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Subject: 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 **(1st reading)**
– *Confirmation of the final compromise text with a view to agreement*

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the Court of Auditors¹,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C 42, 1.2.2019, p. 1.

Whereas:

- (1) With the adoption of Directive (EU) 2017/1371 of the European Parliament and of the Council² and Council Regulation (EU) 2017/1939³, 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 (the "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.
- (2) To protect the financial interests of 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 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.

² 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).

³ 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) Therefore, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁴ 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.
- (4) In view of their common goal to preserve the integrity of the Union budget, the Office and the EPPO should establish and maintain a close relationship based on sincere cooperation and aimed at ensuring the complementarity of their respective mandates and coordination of their action, in particular as regards the scope of the enhanced cooperation for the establishment of the EPPO. Ultimately, the relationship should contribute to ensuring that all means are used to protect the financial interests of the Union and avoiding unnecessary duplication of efforts.
- (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.

⁴ Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (EURATOM) No 1074/1999 (OJ L 248, 18.9.2013, p.1).

- (6) Elements pointing to possible criminal conduct falling within the competence of the EPPO may, in practice, be present in initial allegations received by the Office or may emerge only in the course of an administrative investigation opened by the Office on the grounds of suspicion of administrative irregularity. In order to comply with its duty to report to the EPPO, the Office should therefore, as the case may be, report criminal conduct at any stage before or during an investigation.
- (7) Regulation (EU) 2017/1939 specifies the minimum elements that, as a rule, reports should contain. The Office may need to conduct a preliminary evaluation of allegations to ascertain these elements and collect the necessary information. The Office should conduct this evaluation expeditiously and through means which do not risk jeopardising a possible future criminal investigation. Upon completion of its evaluation, it should report to the EPPO where a suspicion of an offence within its competence is identified.
- (8) In consideration of the Office's expertise, the institutions, bodies, offices and agencies of the Union should have the choice to make use of the Office to conduct such preliminary evaluation of allegations reported to them.

- (9) In conformity with Regulation (EU) 2017/1939, the Office should in principle not open an administrative investigation parallel to an investigation conducted by the EPPO into the same facts. However, in certain cases, the protection of the Union's financial interests may require that the Office carry out a complementary administrative investigation before the conclusion of criminal proceedings initiated by the EPPO with the purpose of ascertaining whether precautionary measures are necessary, or financial, disciplinary or administrative action should be taken. These complementary investigations may be appropriate, inter alia, when necessary to recover amounts due to the Union budget subject to specific time-barring rules, when the amounts at risk are very high, or where there is the need to avoid further expenditure in risk situations through administrative measures.
- (9a) For the purpose of the application of the requirement of non-duplication of investigations, the notion 'same facts' should be considered in light of the relevant case-law developed by the Court of Justice in the framework of the *ne bis in idem* principle. Accordingly, the notion 'same facts' should mean that the material facts under investigation are identical or substantially the same and understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together in time and space.
- (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 of the EPPO. 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 acts of investigation by it, notably with a view to preserve the effectiveness of its investigation and powers. The Office should refrain from performing the action on which the EPPO raised an objection. If the EPPO does not object to the request, the Office investigation should be conducted in close consultation with the EPPO.

- (11) The Office should actively support the EPPO in its investigations. In this regard, the EPPO may request the Office to support or complement its criminal investigations through the exercise of powers under this Regulation. In these cases the Office should perform these operations within the limits of its powers and within the framework provided for in this Regulation.
- (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. In order to ensure the proper application of the rules on non-duplication and complementarity, the Office and the EPPO should agree on certain time-lines for their information exchanges.
- (13) The Commission Report on Evaluation of the application of Regulation (EU, Euratom) No 883/2013⁵, adopted on 2 October 2017, concluded that the 2013 changes to the legal framework brought clear improvements, as regards the conduct of investigations, cooperation with partners and the rights of persons concerned. At the same time, the evaluation has highlighted some shortcomings which impact on the effectiveness and efficiency of investigations.

⁵ COM(2017) 589. The report was accompanied by an evaluation Staff Working Document, SWD(2017) 332, and an Opinion of the Office's Supervisory Committee, Opinion 2/2017.

- (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.
- (15) These changes do not affect the procedural guarantees applicable in the framework of investigations. The Office is bound to apply the procedural guarantees of Regulation (EU, Euratom) No 883/2013, Council Regulation (Euratom, EC) No 2185/96⁶ and those contained in the Charter of Fundamental Rights of the Union. This framework requires that the Office conducts its investigations objectively, impartially and confidentially, seeking evidence for and against the person concerned, and carries out investigative acts on the basis of a written authorisation and following a legality check. The Office must ensure the respect of the rights of persons concerned by its investigations, including the presumption of innocence and the right to avoid self-incrimination. When interviewed, persons concerned have inter alia the rights to be assisted by a person of choice, to approve the record of the interview, and to use any of the official languages of the Union. Persons concerned also have the right to comment on the facts of the case before conclusions are drawn.
- (15a) Persons reporting fraud, corruption and any other illegal activity affecting the financial interests of the Union should be afforded the protection of Directive (EU) 2019/1937.

⁶ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, OJ L 292, 15.11.1996, p. 2–5

- (15b) Where the Office performs, within its mandate, supporting measures at the request of the EPPO, in order to protect the admissibility of evidence, as well as fundamental rights and procedural guarantees, while at the same time avoiding duplication of investigations and providing for an efficient and complementary cooperation, the EPPO and the Office, acting in close cooperation, should ensure that the applicable procedural guarantees of Chapter VI of Regulation (EU) 2017/1939 shall be observed.
- (16) The Office conducts on-the-spot checks and inspections, which allow it to access premises and documentation of economic operators in the framework of its investigations into suspected fraud, corruption or other illegal conduct affecting the financial interests of the Union. These are carried out in accordance with this Regulation and with Regulation (Euratom, EC) No 2185/96, which in some instances make the application of these powers subject to conditions of national law. The Commission evaluation has found that the extent to which national law should apply is not always specified, and as a result hinders the effectiveness of the Office's investigative activities.
- (17) It is therefore appropriate to clarify the instances in which national law should apply in the course of investigations by the Office, without however changing the powers available to the Office or changing the way the Regulation operates in relation to the Member States. This clarification reflects the recent ruling of the General Court in case T-48/16, *Sigma Orionis SA v European Commission*.
- (18) The conduct by the Office of on-the-spot checks and inspections, in situations where the economic operator concerned submits to the check, should be subject to Union law alone. This should allow it to exercise its investigative powers in an effective and coherent manner in all Member States, with a view to contributing to a high level of protection of the Union's financial interests across the Union, as required by Article 325 of the Treaty on the Functioning of the European Union.

- (19) In situations where the Office needs to rely on the assistance of the national competent authorities, particularly in cases where an economic operator opposes an on-the-spot check and inspection, Member States should ensure that the Office's action is effective, and should provide the necessary assistance in accordance with the relevant rules of national procedural law. If a Member State does not comply with its duty to cooperate with the Office, it is appropriate, in order to safeguard the financial interests of the Union, that the Commission takes this into account in considering whether to recover the amounts concerned through the application of financial corrections on Member States, in accordance with the applicable Union rules.
- (19a) The Office is able, under the current provisions of the Regulation, to enter into administrative arrangements with national competent authorities, such as anti-fraud coordination services, and Union institutions and bodies, in order to specify the modalities for their cooperation under this Regulation, in particular concerning the transmission of information, the conduct and the follow-up of investigations.
- (20) A duty for economic operators to cooperate with the Office should be introduced in Regulation (EU, Euratom) No 883/2013. This is in line with their obligation under Regulation (Euratom, EC) No 2185/96 to grant access for the carrying out of on-the-spot checks and inspections to premises, land, means of transport or other areas, used for business purposes, and with the obligation in Article 129⁷ of the Financial Regulation that any person or entity receiving Union funds shall fully cooperate in the protection of the financial interests of the Union, including in the context of investigations by the Office.

⁷ Article 129 will be inserted in Regulation (EU) 2018/XX of the European Parliament and the Council (new Financial Regulation), on which a political agreement has been reached and which is expected to be adopted in the coming months.

- (21) As part of this duty of cooperation, the Office should be able to require economic operators who may have been involved in the matter under investigation, or who might hold relevant information, to supply relevant information. When complying with such requests, economic operators should not be obliged to admit that they have committed an illegal activity, but they should answer factual questions and provide documents, even if this information may be used to establish against them or against another operator the existence of an illegal activity. To ensure the effectiveness of investigations in the context of current work practices, the Office should be able to request access to information in privately owned devices used for work purposes. Access by the Office should be subject to the same conditions and extent that apply to national authorities and only if the Office has reasonable grounds to suspect that their content may be relevant for the investigation. This access should be in compliance with the principles of necessity and proportionality and should only concern access to information relevant to the investigation.
- (22) Economic operators should have the possibility to use any of the official languages of the Member State where the check takes place, and the right to be assisted by a person of their choice, including by external legal counsel, during on-the-spot checks and inspections. The presence of a legal counsel should not, however, represent a legal condition for the validity of on-the-spot checks and inspections. To ensure the effectiveness of the on-the-spot checks and inspections, in particular as regards the risk of evidence disappearing, the Office should be able to access to the premises, land, means of transportation or other areas used for business purposes without waiting for the operator to consult its legal counsel. It should only accept a short reasonable delay pending consultation of the legal counsel before starting the conduct of the check. Any such delay must be kept to the strict minimum.
- (23) To ensure transparency, when carrying out on-the-spot checks and inspections the Office should provide economic operators with appropriate information on their duty to cooperate and the consequences of a refusal to do so, and the procedure applicable to the check, including the applicable procedural safeguards.

- (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. In the course of internal investigations, the Office should be able to request access to information in privately owned devices used for work purposes in situations where the Office has reasonable grounds to suspect that their content might be relevant for the investigation. Access by the Office may be made subject to specific conditions by the institutions, bodies, offices or agencies. This access should be in compliance with the principles of necessity and proportionality and should only concern information relevant to the investigation. To guarantee an effective and consistent level of access for the Office, as well as a high level of protection of the fundamental rights of persons concerned, the Union institutions, bodies, offices and agencies should ensure the coherence of the rules on access to private devices adopted by the different institutions and bodies and offices and agencies, in order to provide equivalent conditions in compliance with the Interinstitutional Agreement of 29 May 1999 concerning internal investigations by OLAF.
- (25) For a more coherent framework for the investigations of the Office, the rules applicable to internal and external investigations should be further aligned, in order to address certain inconsistencies identified by the Commission evaluation, where divergent rules are not justified. This should be the case, for instance, to provide that reports and recommendations drawn up following an external investigation may be sent to the institution, body, office or agency concerned for it to take appropriate action, as is the case in internal investigations. Where possible in accordance with its mandate, the Office should support the institution, body, office or agency concerned in the follow-up to its recommendations. Where the Office does not open an investigation, it should be able to send relevant information to Member States' authorities or to Union institutions, bodies, offices or agencies for appropriate action to be taken. It should do so in those cases where it decides not to open despite there being a sufficient suspicion of fraud, corruption or any other illegal activity affecting the financial interests of the Union. Before doing so, the Office should give due consideration to a possible interference with ongoing investigations by the EPPO.

- (25a) Due to the large diversity of the national institutional framework, based on the principle of sincere cooperation, the Member States should have the possibility to notify to the Office those authorities that are competent to take actions upon recommendations of the Office, as well as those authorities that need to be informed (for financial, statistical or monitoring purposes etc.), as the case may be, for the performance of their relevant duties. Such authority may be the national anti-fraud coordination service. In accordance with settled case law of the General Court, the Office recommendations included in the reports of the Office have no binding legal effects on such national authorities or EU institutions, bodies, offices and agencies.
- (26) The Office should dispose of the necessary means to follow the money trail in order to uncover the modus operandi typical of many fraudulent conducts. Today, it is able to obtain banking information relevant for its investigative activity held by credit institutions in a number of Member States, through cooperation with and assistance by the national authorities. To ensure an effective approach throughout the Union, the Regulation should specify the duty of competent national authorities to provide information on bank and payments accounts to the Office, as part of their general duty to assist it. Member States should notify to the Commission the competent authorities through which such cooperation should take place. When giving this assistance to the Office, the national authorities should act under the same conditions that apply to the competent national authorities of the Member State concerned.
- (26a) In order to pay attention to the protection and respect of procedural rights and guarantees, the Commission should create an internal function in the form of the controller of procedural guarantees, which should - in view of an efficient use of resources - be administratively attached to the Supervisory Committee and be provided with adequate resources. The Controller should handle complaints in a fully independent manner, including from the Supervisory Committee and from the Office. He/she should have access to all information necessary to fulfil his/her duties.

- (26b) In order to allow persons concerned to have a more efficient review of the respect of their procedural guarantees, as well as of the rules applicable to the Office's investigations and their fundamental rights, this Regulation should establish a complaints mechanism for the Office. The Controller of procedural guarantees should be responsible for issuing recommendations in response to such complaints, suggesting solutions to the issues raised in the complaint, where necessary. The Controller should examine the complaint in a swift and adversarial procedure, while respecting the Office's ability to continue the investigation under way. The Controller should give the complainant and the Office the opportunity to provide comments on the issue, as well as the possibility to resolve the issue raised in the complaint. Following the recommendation of the Controller, the Director-General should take appropriate action as the recommendation warrants or, in duly justified cases, deviate from it. The reasons for not following a Controller's recommendation should be attached to the final investigation report.
- (26c) In order to increase transparency and accountability, the Controller 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.
- (27) The early transmission of information by the Office for the purpose of adopting precautionary measures is an essential tool for the protection of the Union's financial interests. In order to ensure close cooperation in this regard between the Office and the institutions, offices, bodies and agencies of the Union, it is appropriate that the latter have the possibility to consult at any time the Office with a view to deciding on any appropriate precautionary measures, including measures for the safeguarding of evidence.

- (28) Reports drawn up by the Office constitute today admissible evidence in administrative or judicial proceedings in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. The Commission evaluation found that in some Member States this rule does not sufficiently ensure the effectiveness of the Office's activities. To increase the effectiveness and the consistent use of reports of the Office, the Regulation should provide for the admissibility of such reports in judicial proceedings of a non-criminal nature before national courts, as well as in administrative proceedings in the Member States. The rule providing for equivalence with the reports of national administrative inspectors should continue to apply in the case of national judicial proceedings of a criminal nature. The Regulation should also provide for the admissibility of the reports drawn up by the Office in administrative and judicial proceedings at Union level.
- (30) The anti-fraud coordination services of the Member States were introduced by Regulation (EU, Euratom) No 883/2013 to facilitate an effective cooperation and exchange of information, including information of an operational nature, between the office and the Member States. The evaluation concluded they have positively contributed to the work of the Office. It also identified the need to further clarify their role in order to ensure that the Office is provided with the necessary assistance to ensure that its investigations are effective, while leaving the organisation and powers of the anti-fraud coordination services to each Member State. In this regard, the anti-fraud coordination services should be able to provide or coordinate the necessary assistance to the Office to carry out its tasks effectively, before, during or at the end of an external or internal investigation.

- (31) The duty of the Office to provide the Member States with assistance in order to coordinate their action for the protection of the financial interests of the Union is a key element of its mandate to support cross-border cooperation among the Member States. More detailed rules should be laid down in order to facilitate the coordinating activities of the Office and its cooperation in this context with Member States' authorities, third countries and international organisations. These rules should be without prejudice to the exercise by the Office of powers conferred on the Commission in specific provisions governing mutual assistance between Member States' administrative authorities and cooperation between those authorities and the Commission, in particular to Council Regulation (EC) No 515/97⁸ and Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights, as well as coordination activities relating to the European Structural and Investment Funds.
- (31a) It should be clarified that when competent authorities of the Member States, including anti-fraud-coordination services, act in cooperation with the Office or with other competent authorities for the purposes of protecting the Union's financial interests, they continue to be bound by their applicable national laws.
- (32) Furthermore, it should be possible for the anti-fraud coordination services in the context of coordination activities to provide assistance to the Office, as well as for the anti-fraud coordination services to cooperate among themselves, in order to further reinforce the available mechanisms for cooperation in the fight against fraud.

⁸ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, OJ L 82, 22.3.1997, p. 1–16.

- (32a) The competent authorities of the Member States, as well as institutions, bodies, offices or agencies, should take the actions warranted by a recommendation of the Office. In order to allow the Office to follow-up on the development of its cases, where the Office makes judicial recommendations to the national prosecution authorities of a Member State, the Member States should, upon request of the Office, send to the Office the final decision of the national court. In order to fully maintain the judicial independence, such transmission can only take place once the relevant judicial proceeding has become final and once the final court decision has become public.
- (32b) In order to supplement the procedural rules on the conduct of investigations set out in this Regulation, the Office should lay down guidelines for the procedural code for investigations to be followed by the staff of the Office.
- (32c) Finally, it should be clarified that the Office may participate in joint investigation teams established in accordance with applicable Union law and that it should be entitled to exchange operational information acquired in this framework. The use of such information shall be subject to the conditions and safeguards provided for in the relevant Union law on the basis of which the joint investigation teams have been established. When the Office participates in such joint investigation teams, it has a supporting capacity and takes the role of a partner subject to legal constraints that may exist at Union law level and at national level.
- (32d) 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, in order to consider whether amendments are warranted on the basis of experience made regarding the cooperation between the Office and the EPPO. The Commission should submit, where appropriate, a new, comprehensive legislative proposal, no later than two years after the evaluation of the application and impact of this Regulation.

- (33) Since the objective of this Regulation to strengthen the protection of the financial interests of the Union by adapting the operation of the Office to the establishment of the EPPO and by enhancing the effectiveness of the investigations by the Office cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level through the adoption of rules governing the relationship between two Union offices and increasing the effectiveness in the conduct of investigations by the Office across the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.
- (34) This Regulation does not modify the powers and responsibilities of the Member States to take measures to combat fraud, corruption and any other illegal activity affecting the financial interests of the Union.
- (35) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁹ and delivered an opinion on ...¹⁰.
- (36) Regulation (EU, Euratom) No 883/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

⁹ 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 (OJ L 295, 21.11.2018, p.39).

¹⁰ OJ C [...], [...], p. [...].

Article 1

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

(1) Article 1 is amended as follows:

(a) in paragraph 3, point (d) is replaced by the following:

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

(b) in paragraph 3, the following point (da) is inserted:

"(da) Regulation (EU) 2016/679.";

(c) the following paragraph 4a is inserted:

"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) 2017/1939. 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.";

(d) in paragraph 5, the last sentence is replaced by the following:

"Those administrative arrangements may concern, in particular, the transmission of information, the conduct and the follow-up of investigations.".

(2) Article 2 is amended as follows:

(a) in point 3, the following last sentence is added:

"The notion of any other illegal activity includes irregularity as defined in Article 1(2) of Regulation 2988/95.";

(b) point 4 is replaced by the following:

"(4) 'administrative investigations' ('investigations') shall mean any inspection, check or other measure undertaken by the Office in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation; those investigations shall not affect the powers of the EPPO or of the competent authorities of the Member States to initiate and conduct criminal proceedings.";

(c) the following point 7a is added:

"(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, with respect to the obligations imposed by Union law in the context of the duties they perform in that capacity.";

(d) the following point 8 is added:

"(8) 'resistance' as referred to in Article 3(7) shall mean that any person concerned or an economic operator who is subject to the on-the-spot check or inspection carried out by the Office does not grant the necessary access for the Office to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of a check."

(3) Article 3 is replaced by the following:

"Article 3

External investigations

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.
2. On-the-spot checks and inspections shall be conducted in accordance with this Regulation and, to the extent that a matter is not covered by this Regulation, with Regulation (Euratom, EC) No 2185/96.
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.
- 3a. Where the economic operator concerned, in compliance with paragraph 3, submits to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (Euratom, EC) No 2988/95 and the third subparagraph of Article 6(1) and Article 7(1) of Regulation (Euratom, EC) No 2185/96 shall not apply, insofar as those provisions require compliance with national law and may restrict access to information and documentation by the Office to the conditions applying to national administrative inspectors.
6. 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 authorisation referred to in Article 7(2).

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 inspection 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 may be subject to investigations by the Office only

- (a) under the conditions and to the extent as national control authorities would be allowed to investigate into privately owned devices and
- (b) if the Office has reasonable grounds to suspect that their content may be relevant for the investigation.

7. Where the staff of the Office finds that an economic operator resists an on-the-spot check or inspection authorised pursuant to this Regulation, the competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford them the necessary assistance so as to enable the Office to conduct its on-the-spot check or inspection effectively and without undue delay.

When providing assistance in accordance with this paragraph or with paragraph 6, the competent national authorities shall act in conformity with national procedural rules applicable to the competent national authority concerned. If that assistance requires authorisation from a judicial authority in accordance with national law, such authorisation shall be applied for.

- 7a. The Office shall conduct on-the-spot checks and inspections upon production of a written authorisation, as provided for in Article 7(2) of this Regulation. It shall, at the latest at the start of the on-the-spot checks and inspections, inform the economic operator concerned of the procedure applicable to the check, including the applicable procedural safeguards, and the duty to cooperate of the economic operator concerned.

- 7b. In the exercise of the powers assigned to it, the Office shall comply with the procedural guarantees provided for in this Regulation and in Regulation (Euratom, EC) No 2185/96. In the conduct of an on-the-spot check and inspection, the economic operator concerned shall have the right not to make self-incriminating statements and to be assisted by a person of choice. When making statements during the on the spot checks, the economic operator shall be provided with the possibility to use any of the official languages of the Member State where he is located. The right to be assisted by a person of choice shall not prevent access by the Office to the premises of the economic operator, and shall not unduly delay the start of the check.
- 7c. Where a Member State does not cooperate with the Office in accordance with paragraphs 6 and 7, the Commission may apply the provisions of Union law in order to recover the funds related to the on-the-spot check or inspection in question.
8. As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in the Member States and, in accordance with the cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.
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.

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.";

- (4) Article 4 is amended as follows:

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

"1. The 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.";

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

"2. In the course of internal investigations:

- (a) the Office shall have the right of immediate and unannounced access to any relevant information and data, relating to the matter under 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 may be subject to investigations by the Office only:

- (i) to the extent the devices are used for work purposes and under the conditions set in the decisions adopted by the respective institution, body, office or agency and
- (ii) if the Office has reasonable 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;

- (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, thoroughly documented according to applicable confidentiality and Union data protection rules.";

- (c) paragraph 3 is replaced by the following:

"3. Under the same rules and conditions as foreseen in 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 investigation within the institutions, bodies, offices and agencies.";

- (d) in paragraph 4, the first sentence is replaced by the following:

"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 data, or request information held by them.";

- (e) in paragraph 8, the first subparagraph is replaced by the following:

"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.";

- (5) Article 5 is amended as follows:

- (a) in paragraph 1, the first two sentences are 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. The decision to open the investigation may take into account the need for efficient use of the Office's resources and for proportionality of the means employed.";

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

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

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

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

- (d) in paragraph 5, the first sentence is replaced by the following:

"If the Director-General decides not to open an investigation, he/she may without delay send any relevant information, as appropriate, to the competent authorities of the Member State concerned for appropriate action to be taken in accordance with Union law and national law or 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.";

- (e) paragraph 6 is replaced by the following:

"6. Where the Director-General decides not to open an investigation, despite there being a sufficient suspicion that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, he/she shall send the information referred to in paragraph 5 without delay.";

- (6) Article 7 is amended as follows:

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

"The Director-General shall not carry out concrete investigative acts her-/himself.";

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

"3. The competent authorities of the Member States shall give the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay. When providing such assistance in accordance with this paragraph, the national competent authorities shall act in conformity with any national procedural rules applicable to the national competent authority concerned.";

(c) the following paragraph 3a is added:

"3a. At the request of the Office, which shall be explained in writing, in relation to matters under investigation, the relevant competent authorities of the Member States shall provide the Office, under the same conditions that apply to the competent national authorities, with the following information:

- (a) information available in the centralised automated mechanisms referred to in Article 32a(3) of Directive (EU) 2015/849;
- (b) when strictly necessary for the purposes of the investigation, the record of transactions.

The requests of the Office shall include a justification on the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation and can only refer to information mentioned in points (a) and (b).

The Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b).";

(d) the following paragraph 3b is added:

"3b. The institutions, bodies, offices and agencies shall ensure that their officials, other servants, members, heads and staff members provide the necessary assistance to enable the staff of the Office to fulfil their tasks effectively and without undue delay.";

(e) in the first subparagraph of paragraph 6, letter (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;"

(f) in paragraph 6, the second subparagraph is replaced by the following:

"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. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.";

(g) paragraph 8 is replaced by the following:

"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 envisaged with a view to speeding up the investigation.";

(7) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

"Within the scope of Article 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.

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 previous subparagraph by transmitting to the Office a copy of the report sent to the EPPO.";

(b) paragraph 2 is replaced by the following:

"2. 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.

Prior to the opening of an investigation at the request of the Office, which shall be explained in writing, they shall transmit any document or information they hold which is necessary to assess the allegations or to apply the criteria for opening an investigation as set out in Article 5(1).";

(c) paragraph 3 is replaced by the following:

"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 affecting the financial interests of the Union.";

(d) the following paragraph 4 is added:

"4. 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.

This is without prejudice to the possibility for the EPPO to provide the Office with relevant information on cases in accordance with Article 34(8), Article 36(6), Article 39(4) and Article 101(3) and (4) of Regulation (EU) 2017/1939.

The provisions related to transmission of information according to Council Regulation (EU) No 904/2010 remain unaffected.";

(8) Article 9 is amended as follows:

(a) in paragraph 2, the fourth subparagraph, the following sentence is added:

"The procedural guarantees as referred to in Article 3(7a) and (7b) shall apply to the person concerned, in particular the right to be assisted by a person of choice.";

(b) in paragraph 4, the second sentence of the second subparagraph is replaced by the following:

"That invitation shall include a summary of the facts concerning the person concerned and the information required by Articles 15 and 16 of Regulation (EU) 2018/1725, 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.";

(c) in paragraph 4, the third subparagraph is replaced by the following:

"In duly justified cases where it is necessary to preserve the confidentiality of the investigation and/or an ongoing or future criminal investigation by the EPPO or a national judicial authority, the Director-General may, where appropriate after consulting the EPPO or the national judicial authority concerned, decide to defer the fulfilment of the obligation to invite the person concerned to comment.";

(9) The following Articles 9a and 9b are 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/her term, he/she shall remain in office until he/she is replaced.

- 1a. The Controller shall be administratively attached to the Supervisory Committee. The Secretariat of the Supervisory Committee shall provide the Controller with all necessary administrative and legal support.
- 1b. The Commission shall, from within its approved budget, allocate to the Supervisory Committee the personnel and financial means necessary for the Controller.
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/her functions in complete independence, including from the Office and from the Supervisory Committee, and shall neither seek nor take instructions from anyone in the performance of his/her duties.
- 4a. If the Controller ceases to fulfil the conditions required for the performance of his/her duties, or if he/she is found guilty of serious misconduct, the European Parliament, the Council and the Commission may, by common accord, relieve him/her of his/her duties.
5. Pursuant to the mechanism referred to in Article 9b, the Controller shall monitor the Office's compliance with the procedural guarantees set out in Article 9, as well as the rules applicable to investigations by the Office. He/She shall be responsible of handling the complaints referred to in Article 9b.

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/She shall not refer to individual cases under investigation and shall ensure the confidentiality of investigations even after their closure. The Controller shall report to the Supervisory Committee on any systemic issue arising out of his/her recommendations.

Article 9b

Complaints mechanism

1. 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, as well as on the grounds of a violation of the rules applicable to investigations by the Office, in particular infringements of procedural requirements and fundamental rights. The lodging of a complaint shall have no suspensive effect on the conduct of the investigation under way.
2. 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/her 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.
3. Upon receipt of a complaint, the Controller shall inform the Director-General of the Office immediately. Within 10 working days from the day of its registration, the Controller shall determine whether the conditions of paragraphs 1 and 2 of this Article are fulfilled. He/she shall close the file if the conditions are not fulfilled and shall inform the person concerned without delay. The Controller shall give the Office the possibility to resolve the issue raised by the complainant within 15 working days, making a proposal for a solution.

4. Without prejudice to Article 10 of this Regulation, the Office shall transmit to the Controller all information necessary for the Controller to assess whether the complaint is justified as well as information that may resolve the issue raised and enables the Controller to issue a recommendation.
5. The Controller shall issue a recommendation on how to resolve the issues raised in the complaint without delay, but at the latest within two months of the Office having informed the Controller of the action it has taken to resolve the issue raised or after the expiry of the period referred to in paragraph 2. Before issuing the recommendation, the Controller shall seek the opinion of the Supervisory Committee.

The Controller may recommend that the Office amends or repeals its recommendations and/or reports, on the grounds of violation of the rules applicable to OLAF investigations, in particular infringements of procedural requirements and fundamental rights.

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.

6. 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 also ask witnesses to provide written or oral explanations he/she considers relevant to ascertaining the facts.

7. The Director-General shall take appropriate action which the recommendation warrants. If the Director-General decides not to follow the Controller's recommendation, he/she shall communicate to the complainant and to the Controller the main reasons for that decision, in as much as doing so does not affect the on-going investigation. He/she shall state the reasons for not following the Controller's recommendation in a note to be attached to the final investigation report.
- 7a. This complaint mechanism is without prejudice to the means of redress available under the Treaties, including actions relating to compensation for damage.
8. 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 shall respond.
9. 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.
10. The Controller, after having consulted the Supervisory Committee, shall adopt implementing provisions for the handling of complaints.

11. Those implementing provisions shall cover, in particular:

- (a) detailed rules for lodging a complaint;
- (b) detailed rules regarding exchange of information between Supervisory Committee, the Controller and the Director-General of the Office;
- (c) detailed rules regarding addressing the issues raised in the complaint by the Office;
- (d) detailed rules on the examination of the complaint in an adversarial procedure without interfering with the conduct of the investigation under way;
- (e) detailed rules regarding the issuing and communication of the Controller's recommendation;
- (f) detailed rules regarding duly justified cases in which the Director-General may deviate from the recommendation and on a procedure to follow in those cases.";

(10) Article 10 is amended as follows:

(a) the following paragraphs 3a and 3b are added:

"3a. Directive (EU) 2019/1937 shall apply to the reporting of fraud, corruption and any other illegal activity affecting the financial interests of the Union and the protection of persons reporting such breaches.

3b. For cases where the Office recommends a judicial follow-up, and without prejudice to the confidentiality rights of whistle-blowers and informants, and the respect of applicable data protection and confidentiality rules, the person concerned may request from the Office access to the final report drawn up under Article 11 to the extent that it relates to that person. The Office shall communicate that request without delay to all recipients of the final report concerned, and shall grant access only with the explicit consent of the recipients. The recipients shall reply within a period of 12 months. In the absence of an objection within that period, the Office shall grant access.

The competent authority may also authorise the Office to grant access before this period has expired.";

(b) in paragraph 4, the first subparagraph is replaced by the following:

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

(11) Article 11 is amended as follows:

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

"The report shall, where appropriate, 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.";

(b) paragraph 2 is replaced by the following:

"2. In drawing up such reports and recommendations, account shall be taken of the relevant provisions of Union law and, in so far as it is applicable, of the national law of the Member State concerned.

The following rules shall apply:

- (a) reports drawn up in accordance with the first subparagraph, including all evidence supporting and annexed to these reports shall constitute admissible evidence in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;
- (b) reports drawn up in accordance with the first subparagraph 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.

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

Member States shall, upon request of the Office, send to the Office the final decision of the national court, once the relevant judicial proceeding has become final and once the final court decision has become public.

- (c) reports drawn up by the Office shall constitute admissible evidence in judicial proceedings before the Union courts and in administrative proceedings in the Union.

The power of national and Union courts or competent bodies in administrative and criminal proceedings to freely assess the evidential value of the reports drawn up by the Office shall not be affected by this Regulation.

The Office shall take appropriate measures to insure the consistent quality of final reports and recommendations.";

- (c) paragraph 3 is replaced by the following:

- "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. The competent authorities of the Member State concerned, the 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. Member States may notify to the Office the relevant national authorities competent to deal with such reports, recommendations and documents.";

(d) paragraph 5 is replaced by the following:

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

At the request of the Office, the competent authorities of the Member States concerned shall, within a time limit laid down in the recommendations, send to the Office information on action taken, if any, and the reasons for non-implementation of recommendations, where applicable, following the transmission by the Office of any information in accordance with paragraph 3 or paragraph 5.";

(e) paragraph 6 is deleted;

(f) paragraph 8 is replaced by the following:

"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, unless it considers that this information 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.";

(12) Article 12 is amended as follows:

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

"It may also transmit information to the institution, body, office or agency concerned.";

(b) paragraph 3 is replaced by the following:

"3. The competent authorities of the Member State concerned shall, unless prevented by national law, inform the Office as soon as possible, but in any case within 12 months, of the action taken on the basis of the information transmitted to them under this Article.";

(c) the following paragraph 5 is added:

"5. The Office may provide relevant information to the Eurofisc network established by Council Regulation (EU) No 904/2010¹¹. Eurofisc working field coordinators may transmit relevant information from the Eurofisc network to the Office under the conditions laid down in Council Regulation (EU) No 904/2010.";

(13) The following Articles are inserted:

"Article 12a

Anti-fraud coordination services in the Member States

1. Member States shall, for the purposes of this Regulation, designate a service ('the anti-fraud coordination service') to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, in accordance with national law, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation.
2. Upon request of the Office, before a decision has been taken as to whether or not to open an investigation, as well as during or after an investigation, the anti-fraud coordination services shall provide or coordinate the necessary assistance for the Office to carry out its tasks effectively. That assistance shall include in particular the assistance from the national competent authorities provided in accordance with Article 3(6) and (7), Article 7(3) and Article 8(2) and (3).

¹¹ 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).

3. The anti-fraud coordination services may provide assistance to the Office upon request so that the Office may conduct coordination activities in accordance with Article 12b, including, where appropriate, horizontal cooperation and exchange of information between anti-fraud coordination services.

Article 12b

Coordination activities

1. Pursuant to Article 1(2), the Office may organise and facilitate cooperation between the competent authorities of the Member States, institutions, bodies, offices and agencies, as well as, in accordance with the cooperation and mutual assistance agreements and any other legal instrument in force, third countries' authorities and international organisations. For the purpose of protecting the financial interests of the Union, the participating authorities and the Office may collect, analyse and exchange information, including operational information. The staff of the Office may accompany competent authorities carrying out investigative activities upon request of those authorities. Article 6, Article 7(6) and (7), Article 8(3) and Article 10 shall apply.
2. The Office may draw up a report on the coordination activities conducted and transmit it, where appropriate, to the competent national authorities and institutions, bodies, offices and agencies concerned.
3. This Article shall apply without prejudice to the exercise by the Office of powers conferred on the Commission in specific provisions governing mutual assistance between Member States' administrative authorities and cooperation between those authorities and the Commission.
4. The Office may participate in joint investigation teams established in accordance with applicable Union law and exchange in this framework operational information acquired pursuant to this Regulation.

Article 12c

Reporting to the EPPO of any criminal conduct on which it could exercise its competence

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.
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.
3. The Office shall not be bound to report to the EPPO manifestly unsubstantiated allegations.

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.

Following this preliminary evaluation, the Office shall report to the EPPO if the conditions set out in paragraph 1 are met.

4. Where the conduct referred to in paragraph 1 comes to light during an investigation by the Office, and the EPPO opens an investigation following the report, the Office shall not continue its investigation into the same facts other than in accordance with Articles 12e or 12f.

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 a time limit to be set in accordance with Article 12g.

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 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.
6. Where, following the report to the EPPO in accordance with this Article, the Office closes its investigation, Article 9(4) and Article 11 shall not apply.

Article 12d

Non-duplication of investigations

1. 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. The Director-General shall inform the EPPO about each decision to discontinue taken on such grounds.

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 a time limit to be set in accordance with Article 12g.

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

- 1b. The EPPO may, with a view to enabling OLAF to consider appropriate administrative action in accordance with its mandate, provide relevant information to OLAF on cases where the EPPO has decided not to conduct an investigation or has dismissed a case.

Whenever new facts which were not known to the EPPO at the time of the dismissal decision become known to the Office, the Director General may ask the EPPO to reopen a case according to Article 39(2) of the Regulation 2017/1939.

Article 12e

The Office's support to the EPPO

1. In the course of an investigation by the EPPO, and at the request of the EPPO in accordance with Article 101(3) of Regulation (EU) 2017/1939, the Office shall, in conformity with its mandate, support or complement the EPPO's activity in particular by:
 - (a) providing information, analyses (including forensic analyses), expertise and operational support;
 - (b) facilitating coordination of specific actions of the competent national administrative authorities and bodies of the Union;
 - (c) conducting administrative investigations.

When providing support to the EPPO, OLAF shall refrain from performing certain acts or measures which could jeopardise the investigation or prosecution.

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.

Where necessary, the Office may request additional information.

- 2a. In order to protect the admissibility of evidence as well as fundamental rights and procedural guarantees, where the Office performs, within its mandate, supporting measures at the request of the EPPO pursuant to this Article, the EPPO and the Office acting in close cooperation, shall ensure that the applicable procedural guarantees of Chapter VI of Regulation (EU) 2017/1939 shall be observed.

Article 12f

Complementary investigations

- 1. Where the EPPO is conducting an investigation, if the Director-General, in duly justified cases, considers that an investigation by the Office should also 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.

After receipt of this information and within a time limit to be set in accordance with Article 12g, the EPPO may object to the opening of an investigation or to the performance of certain acts pertaining to the investigation. In cases where the EPPO objects to the opening of an investigation or to the performance of certain acts pertaining to an investigation, it shall notify to the Office without undue delay when the grounds for the objection cease to apply.

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

The Office shall suspend or discontinue its investigation, or refrain from performing certain acts pertaining to the investigation, if the EPPO subsequently objects to it, on the same grounds as referred to in the second subparagraph.

2. Where the EPPO informs the Office that it is not conducting an investigation in reply to a request for information submitted in accordance with Article 12d and subsequently opens an investigation into the same facts, it shall inform the Office without delay. If, following receipt of this information, the Director-General considers that the investigation opened by the Office should be continued with a view to facilitating the adoption of precautionary measures or of financial, disciplinary or administrative action, paragraph (1) shall apply.

Article 12g

Working arrangements and exchange of information with the EPPO

1. The Office shall agree with the EPPO on administrative arrangements. Such working arrangements may establish practical details for the exchange of information or complementary investigations, 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 for the purpose of determining competences over investigations. They shall also include arrangements on the transfer of information between the Office and the EPPO, when OLAF acts in support or in a complementary manner to EPPO. They shall provide for timeframes for answering each others requests.

The EPPO and the Office shall agree on the time limits, and their modalities, referred to in Articles 12c(4), 12d(1), and 12f(1) of this Regulation. Until the adoption of this agreement, the EPPO shall reply to the Office's requests without delay, and in any case within 10 working days of the requests referred to in Articles 12c(4) and 12d(1) and 20 working days of the information referred to in Article 12f(1).

Prior to the adoption of the working arrangements with the EPPO, the Director-General shall send the draft to the Supervisory Committee, the European Parliament and the Council for information. The Supervisory Committee shall deliver its opinion without delay.

2. The Office shall have indirect access to information in the EPPO's case management system on the basis of a hit/no hit system.

Whenever a match is found between data entered into the case management system by the Office and data held by the EPPO, the fact that there is a match shall be communicated to both the EPPO and the Office. The Office shall take appropriate measures to enable the EPPO to have access to information in its case management system on the basis of a hit/no-hit system.

The technical and security aspects of the reciprocal access to the case management system, including internal procedures to ensure that each access is duly justified for the performance of their functions and is documented, shall be established in the working arrangements.

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

- (14) In Article 13, in paragraph 1, the first sentence of the first paragraph is replaced by the following:

"Within its mandate to protect the financial interests of the Union, the Office shall cooperate, as appropriate, with Eurojust and with the European Union Agency for Law Enforcement Cooperation (Europol).";

(15) Article 15 is amended as follows:

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

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

(b) in paragraph 1, the last subparagraph 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 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."

(c) in paragraph 8, the fifth sentence is replaced by the following:

"Its secretariat shall be provided by the Commission and in close cooperation with the Supervisory Committee.";

(16) Article 16 is amended as follows:

(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 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 attend the exchange of views. 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.";

(b) in paragraph 2, the first sentence is replaced by the following:

"Within the objective of paragraph 1, 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:";

(c) in paragraph 2, points (d) and (e) are replaced by the following:

"(d) the framework of the relations between the Office and the institutions, bodies, offices and agencies, in particular the EPPO, including any horizontal and systemic issues encountered in the follow-up to the Office's final investigation reports;

(e) the framework of the relations between the Office and the competent authorities of the Member States, including any horizontal and systemic issues encountered in the follow-up to the Office's final investigation reports;"

(17) Article 17 is amended as follows:

(a) 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. The Commission shall draw up a list of suitably qualified candidates. After a favourable opinion has been given by the Supervisory Committee on the selection procedure applied by the Commission, the European Parliament and the Council shall in due time agree on a shortlist of three candidates from the list of suitable candidates drawn up by the Commission. The Commission shall appoint the Director-General from that shortlist.";

(b) paragraph 3 is replaced by the following:

"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/her 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/her independence into question, he/she shall immediately inform the Supervisory Committee and shall decide whether to bring an action against the Commission before the Court of Justice.";

(c) 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 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. The annual report shall also include an assessment of the actions taken by the competent authorities of the Member States and the institutions, bodies, offices and agencies, following reports and recommendations drawn up by the Office.

The Office shall publish on its website its replies to the opinions delivered by the Supervisory Committee.";

(d) the following paragraph 4a is added:

"4a. At the request of the European Parliament or the Council in the context of their 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 and the Council shall ensure the confidentiality of information provided in accordance with this paragraph.";

- (e) in paragraph 5, point (b) is replaced by the following:
- "(b) of cases in which information has been transmitted to judicial authorities of the Member States or to the EPPO;"
- (f) in paragraph 5, the following points (ba) and (bb) are added:
- "(ba) of cases dismissed;
- (bb) of cases in which he/she decided not to open an investigation;"
- (g) at the end of paragraph 7, the following two sentences are added:
- "The legality check shall be carried out by Office experts in law and investigative procedures. Their opinion shall be annexed to the final investigation report.";
- (h) in the first subparagraph of paragraph 8, points (a)-(d) are replaced by the following:
- "(a) the practices to be observed in implementing the mandate of the Office;
- (b) detailed rules governing investigations procedures;
- (c) the procedural guarantees;
- (d) details on the internal advisory and control procedures, including the legality check;
- (da) data protection and policies on communication and access to documents as laid down in Article 10(3b);
- (e) relations with the EPPO.";
- (i) the first subparagraph of paragraph 9 is replaced by the following:
- "Before imposing any disciplinary penalty on the Director-General or waiving his/her immunity, the Commission shall consult the Supervisory Committee."

(18) Article 19 is replaced by the following:

"Article 19

Evaluation report and possible 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, where appropriate, 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."

Article 2

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

Articles 12c to 12f referred to in point 13 in Article 1 shall apply from the date determined in accordance with the second subparagraph of Article 120(2) of Regulation (EU) 2017/1939.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President