

EUROPEAN PARLIAMENT

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Committee on Budgetary Control

2006/0084(COD)

22.8.2008

*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)
(COM(2006)0244 – C6-0228/2006 – 2006/0084(COD))

Committee on Budgetary Control

Rapporteur: Ingeborg Gräßle

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)
(COM(2006)0244 – C6-0228/2006 – 2006/0084(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0244),
 - having regard to Articles 251(2) and 280(4) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0228/2006),
 - having regard to Court of Auditors' Opinion No 7/2006¹,
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Legal Affairs (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a regulation – amending act
Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) In acknowledgement of the importance of prevention aspects in the drawing up of a European policy in the field of the protection of the European Community's financial interests (including the fight against fraud and corruption), the remit of the European Anti-Fraud Office (hereinafter 'the

¹ OJ C 8, 12.1.2007.

Office') should be broadened to include those aspects. Legislative and administrative measures at European level should be devised on the basis of the Office's operational practice in the above field.

Or. fr

Amendment 2

Proposal for a regulation – amending act Recital -1 a (new)

Text proposed by the Commission

Amendment

(-1a) Given the scale of the Community funds allocated to the external-aid sector, the number of investigations carried out by the Office in that sector and the existence of international cooperation for the purposes of investigation, a legal basis should be established which will enable the Commission to seek assistance from the competent authorities in third countries and from international organisations in the performance of the Office's tasks.

Or. fr

Amendment 3

Proposal for a regulation – amending act Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The accuracy of the information forwarded to the Office in connection with its remit must be checked as quickly as possible. Hence it should be made clear that the institutions, bodies, offices and agencies will grant the Office immediate

and automatic access to databases relating to the management of Community funds and to any other database and relevant information, with the exception of the operational information held by Eurojust and Europol.

Or. fr

Amendment 4

Proposal for a regulation – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The Office’s operational practice is highly dependent upon cooperation with the Member States. For the Office’s benefit the Member States should identify their competent authorities which are able to provide employees of the Office with the assistance they require in the course of their duties.

Or. fr

Amendment 5

Proposal for a regulation – amending act Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) If the operational, legal and administrative framework for combating fraud is to be improved, the Office must know how the results of its investigations have been followed up. Hence the Member States’ competent authorities and the European institutions, bodies, offices and agencies (and also - with assistance from the Commission - third-country

authorities and international organisations) should be required to report regularly to the Office on progress made as regards action taken in response to the final investigation report issued by the Office.

Or. fr

Amendment 6

Proposal for a regulation – amending act Recital 4 c (new)

Text proposed by the Commission

Amendment

(4c) In view of the major benefits of strengthening cooperation between the Office, Europol and Eurojust, a legal basis must be introduced which will enable the Office to conclude agreements with those two agencies. In order to harness the respective powers of Eurojust, the Office and the Member States' competent authorities in respect of deeds liable to criminal investigation, the Office will be called upon to inform Eurojust in cases of suspected illegal activity damaging to the European Community's financial interests and involving serious forms of criminality and at least two Member States.

Or. fr

Amendment 7

Proposal for a regulation – amending act Recital 5

Text proposed by the Commission

Amendment

(5) It is necessary, for the sake of legal certainty, to **clarify** the procedural

(5) It is necessary, for the sake of legal certainty, to **codify in this Regulation** the

guarantees applicable in internal or external investigations conducted by the Office. That does not affect any more extensive protection which may derive from the rules of the Treaties, the Staff Regulations and any relevant national provisions.

fundamental procedural guarantees applicable in internal or external investigations conducted by the Office. That does not affect any more extensive protection which may derive from the rules of the Treaties, the Staff Regulations and any relevant national provisions.

Or. fr

Amendment 8

Proposal for a regulation – amending act Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The procedural guarantees and the legitimate rights of persons who are under investigation must be upheld and applied without any difference in treatment stemming from the type of investigation carried out by the Office.

Or. fr

Amendment 9

Proposal for a regulation – amending act Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) In order to ensure that the Office's operational activities are as transparent as possible (with particular regard to the principles governing the investigation procedure, the legitimate rights of the persons concerned and the procedural guarantees, the provisions relating to data-protection, the policy for the forwarding of information concerning certain aspects of the Office's operational

activity, checks on the legality of investigative acts and the means of redress available to the persons concerned), a legal basis should be established which will enable the Office to adopt a code of investigative procedure. The code should be published in the Official Journal of the European Union.

Or. fr

Amendment 10

**Proposal for a regulation – amending act
Recital 5 c (new)**

Text proposed by the Commission

Amendment

(5c) In order to ensure that procedural guarantees are upheld at every stage of the investigation, checks on legality must be carried out by the Office, in particular prior to the opening and the closing of an investigation and prior to any forwarding of information to the Member States' competent authorities. Such checks will be carried out by legal experts who may play a judicial role within a Member State and who will work within the Office. The Director-General will also request those experts' opinion on behalf of the Office's executive committee.

Or. fr

Amendment 11

**Proposal for a regulation – amending act
Recital 6**

Text proposed by the Commission

(6) In order to strengthen the protection of the individual rights of persons under investigation, and without prejudice to Article 90a of the Staff Regulations of Officials of the European Communities and the powers of the Court of Justice of the European Communities under the Treaty, a person implicated personally must be entitled, at the final stage of an investigation, to be provided with the conclusions and recommendations of the final investigation report ***and, if that person considers that procedural guarantees have not been complied with, must be able to file a request for an opinion with the Review Adviser established by this Regulation.***

Amendment

(6) In order to strengthen the protection of the individual rights of persons under investigation, and without prejudice to Article 90a of the Staff Regulations of Officials of the European Communities and the powers of the Court of Justice of the European Communities under the Treaty, a person implicated personally must be entitled, at the final stage of an investigation, to be provided with the conclusions and recommendations of the final investigation report.

Or. fr

Amendment 12

**Proposal for a regulation – amending act
Recital 8**

Text proposed by the Commission

(8) Where it is found that facts which may constitute criminal offences, brought to light by the final report on an internal investigation, cannot, on account of their nature, because they are not serious enough or because the financial loss was only minor, be effectively dealt with before the courts, the Director-General of the Office should transmit the final report direct to the institution, body, office or agency concerned in order that more appropriate action then be taken. It is necessary that he inform the Supervisory Committee and the Review Adviser of all duly reasoned decisions not to transmit

Amendment

deleted

the final report to the judicial authorities.

Or. fr

Amendment 13

Proposal for a regulation – amending act Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The fundamental rights of the persons under investigation must be upheld at all times, in particular when information is forwarded. The basic principles of the Office's forwarding policy should be clarified. The forwarding of information concerning the Office's investigations to the European Parliament, to the Council, to the Commission and to the Court of Auditors (either bilaterally or pursuant to the consultation procedure) will be carried out with due regard to the confidentiality of investigations, the legitimate rights of the persons concerned and - where appropriate - the Member States' provisions applicable to judicial procedures. A legal basis enabling the Office to conclude agreements with the institutions concerned relating to the forwarding of information should be introduced. The Director-General should ensure that any forwarding of information to the public is in accordance with the principles of neutrality and impartiality. The consequences of non-authorised disclosure of information should be made clear in the Code of Investigative Procedure.

Or. fr

Amendment 14

Proposal for a regulation – amending act Recital 10

Text proposed by the Commission

(10) It is appropriate to **strengthen** the Supervisory Committee's **powers of review in relation, in particular, to compliance with the provisions governing information exchanges between the Office and the institutions, bodies, offices and agencies, and to developments in the application of procedural guarantees and duration of investigations. It is also necessary to establish cooperation between the Supervisory Committee and the European Parliament, the Council and the Commission, by enabling the Supervisory Committee, without affecting the independence of its members, to meet representatives of those institutions in the context of a structured dialogue.**

Amendment

(10) It is appropriate to **clarify** the Supervisory Committee's **role and to revise the criteria and the procedure for appointing its members. At the time when they are selected, candidates will be engaged in high-level judicial or investigative tasks. They will be appointed for a non-renewable six-year period.**

Or. fr

Amendment 15

Proposal for a regulation – amending act Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is appropriate to redefine the Supervisory Committee's tasks, which stem from its remit to ensure that the Office performs its investigations independently. The Committee will monitor developments with regard to procedural guarantees and the duration of investigations. It will be informed of investigations exceeding 12 months in duration and it will issue opinions to the Director-General (and, where appropriate, to the institutions)

concerning investigations which are not completed within 24 months. It should be pointed out that the Supervisory Committee does not intervene in the progress of current investigations.

Or. fr

Amendment 16

Proposal for a regulation – amending act Recital 10 b (new)

Text proposed by the Commission

Amendment

(10b) Consideration should be given to the legal, institutional and operational framework of the fight against fraud, corruption and any other activity detrimental to the European Community's financial interests. For this purpose the institutions should be called upon to coordinate their action and to promote discussion of the major aspects of European anti-fraud strategy. A procedure for consultation involving the European Parliament, the Council and the Commission should be established. Consultation should relate to certain aspects of cooperation in this area between the Office, the Member States and the European institutions, to relations with third countries and international organisations, to the Office's investigative policy and to the reports and analyses drawn up by the Supervisory Committee. The Director-General of the Office and the chairman of the Supervisory Committee will take part in the consultation, which will take place at least once a year.

Or. fr

Amendment 17

Proposal for a regulation – amending act Recital 11

Text proposed by the Commission

(11) In order to reinforce complete independence in the running of the Office, the Director General should be appointed for a term of **seven** years which will not be renewable.

Amendment

(11) In order to reinforce complete independence in the running of the Office, the Director General should be appointed for a term of **six** years which will not be renewable. ***At the time of selection the candidates should be engaged in high-level judicial or investigative tasks and should have at least 15 years' professional experience in the anti-fraud field. The appointment procedure should be completed within nine months. The Director-General will be nominated by common agreement between the European Parliament and the Council and will be appointed by the Commission.***

Or. fr

Amendment 18

Proposal for a regulation – amending act Recital 12

Text proposed by the Commission

(12) In order to strengthen respect for procedural guarantees, ***a Review Adviser should be required to deliver an opinion, in complete independence, of his own motion or on requests for opinions relating to such guarantees, and to give opinions in certain other cases, in particular on requests made by the person implicated personally.***

Amendment

(12) In order to strengthen respect for procedural guarantees, ***any person who is under investigation by the Office should be able to lodge a complaint with the Director-General of the Office. Complaints will be dealt with by a Review Adviser acting in complete independence, appointed ad hoc by the Director-General and selected from amongst the Directors of the Office who are not involved in the investigation. The Review Adviser will deliver his opinion within 30 working days and will forward it to the plaintiff, to the Director-General of the Office and to***

the Supervisory Committee.

Or. fr

Amendment 19

Proposal for a regulation – amending act Recital 13

Text proposed by the Commission

Amendment

(13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹.

deleted

¹ OJ L 184, 17.7.1999, p. 23.

Or. fr

Amendment 20

Proposal for a regulation – amending act Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) After a four-year period the application of this Regulation should be assessed. The Commission will submit a report to the European Parliament and to the Council, accompanied by an opinion issued by the Supervisory Committee.

Or. fr

Amendment 21

Proposal for a regulation – amending act

Article 1 – point -1 (new)

Regulation (EC) 1073/1999

Article 1 – paragraph 1

Text proposed by the Commission

Amendment

(-1) Article 1(1) is replaced by the following text:

"1. In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Community, the European Anti-Fraud Office established by Commission Decision 1999/352/EC, ECSC, Euratom (hereinafter 'the Office') shall exercise the powers of investigation conferred on the Commission by the Community rules and Regulations and agreements in force in those areas and - in accordance with the cooperation agreements in force - in third countries."

Or. fr

Amendment 22

Proposal for a regulation – amending act

Article 1 – point -1a (new)

Regulation (EC) 1073/1999

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

(-1a) Article 1(2) is replaced by the following text:

"2. The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their activities for the

purpose of protecting the European Community's financial interests against fraud. The Office shall contribute to the design and development of methods of preventing and of fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community."

Or. fr

Amendment 23

Proposal for a regulation – amending act

Article 1 – point 1

Regulation (EC) 1073/1999

Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

As part of its investigative function, the Office shall carry out the inspections and checks 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 agreements in force, in third countries.

Amendment

As part of its investigative function, the Office shall carry out the inspections and checks 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 agreements in force, in third countries **and in international organisations**.

Or. fr

Amendment 24

Proposal for a regulation – amending act

Article 1 – point 1

Regulation (EC) No 1073/1999

Article 3 – paragraph 2

Text proposed by the Commission

2. With a view to establishing that there has been fraud, corruption or any other

Amendment

2. With a view to establishing that there has been fraud, corruption or any other

illegal activity referred to in Article 1 in connection with a grant agreement or decision or a contract concerning Community funding, the Office may, in accordance with the procedures laid down by Regulation (Euratom, EC) No 2185/96, conduct on-the-spot checks and inspections on economic operators concerned by such funding.

illegal activity referred to in Article 1 in connection with a grant agreement or decision or a contract concerning Community funding, the Office may, in accordance with the procedures laid down by Regulation (Euratom, EC) No 2185/96, conduct on-the-spot checks and inspections on economic operators concerned **directly or indirectly** by such funding.

Or. fr

Justification

Compte tenu du fait que les modalités d'enquête prévues par le règlement en objet reprennent celles prévues par le Règlement (EC) No 2185/96, il convient de prévoir pour le règlement (CE) no. 1073/99 le même champ d'application du règlement (CE) no. 2185/96 en ce qui concerne les opérateurs économiques, et ceci afin d'améliorer l'efficacité des enquêtes de l'OLAF.

Amendment 25

Proposal for a regulation – amending act

Article 1 – point 1

Regulation (EC) No 1073/1999

Article 3 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The Member States shall adopt and implement all the measures required in order to ensure that the Office performs the investigative function referred to in this Article. They shall offer their support to the Office in connection with on-the-spot inspections and checks carried out in accordance with the rules laid down in Regulation (EC, Euratom) No 2185/96 on economic operators concerned directly or indirectly by Community funding.

Or. fr

Justification

Il est nécessaire de rappeler, dans le cadre de ce règlement, les obligations à charge des autorités compétentes des Etats membres, de collaborer avec l'OLAF dans la phase préliminaire à l'ouverture d'une enquête, selon les modalités prévues par le règlement (CE, Euratom) n° 2185/96.

Amendment 26

Proposal for a regulation – amending act

Article 1 – point 1

Regulation (EC) No 1073/1999

Article 3 – paragraph 3

Text proposed by the Commission

3. During an external investigation and where **strictly** necessary in order to establish that fraud, corruption or any other illegal activity referred to in Article 1 has occurred, the Office may have access to any relevant information held by the institutions, bodies, offices and agencies connected with the matter under investigation. Article 4(2) and (4) shall apply for that purpose.

Amendment

3. During an external investigation and where necessary in order to establish that fraud, corruption or any other illegal activity referred to in Article 1 has occurred, the Office may have access to any relevant information held by the institutions, bodies, offices and agencies connected with the matter under investigation. Article 4(2) and (4) shall apply for that purpose.

Or. fr

Justification

Il convient de faciliter le travail d'enquête de l'OLAF quant à l'accès aux informations détenues par les institutions.

Amendment 27

Proposal for a regulation – amending act

Article 1 – point 1

Regulation (EC) No 1073/1999

Article 3 – paragraph 4

Text proposed by the Commission

4. Where the Office has to hand, prior to an investigation, information which suggests that there has been fraud, corruption or any

Amendment

4. Where the Office has to hand, prior to an investigation, information which suggests that there has been fraud, corruption or any

other illegal activity referred to in Article 1, the Director-General of the Office may inform the competent authorities of the Member States concerned and, without prejudice to the sectoral rules, those authorities shall ensure that appropriate action is taken and, where necessary, undertake investigations in accordance with national law, in which staff of the Office may take part. The competent authorities of the Member States concerned shall inform the Director-General of the Office of their findings on the basis of such information.

other illegal activity referred to in Article 1, the Director-General of the Office may inform the competent authorities of the Member States concerned and, without prejudice to the sectoral rules, those authorities shall ensure that appropriate action is taken and, where necessary, undertake investigations in accordance with national law, in which staff of the Office may take part. The competent authorities of the Member States concerned shall inform the Director-General of the Office ***of the action taken and*** of their findings on the basis of such information.

Or. fr

Justification

Il convient de prévoir que les autorités compétentes des Etats membres informent le directeur général de l'Office aussi des mesures prises à la suite de la transmission d'information par l'OLAF avant l'ouverture d'une enquête

Amendment 28

Proposal for a regulation – amending act

Article 1 – point 1

Regulation (EC) No 1073/1999

Article 3 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Where the Office decides not to open an investigation, it shall inform Eurojust that items of information which point to the existence of fraud, corruption or any other illegal activity referred to in Article 1 which constitutes a serious form of criminality and involves two or more Member States have been forwarded to the Member States' competent authorities.

Or. fr

Justification

Il convient de prévoir un échange d'information systématique entre OLAF et Eurojust chaque fois qu'une autorité compétente nationale reçoit par l'OLAF des informations relatives à des soupçons de fraude, corruption ou autre activité visée à l'article 1er du présent règlement, et qui relèvent de formes graves de criminalité, impliquant deux Etats membres ou plus. Cette mesure améliore la coordination, portant sur des faits de fraude grave transnationale, entre l'OLAF et Eurojust.

Amendment 29

Proposal for a regulation – amending act

Article 1 – point 1 a (new)

Regulation (EC) No 1073/1999

Article 3 a (new)

Text proposed by the Commission

Amendment

(1a) The following Article 3a is inserted:

"Article 3a

Cooperation on the part of the Office with Eurojust, Europol and other international organisations

Pursuant to the powers and responsibilities conferred upon it under this Regulation, the Office may conclude cooperation agreements with Eurojust, Europol and other international organisations."

Or. fr

Amendment 30

Proposal for a regulation – amending act

Article 1 – point 2 -a (new)

Regulation (EC) No 1073/1999

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

(-a) Paragraph 1, subparagraph 2, is replaced by the following text:

"These internal investigations shall be carried out subject to the rules of the Treaties, in particular the Protocol on privileges and immunities of the European Communities, and with due regard for the Staff Regulations under the conditions and in accordance with the procedures provided for in this Regulation and in decisions adopted by each institution, body, office and agency; *from the point of view of procedural guarantees and the legitimate rights of the persons concerned there must be no difference in treatment by comparison with external investigations.*"

Or. fr

Justification

Il est bien de souligner que les personnes soumises aux enquêtes de l'OLAF doivent avoir un traitement égal, sur le plan des garanties de procédure et des droits légitimes, indépendamment du fait qu'il s'agit d'une enquête interne ou externe.

Amendment 31

Proposal for a regulation – amending act

Article 1 – point 2 a

Regulation (EC) No 1073/1999

Article 4 – paragraph 3

Text proposed by the Commission

3. In accordance with the procedures laid down by Regulation (Euratom, EC) No 2185/96, the Office may carry out on-the-spot inspections at the premises of economic operators in order to obtain access to information relevant to the matter under internal investigation.

Amendment

3. In accordance with the procedures laid down by Regulation (Euratom, EC) No 2185/96, the Office may carry out on-the-spot inspections at the premises of economic operators ***who are directly or indirectly concerned*** in order to obtain access to information relevant to the matter under internal investigation.

Or. fr

Justification

Compte tenu du fait que les modalités d'enquête prévues par le règlement en objet reprennent

celles prévues par le Règlement (CE) No 2185/96, il convient de prévoir pour le règlement (CE) no. 1073/99 le même champ d'application du règlement (CE) no. 2185/96, en ce qui concerne les opérateurs économiques, et ceci afin d'améliorer l'efficacité des enquêtes de l'Office.

Amendment 32

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1073/1999

Article 5 – paragraph 1

Text proposed by the Commission

1. The Office may open an investigation when sufficiently strong suspicions exist that acts of fraud or corruption or other illegal acts referred to in Article 1 have been committed. The decision whether or not to open an investigation shall take account of the investigation policy priorities and the Office's programme of investigative activities determined in accordance with Articles 11a and 12(5).

That decision shall also take account of the need for efficient utilisation of the Office's resources and for proportionality in the means deployed.

Amendment

1. The Office may open an investigation when sufficiently strong suspicions exist that acts of fraud or corruption or other illegal acts referred to in Article 1 have been committed. The decision whether or not to open an investigation shall take account of the investigation policy priorities and the Office's programme of investigative activities determined in accordance with Articles 11a and 12(5).

Or. fr

Justification

Le principe d'efficience est applicable à la gestion budgétaire même. Il ne convient pas de l'appliquer à la décision sur l'ouverture d'enquête, afin d'éviter à tout prix une situation où l'Office doit renoncer à une enquête faute de ressources pour effectuer cette enquête.

Amendment 33

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1073/1999

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The decision to open an investigation shall be taken by the Director-General of the Office after consulting the Office's Supervisory Committee and in accordance with the provisions concerning checks on legality which are laid down in Article 14(2) of this Regulation.

Or. fr

Justification

La décision finale d'ouvrir ou non une enquête est prise par le directeur général, après consultation du comité exécutif de l'Office, selon la procédure détaillée dans le code de procédure. Dans la pratique actuelle de l'Office, le comité exécutif donne un avis au directeur général, au moment de l'ouverture d'une enquête.

Amendment 34

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1073/1999

Article 5 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

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

The decision to open an external investigation shall be taken by the Director-General of the Office, acting on his own initiative or following a request from a Member State concerned or the ***institutions of the European Communities and of the European Union***.

Or. fr

Justification

Il convient de donner aux institutions aussi la possibilité de demander au directeur général de l'OLAF d'ouvrir une enquête.

Amendment 35

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1073/1999

Article 5 – paragraph 4 – subparagraph 3 (new)

Text proposed by the Commission

Amendment

Prior to the opening and throughout the duration of an investigation, the institutions, bodies, offices and agencies shall provide the Office with immediate and automatic access to databases concerned with the management of Community funds and to any other base containing relevant data and information which will enable the Office to check that the information forwarded is accurate. This provision does not concern Eurojust's and Europol's operational information and databases.

Or. fr

Justification

Il est utile d'insérer une base juridique permettant à l'OLAF d'accéder de façon immédiate et automatique aux bases de données et à toute autre information pertinente dans la phase d'évaluation préliminaire de l'information. Le bien-fondé des informations transmises est rapidement vérifié et l'efficacité d'une enquête, si ouverte par la suite, améliorée.

Amendment 36

Proposal for a regulation – amending act

Article 1 – point 4 a

Regulation (EC) No 1073/1999

Article 6 – paragraph 1

Text proposed by the Commission

Amendment

(a) in paragraphs 1 and 3, “the Director” is replaced by “the Director-General”;

(a) Paragraph 1 is replaced by the following text:

"1. The Director-General of the Office shall direct the conduct of investigations. He may issue written instructions to an

operational Director of the Office to direct the conduct of investigations. Investigations shall be conducted under the authority and the responsibility of the Director-General of the Office by agents nominated by the Office."

Or. fr

Justification

Il est utile de prévoir clairement, pour le directeur général, la compétence d'habiliter un directeur de l'Office à diriger des enquêtes, comme il est prévu dans le Manuel de l'OLAF. Il est également utile de mentionner qu'il est le responsable de l'enquête. La décision finale concernant la clôture d'une enquête reste de responsabilité du directeur général.

Amendment 37

Proposal for a regulation – amending act

Article 1 – point 4 a a (new)

Regulation (EC) No 1073/1999

Article 6 – paragraph 3

Text proposed by the Commission

Amendment

(aa) Paragraph 3 is replaced by the following text:

3. "The Office's employees shall be equipped for each intervention with a written authority issued by the Director-General indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases."

Or. fr

Justification

Afin de faciliter le travail d'enquête des agents désignés de l'OLAF, il convient de prévoir un mandat qui fasse référence : à l'objet et au but de l'enquête, aux bases juridiques pour mener ces enquêtes (droit communautaire et, le cas échéant, droit national) ainsi qu'aux pouvoirs d'enquêtes découlant de ces bases.

Amendment 38

Proposal for a regulation – amending act

Article 1 – point 4 a b (new)

Regulation (EC) No 1073/1999

Article 6 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(ab) The following paragraph 3a is added:

"3a. Where Office employees nominated to carry out an on-the-spot check or inspection in accordance with the rules laid down in Regulation (EC, Euratom) No 2185/96 encounter resistance from an economic operator, the competent authority of the Member State concerned (previously identified by the Office as a contact point) shall be informed immediately. At the Office's request the competent authority of the Member State concerned shall provide them with the assistance which they require in order to carry out their task, as specified in the written authority referred to in paragraph 3. The Member State must ensure that the Office's employees are allowed access (under the same terms and conditions as its competent authorities and in compliance with national law) to all information and documents relating to the facts referred to in Article 1 which prove necessary for the on-the-spot checks and inspections to be carried out satisfactorily."

Or. fr

Justification

Compte tenu de certaines difficultés rencontrées par l'Office lors de l'exécution de contrôles et vérification sur place auprès d'opérateurs économiques, il convient de prévoir que l'OLAF puisse demander à l'Etat membre l'assistance nécessaire, selon les modalités prévues par le règlement 2185/96.

Amendment 39

Proposal for a regulation– amending act

Article 1 – point 4 a c (new)

Regulation (EC) No 1073/1999

Article 6 – paragraph 4

Text proposed by the Commission

Amendment

(ac) Paragraph 4 is replaced by the following text:

"4. During on-the-spot inspections, checks and investigations, the Office's employees shall adopt an attitude in keeping with the rules and practices governing officials of the Member State concerned, with the Staff Regulations and with the decisions referred to in the second subparagraph of Article 4(1). Employees of the Office shall act in accordance with the principle of impartiality. They shall immediately notify the Director-General if in the course of their investigative activities they find themselves in a position which constitutes a conflict of interests. The Director-General shall decide whether or not a conflict of interests exists. Where appropriate he shall give instructions with a view to having such employees replaced".

Or. fr

Justification

Compte tenu de la jurisprudence communautaire en la matière, il convient d'expliciter que l'exercice de la fonction d'enquête d'un agent de l'Office est incompatible avec un conflit d'intérêt. Il s'agit d'un principe par ailleurs qui est repris dans le Manuel de l'Office.

Amendment 40

Proposal for a regulation– amending act

Article 1 – point 4 a d (new)

Regulation (EC) n° 1073/1999

Article 6 – paragraph 5

Text proposed by the Commission

Amendment

(ad) Paragraph 5 is replaced by the following text:

"5. Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case. Employees of the Office must ensure that the investigation is conducted in accordance with procedures which will enable items of evidence to be safeguarded and preserved. If necessary (where there is a risk that items of evidence will disappear) they may ask the competent authority of the Member State concerned to take (in accordance with its internal law) any necessary precautionary or implementing measures."

Or. fr

Justification

Compte tenu du fait que l'activité d'enquête de l'OLAF constitue souvent une phase préparatoire de procédures nationales de suivi, et que parmi les motifs de refus de donner suite aux recommandations de l'OLAF figurent le manque de preuve, il convient de clarifier que l'enquête de l'OLAF doit être conduite rapidement et avec l'objectif de préserver les éléments de preuves, sans préjudice du droit national applicable, et conformément aux dispositions de droit communautaire (Régulation 2185/96).

Amendment 41

Proposal for a regulation– amending act

Article 1 – point 4 b

Regulation (EC) n° 1073/1999

Article 6 – paragraph 5 a – subparagraph 1

Text proposed by the Commission

Amendment

5 a. As soon as investigations reveal that a member, manager, official, servant or any other person serving an institution, body, office or agency may be implicated or show that it might be appropriate to take

5 a. As soon as investigations reveal that a member, manager, official, servant or any other person serving an institution, body, office or agency may be implicated or show that it might be appropriate to take

precautionary or administrative measures to protect the interests of the Union, the institution, body, office or agency concerned ***shall be informed*** of the investigation in progress. The information supplied shall include the following:

(a) the identity of the person or persons under investigation and a summary of the facts in question;

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

(c) any special measures of confidentiality recommended.

precautionary or administrative measures to protect the interests of the Union, ***the Office shall inform*** the institution, body, office or agency concerned ***without delay*** of the investigation in progress. The information supplied shall include the following:

(a) the identity of the person or persons under investigation and a summary of the facts in question;

(b) any information that may assist the institution, body, office or agency in deciding whether it is appropriate to take precautionary or administrative measures in order to protect the interests of the Union, ***and where appropriate some indication regarding the timing of precautionary or administrative measures;***

(c) any special measures of confidentiality recommended.

Or. fr

Justification

Il convient d'assurer que les informations portant sur des implications de fonctionnaires soient communiquées à l'institution concernée dans les meilleurs délais. Il convient aussi de prévoir la possibilité, pour l'OLAF, de donner des indications concernant les délais pour la prise de mesure conservatoire ou administrative

Amendment 42

Proposal for a regulation– amending act

Article 1 – point 4 b

Regulation (EC) no. 1073/1999

Article 6 – paragraph 5 a – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The provision of this information to the institution, body, office or agency may be deferred in cases requiring absolute

secrecy to be maintained for the purposes of the investigation or requiring recourse to investigative procedures under the competence of a Member State's judicial authority, in accordance with national law applicable to investigations. The Director-General shall give reasons for his decision pursuant to Article 14(2) of this Regulation.

Or. fr

Justification

Il convient de prévoir la possibilité pour l'Office de différer l'information telle que prévue à l'ancien article 4 paragraphe 5, subparagraph 2.

Amendment 43

Proposal for a regulation– amending act

Article 1 – point 4 b

Regulation (EC) n° 1073/1999

Article 6 – paragraph 5 a – subparagraph 2

Text proposed by the Commission

The institution, body, office or agency shall decide whether any precautionary or administrative measures are appropriate, with due account being taken of the importance of guaranteeing the effectiveness of the conduct of the investigation and of the specific confidentiality measures recommended by the Office.

Amendment

The institution, body, office or agency shall decide whether any precautionary or administrative measures are appropriate, with due account being taken of the importance of guaranteeing the effectiveness of the conduct of the investigation and of the specific confidentiality measures recommended by the Office. ***The institution, body, office or agency shall inform the Office without delay if any decision is taken to implement measures pursuant to this Article.***

Or. fr

Justification

Il convient de renforcer le cadre régissant le flux d'information entre les institutions et l'OLAF.

Amendment 44

Proposal for a regulation– amending act

Article 1 – point 4 b a)

Regulation (EC) n° 1073/1999

Article 6 - paragraph 6 - subparagraph 2 (new)

Text proposed by the Commission

Amendment

(b a) The following subparagraph 2 is added to paragraph 6:

"Employees of the Office may ask the competent authorities of third countries for assistance in the performance of their duties, pursuant to the provisions of the cooperation agreements concluded with those countries. They may also request assistance from international organisations in the performance of their duties, pursuant to the provisions of the agreements concluded with those organisations."

Or. fr

Justification

Compte tenu du nombre grandissant d'enquêtes externes dans le domaine de l'aide extérieure, il convient de mentionner les dispositions en matière d'assistance à l'OLAF. Ceci vaut également aussi pour les autorités compétentes des pays tiers, conformément aux accords de coopération conclus avec eux.

Amendment 45

Proposal for a regulation– amending act

Article 1 – point 4 c

Regulation (EC) n° 1073/1999

Article 6 – paragraph 7

Text proposed by the Commission

Amendment

7. Where it is found that an investigation cannot be closed within 12 months after it has been opened, the Director-General of

7. Where it is found that an investigation cannot be closed within 12 months after it has been opened, the Director-General of

the Office may decide to extend the period by up to six months. Before taking this decision, *he shall seek an opinion from the Review Adviser referred to in Article 14. Within fifteen working days the Review Adviser shall send the Director-General his opinion on whether the investigation in progress complies with Article 6(5) and on the reasons given by the Director-General for extending the investigation, together with any recommendations he considers useful for the further conduct of the investigation. The Review Adviser shall send a copy of his opinion to the Secretary-General of the institution, body, office or agency concerned and to the Supervisory Committee.*

If necessary, further such extension decisions may be taken, subject to the same conditions.”

the Office may decide to extend the period by up to six months. *The Director-General of the Office shall ascertain the need for the investigation to be extended.* Before taking this decision, *the Director-General shall inform the Supervisory Committee of the reasons preventing the investigation from being concluded and of the likely period of time needed for it to be completed.*

If an investigation is not completed within 24 months after it has been opened, the Supervisory Committee shall be informed by the Director-General of the reasons which have prevented him from closing the investigation and shall issue an opinion on the extension (and where appropriate the subsequent conduct) of the investigation.

The Supervisory Committee shall forward a copy of its opinion to the institution, body, office or agency concerned. It may defer the forwarding of its opinion in cases requiring absolute secrecy to be maintained for the purposes of the investigation or in accordance with the national law applicable to investigations.

The Director-General of the Office shall submit to the budgetary authority an annual report on the reasons which have prevented him from closing investigations within 36 months after they have been opened. The Supervisory Committee shall submit an opinion on those reasons to the budgetary authority.

Or. fr

Justification

La responsabilité de prolonger une enquête au-delà des douze mois doit être en chef au directeur général. Si l'enquête ne peut pas être conclue dans les 24 mois, il est nécessaire de prévoir que le comité de surveillance puisse rendre un avis au directeur général. Cet avis doit être communiqué à l'institution concernée pour lui permettre de prendre connaissance du stade d'avancement de l'enquête, sauf exception.

Amendment 46

Proposal for a regulation– amending act

Article 1 – point 4 a (new)

Regulation (EC) n° 1073/1999

Article 7 – paragraph 1

Text proposed by the Commission

Amendment

(4a) Article 7(1) is replaced by the following text:

'1. The institutions, bodies, offices and agencies shall forward to the Office without delay any information relating to possible cases of fraud or corruption or any other illegal activity detrimental to the financial interests of the European Community.'

Or. fr

Justification

Il convient de préciser que les activités illégales qui peuvent faire l'objet d'une communication à l'Office doivent se limiter à celles portant atteinte aux intérêts financiers communautaires. Il s'agit d'une précision du champ de compétence de l'Office.

Amendment 47

Proposal for a regulation– amending act

Article 1 – point 4 b

Regulation (EC) n° 1073/1999

Article 7 – paragraph 2

Text proposed by the Commission

Amendment

(4b) Article 7(2) is replaced by the

following text:

"2. The institutions, bodies, offices and agencies and, in so far as national law allows, the Member States shall, at the request of the Office or on their own initiative, forward any document or information they hold which relates to a current investigation."

Or. fr

Justification

Il convient de prévoir que les institutions, organes et organismes communautaires, ainsi que les Etats membres, conformément à leur droit national, transmettent à l'Office tout document ou information relatifs à des enquêtes en cours, sans distinction entre enquêtes internes et enquêtes externes.

Amendment 48

Proposal for a regulation– amending act

Article 1 – point 5

Regulation (EC) n° 1073/1999

Article 7 a – paragraph 1

Text proposed by the Commission

1. In its investigation the Office shall seek evidence for and against the person concerned.

Amendment

1. In its investigation the Office shall seek evidence for and against the person concerned. ***Investigations shall be conducted objectively and impartially and in accordance with the principle of the presumption of innocence and the procedural guarantees set out in the Procedural Code referred to in Article 15a of this Regulation.***

Or. fr

Justification

Compte tenu de la jurisprudence communautaire en la matière, il convient de préciser que les enquêtes de l'Office doivent être conduites dans le respect de certains principes procéduraux et des droits individuels.

Amendment 49

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 1073/1999

Article 7 a – paragraph 2

Text proposed by the Commission

2. As soon as an investigation reveals that a member, manager, official or other servant or a person serving an institution, body, office or agency or an economic operator may be implicated in a matter, the person concerned shall be informed, provided that this does not prejudice the conduct of the investigation.

In any event, no conclusions referring by name to a natural or legal person may be drawn on completion of an investigation unless the person thus personally implicated has been given the opportunity to make his views known on all matters concerning him. That person must be given a summary of such matters in the invitation to comment. He is entitled to be assisted by a person of his choice. Any person implicated personally is entitled to use the official Community language of his choice; however, officials or other servants of the Communities may be asked to use an official Community language of which they have a thorough knowledge. A person implicated personally shall be entitled to avoid self incrimination.

In cases requiring absolute secrecy to be maintained for the sake of the investigation **and** entailing use of investigative proceedings falling under the jurisdiction

Amendment

2. As soon as an investigation reveals that a member, manager, official or other servant or a person serving an institution, body, office or agency or an economic operator may be implicated in a matter, the person concerned shall be informed, provided that this does not prejudice the conduct of the investigation.

In any event, ***until the final investigation report has been drawn up***, no conclusions referring by name to a natural or legal person may be drawn on completion of an investigation unless the person thus personally implicated has been given the opportunity to make his views known, ***either in writing or in an interview with the Office's designated agents***, on all matters concerning him. That person must be given a summary of such matters in the invitation to comment, ***and shall submit his comments within the time indicated by the Office***. He is entitled to be assisted by a person of his choice. Any person implicated personally is entitled to use the official Community language of his choice; however, officials or other servants of the Communities may be asked to use an official Community language of which they have a thorough knowledge. A person implicated personally shall be entitled to avoid self incrimination.

In cases requiring absolute secrecy to be maintained for the sake of the investigation **or** entailing use of investigative proceedings falling under the jurisdiction

of a national judicial authority *or, in the case of an external investigation, that of a competent national authority*, the Director General of the Office may decide to defer fulfilment of the obligation to ask the person implicated to make his views known. *He shall first notify the Review Adviser, who shall give an opinion in accordance with Article 14(3)*. In the case of an internal investigation, the Director General of the Office shall take his decision *in agreement with* the institution, body, office or agency to which the person concerned belongs..

of a national judicial authority, *in accordance with the national law applicable to investigations*, the Director General of the Office may decide to defer fulfilment of the obligation to ask the person implicated to make his views known, *in accordance with the legality review provisions set out in Article 14*. In the case of an internal investigation, the Director General of the Office shall take his decision *after having informed* the institution, body, office or agency to which the person concerned belongs.

Or. fr

Justification

Cette disposition introduit le droit fondamental, pour la personne soumise aux enquêtes, de présenter ses observations concernant les conclusions du rapport final d'enquête, avant son adoption. Il fixe aussi les exceptions, conformément au droit national applicable aux enquêtes, ainsi qu'après exécution du contrôle de légalité.

Amendment 50

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 1073/1999

Article 7 b

Text proposed by the Commission

If, on completion of an investigation, no evidence has been found against a member, manager, official or other servant or person serving an institution, body, office or agency or against an economic operator, the investigation into that person shall be closed and no further action taken, by decision of the Director General of the Office, who shall inform the person concerned and, where appropriate, the institution, body, office or agency in writing.

Amendment

If, on completion of an investigation, no evidence has been found against a member, manager, official or other servant or person serving an institution, body, office or agency or against an economic operator, the investigation into that person shall be closed and no further action taken, by decision of the Director General of the Office, who shall, *within ten working days of the decision being taken*, inform the person concerned and, where appropriate, the institution, body, office or agency in writing.

Justification

Il convient de souligner le fait qu'à la suite d'une enquête sans suite, les personnes concernées et, dans le cas d'un fonctionnaire, son institution d'appartenance, puissent être informées de la conclusion de l'enquête dans les plus courts délais.

Amendment 51**Proposal for a regulation – amending act****Article 1 – point 7**

Regulation (EC) No 1073/1999

Article 8 a – subparagraph 2

Text proposed by the Commission

The Director General of the Office may decide not to make the communication referred to in the first subparagraph in cases requiring the maintenance of absolute secrecy **and** use of investigative measures that fall under the jurisdiction of a national judicial authority. In the case of an internal investigation he shall decide **in agreement with** the institution, body, office or agency to which the person concerned belongs.

Amendment

The Director General of the Office may decide not to make the communication referred to in the first subparagraph in cases requiring the maintenance of absolute secrecy **or** use of investigative measures that fall under the jurisdiction of a national judicial authority, **in accordance with the national law applicable to investigations**. In the case of an internal investigation he shall decide, **having first informed in good and due form** the institution, body, office or agency to which the person concerned belongs.

Justification

Les cas nécessitant d'un secret absolu ou le recours à des moyens d'investigation relevant de la compétence d'une autorité judiciaire nationale doivent être traités par le directeur général en conformité avec le droit national applicable. En conséquence, le droit d'informer la personne de la transmission du rapport final d'enquête peut être différé si requis par la procédure nationale.

Amendment 52

Proposal for a regulation – amending act

Article 1 – point 7

Regulation (EC) No 1073/1999

Article 8 a – subparagraph 3

Text proposed by the Commission

If the person implicated personally considers that the procedural guarantees provided for in Articles 6(5) and 7a have been disregarded in a manner liable to affect the conclusions of the investigation, that person may lodge a request for an opinion with the **Review Adviser** within ten working days of receiving the conclusions of the final report.

Amendment

If the person implicated personally considers that the procedural guarantees provided for in Articles 6(5) and 7a have been disregarded in a manner liable to affect the conclusions of the investigation, that person may lodge a request for an opinion with the **Director General, in accordance with Article 14a of the present regulation**, within ten working days of receiving the conclusions of the final report.

Or. fr

Amendment 53

Proposal for a regulation – amending act

Article 1 – point 8 a

Regulation (EC) No 1073/1999

Article 9 – paragraph 1

Text proposed by the Commission

On completion of an investigation by the Office, the latter shall draw up a report, under the authority of the Director General, which shall **include** an account of the stages in the procedure, the legal basis, the facts established and their classification in law, **the financial loss, if any**, and the findings of the investigation, including recommendations on action that should be taken.

Amendment

On completion of an investigation by the Office, the latter shall draw up a report, under the authority of the Director General, which shall **give** an account of the stages in the procedure, the legal basis, the facts established and their classification in law, and the findings of the investigation, including recommendations on action that should be taken. **The report shall specify the estimated financial loss and the amounts to be recovered. The regulatory procedure referred to in Article 15a of the present regulations shall detail all the other information to be included in the**

report for purposes of recovery, responsibility for which lies with the competent authorising officer.

Or. fr

Justification

Le Manuel de l'OLAF détaille déjà les éléments de ce rapport. Compte tenu de l'importance de l'activité de recouvrement, il convient de mentionner, outre que les mesures d'enquêtes exécutées, aussi et le préjudice financier estimé (il s'agit toujours d'une estimation). Le montant à recouvrer devrait figurer dans ce rapport. Le code de procédure des enquêtes de l'OLAF doit, de la même manière, mentionner tous les éléments à insérer dans le rapport final d'enquête, aux fins d'un recouvrement.

Amendment 54

Proposal for a regulation – amending act

Article 1 – point 8 b

Regulation (EC) No 1073/1999

Article 9 – paragraph 3

Text proposed by the Commission

3. Reports drawn up following an external investigation and any useful related documents shall be sent to the competent authorities of the Member States concerned in accordance with the rules relating to external investigations and to the Commission. The competent authorities of the Member States concerned shall, in so far as is not incompatible with national law, inform the Director General of the Office of the action taken as a result of the investigation reports sent to them.

Amendment

3. Reports drawn up following an external investigation and any useful related documents shall be sent to the competent authorities of the Member States concerned in accordance with the rules relating to external investigations and to the Commission. The competent authorities of the Member States concerned shall, in so far as is not incompatible with national law, inform the Director General of the Office of the action taken as a result of the investigation reports sent to them. ***To this end, they shall forward a progress report to the Director General of the Office every six months or, where applicable, within the period laid down by the Director General.***

Or. fr

Justification

Compte tenu du manque d'information régulière transmise à l'OLAF dans le cadre du suivi de ses enquêtes, il convient de prévoir que les autorités transmettent deux fois par an, un rapport sur les progrès accomplis concernant les suites données aux rapports transmis par l'OLAF.

Amendment 55

Proposal for a regulation – amending act

Article 1 – point 8 b

Regulation (EC) No 1073/1999

Article 9 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The Office shall forward to the competent authorities of third countries, in accordance with the cooperation and mutual assistance agreements concluded with the Commission, and to international organisations, in accordance with the agreements concluded with the Commission, the conclusions and recommendations of the report drawn up following an external investigation and any useful related documents. The Commission shall ensure that the competent authorities of the third countries identified in the cooperation and mutual assistance agreements as the Office's point of contact inform the Director General of the Office, in so far as this is not incompatible with national law, of the action taken on the conclusions and recommendations of the final investigation report. The Commission shall likewise ensure that the international organisations inform the Director General of the Office of the action taken further to the conclusions and recommendations of the final investigation report. To this end, they shall forward a progress report to the Director General of the Office every six months or, where applicable, within the

period laid down by the Director General.

Or. fr

Justification

Compte tenu de l'importance croissante des enquêtes extérieures de l'Office il convient d'établir, dans ce règlement, une base juridique permettant à l'Office de transmettre des rapports finaux d'enquête aux autorités compétentes des pays tiers ainsi qu'aux organisations internationales, et de recevoir des informations sur les suites données. La Commission adopte toutes les dispositions nécessaires pour permettre un tel échange.

Amendment 56

Proposal for a regulation – amending act

Article 1 – point 8 c

Regulation (EC) No 1073/1999

Article 9 – paragraph 3 a

Text proposed by the Commission

3a. Where the report drawn up after an internal investigation ***reveals the existence of*** facts which could give rise to criminal proceedings, the final report shall be transmitted to the judicial authorities of the Member State concerned. ***The Director General of the Office may decide, however, not to transmit the final report to the judicial authorities where he considers that internal measures permitting more appropriate follow up action are available, in the light of the nature of the facts, their lack of seriousness or the small scale of the financial loss. In all cases, he shall transmit the final report*** to the institution, body, office or agency concerned in accordance with paragraph 4. ***He shall inform the Review Adviser and the Supervisory Committee of all duly reasoned decisions not to transmit the final report to the judicial authorities.***

Amendment

3a. Where the report drawn up after an internal investigation ***contains information pertaining to*** facts which could give rise to criminal proceedings, the final report shall be transmitted to the judicial authorities of the Member State concerned ***and, without prejudice to national provisions on judicial procedures,*** to the institution, body, office or agency concerned in accordance with paragraph 4.

Or. fr

Justification

Clarification. Les enquêtes sur des faits susceptibles de poursuites pénales sont de compétence des autorités judiciaires nationales. Le directeur général de l'Office conduit des enquêtes administratives. S'il estime que des faits sont susceptibles de poursuite pénale, il doit les transmettre aux autorités compétentes. L'institution concernée en est informée, conformément au droit national.

Amendment 57

Proposal for a regulation – amending act

Article 1 – point 8 c a (new)

Regulation (EC) No 1073/1999

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

(ca) Paragraph 4 is replaced by the following:

“ 4. Reports drawn up following an internal investigation and any useful related documents shall be sent to the institution, body, office or agency concerned. The institution, body, office or agency shall take such action, in particular disciplinary or legal, on the internal investigations, as the results of those investigations warrant, and shall report thereon to the Director of the Office [...]. To this end, they shall forward a progress report to the Director General of the Office every six months or, where applicable, within the period laid down by the Director General.”

Or. fr

Justification

Afin d'harmoniser entre les institutions, organes et organismes et les autorités compétentes des Etats membres la pratique d'information sur les suites données aux conclusions du rapport final d'enquête, il convient de préciser aussi pour les institutions l'opportunité de prévoir un rapport sur les suites et les progrès accomplis, à adresser au directeur général de l'Office, notamment avec les contributions de IDOC.

Amendment 58

Proposal for a regulation – amending act

Article 1 – point 9

Regulation (EC) No 1073/1999

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

Text proposed by the Commission

Amendment

The decision to forward shall be taken by the Director General of the Office, after consultation of the Office’s executive committee and in accordance with the legality review provisions set out in Article 14(2) of the present regulation.

Or. fr

Justification

Il convient de prévoir que la transmission d’informations aux autorités compétentes des Etats membres soit soumise au contrôle de légalité. Le Comité exécutif de l’OLAF doit être consulté par le directeur général avant sa prise de décision.

Amendment 59

Proposal for a regulation – amending act

Article 1 – point 9

Regulation (EC) No 1073/1999

Article 10 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The decision to forward shall be taken by the Director General of the Office, after consultation of the Office’s executive committee and in accordance with the legality review provisions set out in Article 14(2) of the present regulation.

Or. fr

Justification

Il convient de prévoir que la transmission d’informations aux autorités compétentes des Etats membres soit soumise au contrôle de légalité. Le Comité exécutif de l’OLAF doit être consulté

par le directeur général avant sa prise de décision.

Amendment 60

Proposal for a regulation – amending act

Article 1 – point 9

Regulation (EC) No 1073/1999

Article 10 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Before forwarding the information referred to in the first subparagraph, the Office shall give the person implicated by the investigation the opportunity to comment on the matters concerning him subject to the conditions, and in accordance with the arrangements, set out in the second and third subparagraphs of Article 7a(2).

Amendment

Before forwarding the information referred to in the first subparagraph, ***provided that this is not prejudicial to the conduct of the inquiry***, the Office shall give the person implicated by the investigation the opportunity to comment on the matters concerning him subject to the conditions, and in accordance with the arrangements, set out in the second and third subparagraphs of Article 7a(2).

Or. fr

Amendment 61

Proposal for a regulation – amending act

Article 1 – point 9 a (new)

Regulation (EC) No 1073/1999

Article 10 – paragraph 4 (new)

Text proposed by the Commission

Amendment

9a. The following paragraph 4 is added to Article 10:

“4. Information exchange and cooperation between the Office and the competent authorities of the Member States, as well as the actions and measures taken or implemented on the basis of the information forwarded to them, shall be regularly analysed in the framework of the consultation procedure established under Article 11a.”

Justification

L'échange d'information et la coopération entre les autorités compétentes et l'Office, tel qu'il ressort dans la pratique opérationnelle de l'Office, représente un élément nécessitant d'une analyse régulière entre les institutions, afin de pouvoir identifier des solutions opérationnelles pouvant améliorer l'environnement de travail de l'Office.

Amendment 62

Proposal for a regulation – amending act

Article 1 – point 9 b (new)

Regulation (EC) No 1073/1999

Article 10 a – paragraph 1 (new)

Text proposed by the Commission

Amendment

9 (b) The following Article 10 a, paragraph 1, is added:

“Article 10 a

Exchange of information between the Office and institutions concerned

1. The Director General of the Office shall report to the European Parliament, the Council, the Commission and the Court of Auditors on the results of the investigations carried out by the Office, with due respect for the confidentiality of those investigations, the legitimate rights of the people involved and, where applicable, the national provisions applicable to judicial procedures.

The Director General shall act in accordance with the principle of independence that informs his mission.”

Or. fr

Justification

Il convient de prévoir une disposition permettant au Directeur général de l'OLAF d'informer régulièrement les institutions concernées, sur les résultats des enquêtes, afin de donner suite à la jurisprudence récente de la Cour dans ce domaine.

Amendment 63

Proposal for a regulation – amending act

Article 1 – point 9 c (new)

Regulation (EC) No 1073/1999

Article 10 a – paragraph 2 (new)

Text proposed by the Commission

Amendment

9c. The following Article 10a, paragraph 2 is added:

“2. The European Parliament, the Council, the Commission and the Court of Auditors shall ensure that the confidentiality of the investigations carried out by the Office, the legitimate rights of the people concerned and, where there are judicial procedures, all national provisions applicable to those procedures is preserved.”

Or. fr

Justification

Les institutions concernées par une enquête doivent assurer le respect de la confidentialité des enquêtes de l'Office et des autorités compétentes, ainsi que des droits légitimes des personnes concernées.

Amendment 64

Proposal for a regulation – amending act

Article 1 – point 9 d (new)

Regulation (EC) No 1073/1999

Article 10 a – paragraph 3 (new)

Text proposed by the Commission

Amendment

9d. The following Article 10 a, paragraph 3, is added:

“3. The Office and the institutions concerned may reach agreements regarding the forwarding of any information necessary for the

accomplishment of the Office's mission, in compliance with the principles set out in paragraphs 1 and 2.”

Or. fr

Justification

Actuellement, il n'existe aucune base juridique permettant à l'OLAF et au Parlement européen d'échanger des informations confidentielles. L'accord cadre entre la Commission et le Parlement européen de mai 2005 ne s'applique pas à l'Office. Le flux d'information est régi par l'Annexe VII du Règlement du Parlement européen. Selon l'avis du service juridique du Parlement, il serait utile de prévoir une telle base juridique, pour permettre à l'institution d'exercer sa mission.

Amendment 65

Proposal for a regulation – amending act

Article 1 – point 9 e (new)

Regulation (EC) No 1073/1999

Article 10 b (new)

Text proposed by the Commission

Amendment

9e. The following Article 10 b is added:

“Article 10 b

Public information

The Director General of the Office shall ensure that public information is given neutrally and impartially and in accordance with the principles set out in Article 10 a.

The procedural code for OLAF investigations adopted under Article 15 of the present regulation sets out the rules on prevention of unauthorised distribution of information relating to the Office's operational activity and the disciplinary sanctions to be applied in the event of an information leak, in accordance with Article 8(3).

Or. fr

Justification

Il convient de prévoir des dispositions portant sur la politique de communication au public de l'Office, ainsi que de rappeler, à cet endroit, les principes et les éléments du Règlement (CE) No 45/2001 (article 49) à insérer dans le code de procédure (y compris les sanctions disciplinaires en cas de fuite.

Amendment 66

Proposal for a regulation – amending act

Article 1 – point 10 a

Regulation (EC) No 1073/1999

Article 11 – paragraph 1

Text proposed by the Commission

1. The Supervisory Committee shall **reinforce** the Office's independence **by regular monitoring of the implementation of the investigative function.**

The Supervisory Committee shall ensure that the rules governing information exchanges between the Office and the institutions, bodies, offices and agencies are complied with.

The Supervisory Committee shall monitor developments regarding the application of procedural guarantees and the duration of investigations in the light of the periodic statistics **supplied** by the Director General of the Office and the opinions **and analysis reports regularly** drawn up **in this connection** by the Review Adviser **on the basis of close cooperation with the Director General of the Office.**

Amendment

1. The Supervisory Committee shall **ensure that the Office exercises the powers conferred upon it by the present regulation in complete independence. In order to guarantee the Office's independence, without interfering in the conduct of investigations in progress, the Supervisory Committee shall:**

(a) monitor developments regarding the application of procedural guarantees and the duration of investigations in the light of the periodic statistics, **information and closed investigation files forwarded to it** by the Director General of the Office, and the opinions drawn up by the Review Adviser.

(b) assist the Director General by ensuring that the Office has the necessary resources to fulfil its investigative function;

(c) give opinions and recommendations on:

- *determining the priorities of the investigation;*
- *the duration of investigations and the action taken further to them;*
- *the procedural code;*

(d) give opinions on the Director General's statements to the Court of Justice of the European Communities and the national courts;

(e) assist the Director General with the consultation procedure.

The Supervisory Committee shall deliver opinions *to the Director General of the Office*, on its own initiative or at his request or the request of an institution, body, office or agency, without however interfering with the conduct of investigations in progress. The applicant shall be provided with a copy of such opinions.

The Supervisory Committee shall deliver opinions, on its own initiative or at his request or the request of an institution, body, office or agency, without however interfering with the conduct of investigations in progress. The applicant shall be provided with a copy of such opinions.

Or. fr

Justification

Cette disposition clarifie les tâches à confier au comité de surveillance dans un sens qui garantit et assure l'indépendance de l'Office. Le comité, dans l'accomplissement de ses tâches, n'interfère pas avec le déroulement des enquêtes en cours.

Amendment 67

Proposal for a regulation – amending act

Article 1 – point 10 a a (new)

Regulation (EC) No 1073/1999

Article 11 – paragraph 2

Text proposed by the Commission

Amendment

(aa) Paragraph 2 is replaced by the following text:

“2. It shall be composed of five independent outside persons occupying, at the time of their appointment, senior judicial or investigative posts relating to the Office's areas of activity. They must

possess a knowledge of the workings of the European institutions and of a second official EU language.”

Or. fr

Justification

Une expérience pratique opérationnelle dans le domaine de la lutte contre la fraude, ainsi qu'une connaissance approfondie du fonctionnement des institutions et d'une deuxième langue officielle de l'UE, de préférence d'une langue de travail de la Commission, doivent être requises aux candidats membres du comité de surveillance.

Amendment 68

Proposal for a regulation – amending act

Article 1 – point 10 a b (new)

Regulation (EC) No 1073/1999

Article 11 – paragraph 2 – subparagraph 2 (new)

Text proposed by the Commission

Amendment

(ab) The following subparagraph is added to paragraph 2:

“The members of the committee shall be appointed by common agreement by the European Parliament, the Council and the Commission. A call for applications shall be published in the Official Journal of the European Union. The five persons shall be chosen on the basis of a ‘preselection list’ submitted by the Commission, comprising at least 12 candidates.”

Or. fr

Justification

La nomination des membres du comité se fait de commun accord entre les institutions, sur base d'une liste présentée par la Commission. Afin d'assurer la plus grande transparence dans la procédure de nomination des membres, une publication de l'avis à soumission des candidatures doit être prévue.

Amendment 69

Proposal for a regulation – amending act

Article 1 – point 10 a c

Regulation (EC) No 1073/1999

Article 11 – paragraph 3

Text proposed by the Commission

Amendment

(ac) Paragraph 3 is replaced by the following text:

“3. The term of office of members shall be six years and shall *not* be renewable [...].”

Or. fr

Justification

Il convient de donner un mandat d’une durée égale à celle du directeur général de l’Office. Toutefois, il serait souhaitable de prévoir que le mandat du comité de surveillance débute en différé par rapport au mandat du directeur général de l’Office.

Amendment 70

Proposal for a regulation – amending act

Article 1 – point 10 a d

Regulation (EC) No 1073/1999

Article 11 – paragraph 6

Text proposed by the Commission

Amendment

(ad) Paragraph 6 is replaced by the following text:

“6. The Supervisory Committee shall appoint its chairman. It shall adopt its own rules of procedure, *which shall, before adoption, be submitted to the European Parliament, the Council and the Commission for their opinion. Meetings of the Supervisory Committee shall be convened on the initiative of its chairman or of the Director General of the Office.* [...] It shall take its decisions by a majority of its members. Its secretariat shall be provided by the

Office.”

Or. fr

Justification

La procédure d'adoption du règlement interne du comité s'inspire de celle prévue pour la Cour de justice. Elle tient compte de certains éléments arrêtés par le Tribunal de première instance, et notamment de l'impact du règlement interne du comité aux fins d'une appréciation du travail opérationnel de l'Office. Pour plus de flexibilité et pour les besoins de l'Office, il convient de ne plus prescrire le nombre de réunions du comité.

Amendment 71

Proposal for a regulation – amending act

Article 1 – point 10 b

Regulation (EC) No 1073/1999

Article 11 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Amendment

The Director General of the Office shall inform the Supervisory Committee:

The Director General of the Office shall inform the Supervisory Committee:

(a) of cases where the institution, body, agency or office concerned has failed to act on the recommendations made by it;

(a) of cases where the institution, body, agency or office concerned has failed to act on the recommendations made by it;

(b) of cases ***in which information is forwarded to the judicial authorities of a Member State.***

(b) of cases in which ***the competent authority in the Member States has not acted upon the information he has forwarded.***

Or. fr

Justification

Comme le comité de surveillance ne peut pas interférer dans le déroulement des enquêtes en cours il convient de prévoir que le contrôle de légalité lors de la transmission d'informations aux autorités compétentes d'un Etat membre se fasse en interne par les “conseillers judiciaires” de l'Office qui ont accès au dossier d'enquête. Cette disposition assure un véritable contrôle de légalité.

Amendment 72

Proposal for a regulation – amending act

Article 1 – point 10 b

Regulation (EC) No 1073/1999

Article 11 – paragraph 8

Text proposed by the Commission

8. The Supervisory Committee shall adopt at least one report on its activities per year, covering in particular the application of procedural guarantees and the duration of investigations; such reports shall be sent to the institutions. The Committee may submit reports to the European Parliament, the Council, the Commission and the Court of Auditors on the results of the Office's investigations and the action taken thereon.

Amendment

8. The Supervisory Committee shall adopt at least one report on its activities per year, covering in particular ***the assessment of the Office's independence***, the application of procedural guarantees and the duration of investigations; such reports shall be sent to the institutions. The Committee may submit reports to the European Parliament, the Council, the Commission and the Court of Auditors on the results of the Office's investigations and the action taken thereon.

Or. fr

Justification

Il est important de demander au comité de faire rapport aussi sur l'évaluation de l'indépendance de l'Office.

Amendment 73

Proposal for a regulation – amending act

Article 1 – point 11

Regulation (EC) No 1073/1999

Article 11 a

Text proposed by the Commission

Structured dialogue with the institutions

The Supervisory Committee shall meet, at least twice a year and at the request of one of the institutions, with one representative designated by each of the European Parliament, the Council and the Commission, as part of a structured dialogue at political level in order to devise common guidelines.

Amendment

Consultation procedure

1. A consultation procedure between the Council, the European Parliament and the Commission shall be established.

The structured dialogue shall relate to the Office's investigative function, and in particular to:

(a) the annual report on the activities of the Supervisory Committee and that of the Director General of the Office;

(b) the Office's programme of investigative activities;

(c) aspects relating to the Office's investigation policy priorities;

(d) good relations between the Office and the institutions, bodies, offices and agencies;

(e) the effectiveness of the work of the Office with regard to investigations and that of the Supervisory Committee.

The structured dialogue shall not interfere with the conduct of investigations.

The Office shall take such action as is appropriate on the opinions expressed in the structured dialogue.

2. The consultation procedure shall relate to:

a) the relations and cooperation between the Office and the Member States, and among the latter, in particular:

- coordination of actions taken pursuant to Article 1;

- the implementation and application of the present regulation, Regulation (EC, Euratom) No2988/95 and Regulation (EC, Euratom) No2186/95, as well as of the Convention on the protection of the financial interests of the European Communities of 26 July 1995 and its protocols;

- the action taken on the Office's final investigation reports and the action taken further to the forwarding of information by the Office;

(b) the relations and cooperation between the Office and the institutions, bodies, offices and agencies of the Union and the European Communities, including Eurojust and Europol, including the assistance offered to the Office by the institutions and the action taken on final investigation reports or further to forwarding of information by the Office;

(c) the relations and cooperation between the Office and the competent authorities in third countries, as well as with international organisations, in the framework of the agreements referred to in the present regulation;

(d) aspects relating to the Office's investigation policy priorities;

(e) the Supervisory Committee's reports and analyses;

3. Consultation shall take place at least once a year and at the request of one of the institutions.

4. The Director General of the Office and the chairman of the Supervisory Committee shall take part in the consultation procedure. Representatives of the Court of Auditors, Eurojust and Europol may be invited.

5. Consultation shall be prepared at one or more technical meetings. The meetings shall be convened at the request of one of the institutions or of the Office.

6. The consultation procedure may not under any circumstances interfere with the conduct of investigations and shall be carried out with full respect for the independence of the Director General.

7. The institutions, bodies, offices and agencies, the Office and the Member States shall inform the parties to the consultation procedure of the action taken further to the conclusions of the consultation procedure on every occasion.

Or. fr

Justification

Cette procédure offre au législateur communautaire, à l'autorité budgétaire et à la Commission l'opportunité de discuter de différents aspects concernant la lutte contre la fraude. Elle permet d'identifier les solutions opportunes (opérationnelles, législatives, institutionnelles) aux difficultés rencontrées par l'Office dans le cadre de sa mission. Cette procédure, par ailleurs, reprend les considérations du Conseil sur la proposition de la Commission (« comitologie »).

Amendment 74

Proposal for a regulation – amending act

Article 1 – point 12 a

Regulation (EC) No 1073/1999

Article 12 – paragraph 1

Text proposed by the Commission

Director General

After consulting the representatives of the other institutions, meeting with the

Amendment

Director General

The Office shall be placed under the authority of a Director General appointed

Supervisory Committee in the context of the structured dialogue, the Commission shall appoint the Director General of the Office for a term of seven years, which may not be renewed. The consultation shall be organised on the basis of a list of candidates drawn up by the Commission after a call for applications.

by the Commission for a term of six years, which may not be renewed.

Or. fr

Justification

Un mandat non renouvelable assure une plus grande indépendance du directeur général de l'Office. La durée de 6 ans de son mandat est inspirée de celui des juges de la Cour de justice des communautés européennes. La Commission reste l'autorité investie du pouvoir de nomination pour le poste du directeur général de l'Office, conformément au statut de ce dernier.

Amendment 75

Proposal for a regulation – amending act

Article 1 – point 12 b

Regulation (EC) No 1073/1999

Article 12 – paragraph 2)

Text proposed by the Commission

Paragraph 2 is deleted.

Amendment

Paragraph 2 is replaced by the following text:

2. The European Parliament and the Council shall appoint the Director General by common agreement on the basis of a list of 12 candidates put forward by the Commission. A call for applications shall be published in the Official Journal of the European Union.

Or. fr

Justification

L'appel à candidature pour le poste de directeur général doit être publié au JO pour assurer la plus grande transparence. Le directeur général est nommé par la Commission (autorité

investie du pouvoir de nomination), à la suite de la désignation d'un candidat choisi de commun accord par le Parlement européen et le Conseil.

Amendment 76

Proposal for a regulation – amending act

Article 1 – point 12 b

Regulation (EC) No 1073/1999

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

Text proposed by the Commission

Amendment

The appointment shall be made within three months of the list of candidates being put forward by the Commission. The duration of the appointment procedure as a whole may not exceed nine months and the procedure must begin at least twelve months before the end of the term of office of the incumbent, who shall remain in office until the beginning of the new Director General's term of office.

Or. fr

Justification

Compte tenu des expériences relatives à la dernière nomination d'un directeur général de l'Office, il convient de fixer des délais précis pour sa nomination, afin d'éviter tout retardement injustifié et assurer la bonne continuité des activités de l'Office.

Amendment 77

Proposal for a regulation – amending act

Article 1 – point 12 b

Regulation (EC) No 1073/1999

Article 12 – paragraph 2 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

The Director General of the Office shall be chosen from among the candidates occupying a senior judicial or investigative post and having operational professional experience, a significant part of it in the area of fraud prevention, of at

least fifteen years. He must have a thorough knowledge of the workings of the European institutions and of a second official language of the Union.

Or. fr

Justification

Il est judicieux d'expliciter les critères que le candidat doit remplir pour la nomination au poste de directeur général de l'Office. Pour des raisons pratiques, la connaissance d'au moins une langue de travail de la Commission doit être requise.

Amendment 78

Proposal for a regulation – amending act

Article 1 – point 12 c

Regulation (EC) No 1073/1999

Article 12 – paragraph 3

Text proposed by the Commission

(c) in paragraph 3, “the Director” is replaced by “the Director General”;

Amendment

(c) paragraph 3 *is replaced by the following text:*

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

The Director General shall report regularly to the European Parliament, the Council, the Commission and the Court of Auditors, *in the context of the consultation procedure referred to in Article 11a, 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, where appropriate, national provisions applicable to judicial proceedings.

The above institutions shall ensure that the confidentiality of the investigations conducted by the Office is respected, together with the legitimate rights of the persons concerned, and, where judicial proceedings have been instituted, that all national provisions applicable to such proceedings have been adhered to.”

Or. fr

Justification

Parmi les sujets à illustrer devant les institutions intéressées, il convient de prévoir aussi celui des suites données aux enquêtes de l'Office et aux difficultés rencontrées. Cet ajout reflète les obligations en matière de suivi des enquêtes de l'Office à charge des partenaires opérationnels de l'Office. La procédure de concertation assure l'audience nécessaire pour permettre d'identifier des solutions, et améliorer ainsi l'efficacité de la lutte contre la fraude

Amendment 79

Proposal for a regulation – amending act

Article 1 – point 12 d

Regulation (EC) No 1073/1999

Article 12 – paragraph 4

Text proposed by the Commission

Before adopting any disciplinary sanction against the Director General, the Commission shall consult the Supervisory Committee, meeting with the representatives of the other institutions in the context *of the structured dialogue*.

Measures relating to disciplinary sanctions against the Director General shall be the subject of reasoned decisions, which shall

Amendment

Before adopting any disciplinary sanction against the Director General, the Commission shall consult the Supervisory Committee, meeting with the representatives of the other institutions in the context of the *consultation procedure referred to in Article 11a*.

Measures relating to disciplinary sanctions against the Director General shall be the subject of reasoned decisions, which shall

be forwarded for information to the European Parliament, to the Council and to the Supervisory Committee.

be forwarded for information to the European Parliament, to the Council and to the Supervisory Committee.

Or. fr

Justification

La procédure de concertation offre à la Commission le cadre institutionnel pour permettre de débattre des éventuelles sanctions disciplinaires à l'égard du directeur général. Compte tenu de l'importance de la mesure à prendre, il convient d'assurer, en effet, que ces mesures soient discutées non seulement avec le comité de surveillance, mais aussi avec les autres institutions intéressées.

Amendment 80

Proposal for a regulation – amending act

Article 1 – point 12 a (new)

Regulation (EC) No 1073/1999

Article 12 a (new)

Text proposed by the Commission

Amendment

12a. The following Article 12a is added:

“Article 12 a

***Interventions of the Director General
before the Court of Justice of the
European Communities and before the
national courts***

***The Director General of the Office may
intervene in cases, in connection with the
conduct of the Office’s activities, brought
before the Court of Justice of the
European Communities and, in
accordance with national law, before the
national courts.***

***Before intervening before the Court of
Justice of the European Communities or
the national courts, the Director General
of the Office shall seek an opinion of the
Supervisory Committee.”.***

Or. fr

Justification

En ligne avec l'idée contenue à l'article 12 du présent règlement de donner au directeur général de l'Office de faire examiner en droit les mesures mettant en cause son indépendance, il s'avère utile de lui donner aussi un droit d'intervention au soutien d'une partie devant la Cour, lorsqu'il est question de l'exercice de sa fonction d'enquête. Ce droit d'intervention peut être élargi aussi devant les tribunaux nationaux. Le comité de surveillance donne son avis.

Amendment 81

Proposal for a regulation – amending act

Article 1 – point 14

Regulation (EC) No 1073/1999

Article 14

Text proposed by the Commission

Amendment

Review adviser

Review of legality of the Office's investigations

1. The Director General of the Office, acting on a proposal from the Supervisory Committee, shall appoint a Review Adviser for a non-renewable term of five years. The Supervisory Committee shall base its proposal on a list of several candidates drawn up following a call for applications.

1. The review of legality of the Office's investigations shall concern respect for the procedural guarantees and fundamental rights of the people involved in an Office investigation.

2. The Review Adviser shall act in complete independence. He shall neither seek nor take instructions from anyone in the performance of his duties. He shall perform no functions within the Office other than those related to monitoring compliance with procedures.

2. The review of legality shall be carried out before the opening and after the close of an investigation, before any forwarding of information to the competent authorities in the Member States concerned within the meaning of Articles 9 and 10, and in connection with an evaluation of the absolute confidentiality of the investigation.

Before adopting any disciplinary measure concerning the Review Adviser, the Director General of the Office shall consult the Supervisory Committee.

3. The review of legality of investigations shall be carried out by Office experts in law and investigative procedure able to exercise judicial office in a Member State. Their opinion shall be appended to the final investigation report.

3. Anyone personally implicated by an investigation may ask the Review Adviser to give an opinion regarding the

4. The procedural code referred to in Article 15a sets out the procedure for the

procedural guarantees provided for in Article 6(5) and Article 7a. The Review Adviser may also issue opinions of his own motion on those matters.

legality review.

4. Cases shall be referred for the opinion of the Review Adviser by the Director General of the Office in the circumstances referred to in Article 6(7) and the third subparagraph of Article 7a(2). The Director General of the Office may also submit any request to the Review Adviser in connection with the review of investigations.

5. The Review Adviser shall report regularly to the Supervisory Committee on his activities; he shall present it, and the Commission, with regular statistical and analytical reports on questions related to the duration of investigations and procedural guarantees. The Review Adviser's reports may not refer to individual cases under investigation.

Or. fr

Justification

En plus que le contrôle de légalité des tribunaux nationaux et de la Cour de justice sur les enquêtes de l'Office, il convient de clarifier la pratique opérationnelle de l'OLAF dans ce domaine. Le contrôle de légalité, effectué par l'Office, assure le respect des garanties procédurales et des droits fondamentaux des personnes concernées. Cette pratique s'appuie sur les connaissances du droit communautaire des enquêtes et du droit et de la procédure nationale des « conseillers judiciaires » de l'OLAF.

Amendment 82

Proposal for a regulation – amending act

Article 1 – point 14 a (new)

Regulation (EC) No 1073/1999

Article 14 a (new)

Text proposed by the Commission

Amendment

14a. The following Article 14 a is added:

“Article 14 a

***Filing of complaints by persons
concerned by Office investigations***

- 1. Any person personally concerned by an investigation may file a complaint with the Office's Director General alleging a violation of his procedural or human rights in the course of the investigation. Following reception of a complaint, an ad hoc review adviser shall be appointed by the Director General. He shall be chosen by the Director General from among those of the Office's directors who are not involved in the conduct of the investigation that is the subject of the complaint.***
- 2. The review adviser shall carry out his duties in complete independence. In carrying out his task he may neither ask for nor accept instructions from anyone. He may ask for access to the investigation file and request, for information, the opinions delivered by the experts referred to in Article 14. He may hear the complainant, at the latter's request or on his own initiative.***
- 3. The review adviser shall give the Director General his opinion within no more than 30 working days of the forwarding of the complaint by the Director General. His opinion shall be sent to the complainant, the Director General and the Supervisory Committee.***
- 4. Any official or other agent of the European Communities may address to the Director General of the Office a complaint against an act that is damaging to him carried out by the Office in the context of an internal investigation, in accordance with the rules set out in Article 90, paragraph 2, of the Staff Regulations of the European Communities. Article 91 of the abovementioned Staff Regulations shall be applicable to decisions taken with regard to such complaints.***

Justification

Au cours d'une enquête, les personnes concernées ont le droit de présenter une plainte alléguant une violation de leurs droits procéduraux et fondamentaux. Le conseiller réviseur nommé ad hoc traite la plainte. Le conseiller réviseur travaille en toute transparence : il transmet ses avis au directeur général, à la personne concernée, et au comité de surveillance. Le faible nombre de plaintes introduites à présent ne justifie pas un poste de conseiller réviseur avec mandat pluriannuel.

Amendment 83**Proposal for a regulation – amending act****Article 1 – point 15**

Regulation (EC) No 1073/1999

Article 15

Text proposed by the Commission

Article 15 is deleted

Amendment

Article 15 is replaced by the following text:

In the course of the fourth year following the entry into force of the present regulation, the Commission shall forward to the European Parliament and the Council a report on the application of the present regulation, accompanied by an opinion of the Supervisory Committee.

Justification

Il convient de garder l'opportunité, pour la Commission, de présenter un rapport sur l'application du présent règlement.

Amendment 84**Proposal for a regulation – amending act****Article 1 – point 16**

Regulation (EC) No 1073/1999

Article 15 a

Text proposed by the Commission

Amendment

Article 15

Article 15 a

Implementing measures

Procedural code for OLAF investigations

Implementing measures relating to the application of procedural guarantees in administrative investigations by the Office as provided for by this Regulation shall be adopted in accordance with the regulatory procedure referred to in Article 15b(2).

1. The Office shall adopt a ‘procedural code for OLAF investigations’ incorporating the judicial and procedural principles adopted under the present regulation. It shall take account of the Office’s operational practices.

2. The procedural code shall set out the practices to be observed in implementing the mandate and statute of the Office, general principles governing investigative procedures, as well as the main investigative acts, the legitimate rights and procedural guarantees of the persons concerned, provisions relating to data protection and policies on communication and access to documents, provisions on review of legality and the means of redress open to the people concerned.

3. Before adoption of the procedural code, the European Parliament, the Council, the Commission and the Office’s Supervisory Committee shall be consulted. The Supervisory Committee shall ensure the independence of the Office in adopting the procedural code.

4. The code may be updated on a proposal from the Director General of the Office. In this case the adoption procedure referred to in the present article shall be applied.

5. The procedural code adopted by the Office shall be published in the Official Journal of the European Union.

Or. fr

Justification

Il convient d’établir une base juridique permettant à l’OLAF de se doter d’un code de

procédure de ses enquêtes, pour assurer une plus grande transparence au travail opérationnel de l'Office.

Amendment 85

Proposal for a regulation – amending act

Article 1 – point 16

Regulation (EC) No 1073/1999

Article 15 b

Text proposed by the Commission

Amendment

Article 15 b

deleted

Committee

1. The Commission shall be assisted by the Committee instituted by Article 43 of Council Regulation (EC) No 515/97().*

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.

3. The Committee shall adopt its Rules of Procedure.

()* OJ L 82, 22.3.1997, p. 1.”

Or. fr

Justification

Compte tenu des Amendements proposés, tels que d'une part les dispositions en matière de contrôle de légalité et de garanties de procédures, et d'autre part les dispositions relatives à l'institution d'une procédure de concertation, ce comité devient superflu.