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Amended 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) and repealing Regulation (EURATOM) No
1074/1999**

SEC(2011) 343 final

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The European Anti-fraud Office ("the Office") was established in 1999. European Parliament and Council Regulation (EC) No 1073/1999¹ and Council Regulation (Euratom) No 1074/1999 of 25 May 1999², which lay down the modalities of both internal and external investigations conducted by the Office, and Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the Office³ are the key instruments in the legal framework within which it operates.

In 2006, the Commission put forward a proposal for amending Regulation 1073/1999⁴. The legislative proposal focused on achieving *better operational efficiency and improved governance for the Office* by:

- improving the information flow between the Office, the European institutions and bodies, the Member States and informers;
- clarifying the relations between the Supervisory Committee, the Office and the institutions and other bodies, offices and agencies and introducing a "structured dialogue" involving the Supervisory Committee, European Parliament, Council and Commission on key governance questions;
- strengthening the procedural rights of persons concerned by investigations (laying down procedural guarantees to be respected during both internal and external investigations and introducing a Review Adviser).

The proposal of the Commission was discussed both in the Council and the **European Parliament**. The latter adopted a **resolution on 20 November 2008**⁵ in first reading under the co-decision procedure. It put forward approximately one hundred amendments to the Commission's proposal. Many amendments have been welcomed by the Commission. At the request of the Czech Presidency of the Council (January-June 2009) the **Commission** presented in July 2010 a **Reflection paper on the reform of the Office**⁶ to the European Parliament and the Council. This document outlines possible solutions to take forward the current legislative process. The European Parliament welcomed in October 2010 the Reflection paper and asked the Commission to take up the legislative procedure again. On 6 December 2010, the **Council** adopted **conclusions** on the Reflection paper put forward by the Commission. The **Supervisory Committee of OLAF** contributed to the discussion with its

¹ OJ L 136, 31.5.1999, p.1.

² OJ L 136, 31.5.1999, p. 8.

³ OJ L 136, 31.05.1999, p. 20.

⁴ COM (2006)244

⁵ European Parliament legislative resolution of 20 November 2008 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), P6_TA-PROV(2008) 553. For the preparing report see A6-0394/2008.

⁶ SEC (2010)859

opinions on the Reflection paper and on the respect for fundamental rights and procedural guarantees in investigations by OLAF.⁷

The Commission has now prepared an amended proposal that takes into account the positions expressed so far and looks forward to achieving the current legislative reform as soon as possible.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

N/A

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Strengthening the efficiency of the Office's investigations

The amended proposal includes further provisions on an increased efficiency of investigations and a reinforced cooperation with the Member States to achieve an effective accelerating of the procedures of investigations.

For this purpose, the Commission proposes that the Supervisory Committee should examine the **length of investigations** based on information supplied by the Office. In cases where the investigations cannot be closed after 12 months, the Office should inform the Supervisory Committee of the reasons preventing the finalisation of the investigation at intervals of 6 months. This way, a continuous monitoring of the duration of investigations will be ensured until their closure.

The amended proposal further contributes to making the work of the Office more effective by improving its **cooperation and information exchange with the other EU institutions, offices, bodies and agencies**, as well as with the Member States at all stages of the investigative process.

The **institutions, bodies, offices and agencies** whose member/staff member or budget is concerned by an investigation should be **informed by the Office** without undue delay. This way, the institutions, bodies, offices and agencies may take precautionary administrative measures. It is their responsibility to ensure the best protection of the EU's financial interests and to avoid any continuation of an irregularity or potential increase of financial loss. Their information is therefore absolutely necessary. For exceptional cases, in which the confidentiality of the investigation cannot be ensured (for instance if the highest management or political level of an institution, office, body or agency is concerned), the Office should use appropriate alternative channels of information.

⁷ Opinion No 2/2010 of 23 September 2010 and Opinion No 5/2010 of 29 November 2010, published in the Annual Report of the Supervisory Committee of OLAF (June 2009- December 2010) http://ec.europa.eu/anti_fraud/reports/sup_comm/2009-2010/Activity-report-2009-2010_en.pdf

Regarding **the Office's access to information held by the institutions, bodies, offices and agencies**, pursuant to article 4 (2) of Regulation 1073/1999 the Office continues to have immediate and unannounced access to any relevant information connected with the matter under investigation, held by the EU institutions, offices, bodies and agencies, without prejudice to the exclusions pursuant to the legal basis establishing Europol⁸.

This amended proposal confirms and further develops the **de minimis approach** of the 2006 proposal, as well as the zero tolerance policy towards fraud: with regard to the opening of investigations, the Office should take into account the investigation policy priorities and the need for efficient utilisation of the Office's resources. With specific reference to internal investigations, the Office should consider whether such investigations are best carried out by the institution, body, office or agency concerned, or by the Office itself. Furthermore, in cases where the Office, having carried out an internal investigation, considers that, in the light of the nature of the facts and the scale of the financial damage, internal measures allow for more appropriate follow-up, it should forward the case to the Investigation and Disciplinary Office of the Commission (IDOC) or to the institutions, bodies, office or agency concerned, instead of sending it to the competent national judicial authorities. Thus, the *de minimis* policy (cases where the Office decides not to open an investigation or not to forward its findings to the competent national judicial authorities) has been clarified in the amended proposal. When implementing the *de minimis* policy, the Office should apply precise guidelines, as proposed by the Council in its Conclusions of 6 December 2010.

To step up **cooperation between the Office and the competent authorities of the Member States**, an authority (anti-fraud coordination service) should be designated by each Member State to assist the Office in its collaboration with the national competent authorities. This does not mean that a new authority would be established. Experience shows that due to the different structures in each Member State, it is often very difficult for the Office to address the competent authority in a given Member State.

Regular monitoring is especially important for internal investigations, to ensure that disciplinary action or other measures can be taken by IDOC or equivalent entities in other institutions, bodies, offices or agencies. It is therefore proposed that Member States report upon the Office's request on the **follow-up given to the information** transmitted to them by the Office. In order to avoid unnecessary administrative burden for Member States, the amended proposal provides that they will report to the Office upon its request on the actions taken and progress made following transmission of information by the Office.

To further encourage cooperation between the Office and **Europol and Eurojust**, including in the perspective of possible further developments of their responsibilities, as well as with **third countries'** competent authorities and with **international organisations**, the insertion of a provision in the regulation is proposed, giving the Office the possibility to conclude administrative arrangements with these entities to facilitate the exchange of information. The Office already has such a cooperation arrangement with Eurojust. According to the Council Decision setting up Eurojust, Eurojust may agree on necessary practical arrangements with

⁸ Council Decision 2009/371/JHA of 6 April 2009, OJ L 121, p37.

the Commission.⁹ The Office also has such arrangements with some third countries. Regarding Europol, a new Framework Decision is applicable as of 2010 which stipulates that Europol shall conclude working arrangements with the Office. Therefore, a corresponding rule should be established for the Office. In line with Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU) which foresees in Article 3(4) the cooperation between EEAS and OLAF, there is an obligation for all institutions to give the necessary support to enable OLAF's agents to fulfil their tasks. The modalities of cooperation of OLAF with third country authorities should be set out in memoranda of understanding with the EEAS and with relevant Commission services.

While the **Director-General** of the Office continues to be responsible for the opening and for the conduct of investigations, he should be assisted by an internal body which he will consult when opening an investigation, before closing an investigation and whenever he deems necessary. To clarify the internal decision-making procedures with respect to the role of the Director-General of the Office, the Director-General may also delegate in writing the direct execution of investigations to individual members of the staff of the Office. The term of the Director-General should be non-renewable in order to reinforce his independence. The title of "Director-General" which was introduced by the 2006 proposal is maintained. This is necessary to reflect the status of OLAF as a Commission Directorate-General and to distinguish the Director-General from the members of the senior management team which are of Director grade. To ensure continuity, and in light of recent experience, deputising rules are provided in the amended proposal.

The **distinction between internal and external investigations** should be limited to the extent strictly necessary. This would facilitate the conduct of investigations. As experience has shown, investigations can start as external ones and later lead to internal investigations or vice versa. Under the current legal framework, persons concerned in internal investigations have the duty to cooperate with the Office according to the Staff Regulations or the Protocol on the Privileges and Immunities of the European Union. The Office's investigative powers are also more detailed in internal investigations. The procedural and fundamental rights of the persons concerned have to be fully respected, be it in an internal or an external investigation.

3.2. The Office's governance: balance between independence and accountability of the Office

Enhanced governance, combined with the establishment of a review procedure and provisions on the flow of information between the Office and the institutions, bodies, offices and agencies concerned will help strike the balance between independence and accountability of the Office.

The **Supervisory Committee** of the Office will continue to ensure that the Office exercises its mission in full independence. Moreover, the role of the Supervisory Committee is further clarified. It should expressly be mandated to monitor information exchanges between the

⁹ Council Decision of 28 February 2002, OJ L 63, 6.3.2002, p. 1 (Art. 11(3))

Office and the institutions, bodies, offices and agencies and the developments regarding the application of procedural guarantees. It should also monitor in a general and systemic way the developments regarding the duration of investigations, without interfering with the conduct of investigations. Regarding the appointment of the members of the Supervisory Committee, a staggered renewal is envisaged to preserve its expertise. The Supervisory Committee should be consulted for the appointment of the Director-General and the designation of the deputising Director(s) and should be informed about transmissions to judicial authorities.

Instead of a formal structured dialogue between the Supervisory Committee and the institutions on the investigative function of the Office, a **periodical exchange of views** is now proposed to increase the Office's governance while respecting its operational independence. The Council, in its conclusions of 6 December 2010, also stresses that a formal structured dialogue could weaken the independence of the Office. In substance, the less formal approach is in line with the original intention of the Commission for increased governance while guaranteeing the independence of the Office for its investigations. The exchange of views will be established between the European Parliament, the Council, the European Commission, with the participation of the Office and the Supervisory Committee. This exchange of views should contribute to the exchange of information and opinion between the stakeholders for an improved efficiency of the Office's activity. The exchange of views should not interfere with the conduct of investigations and it should relate to the strategic priorities for the Office's investigative policies, the reports on the activities of the Supervisory Committee and that of the Director-General of the Office, the relations between the Office and the EU institutions, bodies, offices and agencies; the relations between the Office and the competent authorities of the Member States and the effectiveness of the work of the Office with regard to investigations and that of the Supervisory Committee. In line with the opinions expressed by the institutions, the exchange of views will be flexible: it will take place periodically or upon request of one of the above-mentioned institutions, the Office or the Supervisory Committee.

One of the main objectives of the amended proposal is to further strengthen the **procedural rights of persons concerned by the Office's investigations** (Article 7a). It is appropriate to make the procedural guarantees clearer and more transparent and to have them apply to all investigations conducted by the Office, both internal and external. These guarantees respect the fundamental rights recognised in particular by the Charter of Fundamental Rights of the Union. Common procedural rights for both internal and external investigations are provided by this proposal (the right for the person concerned by an investigation to make his/her views known before conclusions referring by name to him or her have been drawn, the right to be given a summary of the matters under investigations and to be invited to comment on these matters; the right to be assisted by a person of his/her choice during an interview, the right to use the EU language of his or her choice; the principle that any person concerned by an investigation shall be entitled to avoid self-incrimination). The practical application of these rights should be reflected in the Office's manual of procedures for investigations (OLAF manual) as adopted by the Director-General.

In the proposal of 2006, the Commission proposed a Review Adviser to whom cases may be referred for his or her independent opinion regarding the procedural guarantees. In order to avoid overlapping with the tasks of the Supervisory Committee and to avoid additional formal structures while guaranteeing an effective, efficient, and independent handling of individual complaints, the Commission now proposes that a **review procedure** be set up, by the

Director-General within the Office. The person or persons entrusted with the review procedure should act in full independence. The Director-General of the Office will report to the institutions about the measures taken for the setting up of the review procedure.

As to the fundamental right to the **protection of personal data**, as recognised in Article 8 of the Charter and Article 16 TFEU, the amended proposal provides for clarification and more detailed provisions implementing the principles of Regulation (EC) No 45/2001¹⁰, in particular the requirement that OLAF appoint a Data Protection Officer.

The Office's **communication to the public** needs to preserve the confidentiality of investigations and the presumption of innocence and should always be cautious and impartial. Article 8 of the current Regulation foresees obligations concerning confidentiality and data protection.

The Director-General should adopt, after consultation of the Supervisory Committee, the person or persons entrusted with the review procedure, and the Office's Data Protection Officer, the OLAF **manual of procedures** referred to above. This manual shall provide guidelines on the practical application of the administrative investigations by the Office.

As the EURATOM competences will be covered under Article 325 TFEU as the new legal basis for Regulation 1073/1999, following the entry into force of the Lisbon Treaty, **Regulation (Euratom) 1074/1999** should be therefore repealed.

4. BUDGETARY IMPLICATION

The financial statement attached to the proposal indicates that there will be no impact on the EU budget.

5. OPTIONAL ELEMENTS

N/A

¹⁰ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p.1-22

Amended 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) and repealing Regulation (EURATOM) No 1074/1999

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the Court of Auditors¹¹,

Having regard to the opinion of the European Data Protection Supervisor¹²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In view of the importance of prevention measures to protect the financial interests of the Union and as components in the fight against fraud and corruption, there is a need to clarify the role of the European Anti-Fraud Office ("the Office") when conducting investigations pursuant to Regulation (EC) No 1073/1999¹³. Relying on its operational experience, the Office should also contribute to the design and development of methods of preventing and combating fraud at Union level and it should support joint anti-fraud actions undertaken by Member States on a voluntary basis.
- (2) In order to make the Office's investigative activity more effective and in the light of the evaluations of its activities made by the Union institutions, in particular the Commission's evaluation report of April 2003 and the Court of Auditors' special report No 1/2005¹⁴ on the management of the Office, certain aspects of the conduct of the investigations of the Office and certain measures it can take when conducting its investigations need to be clarified and improved. The Office has been given the power

¹¹ OJ C [...], [...], p. [...].

¹² OJ C [...], [...], p. [...].

¹³ OJ L 136, 31.5. 1999, p.1.

¹⁴ Special report No. 1/2005 (OJ C 202, 18.8.2005, p.1) approved by Council Conclusions dated 8 November 2005.

to carry out the inspections and checks provided for by Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996¹⁵ concerning on-the-spot checks and inspections carried out by the Commission in order to protect the Union's financial interests against fraud and other irregularities in connection with internal investigations and in cases of fraud linked to contracts concerning Union funding. Therefore the Office should have access to information held by the institutions, bodies, offices and agencies of the Union in connection with external investigations.

- (3) The courses of action which may be taken by the Office in external investigations should be clarified where legal uncertainties have been found in the existing system and should be strengthened where only more effective action by the Office can ensure that reliable external investigations are conducted.
- (4) The Office's investigative tasks should be exercised without prejudice to the control and audit functions of other Commission services, notably the authorising officers by delegation, set out in sector-specific legislation.
- (5) The Office should be placed under precise obligations to inform the institutions, bodies, offices and agencies of the Union of investigations in progress where a member or staff member is concerned by the matter under investigation or where precautionary administrative or criminal law measures may be required in order to protect the financial interests of the Union.
- (6) In view of the major benefits of strengthening cooperation between the Office, the European Police Office (Europol) and Eurojust, the Office should be enabled to agree on administrative arrangements with those two agencies. In order to strengthen the cooperation between Eurojust, the Office and the competent authorities of the Member States in respect of deeds liable to criminal investigation, the Office should inform Eurojust in particular of those cases of suspected illegal activity damaging to the financial interests of the Union and which involve serious forms of criminality.
- (7) The operational efficiency of the Office depends greatly on cooperation with the Member States. There is a need for the Member States to identify their competent authorities which are able to provide the Office with the assistance needed in the exercise of its duties. In cases where a Member State has not set up a specialist department at national level with the task of coordinating the protection of the financial interests of the Union and the fight against fraud, an authority (anti-fraud coordination service) should be designated to ensure an effective cooperation and information exchange with the Office.
- (8) Clear rules should be laid down which, while confirming the priority enjoyed by the Office for conducting internal investigations on matters affecting the financial interests of the Union, enable the institutions, bodies, offices and agencies of the Union quickly to conduct such investigations in cases where the Office decides not to intervene.
- (9) In order to improve its efficiency, the Office must know how the results of its investigations have been followed up. Hence, the competent authorities of the Member States and the institutions, bodies, offices and agencies of the Union should be

¹⁵ OJ L 292, 15.11.1996, p. 2.

required to report to the Office, on its request on the action taken and progress made in response to the information sent by the Office.

- (10) It is necessary, in the interests of legal certainty, to clarify the procedural guarantees applicable to investigations conducted by the Office. The clarification of the procedural guarantees should take into account the administrative nature of the Office's investigations.
- (11) In order to strengthen the protection of the individual rights of persons under investigation, conclusions referring by name to a person concerned should not be drawn, at the final stage of an investigation, without that person being given the opportunity to comment in facts concerning him or her. Where a member, staff member or a natural person considers that procedural guarantees have not been complied with, he or she must be entitled to file a request for an opinion of the person or persons entrusted with a review procedure as established by this Regulation.
- (12) Where it is found that facts brought to light by the final report on an internal investigation could give rise to criminal proceedings, this information should be transmitted to the national judicial authorities of the Member State concerned, unless internal measures allowing for more appropriate follow-up action are available, in the light of the nature of the facts and the scale of the financial impact.
- (13) The fundamental rights of the persons concerned by investigations should be respected at all times, in particular when information about ongoing investigations is provided. Information on Office investigations supplied to the European Parliament, the Council, the Commission and the Court of Auditors, whether bilaterally or as part of the exchange of views, should be provided while respecting the confidentiality of investigations, the legitimate rights of the persons concerned and, where applicable, the national provisions governing judicial proceedings. Information forwarded or obtained during investigations should be treated in accordance with the Union legislation on data protection. The exchange of information should be governed by the proportionality and the need-to-know principles.
- (14) The Director-General should ensure that any information supplied to the public respects the legitimate rights of the persons concerned.
- (15) Given the scale of the Union 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 investigation purposes, the Office should be enabled to seek practical assistance by administrative arrangements from the competent authorities in third countries and from international organisations in the performance of its tasks.
- (16) It is appropriate to revise the criteria and procedure for appointing the Supervisory Committee's members and to further specify the tasks of the Supervisory Committee arising from its mandate.
- (17) In order to ensure that the Supervisory Committee can carry out its mission efficiently, the independent functioning of its Secretariat should be guaranteed by the Office.
- (18) An exchange of views should take place periodically between the European Parliament, the Council and the Commission. Such exchange of views should cover the strategic priorities for investigative policies and the effectiveness of the work of

the Office without in any way interfering with the independence of the Office in the conduct of its investigations.

- (19) In order to reinforce complete independence in the running of the Office, the Director-General should be appointed for a non-renewable term of seven years.
- (20) Experience from operational practice has shown that it would be useful to allow the Director-General of the Office to delegate the exercise of certain of his functions to one or more members of the staff of the Office. To ensure continuity explicit deputising rules should also be provided.
- (21) The Director-General should be assisted by an internal body to be consulted by him.
- (22) The Director-General should be able to adopt a manual of procedures providing guidelines on the practical application of the administrative investigations by the Office.
- (23) The existing provision on judicial review should be deleted as its content has been included in Article 90a of the Staff Regulations.
- (24) Regulation (EC) No 1073/99 should therefore be amended accordingly.
- (25) Following the entry into force of the Lisbon Treaty, which extends the application of Article 325 TFEU to the European Atomic Energy Community (EURATOM), the rules governing the investigations conducted by Office as regards the Union should also apply as regards EURATOM. Regulation (Euratom) No 1074/99 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹⁶ should therefore be repealed.
- (26) This Regulation fully respects the principle of subsidiarity as set out in Article 5 of the Treaty on the Functioning of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (27) This Regulation respects fundamental rights and complies with the principles recognised in particular in the Charter of Fundamental Rights of the European Union, and in particular Articles 41, 47 and 48 thereof,

HAVE ADOPTED THIS REGULATION:

Article 1

1. Regulation (EC) 1073/1999 is amended as follows:

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

"Article 1

Objectives and tasks

¹⁶ OJ L 136, 31.5.1999, p.8.

1. In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Union and of the European Atomic Energy Community (hereinafter "the Union" when the context so requires), 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:

- (a) the Union rules and Regulations in force in those areas and
- (b) the cooperation and mutual assistance agreements concluded by the Union with third countries and international organisations in those areas.

2. The Office shall assist the Member States in organising close and regular cooperation between their competent authorities in order to coordinate their activities for the purpose of protecting the Union's financial interests against fraud. The Office shall contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the Union. The Office shall promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field of the protection of financial interests of the Union, as well as support joint anti-fraud actions undertaken by Member States on a voluntary basis.

3. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties (hereinafter "the institutions, bodies, offices and agencies"), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end it shall investigate serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or members of the staff of institutions, bodies, offices or agencies not subject to the Staff Regulations of officials and the Conditions of employment of other servants of the European Union ("the members or staff members")."

- (2) Article 2 is replaced by the following:

"Article 2

Definitions

Within the meaning of this Regulation:

- "administrative investigations" (hereinafter "investigations") shall mean all inspections, checks and other measures undertaken by the Office, in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation. These investigations shall not affect the powers of the Member States to bring criminal proceedings.

- "person concerned" shall mean a person suspected of having committed an irregularity or fraud and who is therefore subject to investigation by the Office.
- "Staff Regulations" shall mean the Staff Regulations of Officials and Conditions of Employment of other Servants of the European Union¹⁷."

(3) Article 3 is replaced by the following:

"Article 3

External investigations

1. The Office shall exercise the power conferred on the Commission by Regulation (Euratom, EC) No 2185/96 to carry out on-the-spot inspections and checks in the Member States and, in accordance with the cooperation agreements in force, in third countries and on the premises of international organisations.

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 2988/95¹⁸ 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 on the premises of international organisations.

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 Union 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.

3. During on-the-spot checks and investigations, the Office's staff shall act in accordance with the rules and practices governing administrative investigations of the Member State concerned, and the procedural guarantees provided in this Regulation.

At the Office's request, the competent authority of the Member State concerned shall provide the Office's staff with the assistance needed in order to carry out their task, as specified in the written authorisation referred to in Article 6(2).

The Member State concerned must ensure that the Office's staff 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 matter under investigation which prove necessary for the on-the-spot checks and inspections to be carried out effectively and efficiently.

¹⁷ OJ L56, 4.3.1968.

¹⁸ OJ L 312, 23.12.1995, p.1-4.

4. Member States shall designate a service to facilitate proper coordination between all competent authorities at national level (hereinafter 'the anti-fraud coordination service'). That service shall ensure an effective cooperation and information exchange with the Office.

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

6. Where the Office has to handle, prior to an external investigation, information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, the Office may inform the competent anti-fraud coordination service and the competent authorities of the Member States concerned and, where appropriate, the competent Commission services. Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities shall ensure that appropriate action is taken and, where necessary, undertake investigations in accordance with national law, in which the Office may take part. The Member States concerned shall inform the Office of the action taken and of their findings on the basis of such information."

(4) Article 4 is amended as follows:

(a) In Paragraph 1, the second subparagraph is replaced by the following:

"These internal investigations shall be conducted under the conditions provided for in this Regulation and in decisions adopted by each institution, body, office and agency."

(b) In Paragraph 2, the second indent is replaced by the following:

"The Office may request oral and written information from members or staff members of the institutions, bodies, offices and agencies."

(c) In Paragraph 3, the first subparagraph is replaced by the following:

"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."

(d) Paragraphs 4 to 6 are replaced by the following:

"4. The institutions, bodies, offices and agencies shall be informed whenever the Office conducts an investigation on their premises or consults a document or requests information held by them. Without prejudice to Articles 8 and 9 of this Regulation, the Office may at any time forward to the institution, body, office or agency concerned the information obtained in the course of internal investigations.

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

6. Where investigations reveal that a member or staff member may be concerned by an internal investigation, the institution, body, office or agency to which he belongs shall be informed.

In exceptional cases where the confidentiality of the investigation cannot be ensured, the Office shall use appropriate alternative channels of information.

7. The decision to be adopted by each institution, body, office or agency as provided for in paragraph 1, shall in particular include a duty on the part of the members or staff members of the institutions, bodies, offices and agencies, to cooperate loyally with and supply information to the Office."

(5) Article 5 is replaced by the following:

"Article 5

Opening of investigations

1. The Office may open an investigation when sufficient suspicions exist that acts of fraud or corruption or other illegal acts affecting the financial interests of the Union have been committed. Anonymous information may also be taken into account. The decision whether or not to open an investigation shall take account of the investigation policy priorities and the Office's annual management plan determined in accordance with Article 12(4). That decision shall also take account of the need for efficient utilisation of the Office's resources and for proportionality in the means deployed.

With regard to internal investigations, specific account shall be taken of the institution, body, office or agency best placed to conduct them, based, in particular, on: the nature of the facts, the actual or potential financial impact of the case, and the perspective of any judicial follow-up.

2. The decision whether or not to open an investigation shall be taken by the Director-General.

The decision to open an external investigation shall be taken by the Director-General, acting on his own initiative or following a request from a Member State concerned or one of the institutions, bodies, offices or agencies of the Union.

The decision to open an internal investigation shall be taken by the Director-General, acting on his own initiative or following a request from the institution, body, office or agency within which the investigation is to be conducted.

3. While the Office is conducting an internal investigation, the institutions, bodies, offices or agencies concerned shall not open a parallel investigation into the same facts.

4. Within two months of receipt by the Office of a request as referred to in paragraph 2, a decision on whether or not to open an investigation at this point in time shall be taken. It shall be communicated without delay to the Member State, institution, body, office or agency which made the request. Reasons shall be given for a decision not to open an investigation.

Where a member or staff member of an institution, body, office or agency, acting in accordance with Article 22a of the Staff Regulations, provides information to the Office relating to a suspected fraud or irregularity, the Office shall inform him or her of the decision whether or not to open an investigation into the facts in question.

5. If the Office decides not to open an internal investigation, it shall without delay send the information available to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules that are applicable to it. In appropriate cases the Office shall agree with that institution, body, office or agency on suitable measures to protect the confidentiality of the source of that information and shall ask, if necessary, to be informed of the action taken."

(6) Article 6 is amended as follows:

(a) Paragraphs 1 to 4 are replaced by the following:

"1. The Director-General shall direct the conduct of investigations. He may issue written instructions to individual members of the staff of the Office to direct the conduct of investigations. Investigations shall be conducted under his direction by staff nominated by him.

2. The Office's staff shall carry out their tasks on production of a written authorisation showing their identity and their capacity. That authorisation shall be 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.

3. The Member States shall ensure that their competent authorities, in conformity with national provisions, give the necessary support to enable the Office's staff to fulfil their tasks. The institutions, bodies, offices and agencies shall ensure that their members and staff members provide the necessary assistance to enable the Office's staff to fulfil their tasks."

(b) Paragraph 5 becomes Paragraph 4 and Paragraph 6 is replaced by the following:

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

- (a) the identity of any member or staff member concerned 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 administrative measures in order to protect the financial interests of the Union;
- (c) any special measures of confidentiality recommended in particular in cases entailing the use of investigative measures falling under the competence of a national judicial authority or, in the case of an external investigation, under the competence of a national authority, in accordance with the national provisions applicable to investigations.

The institution, body, office or agency concerned may take at any moment any appropriate precautionary administrative measures, and shall inform the Office without delay of the decision to take such measures.

6. Where it is found that an investigation cannot be closed within 12 months after it has been opened, the Office shall inform the Supervisory Committee of the reasons at intervals of 6 months."

- (7) Article 7 is replaced by the following:

"Article 7

Duty to inform the Office

"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 affecting the financial interests of the Union.

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 an ongoing investigation of the Office.

3. The institutions, bodies, offices and agencies, and, in so far as national law allows, the Member States shall also send 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.

4. The Office, the institutions, bodies, offices or agencies concerned and the anti-fraud coordination services may agree on administrative arrangements regarding the forwarding of any information to the Office."

(8) The following Articles 7a and 7b are inserted:

"Article 7a

Procedural guarantees

"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 this Article.

2. The invitation to an interview, whether with a witness or with a person concerned, must be sent with ten working days' notice; the period of notice may be shortened with the express consent of the person to be interviewed or for duly motivated reasons of the urgency of the investigation. The invitation shall include a list of the rights of the person to be interviewed. The Office shall draw up a record of the interview and shall give the person interviewed access to it so that he or she may either approve the record or add observations. A copy of the records of the interview shall be given to the person interviewed. These rules do not apply to the taking of statements in the context of on-the-spot checks.

When, in the course of the interview, evidence emerges that the person interviewed may be concerned by the investigation, the procedural rules provided for in paragraphs 3 and 4 shall apply at once.

3. As soon as an investigation reveals that a member or staff member of an institution, body, office or agency may be concerned, that member or staff member shall be informed, provided that this does not prejudice the conduct of the investigation.

4. Without prejudice to Articles 4(6) and 6(5) conclusions referring by name to a person concerned may not be drawn once the investigation has been completed without that person concerned being given the opportunity to comment on facts concerning him or her in writing or at an interview with staff designated by the Office, and being provided with the information required by Articles 11 and 12 of Regulation 45/2001. The final case report shall make reference to those comments. The person concerned must be given a summary of such matters in the invitation to comment and shall submit his or her comments within the time limits indicated by the Office in accordance with paragraph 2. In an interview the person concerned is entitled to be assisted by a person of his or her choice. Any person concerned is entitled to use the official Union language of his or her choice; however, officials or other servants of the Union may be required to use an official Union language of which they have a thorough knowledge. A person concerned shall be entitled to avoid self-incrimination.

In cases where it is necessary to preserve the confidentiality of the investigation and entailing the use of investigative proceedings falling within the remit of a national judicial authority, the Director-General may decide to defer the fulfilment of the obligation to ask the person concerned to make his or her views known. In case of an internal investigation, the Director-General shall take the decision in agreement with the institution, body, office or agency to which the person concerned belongs. Failure of the institution, body, office or agency to reply within one month shall be deemed as agreement.

5. The rules of this Regulation shall apply without prejudice to:
 - (a) The Charter of Fundamental Rights of the European Union;
 - (b) The Protocol on the Privileges and Immunities of the European Union;
 - (c) The Statute for Members of the European Parliament;
 - (d) The Staff Regulations.

Article 7b

Review procedure

1. The Director-General shall put in place, within the Office, a review procedure.
2. The person or persons entrusted with the review procedure shall not take instructions from anyone in the performance of their duties.

If the person or persons entrusted with the review procedure consider that a measure taken by the Director-General calls their independence into question, they shall immediately inform the Supervisory Committee.

The Supervisory Committee shall be consulted before any disciplinary proceedings concerning the person or persons entrusted with the review procedure are initiated in accordance with provisions of the Staff Regulations.

3. A member, staff member or a natural person concerned by an investigation may ask the person or persons entrusted with the review procedure to give an opinion regarding the procedural guarantees provided for in Article 6(4) and Article 7a. The request may be filed during the investigation or at the latest one month after the member, staff member or natural person concerned having been informed that the investigation has been closed.

Within one month after the receipt of the request, the person or persons entrusted with the review procedure shall communicate their opinion to the Director-General and shall send a reasoned reply to the person concerned. The Director-General shall take the appropriate measures.

4. Submission of a request under paragraph 3 does not suspend the investigation.

5. The person or persons entrusted with the review procedure shall report regularly to the Supervisory Committee on their activities; they shall present it, and the Commission, with regular statistical and analytical reports on questions related to the procedural guarantees. These reports may not refer to individual cases under investigation."

(9) In Article 8, Paragraphs 2 to 4 are replaced by the following:

"2. Information forwarded or obtained in the course of internal investigations, in whatever form, shall be subject to professional secrecy and shall enjoy the protection given by the provisions applicable to the institutions of the Union.

3. The institutions, bodies, offices or agencies concerned 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.

4. The Office shall process only such personal data as necessary to fulfil its tasks under this Regulation. Such processing of personal data shall be done in conformity with Regulation (EC) No 45/2001, including the provision of relevant information to the data subject required by articles 11 and 12 of that Regulation. Such information may not be communicated to persons other than those within the institutions of the Union or in the Member States whose functions require them to know, nor may it be used for purposes other than to prevent fraud, corruption or any other illegal activity.

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

5. The Director-General shall ensure that any information to the public is given neutrally, impartially and in accordance with the principles set out in this Article and in Article 7a."

(10) Article 9 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. On completion of an investigation by the Office, a report shall be drawn up, under the authority of the Director-General, which shall give an account of the legal basis for the investigation, the procedural steps followed, the facts established and their legal qualification, the respect of the procedural guarantees in accordance with Article 7a, the impact on the

financial interests of the Union, if any, and the conclusions of the investigation, including recommendations on follow-up action that should be taken."

(b) Paragraphs 3 and 4 are replaced by the following:

"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. On request of the Office, the competent authorities of the Member States concerned shall in due time forward to the Office information on the action taken and progress made following transmission by the Office of its investigation reports.

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 Office, within a deadline laid down in the recommendations of the report.

5. Where the report drawn up after an internal investigation reveals the existence of facts which could give rise to criminal proceedings, this information shall be transmitted to the judicial authorities of the Member State concerned unless internal measures allowing for more appropriate follow-up action are available in the light of the nature of the facts and the scale of the financial impact.

6. Without prejudice to the second sentence of Paragraph 4, if, on completion of an investigation, no evidence has been found against a member or a staff member of an institution, body, office or agency or against a natural or legal person, the investigation into that person shall be closed by the Director-General, who shall, within ten working days, inform the person concerned."

7. An informer who has provided the Office with information relating to suspected fraud or irregularity may, if he so requests, be informed by the Office that an investigation has been closed and, where appropriate, that a final report has been sent to the competent authorities. The Office may, however, refuse the request when it considers that it is such as to prejudice the legitimate interests of the person concerned, the effectiveness of the investigation and the action to be taken subsequent thereto or any confidentiality requirements."

(11) Article 10 is replaced by the following:

"Article 10

**Exchange of information between the Office and the authorities
of the Member States**

1. Without prejudice to Articles 8 and 9 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may at any time forward to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time in order to enable them to take appropriate action.

2. Without prejudice to Articles 8 and 9, the Director-General shall, in the course of internal investigations, forward to the judicial authorities of the Member State concerned information obtained by the Office concerning facts which require investigative proceedings within the jurisdiction of a national judicial authority.

However, he shall first inform the institution, body, office or agency concerned. The information forwarded shall include the identity of the person concerned, a summary of the facts established, a preliminary legal evaluation and an estimate of any financial impact.

Article 7a (4) shall apply.

3. The competent authorities, and in particular the judicial authorities, of the Member State concerned shall, in so far as is not incompatible with national law, inform the Office without delay, or upon its request of the action taken on the basis of the information forwarded to them under this Article.

4. The Office may provide evidence in proceedings before national courts in conformity with national law and the Staff Regulations."

(12) The following Article 10a is inserted:

"Article 10a

Cooperation of the Office with Eurojust, Europol and international organisations

1. The Office shall cooperate, as appropriate, with Eurojust, the European Police Office (Europol) and international organisations in the area of the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

Where this may support and strengthen coordination and cooperation between national investigating and prosecuting authorities, or when the Office has forwarded to the competent authorities in the Member States information giving grounds for suspecting the existence of

fraud, corruption and any other illegal activity referred to in Article 1 in the form of serious crime, it shall transmit relevant information to Eurojust.

2. The Office may agree on administrative arrangements with Eurojust and Europol necessary to facilitate this cooperation. Such working arrangements may concern exchange of operational, strategic or technical information, including personal data and classified information.

3. The Office may also agree, as appropriate, on administrative arrangements with competent services in third countries and international organisations. The Office shall coordinate with the Commission services concerned and the European External Action Service."

(13) Article 11 is amended follows:

(a) Paragraphs 1 to 4 are replaced by the following:

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

The Supervisory Committee shall in particular:

- (a) monitor the functioning of information exchange between the Office and the institutions, bodies, offices and agencies;
- (b) monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General and the opinions and analysis reports regularly drawn up by the person(s) entrusted with the review procedure.

The Supervisory Committee shall address opinions to the Director-General. These opinions may be delivered on its own initiative. They shall also be delivered at the request of the Director-General or at the request of an institution, body, office or agency, without however interfering with the conduct of investigations in progress.

The institutions, bodies, offices or agencies shall be provided with a copy of such opinions.

The Supervisory Committee may ask the Office for additional information on investigations in duly justified situations, without however interfering with the conduct of investigations.

2. The Supervisory Committee shall be composed of five independent members having experience in senior judicial or investigative functions or comparable functions relating to the Office's area of activity. They shall be appointed by common accord of the European Parliament, the Council and the Commission, on the basis of a pre-selection list submitted by the Commission.

3. The term of office of members shall be five years and shall not be renewable. Every 30 months there shall be a partial replacement. Three and two members shall be replaced alternatively.

4. On expiry of their term of office, members shall remain in office until they are replaced."

(b) Paragraphs 6 to 8 are replaced by the following:

"6. The Supervisory Committee shall appoint its chair. It shall adopt its own rules of procedure, which shall, before adoption, be submitted to the European Parliament, the Council and the Commission for information. Meetings of the Supervisory Committee shall be convened on the initiative of its chair or the Director-General. It shall hold at least 10 meetings per year. The Supervisory Committee shall take its decisions by a majority of its members. Its secretariat shall be provided by the Office.

7. The Director-General shall forward to the Supervisory Committee each year the Office's annual management plan. He shall keep the Supervisory Committee periodically informed of the Office's activities, the implementation of its investigative function and the action taken by way of follow-up to investigations.

The Director-General shall inform the Supervisory Committee periodically:

- (a) of cases in which the institution, body, agency or office concerned or the competent authorities of the Member States have failed to act on the recommendations made by the Office;
- (b) of cases in which information has been forwarded to judicial authorities of the Member States and of cases in which he decided not to transmit information on internal investigations to the national judicial authorities concerned in accordance with Article 9(5);
- (c) on the duration of investigations in accordance with Article 6(6).

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. These reports shall be sent to the European Parliament, the Council, the Commission and the Court of Auditors.

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."

(14) The following Article 11a is inserted:

"Article 11a

Exchange of views with the institutions

1. The European Parliament, the Council and the Commission shall meet periodically or upon request of one of these institutions, the Office or the Supervisory Committee for an exchange of views at political level to discuss the Office's policy of investigations. The Director-General and the chair of the Supervisory Committee shall participate in the exchange of views. Members of Europol, Eurojust and the Court of Auditors may be invited to attend on an ad-hoc basis upon request of one of the above-mentioned institutions, the Office or the Supervisory Committee.

2. 2. The exchange of views shall relate to:

- (a) the strategic priorities for the Office's investigative policies;
- (b) the activity reports and the opinions of the Supervisory Committee provided by Article 11(1);
- (c) the reports under Article 12(3) Subparagraph 2 of the Director-General;
- (d) the relations between the Office and the institutions, bodies, offices and agencies;
- (e) the relations between the Office and the competent authorities of the Member States;
- (f) the effectiveness of the work of the Office with regard to investigations and that of the Supervisory Committee.

3. The exchange of views shall not interfere with the conduct of investigations.

4. The Office shall take appropriate action taking into account the opinions expressed in the exchange of views and shall provide information on the actions taken in the reports referred to in the second subparagraph of Article 12(3)."

(15) Article 12 is replaced by the following:

"Article 12

Director-General

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

2. In order to appoint a new Director-General, the Commission shall publish a call for applications in the Official Journal of the European Union. This publication shall take place at the latest six months before the end of the mandate of the Director-General in office. After having carried out a selection procedure, the Commission shall draw up a list of suitably qualified candidates, duly consult the European Parliament, the Council, as well as with the Supervisory Committee on the basis of this list and adopt its decision.

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-General considers that a measure taken by the Commission calls his independence into question, he shall immediately inform the Supervisory Committee to obtain its opinion, and decide whether to bring an action against the Commission before the Court of Justice.

The Director-General shall report regularly to the European Parliament, the Council and the Commission 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.

4. The Director-General shall each year determine, within the context of the annual management plan, the investigation policy priorities of the Office.

5. The Director-General may delegate the exercise of certain of his functions under Articles 5 and 6(1) to one or more members of the staff of the Office by a written document specifying the conditions and limits governing the delegation.

6. The Director-General shall be assisted by an internal body which he shall consult on the opening of an investigation, before the closing of an investigation and whenever he deems appropriate.

7. The Director-General shall adopt a manual of procedures, after consultation of the Supervisory Committee, the Office's Data Protection Officer, and the person or persons entrusted with the review procedure in accordance with Article 7b . This manual shall provide guidelines on the practical application of the administrative investigations by the Office.

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

Disciplinary penalties 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.

9. Any reference to the "Director" of the Office in the Staff Regulations, the Financial Regulation¹⁹ and in any other legal text should be read as a reference to the Director-General."

(16) The following Article 12a is inserted:

"Article 12a

Deputising director(s)

The Commission rules on deputising shall apply.

By derogation, the Director-General, after consultation of the Supervisory Committee may designate one or two of his Directors as deputising Director(s). If none of the deputising Directors is available, the Commission rules on deputising shall apply again."

(17) Article 13 is replaced by the following:

"Article 13

Financing

The appropriations for the Office, the total amount of which shall be entered under a specific budget line within the section of the general budget of the Union relating to the Commission, shall be set out in detail in an Annex to that section.

The establishment plan of the Office shall be annexed to the Commission's establishment plan."

(18) Article 14 is replaced by the following:

"Article 14

Evaluation report

At the latest on [*date of adoption of this regulation + 4 years*], the Commission shall transmit to the European Parliament and the Council a report on the application of this Regulation, together with an opinion by the Supervisory Committee. The report shall state whether there is a need to amend this Regulation."

(19) Article 15 is deleted.

¹⁹ OJ L 248, 16.9.2002, p. 1-48

Article 2

Regulation (Euratom) No 1074/1999 is repealed.

Article 3

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

2. Article 11 (3) of Regulation (EC) 1073/1999 as amended by this Regulation shall apply to the duration of the term of office of the members of the Supervisory Committee in office when this Regulation enters into force. Immediately after the entering into force of this Regulation, the President of the European Parliament shall choose by lot two members whose duties are to end, by way of derogation from the first sentence of Paragraph 3 of Article 11 of Regulation (EC) 1073/1999 as amended by this Regulation, upon expiry of the first 30 months of their term of office.

3. The third sentence of the first paragraph of Article 12 of Regulation (EC) 1073/1999 as amended by this Regulation shall apply to the mandate of the Director-General in office when this Regulation enters into force.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

[...]

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

[to be used for any proposal or initiative submitted to the legislative authority
(Articles 28 of the Financial Regulation and 22 of the implementing rules)]

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative: Amended proposal to amend Regulation No. 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) and repealing Regulation (EURATOM) No. 1074/1999

1.2. Policy area(s) concerned in the ABM/ABB structure: Anti-fraud

1.3. Nature of the proposal/initiative: legislative

1.4. Objective(s): increase OLAF's overall efficiency and governance

1.5. Grounds for the proposal/initiative: Article 325 TFEU, Article 106a EURATOM

1.6. Duration and financial impact: N/A

1.7. Management method(s) envisaged: Centralised Direct Management by the Commission

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules: See Article 14 of the Amended Proposal

2.2. Management and control system: N/A

2.3. Measures to prevent fraud and irregularities: Within the scope of this Regulation

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected 24.010600.03.01.00 Expenditure incurred for members of the Supervisory Committee

3.2. Estimated impact on expenditure

3.2.1. *Summary of estimated impact on expenditure* No impact

3.2.2. *Estimated impact on operational appropriations* No impact

3.2.3. *Estimated impact on appropriations of an administrative nature* No impact

3.2.4. *Compatibility with the current multiannual financial framework* No impact

3.2.5. *Third-party participation in financing* No impact

3.3. Estimated impact on revenue No impact

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Amended proposal to amend Regulation No. 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) and repealing Regulation (EURATOM) No. 1074/1999

1.2. Policy area(s) concerned in the ABM/ABB structure²⁰

24.01. Administrative expenditure of policy area Fight against fraud
24.02. Anti-fraud

1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**²¹
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objectives

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

Fight against fraud

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

Specific objective No. 7.1.a

ABM/ABB activity(ies) concerned

24.01. Administrative expenditure of policy area Fight against fraud
24.02. Anti-fraud

²⁰ ABM: Activity-Based Management – ABB: Activity-Based Budgeting.
²¹ As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

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

Improved cooperation of OLAF with stakeholders at all levels: at EU level with the EU institutions, bodies, offices and agencies, Member States competent authorities and third countries authorities and international organisations.

1.4.4. *Indicators of results and impact*

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

In accordance with Article 14

1.5. Grounds for the proposal/initiative

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

Full accountability of OLAF under conditions which respect fundamental guarantees, as well as its independence.

1.5.2. *Added value of EU involvement*

Article 325 TFEU provides for joint action of the Commission and the Member States for the protection of the Union's financial interests and the fight against fraud. That article thus attributes specific responsibilities to the Commission for the protection of Union's financial interests.

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

-

1.5.4. *Coherence and possible synergy with other relevant instruments*

The amended proposal is compatible with relevant European Union legislative instruments.

1.6. Duration and financial impact

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

1.7. Management mode(s) envisaged²²

- Centralised direct management** by the Commission
- Centralised indirect management** with the delegation of implementation tasks to:
 - executive agencies
 - bodies set up by the Communities²³
 - national public-sector bodies/bodies with public-service mission
 - persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation
- Shared management** with the Member States
- Decentralised management** with third countries
- Joint management** with international organisations (*to be specified*)

If more than one management mode is indicated, please provide details in the "Comments" section.

Comments

[...]

[...]

²² Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

²³ As referred to in Article 185 of the Financial Regulation.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Supervisory Committee will monitor the investigative activities of OLAF in accordance with Article 11.

In addition to obligations that are unaffected by the amended proposal, the persons entrusted with the Review procedure will regularly report on their activities to the Supervisory Committee (Article 7b)

2.2. Management and control system

2.2.1. Risk(s) identified

N/A

2.2.2. Control method(s) envisaged

N/A

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

Implementation in accordance with the Financial Regulation.

[...]

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

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

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	DA/NDA (24)	from EFTA ²⁵ countries	from candidate countries ²⁶	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
24.0106	24.010600.030100 Expenditure resulting from the mandate of the Members of the Supervisory Committee	DNA	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./non- diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
[...]	[XX.YY.YY.YY] [...]	[...]	YES/N O	YES/N O	YES/N O	YES/NO

²⁴ DA= Differentiated appropriations / DNA= Non-Differentiated Appropriations

²⁵ EFTA: European Free Trade Association.

²⁶ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	Number	[Heading]
--	--------	--------------------

DG: <.....>			Year N ²⁷	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Number of budget line	Commitments	(1)								
	Payments	(2)								
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelop of specific programs ²⁸										
Number of budget line		(3)								
TOTAL appropriations for DG <.....>	Commitments	=1+1a +3								
	Payments	=2+2a +3								

²⁷ Year N is the year in which implementation of the proposal/initiative starts.

²⁸ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)								
TOTAL appropriations under HEADING <....> of the multiannual financial framework	Commitments	=4+ 6								
	Payments	=5+ 6								

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

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)								
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6								
	Payments	=5+ 6								

Heading of multiannual financial framework:	5	" Administrative expenditure "
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EUR million (to 3 decimal places)

		Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: OLAF									
• Human resources		0,972							
• Other administrative expenditure		0,200							
TOTAL DG OLAF	Appropriations	1.172							

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	1,172							
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EUR million (to 3 decimal places)

		Year N ²⁹	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	1,172							
	Payments	0.200							

²⁹ Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. *Estimated impact on operational appropriations*

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

Commitment appropriations in EUR million (to 3 decimal places)

Indicate objectives and outputs ↓			Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)										TOTAL			
	OUTPUTS																			
	Type of output ³⁰	Average cost of the output	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
SPECIFIC OBJECTIVE No 1 ³¹ ...																				
- Output																				
- Output																				
- Output																				
Sub-total for specific objective N°1																				
SPECIFIC OBJECTIVE No 2...																				
- Output																				
Sub-total for specific objective N°2																				
TOTAL COST																				

³⁰ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

³¹ As described in Section 1.4.2. "Specific objective(s)..."

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

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

EUR million (to 3 decimal places)

	Year N ³²	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
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HEADING 5 of the multiannual financial framework							
Human resources	0,972						
Other administrative expenditure	0,200						
Subtotal HEADING 5 of the multiannual financial framework	1,172						

Outside HEADING 5³³ of the multiannual financial framework							
Human resources							
Other expenditure of an administrative nature							
Subtotal outside HEADING 5 of the multiannual financial framework							

TOTAL	1,172						
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³² Year N is the year in which implementation of the proposal/initiative starts.

³³ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

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

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary agents)							
XX 01 01 01 (Headquarters and Commission's Representation Offices)	8						
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External personnel (in Full Time Equivalent unit: FTE)³⁴							
XX 01 02 01 (CA, INT, SNE from the "global envelope")							
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)							
XX 01 04 yy ³⁵	- at Headquarters ³⁶						
	- in delegations						
XX 01 05 02 (CA, INT, SNE - Indirect research)							
10 01 05 02 (CA, INT, SNE - Direct research)							
Other budget lines (specify)							
TOTAL	8						

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary

³⁴ CA= Contract Agent; INT= agency staff ("*Intérimaire*"); JED= "*Jeune Expert en Délégation*" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert;

³⁵ Under the ceiling for external personnel from operational appropriations (former "BA" lines).

³⁶ Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents	Administrative support for the Members of the Supervisory Committee
External personnel	

3.2.4. *Compatibility with the current multiannual financial framework*

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

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

[...]

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework³⁷.

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

[...]

3.2.5. *Third-party contributions*

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

Appropriations in EUR million (to 3 decimal places)

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

³⁷ See points 19 and 24 of the Interinstitutional Agreement.

3.3. Estimated impact on revenue

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

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the ongoing budget exercise	Impact of the proposal/initiative ³⁸					... insert as many columns as necessary in order to reflect the duration of the impact (see point 1.6)		
		Year N	Year N+1	Year N+2	Year N+3				
Article									

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

[...]

Specify the method for calculating the impact on revenue.

[...]

³⁸ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.