



Brussels, 11.6.2014  
COM(2014) 340 final

2014/0173 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**amending Regulation (EU, Euratom) No 883/2013 as regards the establishment of a**  
**Controller of procedural guarantees**

{SWD(2014) 183 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### **Grounds and objectives**

The objectives of the proposal are to further strengthen the procedural guarantees in place for all persons under investigation by the European Anti-Fraud Office (referred to in the regulation as “persons concerned”) and to take into account the special way in which members of EU institutions were elected or appointed as well as their special responsibilities which may justify specific provisions aimed at ensuring the proper functioning of the institutions to which they belong. To this end, Regulation No 883/2013 on investigations by OLAF is to be amended.

These objectives will be achieved by establishing a Controller of procedural guarantees, tasked with two functions:

- Reviewing complaints lodged by persons under investigation about violation of their procedural guarantees,
- Authorizing OLAF to conduct certain investigative measures in respect of members of EU institutions.

#### **General context**

In 2013, after many years of intense negotiations, the institutions agreed on a new legal framework for OLAF investigations. This resulted in Regulation 883/2013 on OLAF investigations which entered into force on 1 October 2013. The Regulation brought substantial changes to OLAF's organisation and investigative procedures, in particular as regards reinforcing OLAF's governance and strengthening the procedural guarantees of persons concerned by OLAF investigations. These changes are currently being implemented.

In July 2013, the Commission adopted its proposal on the European Public Prosecutor's Office (EPPO) which includes a series of Union-level procedural safeguards. Together with that proposal, the Commission adopted a Communication on improving the governance of OLAF and reinforcing the procedural safeguards in investigations (COM(2013)533 final). The Communication called for a step-by-step approach to accompany the establishment of the EPPO and further measures to strengthen OLAF's governance and enhance procedural safeguards in its investigations, even before the establishment of the EPPO.

#### **Existing provisions in the area of the proposal**

The proposal aims to amend Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council concerning investigations conducted by the OLAF. Other legal acts regulating the protection of the financial interests of the EU are:

- Council Regulation (Euratom, EC) No 2185/1996 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,
- Council Regulation (EC, Euratom) No 2988/95 on the protection of the European Communities financial interests,
- The Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the

## **2. RESULTS OF THE ANALYSIS OF IMPACTS**

### **Analysis of Impacts**

The proposal is accompanied by a Staff Working Document (Analysis of Impacts), which weighs several possible scenarios as a mean to achieve the policy objectives of this initiative. These policy objectives are to achieve the highest possible level of protection of fundamental rights for EU citizens while maintaining the highest possible level of protection of EU financial interests and safeguarding the reputation of the EU institutions. The analysis looks at the impact of each option in terms of its effectiveness in meeting the policy objectives, its financial cost, its impacts on the institutional framework and its acceptability to stakeholders.

This Analysis of Impacts found that the policy objectives could be reached most effectively by appointing an external Controller of procedural guarantees who would act on complaints and authorise certain investigative measures related to members of the institutions. This would allow, at an acceptable budgetary cost, the procedural safeguards to be strengthened, while still respecting the need for effective protection of the EU financial interests.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **Summary of the proposed action**

The proposal provides for the establishment of a Controller of procedural guarantees, who would be tasked with reviewing complaints lodged by persons concerned in OLAF investigations about the potential non-respect of their procedural guarantees. The Controller would also be responsible for authorising certain investigative measures related to members of EU institutions.

When examining a complaint, the Controller would review whether procedural guarantees provided for in Article 9, Regulation No 883/2013 were respected. For example, he would review whether the notice period for inviting persons concerned to an interview was respected, without, however, taking any position on whether and how to conduct this interview. He would listen to both parties involved before issuing a non-binding recommendation to the Director-General of OLAF. If the Director-General chooses not to follow the Controller's recommendation, he should state the reasons for doing so in a note attached to the final investigation report submitted to the national authorities or, where relevant, to institutions, bodies, offices or agencies of the European Union concerned. Given the nature of the tasks the Controller will be entrusted with, the position should be held by a person with senior legal expertise in the fields of fundamental rights and criminal law, and eligible to be appointed to judicial office in at least one Member State or in an EU Court. He should be able to perform his duties in complete independence and within the time limits foreseen in this Regulation.

This new complaints procedure does not affect any of the other existing complaint procedures, such as the procedure offered by the EU Staff Regulation, the European Ombudsman or the European Data Protection Supervisor. The Controller will also be subject to the requirements of Regulation 45/2001 on data protection, in particular its Articles 2, 4, 25 and 26.

Regarding the use of certain investigative measures towards members of EU institutions, a new measure is proposed, whereby the Director-General of OLAF must ask for the

Controller's authorisation if OLAF intends to carry out an inspection of the professional offices of these members. This includes taking of copies of documents or any other form of data storage located in their professional offices. This requirement is inspired by the proposal for a European Public Prosecutor's Office as the future EPPO will require similar authorisation from the competent judicial authorities in Member States. This is to reflect the special way in which members of EU institutions have been appointed or elected, as well as their particular responsibilities and their status, which may justify specific provisions to ensure the proper functioning of the institutions to which they belong.

### **Legal basis**

The proposal is based on art. 325 TFEU on combating fraud.

### **Subsidiarity and proportionality principles**

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

## **4. BUDGETARY IMPLICATION**

The budgetary implications of this proposal are mainly related to human resources. It requires the establishment of the Controller of procedural guarantees and members of his secretariat. It is envisaged that the Controller would have the status of a Special Advisor remunerated at the level of an AD15, which appears as the most appropriate status in view of the expected tasks. With regard to the term of office of five years, the underlying contracts would in this case be issued for administrative reasons in compliance with Article 123 (1) of the Conditions of Employment of Other Servants. The obligations under Article 123 (2) CEOS would be deemed fulfilled through the appointment procedure. He would work part-time (25 per cent in the first year and 50 per cent thereafter) and would be assisted by a secretariat initially composed of two persons in the administrators' function group and one secretarial assistant in the assistants/secretarial clerks' function group, which could be expanded or reduced in view of its workload. The Controller would also have a substitute, who would have the same status and grade as the Controller and would be called upon to act only in case the Controller is not available. For administrative purposes, they would all be attached to the Commission, while benefitting from specific guarantees ensuring their full independence in the exercise of their functions.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU, Euratom) No 883/2013 as regards the establishment of a  
Controller of procedural guarantees**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 325 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the Court of Auditors<sup>1</sup>

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union's institutions and Member States attach great importance to the protection of the financial interests of the European Union and to the protection of the fundamental rights of the citizens. Procedural guarantees of persons concerned by OLAF's administrative investigations should be strengthened without obstructing OLAF in the exercise of its powers and responsibilities.
- (2) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council brought substantial changes to the conduct of OLAF's investigative activities, as regards, in particular, clarifying OLAF's investigative procedures, strengthening the procedural guarantees of persons concerned by OLAF's investigations and clarifying the general monitoring role of the Supervisory Committee.
- (3) In its Communication COM(2013)533 of 17 July 2013 on Improving OLAF's governance and reinforcing procedural safeguards in investigations, the Commission has put forward concepts for further strengthening the procedural guarantees of persons concerned by OLAF administrative investigations, even before the establishment of the European Public Prosecutor's Office on which the Commission has proposed a Regulation<sup>2</sup>.
- (4) In its opinion No 2/2013 of December 2013, OLAF's Supervisory Committee, expressed the view that the remedies offered to persons concerned by OLAF's investigations against potential violation of their rights and procedural guarantees should be strengthened and that a transparent and efficient complaints procedure should be put in place within OLAF.
- (5) In order to ensure a consistent high level of protection of procedural guarantees, all persons concerned by OLAF investigations should be offered enhanced remedies against potential violations of their rights. A Controller of procedural guarantees,

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<sup>1</sup> OJC, , p

<sup>2</sup> COM(2013) 534 final, 17 July 2013.

external to and independent from OLAF, should therefore be established and be tasked with reviewing OLAF's compliance with the procedural guarantees of the persons concerned by OLAF investigations laid down in Article 9 of Regulation No 883/2013.

- (6) In order to review complaints in due time and enable effective protection of the defence rights, complaints related to notice periods or time limits provided for in the Regulation, such as the notice period for invitation to an interview, should be lodged before the expiry of the ordinary period foreseen in the Regulation.
- (7) The Controller should be recruited from outside the EU institutions. For administrative purposes, the Controller should nevertheless be attached to the Commission, while benefitting from sufficient guarantees to ensure his full independence. In agreement with the Controller, the Commission should provide for his supporting staff. The call for applications for the post should specify the eligibility requirements and the selection criteria applicable to the position. The post entails functions normally entrusted to persons appointed to judicial office and candidates must be persons who are able to perform the duties in complete independence and within the time limits foreseen in this Regulation.
- (8) The mandate of the Controller should be established without prejudice to the already existing complaints mechanisms. However, in order to streamline the procedures, if an official or other servant of the EU lodges a complaint with the Controller while a complaint on the same issue is being examined in accordance with Article 90a of the Staff Regulations, the Director-General shall await the recommendation of the Controller before taking a decision in accordance with Article 90a. Times limits provided for under Article 90a should apply.
- (9) In order to avoid any unnecessary complaint procedure, OLAF should be immediately informed by the Controller when a complaint is lodged and be given the opportunity to remedy the issue or explain why it cannot comply with the complainant's request.
- (10) The Controller should examine the complaint in a swift and adversarial procedure, which should, in principle, not be longer than fifteen working days, verifying the legality of the investigative measure concerned. However, the Controller should respect OLAF's discretion to conduct the investigation under way as this may compromise OLAF's independence. In order to be able to fulfil his function, OLAF should communicate to the Controller any information relevant to the complaint. The Controller should give the complainant and the Office the opportunity to provide comments on the issue submitted to him. In order to comply with its duty to conduct the investigation continuously, OLAF should not be prevented from continuing the investigation while a complaint is being examined. The review of the complaint should not unduly prolong OLAF's investigation and procedures.
- (11) In the procedures governing OLAF investigations, the specificities of the status of the members of the EU institutions defined in the Treaty on the European Union should be recognised and reflected in specific provisions aimed at ensuring the proper functioning of the institutions to which they belong. Indeed the political mandate, independent status, special responsibilities and/or special procedure of election or appointment of the members of the EU institutions distinguish them, not individually but functionally, from other persons concerned by OLAF's investigations. Inspection by OLAF's staff of the professional office of members of EU institutions, with a view to taking copies of documents or any other data support, should therefore be made subject to prior authorisation by the Controller. The Controller should carry out an

objective assessment of the legality of the investigative measure OLAF intends to conduct and whether the same objective could be achieved by less intrusive means.

- (12) Regulation No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies is applicable to the processing of personal data for the purposes of this Regulation.
- (13) This Regulation in no way diminishes 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. Entrusting to an independent Controller the task of examining complaints and issuing prior authorisations to OLAF is accordingly in full compliance 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.

HAVE ADOPTED THIS REGULATION:

### *Article 1*

#### *Amendment to Regulation 883/2013*

Regulation No 883/2013 is amended as follows:

- 1) In Article 2, the following paragraph (8) is added after paragraph (7):

“(8) “member of an EU institution” shall mean 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 and a member of the Court of Auditors.”

- 2) In Article 9(2) fourth sub-paragraph, the following second sentence is inserted:

“The person concerned shall however be informed of his rights at the beginning of the taking of the statements, in particular of the right to be assisted by a person of his choice.”

- 3) The following Articles 9a, 9b and 9c are inserted after Article 9:

#### "Article 9a

#### **The Controller of procedural guarantees**

1. Any person concerned by an investigation by the Office shall be entitled to lodge a complaint with the Controller of procedural guarantees (hereinafter “the Controller”) regarding the respect by the Office of the procedural guarantees provided in Article 9.
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 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 9(4) shall be filed before the expiry of the period of notice laid down in these provisions.

3. When receiving 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.
4. The Office shall transmit to the Controller, without prejudice to Article 10 of this Regulation, any relevant information necessary to issue a recommendation.
5. The Controller shall issue a recommendation on the complaint within one month of the communication by the Office of relevant action to remedy the issue or from the expiry of the period referred to in Article 9a(3). The recommendation shall be submitted to the Office and communicated to the complainant. In exceptional cases, duly motivated in a letter addressed to the Director-General, the Controller may decide on extending the period for issuing the recommendation by a further 15 days. The absence of a recommendation by the Controller within the time limits set out in this paragraph shall be deemed closure of 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. Upon their consent, the Controller may ask witnesses to provide written or oral explanations he considers relevant in ascertaining the facts.
7. The Director-General shall not be obliged to follow the Controller's recommendation on the issue. However without prejudice to Article 7(5), if he decides not to follow the recommendation, he shall communicate to the complainant and to the Controller the main reasons for that decision, inasmuch as it does not affect the on-going investigation. He shall state the reasons for not following the Controller's recommendation in a motivated note to be attached to the final investigation report.
8. The Director-General may request, indicating a time limit, the opinion of the Controller on any matter related to the respect of procedural guarantees in his mandate, including on the decision to defer information of the person concerned referred to in Article 9(3).
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 EU 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.)

#### Article 9b

##### **Prior authorisation for certain investigative measures**

1. Without prejudice to the independence of the Office with respect to the discretion to conduct the investigation under way, the Director-General shall first obtain the authorisation of the Controller when the Office intends to exercise its power to inspect the professional office of a member of an EU institution at the premises of an EU institution during an internal investigation or to take copies of documents or of any data support located in this office, irrespective of the nature of the support on which the data is stored. To this end, the Office shall transmit any relevant information necessary to assess the request for authorisation. This procedure is to be regarded as confidential and the Controller shall not disclose any information concerning it.



2. In taking his decision on whether or not to grant authorisation for the aforementioned investigative measures, the Controller shall carry out an objective assessment of their legality and examine whether the same objective could be achieved with less intrusive investigative measures. The Controller shall reply to the request for an authorisation promptly and no later than 48 hours after receiving the request. The absence of a reply by the Controller within this time limit shall be deemed to be an authorisation.
3. In duly justified urgent cases, the Office may request that the time limit referred to in paragraph 2 is shortened to 24 hours, in agreement with the Controller. The time limit may also be extended to a maximum of 72 hours at the duly motivated request of the Controller.

#### Article 9c

### **Appointment and status of the Controller**

1. The Controller and his substitute shall be appointed by common accord of the European Parliament, the Council and the Commission for a non-renewable term of five years. On expiry of their terms, they should remain in office until they are replaced.

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 and of the substitute, after a favourable opinion on the selection procedure has been given by the Supervisory Committee.

The decision to appoint the Controller and his substitute shall also include a reserve list of potential candidates to replace the Controller for the remainder of his term of office in the event of resignation, death, permanent incapacity or removal from office.

The Controller and his substitute shall be administratively attached to the Commission. Their Secretariat shall be provided by the Commission, in close consultation with the Controller.

2. The Controller and his substitute shall exercise their functions in complete independence and shall neither seek nor take instructions from anyone in the performance of their duties. They shall not perform any functions within the Office. In exercising their functions they shall take account of the need for effective application of the rules on the protection of the financial interests of the European Union and on the fight against fraud laid down in Union legislation.
3. If the Controller or his substitute cease to fulfil the conditions required for the performance of their duties, or if they are found guilty of serious misconduct, the European Parliament, the Council and the Commission may, by common accord, relieve them of their duties.
4. The Controller shall report on his activities, on an annual basis, to the European Parliament, the Council, the Commission, the Supervisory Committee and the Office. His reports shall not refer to individual cases under investigation and ensure the confidentiality of investigations even after their closure.”

*Article 2*

This Regulation shall enter into force on the [one year after its publication in the Official Journal of the European Union].

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 as regards the establishment of a Controller of procedural guarantees

#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>3</sup>

Policy area: to be determined

#### 1.3. Nature of the proposal/initiative

- The proposal/initiative relates to a **new action**
- The proposal/initiative relates to a **new action following a pilot project/preparatory action**<sup>4</sup>
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objective(s)

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Fight against fraud – Article 325 TFEU

##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No 7.1.a

ABM/ABB activity(ies) concerned

24.01. Administrative expenditure of policy area Fight against fraud

<sup>3</sup> ABM: activity-based management – ABB: activity-based budgeting.

<sup>4</sup> As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The establishment of a Controller of procedural guarantees is expected to lead to:

- Enhanced protection of the procedural rights of persons concerned by OLAF investigations;
- Improved monitoring of compliance with the procedural requirements for investigations;
- Ex-post control of the respect of the procedural guarantees of any person concerned by an OLAF investigation by the Controller of procedural guarantees, acting on complaint;
- Prior authorisation by the Controller of certain investigative measures concerning members of EU institutions (verification of the legality and whether the same objectives could be achieved by less intrusive means).

### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

- Prompt handling of the complaints by the Controller;
- Prompt delivering by the Controller of the authorisation requested by OLAF to inspect offices and/or take copies of documents of members of the EU institutions;

## 1.5. **Grounds for the proposal/initiative**

### 1.5.1. *Requirement(s) to be met in the short or long term*

The establishment of the Controller of procedural guarantees should offer persons concerned in OLAF internal and external investigations an additional complaints procedure against the potential violation of their procedural rights. It will also raise OLAF's perceived accountability.

The Controller will also authorise OLAF to carry out inspections of offices and taking of copy of documents and thus take into account the special way in which they were elected or appointed.

### 1.5.2. *Added value of EU involvement: Requirement(s) to be met in the short or long term*

OLAF is an EU body and therefore any additional mechanism of control should be placed at the same level. The Controller of procedural guarantees would ensure the highest level of protection of procedural rights, with the lowest possible impact on the duration and effectiveness of OLAF investigations. It would also check the legality of certain investigative measures related to members of EU institutions and whether the same result could be achieved by using less intrusive means. This approach is justified by the special status of the members of EU institutions, the way they were elected or appointed, as well as their statutory independence.

### 1.5.3. *Lessons learned from similar experiences in the past*

The **Hearing Officer** for competition proceedings provides companies under investigation with an effective way of complaining against possible non-respect by the Commission of certain procedural rights. The Controller of procedural guarantees should provide persons concerned in OLAF investigations with a review mechanism

inspired by the one in place in the field of competition, and adapted to the legal framework of anti-fraud investigations.

**Proposals** to establish such a complaints procedure, external to OLAF, have already been discussed in the past. The Commission had introduced in its previous proposal to amend Regulation No. 1073/1999 on investigations conducted by OLAF - COM(2006) 244 final - the concept of a “Review adviser”, while in its 2011 amended proposal - COM(2011) 135 - the concept a of “review procedure”. Both proposed functions were designed to ensure a swift control of the compliance with procedural rights of persons concerned by OLAF investigations. However, neither of the two proposals was acceptable to the legislator because of difficulties to reconcile a high degree of independence from OLAF with the need for cost-efficiency and cost-neutrality.

The Commission now proposes the establishment of a Controller of procedural guarantees, who would be independent, but administratively attached to the Commission. The office of the Controller would be expressly endowed with guarantees of complete independence vis-à-vis OLAF, the Commission and the other EU institutions.

The revised OLAF Regulation which has entered into force in October 2013 provides for a set of procedural rights for the persons concerned by OLAF’s internal and external investigations, as well as for witnesses.

*1.5.4. Compatibility and possible synergy with other appropriate instruments: Requirement(s) to be met in the short or long term*

OLAF Regulation 883/2013 was designed to strengthen the governance of OLAF, reinforcing procedural rights in internal and external investigations and OLAF’s exchange of information both with the institutions and with the Member States’ authorities. The Office of the Controller completes Regulation 883/2013 with an independent handling of complaints concerning the rights provided for in this Regulation.

The initiative is also compatible and coherent with the Regulation on the establishment of the European Public Prosecutor’s Office (COM(2013) 534 final). The establishment of the European Public Prosecutor's Office (EPPO) will bring about a substantial change in the way investigations concerning fraud and other illegal activities affecting the financial interests of the European Union are carried out in the Union. In the future, for criminal conduct falling within the remit of the EPPO, the ensuing investigations would be conducted by the EPPO as a prosecutorial body, rather than – as today – by OLAF which carries out administrative investigations. This change would entail, for the persons under investigation by the EPPO, the application of procedural guarantees typical of a judicial body. The reinforcement of procedural guarantees of persons concerned by OLAF investigations through the establishment of a Controller of procedural guarantees represents, to a certain extent, a preparatory step in the direction of establishing the EPPO.

## 1.6. Duration and financial impact

- Proposal/initiative of **limited duration**
  - Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
  - Financial impact from YYYY to YYYY
- Proposal/initiative of **unlimited duration**
  - Implementation with a start-up period from YYYY to YYYY,
  - followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>5</sup>

### From the 2014 budget

- Direct management** by the Commission
  - by its departments, including by its staff in the Union delegations;
  - by the executive agencies;
- Shared management** with the Member States
- Indirect management** by delegating implementation tasks to:
  - third countries or the bodies they have designated;
  - international organisations and their agencies (to be specified);
  - the EIB and the European Investment Fund;
  - bodies referred to in Articles 208 and 209 of the Financial Regulation;
  - public law bodies;
  - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
  - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
  - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
  - *If more than one management mode is indicated, please provide details in the "Comments" section.*

Comments

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<sup>5</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

#### *2.1.1. Specify frequency and conditions. Requirement(s) to be met in the short or long term*

The Controller of procedural guarantees should report annually on its activity to the European Parliament, the Council, the Commission, the Supervisory Committee, and to the Office.

### **2.2. Management and control system**

#### *2.2.1. Risk(s) identified. Requirement(s) to be met in the short or long term*

- The possible lack of independence of the Controller.
- The possible understaffing of his Secretariat.

#### *2.2.2. Information concerning the internal control system set up. Requirement(s) to be met in the short or long term*

Given the requirement of independence, the Controller should be subject to the 16 Internal Control Standards of the Commission, with special focus on data protection. He would then be subject to verifications and assessments by the Commission Internal Audit Service. Finally, an ex-post control could be performed by the European Court of Auditors.

#### *2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error. Requirement(s) to be met in the short or long term*

To be determined after agreement on the control system (IAS).

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

There is a clear separation between the activities of the Controller of procedural guarantees and of the Supervisory Committee, and between the secretariats of the two structures.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...][Heading.....] .....]- To be completed after agreement of the DG to which the Controller will be attached	Diff./non-diff. (6)	from EFTA countries <sup>7</sup>	from candidate countries <sup>8</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
[...][XX.YY.YY.YY]	Diff./non-diff.	NO	NO	NO	NO	

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...][Heading.....] .....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
[...][XX.YY.YY.YY]		YES/NO O	YES/NO	YES/NO O	YES/NO	

<sup>6</sup> Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

<sup>7</sup> EFTA: European Free Trade Association.

<sup>8</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.



### 3.2. Estimated impact on expenditure

[This section should be filled in using [spreadsheet on budget data of an administrative nature](#) (second document in annex to this financial statement) and uploaded to CISNET for interservice consultation purposes.]

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	Number	[...][Heading..... ....]
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DG: <.....>			Year N <sup>9</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Number of budget line	Commitments	(1)								
	Payments	(2)								
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>10</sup>										
Number of budget line		(3)								
<b>TOTAL appropriations for DG &lt;....&gt;</b>	Commitments	=1+1a +3								
	Payments	=2+2a								

<sup>9</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>10</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

		+3								
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• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
<b>TOTAL appropriations for HEADING &lt;....&gt; of the multiannual financial framework</b>	Commitments	=4+ 6								
	Payments	=5+ 6								

**If more than one heading is affected by the proposal / initiative:**

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
<b>TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)</b>	Commitments	=4+ 6								
	Payments	=5+ 6								

<b>Heading of multiannual financial framework</b>	<b>5</b>	" Administrative expenditure "
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EUR million (to three decimal places)

		2015	2016	2017	2018	2019	2020	TOTAL
DG: <...> - to be determined								
• Human resources		0.198	0.396	0.396	0.396	0.396	0.396	2.178
▪ Other operating cost (Special Adviser and substitute)		0.045	0.090	0.090	0.090	0.090	0.090	0.495
• Other administrative expenditure		0.01	0.01	0.01	0.01	0.01	0.01	0.06
<b>TOTAL DG &lt;...&gt;</b>		<b>0.253</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>2.733</b>
		Appropriations						

<b>TOTAL appropriations for HEADING 5 of the multiannual financial framework</b>	(Total commitments = Total payments)	<b>0.253</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>2.733</b>
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EUR million (to three decimal places)

		2015	2016	2017	2018	2019	2020	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	<b>0.253</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>2.733</b>
	Payments	<b>0.253</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>2.733</b>

3.2.2. *Estimated impact on operational appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs  ↓			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL			
	OUTPUTS																			
	Type <sup>11</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No total	Total cost
SPECIFIC OBJECTIVE No 1 <sup>12</sup> ...																				
- Output																				
- Output																				
- Output																				
Subtotal for specific objective No 1																				
SPECIFIC OBJECTIVE NO 2 ...																				
- Output																				
Subtotal for specific objective No 2																				
<b>TOTAL COST</b>																				

<sup>11</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>12</sup> As described in point 1.4.2. ‘Specific objective(s)...’

### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2015	2016	2017	2018	2019	2020	TOTAL
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<b>HEADING 5 of the multiannual financial framework</b>							
Human resources	0.198	0.396	0.396	0.396	0.396	0.396	<b>2.178</b>
Other operating cost (Special Adviser and substitute)	0.045	0.090	0.090	0.090	0.090	0.090	0.495
Other administrative expenditure	0.01	0.01	0.01	0.01	0.01	0.01	0.06
<b>Subtotal HEADING 5 of the multiannual financial framework</b>	<b>0.253</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>2.733</b>

<b>TOTAL</b>	<b>0.253</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>0.496</b>	<b>2.733</b>
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The human resources appropriations required will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

The figures in the “Human resources” line correspond to the cost involved by the recruitment of 2 AD grade and 1 AST/SC grade staff, with the figure for the first year reduced to half, to reflect the reduced workload expected in the first year of existence of the Controller.

The figure in the “Other operating cost” line reflects the cost of the Controller, who would be an AD15 grade Special Adviser remunerated according to the number of days of actual work. The line also includes the cost of the substitute, but this does not have to be reflected separately and neither it implies additional cost, since he would be called on only to replace the Controller, who would then not be remunerated.

Given the expected workload, the part-time work foreseen for the Controller (and his substitute) is estimated to amount to 25 per cent of the ordinary monthly full-time work time in the first year of activity (5,5 days per month), and 50 per cent thereafter (11 days per month).

There are also foreseen 2 days of mission per month.

### 3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	2015	2016	2017	2018	2019	2020
XX 01 01 01 (Headquarters and Commission's Representation Offices)	1.5	3	3	3	3	3
XX 01 01 02 (Delegations)						
XX 01 05 01 (Indirect research)						
10 01 05 01 (Direct research)						
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>13</sup></b>						
XX 01 02 01 (CA, SNE, INT from the "global envelope")						
XX 01 02 02 (CA, LA, SNE, INT and JED in the delegations)						
XX 01 04 yy <sup>14</sup>	- at Headquarters					
	- Delegations					
XX 01 05 02 (CA, SNE, INT - Indirect research)						
10 01 05 02 (CA, INT, SNE - Direct research)						
Other budget lines 25 01 02 03	0.25	0.5	0.5	0.5	0.5	0.5
<b>TOTAL</b>	<b>1.75</b>	<b>3.5</b>	<b>3.5</b>	<b>3.5</b>	<b>3.5</b>	<b>3.5</b>

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Receiving and reviewing complaints about their procedural rights lodged by persons concerned in OLAF investigations.
External staff	

<sup>13</sup> CA= Contract Staff; LA = Local Staff; SNE= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations).

<sup>14</sup> Sub-ceiling for external staff covered by operational appropriations (former "BA" lines).

3.2.4. *Compatibility with the current multiannual financial framework*

- Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>15</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations cofinanced								

<sup>15</sup> See points 19 and 24 of the Interinstitutional Agreement (for the period 2007-2013).

### 3.3. Estimated impact on revenue

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>16</sup>						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article .....								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>16</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.