Article 2

This Regulation shall enter into force on the [first day of the month] following that of its publication in the *Official Journal of the European Union*. It shall apply as from 1 January 2017.

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