



25.1.2019

OPINION

of the Committee on Legal Affairs

for the Committee on Budgetary Control

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations

(COM(2018)0338 – C8-0214/2018 – 2018/0170(COD))

Rapporteur for opinion: Jean-Marie Cavada

PA_Legam

SHORT JUSTIFICATION

Following the establishment of the European Public Prosecutors' Office (EPPO), the existing Regulation No 883/2013, governing currently the investigations by the European Anti-Fraud Office (OLAF) needs to be revised in order to adapt the collaboration between both institutions, in order to enhance the effectiveness of OLAF's investigation function, to clarify and simplify the provisions laid down in Regulation No 883/2013.

Both, EPP and OLAF – within their respective remits – are entrusted with the mandate to protect the Union's financial interests.

The EPPO, once operational, will have the power to conduct criminal investigations and prosecute before national courts as regards crimes affecting the Union budget. OLAF investigates administrative irregularities as well as criminal behaviour. However, its administrative powers are limited compared to criminal investigations. Therefore, the proposal envisages that the two bodies cooperate as closely as possible together leading to more prosecution, convictions and a higher level of recovery.

In order to allow for a smooth transition into the new framework, the amended Regulation 883/2013 should enter into force before the EPPO becomes operational which is foreseen for the end of 2020.

Your rapporteur supports the Commission's endeavour to foresee for the time being only a limited number of changes, which are essential, according to the analytical Staff Working document accompanying the Commission proposal, which is based on the evaluation report, external studies and the result of the stakeholder consultation. He therefore supports the proposal by the Commission to focus on three areas: the relationship between EPPO and OLAF, enhancing the effectiveness of OLAF investigations and clarifications and simplifications.

I. Relationship between EPPO and OLAF

The proposal introduces the following necessary provisions to regulate the relationship between OLAF and the EPPO:

- OLAF's obligation to report without undue delay to the EPPO any conduct over which the latter may exercise its competence; the information provided to the EPPO shall be sufficiently substantiated and contain the necessary information;
- non-duplication of investigations: OLAF shall not open an unnecessary parallel investigation into facts identical to those under investigation by the EPPO;
- the specific procedural rules applicable to requests from the EPPO to OLAF to support or complement the work of the EPPO.

II. Enhancing the effectiveness of OLAF investigations

In order to implement Court ruling T-48/16, Sigma Orionis SA v European Commission, it is important to clarify that OLAF conducts **on-the-spot-checks** and inspections based on

Regulation N°883/2013 and Regulation N° 2185/1996, unless the economic operator opposes (Art. 3). Union law suspends national law when a matter is regulated by Regulation N° 883/2013 and N° 2185/1996. The Court further stated that the opposition of the economic operator does not entail a “*right to oppose*” but simply has the consequence that the check might be imposed through the assistants of national authorities, following national law. As regards procedural guarantees, OLAF must respect fundamental rights as laid down in Union law, namely the Charter of Fundamental Rights.

Your rapporteur welcomes the proposed amendments as regards **bank account information** which reflect the 5th Anti-Money laundering Directive (Art. 7(3)), exchange of **VAT** information on the basis of Regulation N° 904/2010 (Art. 12(5)), the introduction of a **principle of admissibility of collected evidence** by OLAF (Art. 11(2)), the role of the **anti-fraud coordination service in the Member States** (Art. 12a) and the provision specifying the **coordination activities** that OLAF can conduct (Art. 12b).

Your rapporteur suggests amendments, which are meant to further enhance transparency and efficiency. Your rapporteur also suggests a reference to the protection of whistle blowers in the context of OLAF investigations.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Budgetary Control, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation Recital 1

Text proposed by the Commission

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

Amendment

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

2017/1371, in the participating Member States.

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

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

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

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

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

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

Amendment

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

Amendment 3

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Therefore, Regulation (EU,

Amendment

(3) Therefore, Regulation (EU,

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

⁵ Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (EURATOM) No 1074/1999 (OJ L 248, 18.9.2013, p.1).

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

⁵ Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (EURATOM) No 1074/1999 (OJ L 248, 18.9.2013, p.1).

Amendment 4

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) In view of their common goal to preserve the integrity of the Union budget, the Office and the EPPO should establish and maintain a close relationship based on sincere cooperation and aimed at ensuring the complementarity of their respective mandates and coordination of their action, in particular as regards the scope of the enhanced cooperation for the establishment on the EPPO. Ultimately, the relationship should contribute to ensuring that all means are used to protect the financial

Amendment

(4) In view of their common goal to preserve the integrity of the Union budget, the Office and the EPPO should establish and maintain a close relationship based on sincere ***and efficient*** cooperation and aimed at ensuring the complementarity of their respective mandates and coordination of their action, in particular as regards the scope of the enhanced cooperation for the establishment on the EPPO. Ultimately, the relationship should contribute to ensuring that all means are used to protect ***and***

interests of the Union and avoiding unnecessary duplication of efforts.

secure the financial interests of the Union and avoiding unnecessary duplication of efforts and ensuring full compliance with procedural guarantees and the rights of the economic operators concerned. In order to foster good cooperation, the EPPO and the Office should establish a regular exchange to identify trends and possible links between different cases in respect of their different purviews. Due to their different mandates, with the EPPO conducting criminal and OLAF administrative investigations, a coordination of their activities might in some cases not be necessary.

Amendment 5

Proposal for a regulation Recital 5

Text proposed by the Commission

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

Amendment

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

Amendment 6

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) Elements pointing to possible

Amendment

(6) Elements pointing to possible

criminal conduct falling within the competence of the EPPO may, in practice, be present in initial allegations received by the Office or may emerge only in the course of an administrative investigation opened by the Office on the grounds of suspicion of administrative irregularity. In order to comply with its duty to report to the EPPO, the Office should therefore, as the case may be, report criminal conduct at any stage before or during an investigation.

criminal conduct falling within the competence of the EPPO may, in practice, be present in initial allegations received by the Office or may emerge only in the course of an administrative investigation opened by the Office on the grounds of suspicion of administrative irregularity. In order to comply with its duty to report to the EPPO, the Office should therefore, as the case may be, **immediately** report criminal conduct at any stage before or during an investigation.

Amendment 7

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) Regulation (EU) 2017/1939 specifies the minimum elements that, as a rule, reports should contain. The Office may need to conduct a preliminary evaluation of allegations to ascertain these elements and collect the necessary information. The Office should conduct this evaluation expeditiously and through means which do not risk jeopardising a possible future criminal investigation. Upon completion of its evaluation, it should report to the EPPO where a suspicion of an offence within its competence is identified.

Amendment

(7) Regulation (EU) 2017/1939 specifies the minimum elements that, as a rule, reports should contain. The Office may need to conduct a preliminary evaluation of allegations to ascertain these elements and collect the necessary information. The Office should conduct this evaluation expeditiously, **with no unjustified delay** and through means which do not risk jeopardising a possible future criminal investigation. Upon completion of its evaluation, it should report to the EPPO, **with no unjustified delay** where a suspicion of an offence within its competence is identified.

Amendment 8

Proposal for a regulation

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) all reporting or communication from and among the EPPO and the Office should be conducted with due regard to prevailing Union legislation on data

protection and confidentiality standards.

(This amendment applies throughout the text)

Justification

Due to the nature of cases treated by the Office and EPPO they are to be held to the highest standards of data protection and confidentiality.

Amendment 9

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) In consideration of the Office's expertise, the institutions, bodies, offices and agencies of the Union should have the choice to make use of the Office to conduct such preliminary evaluation of allegations reported to them.

Amendment

(8) ***In order to ensure effective cooperation and*** in consideration of the Office's expertise, ***experience, mandate and powers,*** the institutions, bodies, offices and agencies of the Union should have the choice to make use of the Office to conduct such preliminary evaluation of allegations reported to them.

Amendment 10

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In conformity with Regulation (EU) 2017/1939, the Office should in principle not open an administrative investigation parallel to an investigation conducted by the EPPO into the same facts. ***However,*** in certain cases, the protection of the Union's financial interests may require that the Office carry out a complementary administrative investigation before the conclusion of criminal proceedings initiated by the EPPO with the purpose of ascertaining whether precautionary measures are necessary, or financial, disciplinary or administrative action should

Amendment

(9) In conformity with Regulation (EU) 2017/1939, the Office should not open an administrative investigation parallel to an investigation conducted by the EPPO into the same facts, ***except*** in certain cases, ***when*** the protection of the Union's financial interests may require that the Office carry out a complementary administrative investigation before the conclusion of criminal proceedings initiated by the EPPO with the purpose of ascertaining whether precautionary measures are necessary, or financial, disciplinary or administrative action should

be taken. These complementary investigations may be appropriate, inter alia, when necessary to recover amounts due to the Union budget subject to specific time-barring rules, when the amounts at risk are very high, or where there is the need to avoid further expenditure in risk situations through administrative measures.

be taken. These complementary investigations may be appropriate, inter alia, when necessary to recover amounts due to the Union budget subject to specific time-barring rules, when the amounts at risk are very high, or where there is the need to avoid further expenditure in risk situations through administrative measures.

Amendment 11

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) Regulation (EU) 2017/1939 provides that the EPPO may request such complementary investigations to the Office. In cases where the EPPO does not request it, such a complementary investigation should also be possible on the initiative of the Office, under certain conditions. In particular, the EPPO should be able to object to the opening or continuation of an investigation by the Office, or to the performance of specific acts of investigation by it. ***The reasons for this objection should be based on the need to protect the effectiveness of the EPPO's investigation and should be proportionate to this aim. The*** Office should refrain from performing the action on which the EPPO raised an objection. If the EPPO does not object, the Office investigation should be conducted in close consultation with the EPPO.

Amendment

(10) Regulation (EU) 2017/1939 provides that the EPPO may request such complementary investigations to the Office. In cases where the EPPO does not request it, such a complementary investigation should also be possible on the initiative of the Office, under certain conditions. In particular, the EPPO should be able to object to the opening or continuation of an investigation by the Office, or to the performance of specific acts of investigation by it, ***if it would counter the effectiveness of the EPPO's own investigation. Such an objection should always be duly justified and*** proportionate. ***In that case, the*** Office should refrain from performing the action on which the EPPO raised an objection. If the EPPO does not object, the Office investigation should be conducted in close consultation with the EPPO.

Amendment 12

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) The Office should actively support the EPPO in its investigations. In this

Amendment

(11) The Office should actively ***and effectively*** support the EPPO in the course

regard, the EPPO may request the Office to support or complement its criminal investigations through the exercise of powers under this Regulation. In these cases the Office should perform these operations within the limits of its powers and within the framework provided for in this Regulation.

of its investigations, *for example by providing appropriate technical and logistical support*. In this regard, the EPPO may request the Office to support or complement its criminal investigations through the exercise of *its mandate and* powers under this Regulation. In these cases the Office should perform these operations within the limits of its powers and within the framework provided for in this Regulation.

Amendment 13

Proposal for a regulation

Recital 12

Text proposed by the Commission

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

Amendment

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

Amendment 14

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) The Commission Report on Evaluation of the application of Regulation (EU, Euratom) No 883/2013⁶, adopted on 2 October 2017, concluded that the 2013

Amendment

(13) The Commission Report on Evaluation of the application of Regulation (EU, Euratom) No 883/2013⁶, adopted on 2 October 2017, concluded that the 2013

changes to the legal framework brought clear improvements, as regards the conduct of investigations, cooperation with partners and the rights of persons concerned. At the same time, the evaluation has highlighted some shortcomings which impact on the effectiveness and efficiency of investigations.

changes to the legal framework brought clear improvements, as regards the conduct of investigations, cooperation with partners and the rights of persons concerned. At the same time, the evaluation has highlighted some shortcomings which impact on the effectiveness and efficiency of investigations, *for example in the exercise of powers and use of OLAF's investigative resources, or as regards uniform conditions for conducting internal investigations, cooperation between Member States and their institutions, on the one hand, and the offices, agencies, bodies and institutions of the EU, on the other, as well differences in the application of Union legal framework provisions.*

⁶ COM(2017) 589. The report was accompanied by an evaluation Staff Working Document, SWD(2017) 332, and an Opinion of the Office's Supervisory Committee, Opinion 2/2017.

⁶ COM(2017) 589. The report was accompanied by an evaluation Staff Working Document, SWD(2017) 332, and an Opinion of the Office's Supervisory Committee, Opinion 2/2017.

Amendment 15

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) These changes do not affect the procedural guarantees applicable in the framework of investigations. The Office is bound to apply the procedural guarantees of Regulation (EU, Euratom) No 883/2013, Council Regulation (Euratom, EC) No 2185/967 and those contained in the Charter of Fundamental Rights of the Union. This framework requires that the Office conducts its investigations objectively, impartially and confidentially, seeking evidence for and against the person concerned, and carries out investigative acts on the basis of a written authorisation and following a legality check. **The** Office

Amendment

(15) These changes do not affect the procedural guarantees applicable in the framework of investigations. The Office is bound to apply the procedural guarantees of Regulation (EU, Euratom) No 883/2013, Council Regulation (Euratom, EC) No 2185/967 and those contained in the Charter of Fundamental Rights of the Union. This framework requires that the Office conducts its investigations objectively, impartially and confidentially, seeking evidence for and against the person concerned, and carries out investigative acts on the basis of a written authorisation and following a legality check. **Both the**

must ensure the respect of the rights of persons concerned by *its* investigations, including the presumption of innocence and the right to avoid self-incrimination. When interviewed, persons concerned have inter alia the rights to be assisted by a person of choice, to approve the record of the interview, and to use any of the official languages of the Union. Persons concerned also have the right to comment on the facts of the case before conclusions are drawn.

Office *and the EPPO* must ensure the respect of the rights of persons concerned by *their* investigations, including the presumption of innocence and the right to avoid self-incrimination. When interviewed, persons concerned have inter alia the rights to be assisted by a person of choice, to approve the record of the interview, and to use any of the official languages of the Union. Persons concerned also have the right to comment on the facts of the case before conclusions are drawn.

Amendment 16

Proposal for a regulation Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The participating Member States should agree to cooperate with the EPPO and the Office in order to facilitate the efficient conduct of the investigations.

Amendment 17

Proposal for a regulation Recital 19

Text proposed by the Commission

Amendment

(19) In situations where the Office needs to rely on the assistance of the national competent authorities, particularly in cases where an economic operator opposes an on-the-spot check and inspection, Member States should ensure that the Office's action is effective, and should *provide* the necessary assistance in accordance with the relevant rules of national procedural law.

(19) In situations where the Office needs to rely on the assistance of the national competent authorities, particularly in cases where an economic operator opposes an on-the-spot check and inspection, Member States should ensure that the Office's action is effective, and should *guarantee* the necessary assistance in accordance with the relevant rules of national procedural law.

Amendment 18

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) As part of this duty of cooperation, the Office should be able to require economic operators who may have been involved in the matter under investigation, or who might hold relevant information, to supply **relevant** information. When complying with such requests, economic operators are not obliged to admit that they have committed an illegal activity, but they are obliged to answer factual questions **and to provide documents, even if this information may be used to establish against them or against another operator the existence of an illegal activity.**

Amendment

(21) As part of this duty of cooperation, the Office should be able to require economic operators who may have been involved in the matter under investigation, or who might hold relevant information, to supply **such** information. ***As regards the protection of persons reporting breaches of Union law, notably crimes and infringements related to the EU's financial interests, Directive (EU) 2018/... [reference to Directive on the protection of persons reporting on breaches of Union law] applies.*** When complying with such requests, economic operators are not obliged to admit that they have committed an illegal activity, but they are obliged to answer factual questions.

Amendment 19

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) Economic operators should have the possibility to use any of the official languages of the Member State where the check takes place, and the right to be assisted by a person of their choice, including by external legal counsel, during on-the-spot checks and inspections. The presence of a legal counsel should not, however, represent a legal condition for the validity of on-the-spot checks and inspections. To ensure the effectiveness of the on-the-spot checks and inspections, in particular as regards the risk of evidence disappearing, the Office should be able to access to the premises, land, means of transportation or other areas used for business purposes without waiting for the operator to consult its legal counsel. It should only accept a short reasonable delay pending consultation of the legal counsel

Amendment

(22) Economic operators should have the possibility to use any of the official languages of the Member State where the check takes place, and the right to be assisted by a person of their choice, including by external legal counsel, during on-the-spot checks and inspections. The presence of a legal counsel should not, however, represent a legal condition for the validity of on-the-spot checks and inspections. To ensure the effectiveness of the on-the-spot checks and inspections, in particular as regards the risk of evidence disappearing, the Office should be able to access to the premises, land, means of transportation or other areas used for business purposes without waiting for the operator to consult its legal counsel, **but without preventing such consultation.** It should only accept a short reasonable delay

before starting the conduct of the check.
Any such delay must be kept to the strict minimum.

pending consultation of the legal counsel before starting the conduct of the check. Any such delay must be kept to the strict minimum, ***provided that the procedural guarantees and the rights of the economic operator concerned are duly respected.***

Amendment 20

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) The Office should dispose of the necessary means to follow the money trail in order to uncover the modus operandi typical of many fraudulent conducts. Today, it is able to obtain banking information relevant for its investigative activity held by credit institutions in a number of Member States, through cooperation with and assistance by the national authorities. To ensure an effective approach throughout the Union, the Regulation should specify the duty of competent national authorities to provide information on bank and payments accounts to the Office, as part of their general duty to assist it. This cooperation should, as a rule, take place through the Financial Intelligence Units in the Member States. When giving this assistance to the Office, the national authorities should act in compliance with the relevant provisions of procedural law provided for in the national legislation of the Member State concerned.

Amendment

(26) The Office should dispose of the necessary means to follow the money trail in order to uncover the modus operandi typical of many fraudulent conducts. Today, it is able to obtain banking information relevant for its investigative activity held by credit institutions in a number of Member States, through cooperation with and assistance by the national authorities. To ensure an effective approach throughout the Union, the Regulation should specify the duty of competent national authorities to provide information on bank and payments accounts to the Office, as part of their general duty to assist it. This cooperation should, as a rule, take place through the Financial Intelligence Units in the Member States. When giving this assistance to the Office, the national authorities should act in compliance with the relevant provisions of procedural law provided for in the national legislation of the Member State concerned ***while ensuring proper communication of all information relevant to the investigation to both the EPPO and the Office in a timely manner.***

Amendment 21

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) The early transmission of information by the Office for the purpose of adopting precautionary measures is an essential tool for the protection of the Union's financial interests. In order to ensure close cooperation in this regard between the Office and the institutions, offices, bodies and agencies of the Union, it is appropriate that the latter have the possibility to consult at any time the Office with a view to deciding on any appropriate precautionary measures, including measures for the safeguarding of evidence.

Amendment

(27) The early ***and without delay*** transmission of information by the Office for the purpose of adopting precautionary measures is an essential tool for the protection of the Union's financial interests. In order to ensure close cooperation in this regard between the Office and the institutions, offices, bodies and agencies of the Union, it is appropriate that the latter have the possibility to consult at any time the Office with a view to deciding on any appropriate precautionary measures, including measures for the safeguarding of evidence.

Amendment 22

**Proposal for a regulation
Recital 27 a (new)**

Text proposed by the Commission

Amendment

(27a) To avoid undue delays that could have detrimental consequences to other investigations, such as some waiver of immunity cases, both the EPPO and the Office should conduct their investigations in a timely manner.

Amendment 23

**Proposal for a regulation
Recital 29**

Text proposed by the Commission

Amendment

(29) The mandate of the Office includes the protection of revenues to the Union budget arising from VAT own resources. In this field, the Office should be able to support and complement the activities of the Member States through investigations conducted in accordance with its mandate, the coordination of national competent authorities in complex, transnational cases,

(29) The mandate of the Office includes the protection of revenues to the Union budget arising from VAT own resources. In this field, the Office should be able to support and complement the activities of the Member States through investigations conducted in accordance with its mandate, the coordination of national competent authorities in complex, transnational cases,

and the support and assistance to Member States and to the EPPO. To this end, the Office should be able to exchange information through the Eurofisc network established by Council Regulation (EU) No 904/2010⁹ in order to promote and facilitate cooperation in the fight against VAT fraud.

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

and the support and assistance to Member States and to the EPPO. To this end, the Office should be able to exchange information through the Eurofisc network established by Council Regulation (EU) No 904/2010⁹, ***bearing in mind the provisions of Regulation (EU) 2018/1725 of the European Parliament and of the Council***^{9a} in order to promote and facilitate cooperation in the fight against VAT fraud.

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

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

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU, Euratom) No 883/2013

Article 1 – paragraph 4a

Text proposed by the Commission

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

Amendment

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

their respective mandates and the support provided by the Office to the EPPO.

Union's financial interests through the complementarity of their respective mandates and the support provided by the Office to the EPPO, **including technical and logistic support.**

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

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

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 2

Text proposed by the Commission

2. On-the-spot checks and inspections shall be conducted in accordance with this Regulation and, to the extent that a matter is not covered by this Regulation, with Regulation (Euratom, EC) No 2185/96.

Amendment

2. On-the-spot checks and inspections shall be conducted in accordance with this Regulation and, to the extent that a matter is not covered by this Regulation, with Regulation (Euratom, EC) No 2185/96 **and all relevant Union legislation on data protection.**

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 3

Text proposed by the Commission

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

Amendment

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

operators.

information from economic operators, ***duly documented and processed in accordance with confidentiality standards and data protection legislation.***

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The participating Member States shall ensure that their respective national authorities guarantee the proper and efficient conduct of the EPPO and Office investigations;

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 5

Text proposed by the Commission

Amendment

5. In the exercise of these powers, the Office shall comply with the procedural guarantees provided for in this Regulation and in Regulation (Euratom, EC) No 2185/96. In the conduct of an on-the-spot check and inspection, the economic operator concerned shall have the right not to make self-incriminating statements and to be assisted by a person of choice. When making statements during the on the spot checks, the economic operator shall be provided with the possibility to use any of the official languages of the Member State where he is located. The right to be assisted by a person of choice shall not prevent access by the Office to the premises of the economic operator, and shall not unduly

5. In the exercise of these powers, the Office shall comply with the procedural guarantees provided for in this Regulation and in Regulation (Euratom, EC) No 2185/96, ***as well as Regulation (EU) 2018/1725****. In the conduct of an on-the-spot check and inspection, the economic operator concerned shall have the right not to make self-incriminating statements and to be assisted by a person of choice. When making statements during the on the spot checks, the economic operator shall be ***able*** to use any of the official languages of the Member State where he is located. The right to be assisted by a person of choice ***for a limited and reasonable period*** shall not prevent access by the Office to the premises of the economic operator, and

delay the start of the check.

shall not unduly delay the start of the check.

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

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 6 – subparagraph 1

Text proposed by the Commission

At the request of the Office, the competent authority of the Member State concerned shall provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

Amendment

At the request of the Office, the competent authority of the Member State concerned shall **guarantee without delay** the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7(2).

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 6 – subparagraph 2

Text proposed by the Commission

The Member State concerned shall ensure, in accordance with Regulation (Euratom, EC) No 2185/96, that the staff of the Office

Amendment

The Member State concerned shall ensure, in accordance with Regulation (Euratom, EC) No 2185/96, that the staff of the Office

are allowed access to all information and documents relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspection to be carried out effectively and efficiently, and that they are able to assume custody of documents or data to ensure that there is no danger of their disappearance.

are allowed access to all information and documents relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspection to be carried out effectively and efficiently ***and proportionately***, and that they are able to assume custody of documents or data to ensure that there is no danger of their disappearance. ***The fundamental rights, and in particular the right to privacy, shall be fully respected.***

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 7 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU, Euratom) No 883/2013

Article 3 – paragraph 9

Text proposed by the Commission

9. During an external investigation, the Office may have access to any relevant information and data, irrespective of the medium on which it is stored, held by the institutions, bodies, offices and agencies, connected with the matter under investigation, where necessary in order to

Amendment

9. During an external investigation, the Office may have access to any relevant information and data, irrespective of the medium on which it is stored, held by the institutions, bodies, offices and agencies, connected with the matter under investigation, where necessary in order to

establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. For that purpose Article 4(2) and (4) shall apply.

establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, ***whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and, where appropriate, national provisions applicable to judicial proceedings***. For that purpose Article 4(2) and (4) shall apply.

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point a
Regulation (EU, Euratom) No 883/2013
Article 4 – paragraph 2 – subparagraph b

Text proposed by the Commission

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

Amendment

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

Amendment 34

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point a
Regulation (EU, Euratom) No 883/2013
Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Without prejudice to Article 12d, the Director-General may open an investigation when there is a sufficient suspicion, which may also be based on information provided by any third party or anonymous information, that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union.;

Amendment

Without prejudice to Article 12d, the Director-General may open an investigation when there is a sufficient suspicion ***or strong indications***, which may also be based on information provided by any third party or anonymous information, that there has been fraud, corruption or any other illegal activity affecting the financial interests of the

Union.;

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point a

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The competent authorities of the Member States shall **give** the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay.;

Amendment

The competent authorities of the Member States shall **guarantee** the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay.;

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point d

Regulation (EU, Euratom) No 883/2013

Article 7 – paragraph 6 – subparagraph 2

Text proposed by the Commission

In addition to the first subparagraph, the institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence, and shall inform the Office without delay of such decision.;

Amendment

In addition to the first subparagraph, the institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office **and without duplicating its efforts**, any appropriate precautionary measures, including measures for the safeguarding of evidence, and shall inform the Office without delay of such decision. **The Office shall cooperate constructively and in full synergy with the institution body, office or agency concerned;**

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a
Regulation (EU, Euratom) No 883/2013
Article 8 – paragraph 1 – subparagraph 1a

Text proposed by the Commission

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

Amendment

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

Amendment 39

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b
Regulation (EU, Euratom) No 883/2013
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

investigation by the Office.

an ongoing investigation by the Office.

Amendment 40

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point c

Regulation (EU, Euratom) No 883/2013

Article 8 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 41

Proposal for a regulation

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

Regulation (EU, Euratom) No 883/2013

Article 10 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph 5a is added:

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

Amendment 42

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point a

Regulation (EU, Euratom) No 883/2013
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 43

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point b

Regulation (EU, Euratom) No 883/2013

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

Text proposed by the Commission

Amendment

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

Amendment 44

Proposal for a regulation

Article 1 – paragraph 1 – point 10 – point b

Regulation (EU, Euratom) No 883/2013

Article 11 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

Reports drawn up by the Office shall constitute admissible evidence in judicial

Reports drawn up by the Office shall constitute admissible evidence in judicial

proceedings before the Union courts and in administrative proceedings in the Union.;

proceedings before the Union courts and in administrative proceedings in the Union, ***provided that they have been drawn up lawfully.***

Amendment 45

Proposal for a regulation

Article 1 – paragraph 1 – point 11 – point a

Regulation (EU, Euratom) No 883/2013

Article 12 – paragraph 1 – second sentence

Text proposed by the Commission

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

Amendment

"In order to avoid undue delays that could have detrimental consequences to other investigations, such as some waiver of immunity cases, it may also transmit, upon request, information to the institution, body, office or agency concerned."

Amendment 46

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12c – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 47

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12c – paragraph 2

Text proposed by the Commission

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

Amendment

2. The report shall contain, **all** the facts **and information known by the Office**, including an assessment of the damage caused or likely to be caused the possible legal qualification and any available information about potential victims, suspects and any other involved persons.

Amendment 48

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12c – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

The Office shall report to the EPPO **only substantiated allegations, and shall provide annual data on the number and subject matter of such allegations.**

Amendment 49

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU, Euratom) No 883/2013

Article 12 f a (new)

Text proposed by the Commission

Amendment

Article 12 fa

Simultaneous investigations

1. In situations of an investigation in a Member State part of the EPPO and a Member State that is not part of the EPPO, the Office and the EPPO shall conclude a working arrangement pursuant to Article 99 (3) of Council Regulation (EU) 2017/1939. Such a working arrangement shall contain, as a minimum, provisions on the exchange of

all information, mutual acceptance of evidence and reports, procedural safeguards equivalent to those listed in Chapter VI in Council Regulation (EU) 2017/1939, exchange of personal data.

2. Member States shall cooperate with both the Office and the EPPO and support them in their activities and respective investigations.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations
References	COM(2018)0338 – C8-0214/2018 – 2018/0170(COD)
Committee responsible Date announced in plenary	CONT 5.7.2018
Opinion by Date announced in plenary	JURI 5.7.2018
Rapporteur Date appointed	Jean-Marie Cavada 9.7.2018
Discussed in committee	20.11.2018
Date adopted	23.1.2019
Result of final vote	+: 20 –: 2 0: 1
Members present for the final vote	Max Andersson, Marie-Christine Boutonnet, Jean-Marie Cavada, Mady Delvaux, Rosa Estaràs Ferragut, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
Substitutes present for the final vote	Luis de Grandes Pascual, Pascal Durand, Angelika Niebler, Virginie Rozière, Tiemo Wölken, Kosma Złotowski
Substitutes under Rule 200(2) present for the final vote	Lola Sánchez Caldentey

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

20	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
ECR	Sajjad Karim, Kosma Złotowski
GUE/NGL	Lola Sánchez Caldentey
PPE	Rosa Estaràs Ferragut, Luis de Grandes Pascual, Pavel Svoboda, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Mady Delvaux, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Evelyn Regner, Tiemo Wölken
VERTS/ALE	Max Andersson, Pascal Durand, Julia Reda

2	-
ENF	Marie-Christine Boutonnet, Gilles Lebreton

1	0
PPE	József Szájer

Key to symbols:

+ : in favour

- : against

0 : abstention