



Brussels, 7 May 2019
(OR. en)

8570/19

Interinstitutional File:
2018/0170(COD)

CODEC 947
GAF 42
FIN 299
PE 200

INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations
- Outcome of the European Parliament's first reading
(Strasbourg, 15 to 18 April 2019)

I. INTRODUCTION

The rapporteur, Ingeborg GRÄSSLE (EPP, DE), presented a report on the proposal for a Regulation on behalf of the Committee on Budgetary Control. The report contained 140 amendments (amendments number 1-140) to the proposal.

In addition, the EPP political group tabled 2 amendments (amendments number 141 and 142).

II. VOTE

When it voted on 16 April 2019, the plenary adopted amendments 1-4 and 6-140 to the proposal for a Regulation. No other amendments were adopted.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "█" indicates deleted text.

OLAF investigations and cooperation with the European Public Prosecutor's Office *I**

European Parliament legislative resolution of 16 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations (COM(2018)0338 – C8-0214/2018 – 2018/0170(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0338),
- having regard to Article 294(2) and Article 325 of the Treaty on the Functioning of the European Union, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof, pursuant to which the Commission submitted the proposal to Parliament (C8-0214/2018),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the Opinion 8/2018 of the Court of Auditors¹,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinions of the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A8-0179/2019),

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ ECA Opinion No 8/2018.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) With the adoption of Directive (EU) 2017/1371 of the European Parliament and of the Council³ and Council Regulation (EU) 2017/1939⁴, the Union has substantially strengthened the means available to protect the financial interests of the Union by means of criminal law. The European Public Prosecutor's Office ("EPPO") **will have** the power to carry out criminal investigations and bring indictments related to criminal offences affecting the Union budget, as defined in Directive (EU) 2017/1371, in the participating Member States.

Amendment

(1) With the adoption of Directive (EU) 2017/1371 of the European Parliament and of the Council³ and Council Regulation (EU) 2017/1939⁴, the Union has substantially strengthened the **harmonised legal framework provisions regarding** means available to protect the financial interests of the Union by means of criminal law. The European Public Prosecutor's Office ("EPPO") **is a key priority in the field of criminal justice and anti-fraud policy, having** the power to carry out criminal investigations and bring indictments related to criminal offences affecting the Union budget, as defined in Directive (EU) 2017/1371, in the participating Member States.

³ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

³ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) The European Anti-Fraud Office

Amendment

(2) **To protect the financial interests of**

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

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

Amendment 3

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) Therefore, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁵ should be amended following the adoption of Regulation (EU) 2017/1939. The provisions governing the relationship between the EPPO and the Office in Regulation (EU) 2017/1939 should be reflected and complemented by the rules in Regulation (EU, Euratom) No 883/2013 to ensure the highest level of protection of the financial interests of the Union through synergies between the two bodies.

Amendment

(3) Therefore, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁵ should be amended **and correspondingly adapted** following the adoption of Regulation (EU) 2017/1939. The provisions governing the relationship between the EPPO and the Office in Regulation (EU) 2017/1939 should be reflected and complemented by the rules in Regulation (EU, Euratom) No 883/2013 to ensure the highest level of protection of the financial interests of the Union through synergies between the two bodies, **which means implementing the principles of close cooperation, information exchange, complementarity and avoidance of duplication**.

⁵ 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

⁵ 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

Amendment 4

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Regulation (EU) 2017/1939 requires the Office, as well as all institutions, bodies, offices and agencies of the Union and competent national authorities, to report to the EPPO without undue delay criminal conduct in respect of which the EPPO may exercise its competence. Since the mandate of the Office is to carry out administrative investigations into fraud, corruption and any other illegal activity affecting the financial interest of the Union, it is ideally placed and equipped to act as a natural partner and privileged source of information for the EPPO.

Amendment

(5) Regulation (EU) 2017/1939 requires the Office, as well as all institutions, bodies, offices and agencies of the Union and competent national authorities, to report to the EPPO without undue delay **suspected** criminal conduct in respect of which the EPPO may exercise its competence. Since the mandate of the Office is to carry out administrative investigations into fraud, corruption and any other illegal activity affecting the financial interest of the Union, it is ideally placed and equipped to act as a natural partner and privileged source of information for the EPPO.

Amendment 6

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) Regulation (EU) 2017/1939 provides that the EPPO may request such complementary investigations to the Office. In cases where the EPPO does not request it, such a complementary investigation should also be possible on the initiative of the Office, under *certain* conditions. In particular, the EPPO should be able to object to the opening or continuation of an investigation by the Office, or to the performance of specific

Amendment

(10) Regulation (EU) 2017/1939 provides that the EPPO may request such complementary investigations to the Office. In cases where the EPPO does not request it, such a complementary investigation should also be possible on the initiative of the Office, under *specific* conditions, *after consultation with the EPPO*. In particular, the EPPO should be able to object to the opening or continuation of an investigation by the

acts of investigation by it. The reasons for this objection should be based on the need to protect the effectiveness of the EPPO's investigation and should be proportionate to this aim. The Office should refrain from performing the action on which the EPPO raised an objection. If the EPPO **does not object**, the Office investigation should be conducted in close consultation with the EPPO.

Office, or to the performance of specific acts of investigation by it. The reasons for this objection should be based on the need to protect the effectiveness of the EPPO's investigation and should be proportionate to this aim. The Office should refrain from performing the action on which the EPPO raised an objection. If the EPPO **agrees to the request**, the Office investigation should be conducted in close consultation with the EPPO.

Amendment 7

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) To ensure effective coordination between the Office and the EPPO, information should be exchanged between them on a continuous basis. The exchange of information in the stages prior to the opening of investigations by the Office and the EPPO is particularly relevant to ensure proper coordination between the respective actions and avoid duplication. The Office and the EPPO should specify the modalities and conditions of this exchange of information in their working arrangements.

Amendment

(12) To ensure effective coordination, **cooperation and transparency** between the Office and the EPPO, information should be exchanged between them on a continuous basis. The exchange of information in the stages prior to the opening of investigations by the Office and the EPPO is particularly relevant to ensure proper coordination between the respective actions **to guarantee complementarity** and avoid duplication. **For this purpose, the Office and the EPPO should make use of the hit/no hit functions of their respective case management systems.** The Office and the EPPO should specify the modalities and conditions of this exchange of information in their working arrangements.

Amendment 8

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) It is necessary to address the most unambiguous findings of the Commission

Amendment

(14) It is necessary to address the most unambiguous findings of the Commission

evaluation through the amendment of Regulation (EU, Euratom) No 883/2013. These are essential changes necessary in the short term to strengthen the framework for the Office's investigations, in order to maintain a strong and fully-functioning Office that complements the EPPO's criminal law approach with administrative investigations, but which do not entail a change to the mandate or powers. They primarily concern areas where, today, the lack of clarity of the Regulation hinders the effective conduct of investigations by the Office, such as the conduct of on-the spot checks, the possibility of access to bank account information, or the admissibility as evidence of the case reports drawn up by the Office.

evaluation through the amendment of Regulation (EU, Euratom) No 883/2013. These are essential changes necessary in the short term to strengthen the framework for the Office's investigations, in order to maintain a strong and fully-functioning Office that complements the EPPO's criminal law approach with administrative investigations, but which do not entail a change to the mandate or powers. They primarily concern areas where, today, the lack of clarity of the Regulation hinders the effective conduct of investigations by the Office, such as the conduct of on-the spot checks, the possibility of access to bank account information, or the admissibility as evidence of the case reports drawn up by the Office. *The Commission should submit a new, comprehensive proposal no later than two years after the evaluation of both the EPPO and the Office, and of their cooperation.*

Amendment 9

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) In internal investigations and, where necessary, in external investigations the Office has access to any relevant information held by the institutions, bodies, offices and agencies. It is necessary, as suggested by the Commission evaluation, to clarify that this access should be possible irrespective of the medium on which this information or data is stored, in order to reflect evolving technological progress.

Amendment

(24) In internal investigations and, where necessary, in external investigations the Office has access to any relevant information held by the institutions, bodies, offices and agencies. It is necessary, as suggested by the Commission evaluation, to clarify that this access should be possible irrespective of the *type of* medium on which this information or data is stored, in order to reflect evolving technological progress.

Amendment 10

Proposal for a regulation Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) In order to pay attention to the protection and respect of procedural rights and guarantees, the Office should create an internal function in the form of the controller of procedural guarantees, and provide him or her with adequate resources. The controller of procedural guarantees should have access to all information necessary to fulfil his or her duties.

Amendment 11

Proposal for a regulation

Recital 26 b (new)

Text proposed by the Commission

Amendment

(26b) This Regulation shall establish a complaints mechanism for the Office in cooperation with the Controller of procedural guarantees, to safeguard the respect for procedural rights and guarantees in all the activities of the Office. This should be an administrative mechanism whereby the Controller should be responsible for handling complaints received by the Office in accordance with the right to good administration. The mechanism should be effective, ensuring that complaints are properly followed up. In order to increase transparency and accountability, the Office should report on the complaints mechanism in its annual report. It should cover in particular the number of complaints it has received, the types of procedural rights and guarantees violations involved, the activities concerned and, where possible, the follow-up measures taken by the Office.

Amendment 12

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) The mandate of the Office includes the protection of revenues to the Union budget arising from VAT own resources. In this field, the Office should be able to support and complement the activities of the Member States through investigations conducted in accordance with its mandate, the coordination of national competent authorities in complex, transnational cases, and the support and assistance to Member States and to the EPPO. To this end, the Office should be able to exchange information through the Eurofisc network established by Council Regulation (EU) No 904/2010⁹ in order to promote and facilitate cooperation in the fight against VAT fraud.

⁹ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 268, 12.10.2010, p. 1–18.

Amendment

(29) The mandate of the Office includes the protection of revenues to the Union budget arising from VAT own resources. In this field, the Office should be able to support and complement the activities of the Member States through investigations conducted in accordance with its mandate, the coordination of national competent authorities in complex, transnational cases, and the support and assistance to Member States and to the EPPO. To this end, the Office should be able to exchange information through the Eurofisc network established by Council Regulation (EU) No 904/2010⁹, *bearing in mind the provisions of Regulation (EU) 2018/1725 of the European Parliament and of the Council*^{9a} in order to promote and facilitate cooperation in the fight against VAT fraud.

⁹ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 268, 12.10.2010, p. 1–18.

^{9a} *Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).*

Amendment 13

Proposal for a regulation **Recital 32 a (new)**

Text proposed by the Commission

Amendment

(32a) The competent authorities of the

Member States shall give the necessary assistance to the Office to fulfil their tasks. When the Office makes judicial recommendations to the national prosecution authorities of a Member State and no follow-up is made, the Member State should justify its decision to the Office. Once a year, the Office should draw up a report in order to give an account of the assistance provided by the Member States and on the follow-up of the judicial recommendations.

Amendment 14

Proposal for a regulation Recital 32 b (new)

Text proposed by the Commission

Amendment

(32b) In order to supplement the procedural rules on the conduct of investigations set out in this Regulation, the Office should lay down the procedural code for investigations to be followed by the staff of the Office. Therefore, the power to adopt acts in accordance with Article 290 of the Treaty on the functioning of the European Union should be delegated to the Commission concerning the establishment of such a procedural code, without prejudice to the Office's independence in the exercise of its competences. Those delegated acts should cover, in particular, the practices to be observed in implementing the mandate and statute of the Office; detailed rules governing investigation procedures as well as the investigation acts permitted; the legitimate rights of the persons concerned; procedural guarantees; provisions relating to data protection and policies on communication and access to documents; provisions on the legality check and the means of redress open to the persons concerned; relations with the EPPO. It is of particular importance that the Office

carry out appropriate consultations during its preparatory work, including at expert level. The Commission should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Justification

Recital corresponding to amendment 100 from the draft report.

Amendment 15

Proposal for a regulation

Recital 32 c (new)

Text proposed by the Commission

Amendment

(32c) No later than five years after the date determined in accordance with the second subparagraph of Article 120(2) of Regulation (EU) 2017/1939, the Commission should evaluate the application of this Regulation and in particular the efficiency of the cooperation between the Office and the EPPO.

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point -1 (new)

Regulation (EU, Euratom) No 883/2013

Article 1 – paragraph 1 – introductory part

Present text

Amendment

(-1) in Article 1, the introductory part of paragraph 1 is replaced by the following:

1. In order to step up the fight against

“1. In order to step up the fight against

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

fraud, corruption and any other illegal activity **or irregularity** affecting the financial interests of the European Union and of the European Atomic Energy Community (hereinafter referred to collectively, when the context so requires, as ‘the Union’), the European Anti-Fraud Office established by Decision 1999/352/EC, ECSC, Euratom (‘the Office’) shall exercise the powers of investigation conferred on the Commission by:”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

The objectives should be adapted to the new focus of OLAF’s activities. This is a horizontal amendment that is repeated throughout the text.

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point -1 a (new)

Regulation (EU, Euratom) No 883/2013

Article 1 – paragraph 2

Present text

2. The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their action aimed at protecting the financial interests of the Union against fraud. The Office shall contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the Union. The Office

Amendment

(-1a) in Article 1, paragraph 2 is replaced by the following:

“2. The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their action aimed at protecting the financial interests of the Union against fraud. The Office shall contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity **or irregularity** affecting the financial interests

shall promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field of the protection of the financial interests of the Union, and shall support joint anti-fraud actions undertaken by Member States on a voluntary basis.

of the Union. The Office shall promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field of the protection of the financial interests of the Union, and shall support joint anti-fraud actions undertaken by Member States on a voluntary basis.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

See amendment to Art. 1(1).

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point -1 b (new)

Regulation (EU, Euratom) No 883/2013

Article 1 – paragraph 3 – point d

Present text

(d) Regulation (EC) No 45/2001.

Amendment

(-1b) in Article 1, point d of paragraph 3 is replaced by the following:

"(d) Regulation (EU) 2018/1725;"

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013R0883-20170101&from=EN>)

Justification

Technical amendment: on 11.12.2018, Regulation (EC) No 45/2001 was repealed and replaced by Regulation (EU) 2018/1725.

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point -1 c (new)

Regulation (EU, Euratom) No 883/2013

Article 1 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

(-1c) in Article 1, point da is added to paragraph 3:

“(da) Regulation (EU) 2016/679.”

Justification

As recommended by the European Data Protection Supervisor.

Amendment 20

Proposal for a regulation

Article 1 – paragraph 1 – point -1 d (new)

Regulation (EU, Euratom) No 883/2013

Article 1 – paragraph 4

Present text

Amendment

(-1d) in Article 1, paragraph 4 is replaced by the following:

4. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ('institutions, bodies, offices and agencies'), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, it shall investigate serious matters relating to the discharge of professional duties constituting a

“4. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ('institutions, bodies, offices and agencies'), **and without prejudice to Article 12d**, the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity **or irregularity** affecting the financial interests of the Union. To that end, it shall investigate serious matters relating to the

dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations (hereinafter collectively referred to as ‘officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members’).

discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations (hereinafter collectively referred to as ‘officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members’).’

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Reminder that the EPPO will be generally responsible for criminal cases.

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU, Euratom) No 883/2013

Article 1 – paragraph 4a

Text proposed by the Commission

4a. The Office shall establish and maintain a close relationship with the European Public Prosecutor's Office ('the EPPO') established in enhanced cooperation by Council Regulation (EU) 2017/1939¹³. This relationship shall be based on mutual cooperation and on information exchange. It shall aim in particular to ensure that all available means are used to protect the Union's financial interests through the complementarity of their respective mandates and the support provided by the Office to the EPPO.

Amendment

4a. The Office shall establish and maintain a close relationship with the European Public Prosecutor's Office ('the EPPO') established in enhanced cooperation by Council Regulation (EU) 2017/1939¹³. This relationship shall be based on mutual cooperation, ***complementarity, avoidance of duplication*** and information exchange. It shall aim in particular to ensure that all available means are used to protect the Union's financial interests through the complementarity of their respective mandates and the support provided by the

Office to the EPPO.

¹³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

¹³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point 1 a (new)

Regulation (EU, Euratom) No 883/2013

Article 1 – paragraph 5

Present text

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

Amendment

(1a) in Article 1, paragraph 5 is replaced by the following:

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 1 b (new)

Regulation (EU, Euratom) No 883/2013

Article 2 – paragraph 1 – point 2

Present text

(2) ‘irregularity’ shall mean ‘irregularity’ as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;

Amendment

(1b) in Article 2, point 2 is replaced by the following:

“(2) ‘irregularity’ shall mean ‘irregularity’ as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95, ***including infringements affecting revenue from value-added tax;***”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 1 c (new)

Regulation (EU, Euratom) No 883/2013

Article 2 – paragraph 1 – point 3

Present text

(3) ‘fraud, corruption and any other illegal activity affecting the financial interests of the Union’ shall have the meaning applied to those words in the relevant Union acts;

Amendment

(1c) in Article 2, point 3 is replaced by the following:

“(3) ‘fraud, corruption and any other illegal activity ***or irregularity*** affecting the financial interests of the Union’ shall have the meaning applied to those words in the relevant Union acts;”

Justification

See amendment to Art. 1(1).

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 2 a (new)

Regulation (EU, Euratom) No 883/2013

Article 2 – paragraph 1 – point 5

Present text

(5) ‘person concerned’ shall mean any person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and who is therefore subject to investigation by the Office;

Amendment

(2a) in Article 2, point 5 is replaced by the following:

“(5) ‘person concerned’ shall mean any person or economic operator suspected of having committed fraud, corruption or any other illegal activity ***or irregularity*** affecting the financial interests of the Union and who is therefore subject to investigation by the Office;”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

See amendment to Art. 1(1).

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 2 b (new)

Regulation (EU, Euratom) No 883/2013

Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

Amendment

(2b) in Article 2, the following point 7a is inserted:

“7a. ‘member of an institution’ means a member of the European Parliament, a

member of the European Council, a representative of a Member State at ministerial level in the Council, a member of the European Commission, a member of the Court of Justice of the European Union, a member of the Governing Council of the European Central Bank or a member of the Court of Auditors, as appropriate.”

Justification

Commission proposal for a Regulation of the European Parliament and the Council amending Regulation (EU, Euratom) No 889/2013 as regards the establishment of a Controller of procedural guarantees, COM (2014) 340 final.

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 2 c (new)

Regulation (EU, Euratom) No 883/2013

Article 2 – paragraph 1 – point 7 b (new)

Text proposed by the Commission

Amendment

(2c) in Article 2, the following point 7b is inserted:

“7b. ‘the same facts’ means that material facts are identical, with material facts being understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together and which in their totality may establish elements of a delict investigation which is in competence of the Office or the EPPO.”

Justification

As suggested by the Supervisory Committee in its letter of 20 November 2018.

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – title

Text proposed by the Commission

Amendment

External investigations

On-the-spot checks and inspections in the Member States and third countries

Justification

The rapporteur proposes to abolish the distinction between external and internal investigations.

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. Within the scope defined in Article 1 **and points (1) and (3) of Article 2**, the Office shall carry out on-the-spot checks and inspections in the Member States and, in accordance with the cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

1. Within the scope defined in Article 1, the Office shall carry out on-the-spot checks and inspections in the Member States and, in accordance with the cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

Justification

The Commission has inserted the reference to points (1) and (3) of Art. 2 here, but not in Art. 4(1). This could create legal uncertainty. In any case, the reference is superfluous because the terms defined in points (1) and (3) of Art. 2 are already mentioned in Article 1(1). The reference is

therefore deleted.

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 3

Text proposed by the Commission

3. Economic operators shall cooperate with the Office in the course of its investigations. The Office may request oral **information, including through interviews**, and written information from economic operators.

Amendment

3. Economic operators shall cooperate with the Office in the course of its investigations. The Office may request oral and written information from economic operators **in accordance with point (b) of Article 4(2)**.

Justification

The amendment creates a link with Art. 4(2)(b), in line with the proposed abolition of the distinction between external and internal investigations.

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 6 – subparagraph 1

Text proposed by the Commission

At the request of the Office, the competent authority of the Member State concerned shall provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article

Amendment

At the request of the Office, the competent authority of the Member State concerned shall, **without undue delay**, provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written

7(2).

authorisation referred to in Article 7(2).

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 6 – subparagraph 2

Text proposed by the Commission

The Member State concerned shall ensure, in accordance with Regulation (Euratom, EC) No 2185/96, that the staff of the Office are allowed access to all information **and** documents relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that they are able to assume custody of documents or data to ensure that there is no danger of their disappearance.

Amendment

The Member State concerned shall ensure, in accordance with Regulation (Euratom, EC) No 2185/96, that the staff of the Office are allowed access to all information, documents **and data** relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that they are able to assume custody of documents or data to ensure that there is no danger of their disappearance. *Where privately owned devices are used for work purposes, those devices shall be subject to investigations by the Office only if the Office has good grounds to suspect that their content may be relevant for the investigation.*

Justification

Alignment with Art. 4(2).

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7 a. Where it is demonstrated that a Member State does not comply with its duty to cooperate pursuant to paragraphs 6 and 7, the Union shall have the right to recover the amount related to the on-the-spot-check or inspection in question.

Amendment 34

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 9

Text proposed by the Commission

Amendment

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

deleted

Justification

Text can be merged with Art. 4(2)(a), in line with the proposed abolition of the distinction between external and internal investigations.

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 10

Text proposed by the Commission

Amendment

*10. Without prejudice to Article 12c(1),
where, before a decision has been taken
whether or not to open an external
investigation, the Office handles
information which suggests that there has
been fraud, corruption or any other illegal
activity affecting the financial interests of
the Union, it may inform the competent
authorities of the Member States
concerned and, where necessary, the
institutions, bodies, offices and agencies
concerned.*

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

Justification

*Text can be merged with Art. 4(8), in line with the proposed abolition of the distinction between
external and internal investigations.*

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point -a (new)

Regulation (EU, Euratom) No 883/2013

Article 4 – title

Present text

Amendment

(-a) in Article 4, the title is replaced by the following:

***Internal* investigations**

***“Further provisions on* investigations”**

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

The rapporteur proposes to abolish the distinction between external and internal investigations.

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point -a a (new)

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 1

Present text

Amendment

(-aa) in Article 4, paragraph 1 is replaced by the following:

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

“1. ***Administrative*** investigations within the institutions, bodies, offices and agencies ***in the areas referred to in Article 1*** shall be conducted in accordance with the conditions set out in this Regulation and in the decisions adopted by the respective institution, body, office or agency.”

Those internal investigations shall be

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point a

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

2. In the course of ***internal*** investigations:

Amendment

2. In the course of investigations:

Amendment 39

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point a

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) the Office shall have the right of immediate and unannounced access to any relevant information and data, irrespective of the medium on which it is stored, held by the institutions, bodies, offices and agencies, and to their premises. The Office shall be empowered to inspect the accounts of the institutions, bodies, offices and

Amendment

(a) the Office shall have the right of immediate and unannounced access, ***where necessary in order to establish whether there has been fraud, corruption or any other illegal activity or irregularity affecting the financial interests of the Union***, to any relevant information and data ***relating to the matter under***

agencies. The Office may take a copy of, and obtain extracts from, any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearance;

investigation, irrespective of the *type of* medium on which it is stored, held by the institutions, bodies, offices and agencies, and to their premises. *Where privately owned devices are used for work purposes, those devices shall be subject to investigations by the Office only if the Office has good grounds to suspect that their content may be relevant for the investigation.* The Office shall be empowered to inspect the accounts of the institutions, bodies, offices and agencies. The Office may take a copy of, and obtain extracts from, any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearance;

Justification

Merged with Art. 3(9), which can be deleted.

Amendment 40

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point a

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) the Office may request oral information, including through interviews, and written information from *economic operators*, officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members, *thoroughly documented according to regular confidentiality and Union data protection standards. Economic operators shall cooperate with the Office.*

Justification

This amendment replaces amendment 19 from the draft report.

Amendment 41

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point b

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

(b) paragraph 3 is *replaced by the following:*

3. In accordance with Article 3, the Office may carry out on-the-spot checks and inspections at the premises of economic operators in order to obtain access to information relevant to the matter under internal investigation.;

(b) paragraph 3 is *deleted;*

Justification

Paragraph becomes obsolete with the proposed abolition of the distinction between external and internal investigations, as Article 3 will always be applicable anyway.

Amendment 42

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point b a (new)

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 4

Present text

Amendment

(ba) in Article 4, paragraph 4 is replaced by the following:

4. The institutions, bodies, offices and

“4 The institutions, bodies, offices and

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

In line with the proposed abolition of the distinction between external and internal investigations, this provision can apply to all kinds of investigations. “...or data” aligned with Art. 4(2).

Amendment 43

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point b b (new)

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 5

Present text

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment

(bb) in Article 4, paragraph 5 is replaced by the following:

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

Justification

Amended in line with the proposed abolition of the distinction between external and internal investigations. This provision can apply to all kinds of investigations.

Amendment 44

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point b c (new)

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 6 – subparagraph 1

Present text

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

Amendment

(bc) in Article 4, paragraph 6, subparagraph 1 is replaced by the following:

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Amended in line with the proposed abolition of the distinction between external and internal investigations. This provision can apply to all kinds of investigations.

Amendment 45

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point b d (new)

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 6 – subparagraph 2

Present text

Amendment

(bd) in Article 4, paragraph 6, subparagraph 2 is replaced by the

following:

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

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Amended in line with the proposed abolition of the distinction between external and internal investigations. This provision can apply to all kinds of investigations.

Amendment 46

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point b e (new)

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 7

Present text

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

Amendment

(be) in Article 4, paragraph 7 is replaced by the following:

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Amended in line with the proposed abolition of the distinction between external and internal investigations. This provision can apply to all kinds of investigations.

Amendment 47

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point c

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 8 – subparagraph 1

Text proposed by the Commission

Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an **internal** investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the **institution, body, office or agency** concerned. Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.

Amendment

Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity **or irregularity** affecting the financial interests of the Union, it may inform, **as appropriate, the competent authorities of the Member States concerned and the institutions, bodies, offices or agencies** concerned.

Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.

Justification

Merged with Art. 3(10), which can be deleted.

Amendment 48

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point c a (new)

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 8 – subparagraph 2

Present text

Where necessary, the Office **shall also inform** the competent authorities of the Member **State** concerned. **In this case**, the procedural requirements laid down in the second and third subparagraphs of Article 9(4) shall apply. If the competent authorities decide to take any action on the basis of the information transmitted to them, in accordance with national law, they shall, upon request, inform the Office thereof.

Amendment

(ca) in paragraph 8, subparagraph 2 is replaced by the following:

“As regards investigations within the institutions, bodies, offices and agencies, where the Office **informs** the competent authorities of the Member **States** concerned, the procedural requirements laid down in the second and third subparagraphs of Article 9(4) shall apply. If the competent authorities decide to take any action on the basis of the information transmitted to them, in accordance with national law, they shall, upon request, inform the Office thereof.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Merged with Art. 3(10), which can be deleted.

Amendment 49

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point c b (new)

Regulation (EU, Euratom) No 883/2013

Article 4 – paragraph 8 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(cb) in paragraph 8, the following subparagraph is added:

“As regards on-the-spot checks and inspections pursuant to Article 3, without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities of the Member States concerned shall ensure that appropriate action is taken, in which the Office may take part, in compliance with national law. Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of information as referred to in the first subparagraph of this paragraph.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Merged with Art. 3(10), which can be deleted.

Amendment 50

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point a

Regulation (EU, Euratom) No 883/2013

Article 5 – paragraph 1 – first sentence

Text proposed by the Commission

Amendment

(a) in paragraph 1, the first sentence is deleted replaced by the following:

“Without prejudice to Article 12d, the Director-General may open an investigation when there is a sufficient

suspicion, which may also be based on information provided by any third party or anonymous information, that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union.";

Justification

Technical deletion in view of the proposed new wording for this paragraph.

Amendment 51

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point a a (new)

Regulation (EU, Euratom) No 883/2013

Article 5 – paragraph 1

Present text

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

Amendment

(aa) paragraph 1 is replaced by the following:

"1. Without prejudice to Article 12d, the Director-General may open an investigation when there is a sufficient suspicion, which may also be based on information provided by any third party or anonymous information, that there has been fraud, corruption or any other illegal activity or irregularity affecting the financial interests of the Union. The evaluation period preceding the decision shall not exceed two months. If the informant who provided the underlying information is known, he or she shall be informed as appropriate."

likelihood of any judicial follow-up.

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013R0883-20170101&from=EN>)

Justification

The introduction of IPPs has not proven useful. Furthermore, micro-managing the Director-General's exercise of his duties should be avoided. (This amendment replaces amendment 31 from the draft report - "may" has been reinstated.)

Amendment 52

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point a b (new)

Regulation (EU, Euratom) No 883/2013

Article 5 – paragraph 2 – subparagraph 1

Present text

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

Amendment

(ab) in paragraph 2, subparagraph 1 is replaced by the following:

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Subparagraphs are merged following the abolition of the distinction between external and internal investigations.

Amendment 53

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point a c (new)

Regulation (EU, Euratom) No 883/2013

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

(ac) in paragraph 2, subparagraph 2 is deleted;

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Subparagraphs are merged following the abolition of the distinction between external and internal investigations.

Amendment 54

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point a d (new)

Regulation (EU, Euratom) No 883/2013

Article 5 – paragraph 3

Present text

Amendment

(ad) paragraph 3 is replaced by the following:

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

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

Office.

paragraph shall not apply to investigations by the EPPO pursuant to Regulation (EU) 2017/1939.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Amended in line with the abolition of the distinction between external and internal investigations.

Amendment 55

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point b

Regulation (EU, Euratom) No 883/2013

Article 5 – paragraph 3 – last sentence

Text proposed by the Commission

Amendment

(b) in paragraph 3, the following sentence is added:

“This paragraph shall not apply to investigations by the EPPO pursuant to Regulation (EU) 2017/1939.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Technical deletion – see previous amendment.

Amendment 56

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point b a (new)

Regulation (EU, Euratom) No 883/2013

Article 5 – paragraph 5

Present text

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

Amendment

(ba) in Article 5, paragraph 5 is replaced by the following:

*"5. If the Director-General decides not to open an investigation *within the institutions, bodies, offices and agencies despite there being a sufficient suspicion that there has been fraud, corruption or any other illegal activity or irregularity affecting the financial interests of the Union, he shall* without delay send any relevant information to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be informed of the action taken."*

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013R0883-20170101&from=EN>)

Justification

This amendment replaces amendment 36 from the draft report.

Amendment 57

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point c

Regulation (EU, Euratom) No 883/2013

Article 5 – paragraph 6

Text proposed by the Commission

6. If the Director-General decides not to *open an external investigation, he may* without delay send any relevant information to the competent authorities of the Member State concerned for action to

Amendment

6. If the Director-General decides not to *conduct an on-the-spot check or inspection pursuant to Article 3 despite there being a sufficient suspicion that there has been fraud, corruption or any*

be taken where appropriate, in accordance with Union law and national law. Where necessary, the Office shall also inform the institution, body, office or agency concerned.

other illegal activity or irregularity affecting the financial interests of the Union, he shall without delay send any relevant information to the competent authorities of the Member State concerned for action to be taken where appropriate, in accordance with Union law and national law. Where necessary, the Office shall also inform the institution, body, office or agency concerned.

Justification

This amendment replaces amendment 37 from the draft report.

Amendment 58

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point c a (new)

Regulation (EU, Euratom) No 883/2013

Article 5 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(ca) paragraph 6a is added:

“6a. The Director-General shall periodically inform the Supervisory Committee, in accordance with Article 17(5), about the cases in which he or she has decided not to open an investigation, indicating the reasons for that decision.”

Amendment 59

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point -a (new)

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 1

Present text

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

Amendment

(-a) in Article 7, paragraph 1 is replaced by the following:

“1. The Director-General shall direct the conduct of investigations on the basis, where appropriate, of written instructions. Investigations shall be conducted under his direction by the staff of the Office designated by him. ***The Director-General shall not conduct investigations personally.”***

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 60

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point c a (new)

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 3 – subparagraph 2

Present text

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

Amendment

(ca) in paragraph 3, the second subparagraph is replaced by the following:

“The institutions, bodies, offices and agencies shall ensure that their officials, other servants, members, heads and staff members provide the necessary assistance to enable the staff of the Office to fulfil their tasks ***in accordance with this***

their tasks effectively.

Regulation effectively and without undue delay.

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0883>)

Amendment 61

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point c b (new)

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 4

Present text

Amendment

(cb) paragraph 4 is deleted;

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Technical deletion following the abolition of the distinction between external and internal investigations.

Amendment 62

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point c c (new)

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 6 – introductory part

Present text

Amendment

(cc) in paragraph 6, the introductory

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

part is replaced by the following:

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 63

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point c d (new)

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 6 – subparagraph 1 – point b

Present text

(b) any information that could assist the institution, body, office or agency concerned in deciding **whether it is appropriate to take** precautionary administrative measures in order to protect the financial interests of the Union;

Amendment

(cd) in paragraph 6, subparagraph 1 point b is replaced by the following:

“(b) any information that could assist the institution, body, office or agency concerned in deciding **on the** appropriate precautionary administrative measures **to be taken** in order to protect the financial interests of the Union;”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 64

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point c e (new)

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 6 – subparagraph 1 – point c

Present text

(c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, *in the case of an external investigation, within the competence of a* national authority, in accordance with the national rules applicable to investigations.

Amendment

(ce) in paragraph 6, subparagraph 1 point c is replaced by the following:

“(c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or *other* national authority, in accordance with the national rules applicable to investigations.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Technical amendment following the abolition of the distinction between external and internal investigations.

Amendment 65

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point d

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 6 – subparagraph 2

Text proposed by the Commission

In addition to the first subparagraph, the institution, body, office or agency

Amendment

In addition to the first subparagraph, the institution, body, office or agency

concerned **may at any time consult** the Office **with a view to taking, in close cooperation with the Office, any appropriate** precautionary measures, **including measures for the safeguarding of evidence, and shall inform the Office without delay of such decision.**

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

concerned **shall inform** the Office **without delay of any deviation from the suggested precautionary measures and the reasons for the deviation.**

Amendment 66

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point e

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 8

Text proposed by the Commission

8. If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating the reasons and, **where appropriate**, the remedial measures **envisioned** with a view to speeding up the investigation.

Amendment

8. If an investigation cannot be closed within 12 months after it has been opened, the Director-General shall, at the expiry of that 12-month period and every six months thereafter, report to the Supervisory Committee, indicating **in detail** the reasons **for the delay** and the remedial measures **taken** with a view to speeding up the investigation.

Amendment 67

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point e a (new)

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

(ea) paragraph 8a is added:

“8a. The report shall contain, as a minimum, a brief description of the facts, their legal qualification, an assessment of the damage caused or likely to be caused, the date of expiration of the statutory limitation period, the reasons why the twelve-month period could not be kept, and the remedial measures envisaged with a view to speeding up the investigation, where applicable.”

Amendment 68

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point -a (new)

Regulation (EU, Euratom) No 883/2013

Article 8 – paragraph 1 – subparagraph 1

Present text

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

Amendment

(-a) paragraph 1 is replaced by the following:

*“1. The institutions, bodies, offices and agencies shall transmit to the Office without delay any information relating to possible cases of fraud, corruption or any other illegal activity **or irregularity** affecting the financial interests of the Union. **This duty shall apply to the EPPO when the concerned cases do not fall under its mandate in accordance with Chapter IV of Regulation (EU) 2017/1939.**”*

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

See amendment to Art. 1(1).

Amendment 69

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU, Euratom) No 883/2013

Article 8 – paragraph 1 – subparagraph 1a

Text proposed by the Commission

Where the institutions, bodies, offices and agencies report to the EPPO in accordance with Article 24 of Regulation (EU) 2017/1939, they may *instead transmit* to the Office a copy of the report sent to the EPPO.

Amendment

Where the institutions, bodies, offices and agencies report to the EPPO in accordance with Article 24 of Regulation (EU) 2017/1939, they may *comply with the obligation set out in the first subparagraph by transmitting* to the Office a copy of the report sent to the EPPO.

Amendment 70

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU, Euratom) No 883/2013

Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

The institutions, bodies, offices and agencies and, unless prevented by national law, the competent authorities of the Member States shall, at the request of the Office or on their own initiative, transmit *without delay* to the Office any document or information they hold which relates to an ongoing investigation by the Office.

Amendment 71

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point c

Regulation (EU, Euratom) No 883/2013

Article 8 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The institutions, bodies, offices and agencies and, unless prevented by national law, the competent authorities of the Member States shall transmit ***without delay*** to the Office, ***at the request of the Office or on their own initiative***, any other document or information considered pertinent which they hold relating to the fight against fraud, corruption and any other illegal activity ***or irregularity*** affecting the financial interests of the Union.

Justification

See amendment to Art. 1(1).

Amendment 72

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point d

Regulation (EU, Euratom) No 883/2013

Article 8 – paragraph 4 – subparagraph 1

Text proposed by the Commission

This Article shall not apply to the EPPO as regards the criminal offences in respect of which it could exercise its competence in accordance with ***Articles 22 and 25*** of Regulation (EU) 2017/1939.

Amendment

This Article shall not apply to the EPPO as regards the criminal offences in respect of which it could exercise its competence in accordance with ***Chapter IV*** of Regulation (EU) 2017/1939.

Justification

It seems appropriate here to refer to the entire Chapter IV of the EPPO Regulation, in order to ensure that no relevant provision is omitted. (See also Art. 12c(1).)

Amendment 73

Proposal for a regulation

Article 1 – paragraph 1 – point 8 – point -a (new)

Regulation (EU, Euratom) No 883/2013

Article 9 – paragraph 2 – subparagraph 4

Present text

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

Amendment

(-a) in paragraph 2, subparagraph 4 is replaced by the following:

"The requirements referred to in the second and third subparagraphs shall not apply to the taking of statements in the context of on-the-spot checks and inspections. ***The person concerned shall however be informed of his or her rights before a statement is taken, in particular of the right to be assisted by a person of his or her choice.***"

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013R0883-20170101&from=EN>)

Justification

See the Commission proposal for a Regulation of the European Parliament and the Council amending Regulation (EU, Euratom) No 889/2013 as regards the establishment of a Controller of procedural guarantees, COM (2014) 340 final.

Amendment 74

Proposal for a regulation

Article 1 – paragraph 1 – point 8 – point -a a (new)

Regulation (EU, Euratom) No 883/2013

Article 9 – paragraph 4 – subparagraph 2

Present text

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013R0883-20170101&from=EN>)

Justification

Technical amendment: on 11.12.2018, Regulation (EC) No 45/2001 was repealed and replaced by Regulation (EU) 2018/1725.

Amendment 75

Proposal for a regulation

Article 1 – paragraph 1 – point 8 – point a a (new)

Regulation (EU, Euratom) No 883/2013

Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(aa) paragraph 5a is added:

“5a. For cases where the Office recommends a judicial follow-up, and without prejudice to the confidentiality

rights of whistle-blowers and informants, the person concerned shall have access to the report drawn up by the Office under Article 11 following its investigation, and to any relevant documents, to the extent that they relate to that person and if, where applicable, neither the EPPO nor the national judicial authorities object within a period of six months. An authorisation by the competent judicial authority may also be granted before this period has expired.”

Justification

Mostly in line with amendment 51 by the rapporteur. A deadline is necessary to avoid that the access to the report is unduly delayed. At the same time, a procedure is necessary to prevent that a premature access to the file could endanger follow-up investigations or proceedings.

Amendment 76

Proposal for a regulation

Article 1 – paragraph 1 – point 8 a (new)

Regulation (EU, Euratom) No 883/2013

Article 9 a (new)

Text proposed by the Commission

Amendment

(8a) Article 9a is inserted:

“Article 9a

Controller of procedural guarantees

1. A Controller of procedural guarantees ('the Controller') shall be appointed by the Commission, in accordance with the procedure specified in paragraph 2, for a non-renewable term of five years. On expiry of his term, he shall remain in office until he is replaced.

2. Following a call for applications in the Official Journal of the European Union, the Commission shall draw up a list of suitably qualified candidates for the positions of the Controller. After consultation with the European

Parliament and the Council, the Commission shall appoint the Controller.

3. The Controller shall have the necessary qualifications and experience in the field of procedural rights and guarantees.

4. The Controller shall exercise his functions in complete independence and shall neither seek nor take instructions from anyone in the performance of his duties.

5. The Controller shall monitor the Office's compliance with procedural rights and guarantees. He shall be responsible of handling the complaint received by the Office.

6. The Controller shall report on the exercise of this function on an annual basis, to the European Parliament, the Council, the Commission, the Supervisory Committee and the Office. He shall not refer to individual cases under investigation and shall ensure the confidentiality of investigations even after their closure.”

Amendment 77

Proposal for a regulation

Article 1 – paragraph 1 – point 8 b (new)

Regulation (EU, Euratom) No 883/2013

Article 9 b (new)

Text proposed by the Commission

Amendment

(8b) Article 9b is inserted:

“Article 9b

Complaints mechanism

1. The Office shall, in cooperation with the Controller, take the necessary measures to set up a complaints mechanism to monitor and ensure the

respect for procedural guarantees in all the activities of the Office.

2. *Any person concerned by an investigation by the Office shall be entitled to lodge a complaint with the Controller regarding the Office's compliance with the procedural guarantees set out in Article 9. The lodging of a complaint shall have no suspensive effect on the conduct of the investigation under way.*

3. *Complaints may be lodged at the latest one month after the complainant becomes aware of the relevant facts that constitute the alleged violation of his procedural guarantees. No complaint may be filed later than one month after the closure of the investigation. Complaints related to the notice period referred to in Article 9(2) and (4) shall be filed before the expiry of the notice period laid down in those provisions.*

4. *Upon receipt of a complaint, the Controller shall inform the Director-General of the Office immediately and give the Office the possibility to resolve the issue raised by the complainant within 15 working days.*

5. *Without prejudice to Article 10 of this Regulation, the Office shall transmit to the Controller all information that may be necessary for the Controller to issue a recommendation.*

6. *The Controller shall issue a recommendation on the complaint without delay, but at the latest within two months of the Office informing the Controller of the action it has taken to remedy the issue or after expiry of the period referred to in paragraph 3. The recommendation shall be submitted to the Office and communicated to the complainant. In exceptional cases the Controller may decide to extend the period for issuing the recommendation by a further 15 days. The Controller shall inform the Director-General of the reasons for the extension by letter. In the*

absence of a recommendation by the Controller within the time limits set out in this paragraph, the Controller shall be deemed to have dismissed the complaint without a recommendation.

7. Without interfering with the conduct of the investigation under way, the Controller shall examine the complaint in an adversarial procedure. With their consent, the Controller may ask witnesses to provide written or oral explanations he or she considers relevant to ascertaining the facts.

8. The Director-General shall follow the Controller's recommendation on the issue, save in duly justified cases in which he or she may deviate from it. If the Director-General deviates from the Controller's recommendation, he or she shall communicate to the complainant and to the Controller the main reasons for that decision, inasmuch as doing so does not affect the on-going investigation. He or she shall state the reasons for not following the Controller's recommendation in a note to be attached to the final investigation report.

9. The Director-General may request the opinion of the Controller on any matter related to the respect of procedural guarantees in the Controller's mandate, including on the decision to defer information of the person concerned referred to in Article 9(3). The Director-General shall indicate in any such request the time limit within which the Controller is to respond.

10. Without prejudice to the time limits provided for in Article 90a of the Staff Regulations, where a complaint has been lodged with the Director-General by an official or other servant of the Union in accordance with Article 90a of the Staff Regulations and the official or other servant has lodged a complaint with the Controller related to the same issue, the Director-General shall await the recommendation of the Controller before

replying to the complaint.”

Amendment 78

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point -a (new)

Regulation (EU, Euratom) No 883/2013

Article 10 – paragraph 1

Present text

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

Amendment

(-a) paragraph 1 is replaced by the following:

"1. Information transmitted or obtained in the course of investigations **outside the institutions, bodies, offices and agencies**, in whatever form, shall be protected by the relevant provisions **under national and Union law.**"

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013R0883-20170101&from=EN>)

Justification

This amendment replaces amendment 54 from the draft report.

Amendment 79

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point -a a (new)

Regulation (EU, Euratom) No 883/2013

Article 10 – paragraph 2

Present text

Amendment

(-aa) paragraph 2 is replaced by the following:

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

“2. Information transmitted or obtained in the course of investigations **within the institutions, bodies, offices and agencies**, in whatever form, shall be subject to professional secrecy and shall enjoy the protection afforded by the rules applicable to the Union institutions.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

In line with the proposed abolition of the distinction between external and internal investigations.

Amendment 80

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point -a b (new)

Regulation (EU, Euratom) No 883/2013

Article 10 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(-ab) paragraph 3a is added:

“3a. The Office shall disclose its reports and recommendations after all related national and Union procedures were concluded by the responsible bodies and the disclosure no longer affects the investigations. The disclosure shall be in compliance with the data protection rules and principles set out in this Article and in Article 1.”

Amendment 81

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point a

Regulation (EU, Euratom) No 883/2013

Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

The Office shall designate a Data Protection Officer in accordance with Article 43 of Regulation (EU) 2018/1725.

Justification

Technical amendment: on 11.12.2018, Regulation (EC) No 45/2001 was repealed and replaced by Regulation (EU) 2018/1725.

Amendment 82

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point a a (new)

Regulation (EU, Euratom) No 883/2013

Article 10 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(aa) paragraph 5a is added:

"5a. Persons reporting crimes and infringements related to the financial interests of the Union to the Office shall be fully protected, in particular through Union legislation regarding the protection of persons reporting on breaches of Union law."

Amendment 83

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point a

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The report **may** be accompanied by recommendations of the Director-General on action to be taken. Those recommendations shall, where appropriate, indicate any disciplinary, administrative, financial and/or judicial action by the institutions, bodies, offices and agencies and by the competent authorities of the Member States concerned, and shall specify in particular the estimated amounts to be recovered, as well as the preliminary classification in law of the facts established.

Amendment

The report **shall** be accompanied by recommendations of the Director-General on action to be taken. Those recommendations shall, where appropriate, indicate any disciplinary, administrative, financial and/or judicial action by the institutions, bodies, offices and agencies and by the competent authorities of the Member States concerned, and shall specify in particular the estimated amounts to be recovered, as well as the preliminary classification in law of the facts established.

Amendment 84

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point b

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The Office shall take proper internal measures to ensure the consistent quality of final reports and recommendations, and consider whether there is a need to revise the Guidelines on Investigation Procedures, to address any possible inconsistencies.

Amendment 85

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point b

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Upon simple verification of their authenticity, reports drawn up on that basis shall constitute admissible evidence in judicial proceedings ***of a non-criminal nature*** before national courts and in administrative proceedings in the Member States.

Amendment

Upon simple verification of their authenticity, reports drawn up on that basis ***including all evidence supporting and annexed to these reports*** shall constitute admissible evidence in judicial proceedings before national courts and in administrative proceedings in the Member States. ***The power of the national courts to freely assess the evidence shall not be affected by this Regulation.***

Amendment 86

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point b

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Reports drawn up by the Office shall constitute admissible evidence in criminal proceedings of the Member State in which their use proves necessary in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall have the same evidentiary value as such reports.

Amendment

deleted

Amendment 87

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point b

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 2 – subparagraph 4

Text proposed by the Commission

Member States shall notify to the Office any rules of national law relevant for the purposes of the *third* subparagraph.

Amendment

Member States shall notify to the Office any rules of national law relevant for the purposes of the *first* subparagraph.

Amendment 88

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point b

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 2 – subparagraph 4 a (new)

Text proposed by the Commission

Amendment

The national courts shall notify to the Office any rejection of evidence in accordance with this paragraph. The notification shall include the legal basis and a detailed justification for the rejection. The Director-General shall, in his or her annual reports pursuant to Article 17(4), evaluate the admissibility of evidence in the Member States.

Justification

The oral AM aligns AM 155 with the overall approach for the admissibility of evidence and takes account of the independence of the judiciary.

Amendment 89

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point c

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 3

Text proposed by the Commission

3. Reports and recommendations drawn up following an *external* investigation and any relevant related documents shall be sent to the competent authorities of the Member States concerned in accordance with the rules relating to *external* investigations and, *if necessary*, to the institution, body, office or agency concerned. That institution, body, office or agency shall take such action as the results of the *external* investigation warrant, and shall report thereon to the Office, within a time-limit laid down in the recommendations accompanying the report, and, in addition, at the request of the Office.

Amendment

3. Reports and recommendations drawn up following an investigation and any relevant related documents shall be sent, *as appropriate*, to the competent authorities of the Member States concerned in accordance with the rules relating to investigations and to the institution, body, office or agency concerned. That institution, body, office or agency shall take such action, *in particular of a disciplinary or legal nature*, as the results of the investigation warrant, and shall report thereon to the Office, within a time-limit laid down in the recommendations accompanying the report, and, in addition, at the request of the Office. *The competent authorities of the Member States shall report back to the Office within nine months on the actions taken in response to the case report.*

Amendment 90

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point c a (new)

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 4

Present text

Amendment

(ca) paragraph 4 is deleted;

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Merged with paragraph 3.

Amendment 91

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point c b (new)

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 5

Present text

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

Amendment

(cb) in Article 11, paragraph 5 is replaced by the following:

“5. Where the report drawn up following an investigation reveals the existence of facts which could give rise to criminal proceedings, that information shall be transmitted ***without delay*** to the judicial authorities of the Member State concerned, ***without prejudice to Articles 12c and 12d.***”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 92

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point c c (new)

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(cc) paragraph 6a is inserted:

“6a. The competent authorities of the Member States and the institutions, bodies, offices and agencies shall ensure that the disciplinary, administrative, financial and judicial recommendations made by the Director-General pursuant to paragraphs 1 and 3 are acted upon, and shall send to the Office a detailed report on the actions taken by 31 March each year, including the reasons for non-implementation of recommendations made by the Office where applicable.”

Justification

Addition to amendment 63 proposed by the rapporteur.

Amendment 93

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point c d (new)

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 8

Present text

Amendment

(cd) in Article 11, paragraph 8 is

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

modified as follows:

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 94

Proposal for a regulation

Article 1 – paragraph 1 – point 10 a (new)

Regulation (EU, Euratom) No 883/2013

Article 11 a (new)

Text proposed by the Commission

Amendment

(10a) After Article 11, a new article is inserted:

“Article 11a

Action before the General Court

Any person concerned may bring an action against the Commission for annulment of the investigation report transmitted to the national authorities or to the institutions under Article 11(3) on the grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties, including violation of the Charter, or misuse of powers.”

Justification

Currently it is not possible to bring a lawsuit against a final OLAF report. This amendment seeks to establish effective legal protection, as required by the Charter of Fundamental Rights.

Amendment 95

Proposal for a regulation

Article 1 – paragraph 1 – point 11 – point -a (new)

Regulation (EU, Euratom) No 883/2013

Article 12 – paragraph 1

Present text

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

Amendment

(-a) paragraph 1 is replaced by the following:

“1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may transmit to the competent authorities of the Member States concerned information obtained in the course of ***on-the-spot checks or inspections pursuant to Article 3*** in due time to enable them to take appropriate action in accordance with their national law. ***It may also transmit information to the institution, body, office or agency concerned.***”

Justification

In line with the proposed abolition of the distinction between external and internal investigations.

Amendment 96

Proposal for a regulation

Article 1 – paragraph 1 – point 11 – point a

Regulation (EU, Euratom) No 883/2013

Article 12 – paragraph 1 – last sentence

Text proposed by the Commission

Amendment

(a) in paragraph 1, the following sentence is added:

“It may also transmit information to the institution, body, office or agency concerned.”

Amendment 97

Proposal for a regulation

Article 1 – paragraph 1 – point 11 – point a a (new)

Regulation (EU, Euratom) No 883/2013

Article 12 – paragraph 2 – subparagraph 1

Present text

Amendment

(aa) in paragraph 2, subparagraph 1 is replaced by the following:

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

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

In line with the proposed abolition of the distinction between external and internal investigations.

Amendment 98

Proposal for a regulation

Article 1 – paragraph 1 – point 11 – point b

Regulation (EU, Euratom) No 883/2013

Article 12 – paragraph 3

Text proposed by the Commission

3. The competent authorities of the Member State concerned shall, unless prevented by national law, inform the Office ***in due time, on their own initiative or at the request of the Office***, of the action taken on the basis of the information transmitted to them under this Article.

Amendment

3. The competent authorities of the Member State concerned shall, unless prevented by national law, inform the Office ***within one month*** of the action taken on the basis of the information transmitted to them under this Article.

Amendment 99

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12b – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. The obligations of mutual administrative assistance pursuant to Council Regulation (EC) No 515/97^{1a} and Regulation (EU) No 608/2013^{1b} shall also apply to coordination activities relating to the European Structural and Investment Funds in accordance with this Article.

^{1a} ***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 082, 22.3.1997, p. 1).

^{1b} Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15).

Amendment 100

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12c – paragraph 1

Text proposed by the Commission

1. The Office shall report to the EPPO without undue delay any criminal conduct in respect of which the EPPO could exercise its competence in accordance with **Article 22 and Article 25(2) and (3)** of Regulation (EU) 2017/1939. The report shall be sent **at any stage** before or during an investigation of the Office.

Amendment

1. The Office shall report to the EPPO without undue delay any criminal conduct in respect of which the EPPO could exercise its competence in accordance with **Chapter IV** of Regulation (EU) 2017/1939. The report shall be sent **as early as possible** before or during an investigation of the Office.

Justification

It seems appropriate here to refer to the entire Chapter IV of the EPPO Regulation, in order to ensure that no relevant provision is omitted.

Amendment 101

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12c – paragraph 2

Text proposed by the Commission

2. The report shall contain, as a minimum, a description of the facts, including an assessment of the damage caused or likely to be caused the possible legal qualification and any available information about potential victims, suspects and any other involved persons.

Amendment

2. The report shall contain, as a minimum, a description of the facts **and information known by the office**, including an assessment of the damage caused or likely to be caused, **where the Office has such information**, the possible legal qualification and any available information about potential victims, suspects and any other involved persons. **Together with the report, the Office shall transmit to the EPPO any other relevant information on the case in its possession.**

Amendment 102

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12c – paragraph 3 – subparagraph 2

Text proposed by the Commission

In cases where the information received by the Office does not include the elements set out in paragraph 2, and there is no investigation of the Office ongoing, the Office may conduct a preliminary evaluation of the allegations. The evaluation shall be carried out **expeditiously**, and in any case within two months of receipt of the information. In the course of this evaluation, Article 6 and Article 8(2) shall apply.

Amendment

In cases where the information received by the Office does not include the elements set out in paragraph 2, and there is no investigation of the Office ongoing, the Office may conduct a preliminary evaluation of the allegations. The evaluation shall be carried out **without delay**, and in any case within two months of receipt of the information. In the course of this evaluation, Article 6 and Article 8(2) shall apply. **The Office shall refrain from performing any measures that may jeopardise any possible future investigations of the EPPO.**

Amendment 103

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12c – paragraph 5

Text proposed by the Commission

5. The institutions, bodies, offices and agencies may request the Office to conduct a preliminary evaluation of allegations reported to them. For the purposes of those requests, ***paragraph 3*** shall apply.

Amendment

5. The institutions, bodies, offices and agencies may request the Office to conduct a preliminary evaluation of allegations reported to them. For the purposes of those requests, ***paragraphs 1 to 4*** shall apply ***mutatis mutandis. The Office shall inform the institution, body, office or agency concerned of the results of the preliminary evaluation, unless providing such information could jeopardise an investigation conducted by the Office or the EPPO.***

Justification

As suggested by the Supervisory Committee in its letter of 20 November 2018.

Amendment 104

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) 2013/833

Article 12d – paragraph 1 – subparagraph 1

Text proposed by the Commission

The Director-General shall not open an investigation in accordance with Article 5 if the EPPO is conducting an investigation into the same facts, other than in accordance with Articles 12e or 12f.

Amendment

1. The Director-General shall not open an investigation in accordance with Article 5, ***and shall discontinue an ongoing investigation***, if the EPPO is conducting an investigation into the same facts, other than in accordance with Articles 12e or 12f. ***The Director-General shall inform the EPPO about each decision on not opening or discontinuation taken on such grounds.***

Justification

Addition proposed to Amendment 74 by the rapporteur: including the duty of the Director-General to inform the EPPO about the "not opening" of case.

Amendment 105

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12 d – paragraph 1 – subparagraph 2

Text proposed by the Commission

For the purpose of applying the first subparagraph, the Office shall verify in accordance with Article 12g(2) via the EPPO's case management system whether the EPPO is conducting an investigation. The Office may request further information from the EPPO. The EPPO shall reply to such a request within 10 working days.

Amendment

For the purpose of applying the first subparagraph, the Office shall verify in accordance with Article 12g(2) via the EPPO's case management system whether the EPPO is conducting an investigation. The Office may request further information from the EPPO. The EPPO shall reply to such a request within 10 working days.

This deadline may be extended in exceptional cases subject to modalities to be set out in the working arrangements referred to in Article 12g(1).

Amendment 106

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12d – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Where the Office closes its investigation in accordance with the first subparagraph, Article 9(4) and Article 11 shall not apply.

Justification

See also the text proposed by the Commission for Article 12c(6).

Amendment 107

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12d – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Upon request by the EPPO, the Office shall refrain from performing certain acts or measures which could jeopardise an investigation or prosecution conducted by the EPPO. The EPPO shall notify the Office without undue delay when the grounds for such a request cease to apply.

Justification

Based on a suggestion by the Supervisory Committee contained in its letter of 20 November 2018.

Amendment 108

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 833/2013

Article 12d – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Where the EPPO closes or discontinues an investigation on which it had received information from the Director-General pursuant to paragraph 1 and which is relevant to the exercise of the Office's mandate, it shall inform the Office without undue delay and may make

recommendations regarding follow-up administrative investigations.

Amendment 109

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12e – paragraph 2

Text proposed by the Commission

2. **Pursuant** to paragraph 1, **a request** shall be transmitted in writing and shall specify the measure or measures which the EPPO requests the Office to perform **and**, where appropriate, the envisaged timeline for their performance. **It shall contain information about the EPPO investigation in so far as relevant for the purpose of the request.** Where necessary, the Office may request additional information.

Amendment

2. **A request pursuant** to paragraph 1 shall be transmitted in writing and shall specify **at least**:

- (a) **information on the EPPO investigation in so far as relevant for the purpose of the request;**
- (b) the measure or measures which the EPPO requests the Office to perform;
- (c) where appropriate, the envisaged timeline for their performance;
- (d) **any instructions pursuant to paragraph 2a.**

Where necessary, the Office may request additional information.

Justification

New structure and addendum based on a suggestion by the Supervisory Committee contained in its letter of 20 November 2018.

Amendment 110

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12e – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In order to protect the admissibility of evidence as well as fundamental rights and procedural guarantees, where the Office performs supporting or complementary measures at the request of the EPPO pursuant to this Article, the EPPO may instruct the Office to apply higher standards of fundamental rights, procedural guarantees and data protection than provided for in this Regulation. In doing so, it shall specify in detail the formal requirements and procedures to be applied.

In the absence of any such specific instructions by the EPPO, Chapter VI (procedural safeguards) and Chapter VIII (data protection) of Regulation (EU) 2017/1939 shall apply mutatis mutandis to measures performed by the Office pursuant to this Article.

Justification

The procedural safeguards and data protection rules afforded by the EPPO Regulation should apply to all measures performed by OLAF at the request of the EPPO, so that there is no incentive for the EPPO to delegate tasks to the OLAF with the sole aim of circumventing these rules. Includes suggestions by the Supervisory Committee contained in its letter of 20 November 2018.

Amendment 111

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12f – paragraph 1 – subparagraph 1

Text proposed by the Commission

In duly justified cases where the EPPO is conducting an investigation, where the Director-General considers that an investigation should be opened in accordance with the mandate of the Office with a view to facilitating the adoption of precautionary measures or of financial, disciplinary or administrative action, the Office shall inform the EPPO in writing, specifying the nature and purpose of the investigation.

Amendment

In duly justified cases where the EPPO is conducting an investigation, where the Director-General considers that an investigation should be opened **or continued** in accordance with the mandate of the Office with a view to facilitating the adoption of precautionary measures or of financial, disciplinary or administrative action, the Office shall inform the EPPO in writing, specifying the nature and purpose of the investigation, **and seeking the EPPO's written consent to the opening of a complementary investigation.**

Amendment 112

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12f – paragraph 1 – subparagraph 2

Text proposed by the Commission

Within **30** days after receipt of this information the EPPO **may** object to the opening of an investigation or to the performance of certain **acts** pertaining to the investigation, where necessary to avoid jeopardising its own investigation or prosecution, and for as long as these grounds persist. **The** EPPO shall notify to the Office without undue delay when the grounds for the objection cease to apply.

Amendment

Within **20 working** days after receipt of this information the EPPO **shall either give its consent or** object to the opening **or continuation** of an investigation or to the performance of **any** certain **act** pertaining to the investigation, where necessary to avoid jeopardising its own investigation or prosecution, and for as long as these grounds persist. **In duly justified situations, the EPPO may extend the**

deadline by an additional 10 working days. It shall inform the Office thereof.

In the event that the EPPO objects, the Office shall not open a complementary investigation. In that case, the EPPO shall notify to the Office without undue delay when the grounds for the objection cease to apply.

Amendment 113

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12f – paragraph 1 – subparagraph 3

Text proposed by the Commission

In the event that the EPPO **does not object within the time period of the previous subparagraph**, the Office may open an investigation, and it shall conduct it in close consultation with the EPPO.

Amendment

In the event that the EPPO **gives its consent**, the Office may open **or continue** an investigation, and it shall conduct it in close consultation with the EPPO.

Amendment 114

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12f – paragraph 1 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

If the EPPO does not reply within the deadline in the second subparagraph, the Office may enter into consultations with the EPPO so as to take a decision within 10 days.

Amendment 115

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12g – paragraph 1

Text proposed by the Commission

1. Where necessary to facilitate the cooperation with the EPPO as set out in Article 1(4a), the Office shall agree with the EPPO on administrative arrangements. Such working arrangements may establish practical details for the exchange of information, including personal data, operational, strategic or technical information and classified information. They shall include detailed arrangements on the continuous exchange of information during the receipt and verification of allegations by both offices.

Amendment

1. Where necessary to facilitate the cooperation with the EPPO as set out in Article 1(4a), the Office shall agree with the EPPO on administrative arrangements. Such working arrangements may establish practical details for the exchange of information, including personal data, operational, strategic or technical information and classified information, *as well as the setting up of information technology platforms, including a common approach to upgrades and compatibility of software*. They shall include detailed arrangements on the continuous exchange of information during the receipt and verification of allegations *for the purpose of determining competences over investigations conducted by both offices. They shall also include arrangements on the transfer of evidence between the Office and the EPPO, as well as arrangements on the division of expenses*.

Prior to the adoption of the working arrangements with the EPPO, the Director-General shall send the draft to the European Data Protection Supervisor, the Supervisory Committee and the European Parliament for information. The European Data Protection Supervisor and the Supervisory Committee shall deliver their opinions without delay.

Amendment 116

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12g – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Each indirect access to information in the EPPO's case management system by the Office shall be carried out only in so far as necessary for the performance of the Office's functions as defined under this Regulation and shall be duly justified and validated via an internal procedure set up by the Office. The Office shall keep a log of all instances of access to the EPPO's case management system.

Amendment 117

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12g – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Director-General of the Office and the European Chief Public Prosecutor shall meet at least once per year to discuss matters of common interest.

Amendment 118

Proposal for a regulation

Article 1 – paragraph 1 – point 12 a (new) – point a (new)

Regulation (EU, Euratom) No 883/2013

Article 15 – paragraph 1 – subparagraph 2

Present text

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

Amendment

(12a) Article 15 is amended as follows:

(a) in paragraph 1, subparagraph 2 is replaced by the following:

“The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees and the duration of investigations.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 119

Proposal for a regulation

Article 1 – paragraph 1 – point 12 a (new) – point b (new)

Regulation (EU, Euratom) No 883/2013

Article 15 – paragraph 1 – subparagraph 5

Present text

In duly justified situations, the Supervisory Committee may ask the Office for additional information on investigations, including reports and recommendations on closed investigations,

Amendment

(b) in paragraph 1, subparagraph 5 is replaced by the following:

The Supervisory Committee shall be granted access to all the information and documents it considers necessary for the performance of its tasks, including reports and recommendations on closed

without however interfering with the conduct of investigations in progress.

investigations ***and cases dismissed***, without however interfering with the conduct of investigations in progress, ***and with due regard to the requirements of confidentiality and data protection.***”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Partly based on a suggestion by the Supervisory Committee contained in its letter of 20 November 2018.

Amendment 120

Proposal for a regulation

Article 1 – paragraph 1 – point 12 a (new) – point c (new)

Regulation (EU, Euratom) No 883/2013

Article 15 – paragraph 8 – subparagraph 1

Present text

The Supervisory Committee shall appoint its chair. It shall adopt its own rules of procedure, which shall, before adoption, be submitted to the European Parliament, the Council, the Commission and the European Data Protection Supervisor for information. Meetings of the Supervisory Committee shall be convened on the initiative of its chair or the Director-General. It shall hold at least 10 meetings per year. The Supervisory Committee shall take its decisions by a majority of its component members. Its secretariat shall be provided by the Commission, ***independently from the Office***, and in close cooperation with the Supervisory Committee. Before the appointment of any staff to the secretariat, the Supervisory Committee shall be consulted and its views shall be taken into

Amendment

(c) in paragraph 8, subparagraph 1 is replaced by the following:

“The Supervisory Committee shall appoint its chair. It shall adopt its own rules of procedure, which shall, before adoption, be submitted to the European Parliament, the Council, the Commission and the European Data Protection Supervisor for information. Meetings of the Supervisory Committee shall be convened on the initiative of its chair or the Director-General. It shall hold at least 10 meetings per year. The Supervisory Committee shall take its decisions by a majority of its component members. Its secretariat shall be provided by the Commission and in close cooperation with the Supervisory Committee. Before the appointment of any staff to the secretariat, the Supervisory Committee shall be consulted and its views shall be taken into account. The secretariat

account. The secretariat shall act on the instructions of the Supervisory Committee and independently from the Commission. Without prejudice to its control over the budget of the Supervisory Committee and its secretariat, the Commission shall not interfere with the monitoring functions of the Supervisory Committee.

shall act on the instructions of the Supervisory Committee and independently from the Commission. Without prejudice to its control over the budget of the Supervisory Committee and its secretariat, the Commission shall not interfere with the monitoring functions of the Supervisory Committee.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

As suggested by the Supervisory Committee in its letter of 20 November 2018.

Amendment 121

Proposal for a regulation

Article 1 – paragraph 1 – point 13 – point -a (new)

Regulation (EU, Euratom) No 883/2013

Article 16 – paragraph 1

Present text

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

Amendment

(-a) paragraph 1 is replaced by the following:

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

Commission, the Director-General or the Supervisory Committee.”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

See amendment to Art. 1(1).

Amendment 122

Proposal for a regulation

Article 1 – paragraph 1 – point 13 – point a

Regulation (EU, Euratom) No 883/2013

Article 16 – paragraph 1 – third sentence

Text proposed by the Commission

Amendment

*(a) in paragraph 1, the third sentence is deleted
replaced by the following:*

*“Representatives of the Court of Auditors,
the EPPO, Eurojust and/or Europol may
be invited to attend on an ad hoc basis
upon request of the European Parliament,
the Council, the Commission, the
Director-General or the Supervisory
Committee.”*

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

Technical deletion – see previous amendment.

Amendment 123

Proposal for a regulation

Article 1 – paragraph 1 – point 13 – point a a (new)

Regulation (EU, Euratom) No 883/2013

Article 16 – paragraph 2 – introductory part

Present Text

2. The exchange of views may relate to:

Amendment

(aa) in paragraph 2, the introductory part is replaced by the following:

“2. The exchange of views may relate to any subject the European Parliament, the Council and the Commission agree on. More particularly, the exchange of views may relate to:”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 124

Proposal for a regulation

Article 1 – paragraph 1 – point 13 – point b

Regulation (EU, Euratom) No 883/2013

Article 16 – paragraph 2 – point d

Text proposed by the Commission

(d) the framework of the relations between the Office and the institutions, bodies, offices and agencies, in particular the EPPO.

Amendment

(d) the framework of the relations between the Office and the institutions, bodies, offices and agencies, in particular the EPPO, and action taken on the Office's final investigation reports and other information forwarded by the Office;

Justification

To monitor and improve the follow-up on OLAF recommendations by the IBOAs and the EPPO.

Amendment 125

Proposal for a regulation

Article 1 – paragraph 1 – point 13 – point b a (new)

Regulation (EU, Euratom) No 883/2013

Article 16 – paragraph 2 – point e

Present text

(e) the framework of the relations between the Office and the competent authorities of the Member States;

Amendment

(ba) in paragraph 2, point e is replaced by the following:

*"(e) the framework of the relations between the Office and the competent authorities of the Member States **and action taken by competent authorities in the Member States on the Office's final investigation reports and other information forwarded by the Office;**"*

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

To monitor and improve the follow-up on OLAF recommendations by the Member States.

Amendment 126

Proposal for a regulation

Article 1 – paragraph 1 – point 13 – point b b (new)

Regulation (EU, Euratom) No 883/2013

Article 16 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(bb) after paragraph 4, a new paragraph 4a is added:

"4a. The presidency of the exchange of views shall rotate between the European Parliament, the Council and the Commission."

Amendment 127

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point -a (new)

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 1

Present text

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

Amendment

(-a) paragraph 1 is replaced by the following:

“1. The Office shall be headed by a Director-General. The Director-General shall be appointed by the Commission, in accordance with the procedure specified in paragraph 2. The term of office of the Director-General shall be seven years and shall not be renewable. ***The Director-General shall be recruited as a temporary agent under the Staff Regulations.***”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 128

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point -a a (new)

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 2

Present text

2. In order to appoint a new Director-

Amendment

(-aa) paragraph 2 is replaced by the following:

“2. In order to appoint a new Director-

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

General, the Commission shall publish a call for applications in the Official Journal of the European Union. Such publication shall take place at the latest six months before the end of the term of office of the Director-General in office. After a favourable opinion has been given by the Supervisory Committee on the selection procedure applied by the Commission, the Commission shall draw up a list of suitably qualified candidates. *The Director-General shall be nominated by common accord between the European Parliament, the Council and the Commission, and shall, subsequently, be appointed by the latter.”*

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 129

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point a

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 3

Text proposed by the Commission

3. The Director-General shall neither seek nor take instructions from any government or any institution, body, office or agency in the performance of his duties with regard to the opening and carrying-out of *external and internal* investigations or coordination activities, or to the drafting of reports following such investigations or coordination activities. If the Director-General considers that a measure taken by the Commission calls his independence into question, he shall immediately inform the Supervisory Committee, and shall decide whether to bring an action against the Commission before the Court of

Amendment

3. The Director-General shall neither seek nor take instructions from any government or any institution, body, office or agency in the performance of his duties with regard to the opening and carrying-out of investigations or coordination activities, or to the drafting of reports following such investigations or coordination activities. If the Director-General considers that a measure taken by the Commission calls his independence into question, he shall immediately inform the Supervisory Committee, and shall decide whether to bring an action against the Commission before the Court of Justice.

Justice.

Justification

In line with the proposed abolition of the distinction between external and internal investigations.

Amendment 130

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point a a (new)

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 4

Present text

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

Amendment

(aa) paragraph 4 is replaced by the following:

“4. The Director-General shall report regularly, *and at least annually*, to the European Parliament, the Council, the Commission and the Court of Auditors on the findings of investigations carried out by the Office, the action taken, the problems encountered *and the Office’s follow-up to the recommendations made by the Supervisory Committee in accordance with Article 15*, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and of informants, and, where appropriate, national law applicable to judicial proceedings.

The annual report shall also include an assessment of the degree of cooperation with the competent authorities of the Member States and the institutions, bodies, offices and agencies, with particular regard to the implementation of Article 11 (2) and (6a).”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Amendment 131

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point a b (new)

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(ab) paragraph 4a is added:

“4a. At the request of the European Parliament in the context of its budgetary control rights, the Director-General may provide information about the Office’s activities, respecting the confidentiality of investigations and follow-up proceedings. The European Parliament shall ensure the confidentiality of information provided in accordance with this paragraph.”

Amendment 132

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point a c (new)

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 5 – subparagraph 1

Present text

Amendment

(ac) in paragraph 5, subparagraph 1 is deleted;

The Director-General shall each year determine, within the context of the

annual management plan, the investigation policy priorities of the Office and shall, prior to their publication, forward them to the Supervisory Committee.

Justification

The introduction of IPPs has not proven useful.

Amendment 133

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 5 – subparagraph 3 – point b

Text proposed by the Commission

(b) of cases in which information has been transmitted to judicial authorities of the Member States **and** to the EPPO;

Amendment

(b) of cases in which information has been transmitted to judicial authorities of the Member States **or** to the EPPO;

Amendment 134

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b a (new)

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 5 – subparagraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) in paragraph 5, subparagraph 3, a new point is inserted after point b:
“(ba) of cases dismissed;”

Amendment 135

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b b (new)

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 7

Present text

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

Amendment

(bb) paragraph 7 is replaced by the following:

“7. The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of ***the*** procedural guarantees and fundamental rights of the persons concerned ***and of witnesses***, and of the national law of the Member States concerned, with particular reference to Article 11(2). ***The legality check shall be carried out by Office experts in law and investigative procedures who are qualified to hold judicial office in a Member State. Their opinion shall be annexed to the final investigation report.***”

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0883-20170101&qid=1547480450198&from=EN>)

Justification

The amendment is based on plenary amendments 10 and 23 from the second reading of the 2006-2013 OLAF revision (see plenary document A7-0225/2013 and working document PE 510.603)

Amendment 136

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b c (new)

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 8

Present text

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

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

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

Amendment

(bc) paragraph 8 is replaced by the following:

“8. The Commission shall be empowered to adopt delegated acts in accordance with Article 19a concerning the establishment of a procedural code for investigations to be followed by the staff of the Office. Those delegated acts shall cover, in particular:

- (a) the practices to be observed in implementing the mandate and statute of the Office;*
- (b) detailed rules governing investigation procedures as well as the investigation acts permitted;*
- (c) the legitimate rights of the persons concerned;*
- (d) procedural guarantees;*
- (da) provisions relating to data protection and policies on communication and access to documents;*
- (db) provisions on the legality check and the means of redress open to the persons concerned;*
- (dc) relations with the EPPO.*

During its preparatory work, the Commission shall consult the Supervisory Committee and the European Data Protection Supervisor.

Any delegated act adopted in accordance with this paragraph shall be published for information purposes on the Office's website in all official languages of the Union.”

Justification

The amendment is based on plenary amendments 11 and 24 from the second reading of the 2006-2013 OLAF revision (see plenary document A7-0225/2013 and working document PE 510.603).

Amendment 137

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point c

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 8 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(c) in the first subparagraph of paragraph 8, the following point (e) is added:
“(e) relations with the EPPO.”

deleted

Justification

Technical deletion – see previous amendment.

Amendment 138

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point c a (new)

Regulation (EU, Euratom) No 883/2013

Article 17 – paragraph 9 – subparagraph 1

Present text

Amendment

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

(ca) in paragraph 9, subparagraph 1 is replaced by the following:

“Before imposing any disciplinary penalty on the Director-General *or waiving his or her immunity*, the Commission shall consult the Supervisory Committee.”

Justification

Based on a suggestion by the Supervisory Committee contained in its letter of 20 November 2018.

Amendment 139

Proposal for a regulation

Article 1 – paragraph 1 – point 14 a (new)

Regulation (EU, Euratom) No 883/2013

Article 19

Present text

Article 19

Evaluation report

By 2 October 2017, the Commission shall submit to the European Parliament and the Council an evaluation report on the application of this Regulation. That report shall be accompanied by an opinion of the Supervisory Committee **and shall state whether there is a need to amend this Regulation.**

Amendment

(14a) Article 19 is replaced by the following:

“Article 19

Evaluation report ***and revision***

No later than five years after the date determined in accordance with the second subparagraph of Article 120(2) of Regulation (EU) 2017/1939, the Commission shall submit to the European Parliament and the Council an evaluation report on the application ***and impact*** of this Regulation, ***in particular as regards the effectiveness and efficiency of the cooperation between the Office and the EPPO***. That report shall be accompanied by an opinion of the Supervisory Committee.

No later than two years after the submission of the evaluation report pursuant to the first subparagraph, the Commission shall submit a legislative proposal to the European Parliament and the Council to modernise the Office’s framework, including additional or more detailed rules on the setting up of the Office, its functions or the procedures applicable to its activities, with particular

regard to its co-operation with the EPPO, cross-border investigations and investigations in Member States not participating in the EPPO.”

Amendment 140

Proposal for a regulation

Article 1 – paragraph 1 – point 14 b (new)

Regulation (EU, Euratom) No 883/2013

Article 19 a (new)

Text proposed by the Commission

Amendment

(14b) A new Article 19a is inserted:

“Article 19a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 17(8) shall be conferred on the Commission for a period of four years from ... (date of entry into force of this Regulation). The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 17(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of

the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 17(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.”

Justification

Standard Article on delegated acts (for the procedural code).
