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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

{SWD(2018) 251 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

The Commission is pursuing an ambitious legislative agenda to strengthen the protection of the Union's financial interests. In July 2017, the Parliament and the Council adopted the Directive on the fight against fraud to the Union's financial interests by means of criminal law.

In October 2017, the Council adopted the Regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO). The establishment of the EPPO is a key Commission priority in the areas of criminal justice and the fight against fraud to the Union budget. The EPPO will change the EU institutional anti-fraud landscape significantly. It will have the power to conduct criminal investigations and prosecute before the courts of the participating Member States. It is expected to bring a more consistent and effective prosecution policy for crimes affecting the Union budget, leading to more prosecutions, convictions and a higher level of recovery.

As a consequence of the adoption of the EPPO Regulation, Regulation No 883/2013 governing investigations by the European Anti-Fraud Office (OLAF) needs to be adapted.

OLAF was set up in 1999 with the task, in particular, of conducting administrative investigations in the area of the protection of the Union's financial interests. Within its administrative mandate, OLAF investigates administrative irregularities as well as criminal behaviour. It plays a significant role in the fight against fraud, corruption and other illegal activities through its investigations aimed at enabling financial recoveries, disciplinary and administrative action, as well as indictments and prosecutions. OLAF has used its investigative expertise in a constantly developing context of fraud to the Union budget. It has handled increasing numbers of investigations, leading to increasing numbers of recommendations and amounts recommended for recovery.

In the area of fraud, the creation of the EPPO will be a substantial improvement to the current situation. Today, OLAF carries out administrative investigations using administrative powers which are limited compared to criminal investigations. When it encounters possible criminal offences, it can only address a recommendation to national judicial authorities, but with no guarantees as to whether a criminal investigation will be opened. In future, in the Member States participating in the EPPO, it will report such suspected offences to the EPPO, and collaborate with it in the context of its investigations.

Provisions to regulate the relationship between the EPPO and OLAF already exist in the EPPO Regulation. They are based on the principles of close cooperation, exchange of information, complementarity and non-duplication. These rules need to be mirrored and complemented in Regulation No 883/2013. The adaptation of the OLAF legal framework by the time the EPPO becomes operational is therefore the main driver for the amendment of Regulation No 883/2013. To ensure a smooth transition into the new framework, the amended Regulation should enter into force before the EPPO becomes operational (envisaged for the end of 2020).

The EPPO and OLAF are both, within their respective remits, entrusted with the mandate to protect the Union's financial interests. While the EPPO will conduct criminal investigations aimed at investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, offences affecting the financial interests of the Union, OLAF will continue conducting administrative investigations with a particular emphasis on facilitating

administrative recovery and preventing further harm to the EU finances through administrative measures. Thus, the focus of activity of the future EPPO and of OLAF is distinct, although they converge towards a common goal.

OLAF will also continue its investigations, in the same way as today, in the Member States not participating in the EPPO at this stage. In these Member States, the national authorities as well as OLAF should contribute to creating the conditions to ensure an effective and equivalent level of protection of the Union's financial interests in the whole EU.

In such circumstances, it is essential that the legal framework for OLAF is fit-for-purpose to allow it to fulfil its role with regard to the EPPO, the Member States and Union institutions, bodies, offices and agencies. The Commission evaluation of Regulation No 883/2013 concluded that the Regulation allowed OLAF to continue delivering concrete results in the protection of the Union budget. The 2013 changes brought clear improvements, as regards the conduct of investigations, cooperation with partners and the rights of persons concerned. At the same time, the evaluation highlighted shortcomings which impact on the effectiveness and efficiency of investigations. These findings relate to a wide range of areas including OLAF's investigative tools, the enforcement of OLAF powers, uniform conditions in the conduct of internal investigations, the conduct of digital forensic operations, divergences in the follow-up to OLAF recommendations, the duties of cooperation by Member States and Union institutions, bodies, offices and agencies, or the overall coherence of the legal framework.

However, addressing all evaluation findings is outside the scope of this proposal, as the revised Regulation should be in force by the time the EPPO becomes operational. The proposal therefore contains a limited number of targeted changes, based on the most unambiguous evaluation findings. These are essential changes necessary in the short term to strengthen the framework for OLAF investigations, in order to maintain a strong and fully-functioning OLAF that complements the EPPO's criminal law approach with administrative investigations, but which do not entail a change to its mandate or powers.

The focus is on areas where, today, the lack of clarity of certain provisions in the current Regulation results in obstacles which hinder OLAF's effective operations, regarding, notably, on-the-spot-checks and inspections or access to bank account information. The amendments proposed aim to clarify and reduce ambiguity in the current provisions for the economic operators concerned, for the Member States, and for OLAF, thus enhancing legal certainty. They would allow OLAF to operate in an effective and more coherent manner in all its investigations. This is directly related to the objectives of a strong protection of the budget across the Union coupled with appropriate procedural safeguards for economic operators subject to investigation.

The overall objective of the proposal is to strengthen the protection of the Union's financial interests. This will be achieved by three specific objectives to:

– adapt the operation of OLAF to the establishment of the EPPO;

– enhance the effectiveness of OLAF's investigative function;

– clarify and simplify selected provisions of Regulation No 883/2013.

The Commission evaluation report already indicated that the proposal containing these targeted changes could be followed by a more far-reaching process to modernise the OLAF framework, which in its core aspects dates from the creation of OLAF in 1999. This would be the opportunity to consider other more fundamental changes in the context of 21st century fraud areas and trends, and it should take account of the experience gained in the cooperation between the EPPO and OLAF. It would also allow considering other evaluation findings, as well as aspects of the legal framework where further reflection and discussion may be needed.

Consistency with existing policy provisions in the policy area

The amendment of Regulation No 883/2013 is a consequence of the creation of the EPPO, and is precisely intended to ensure the coherence of the legal framework for the protection of the Union's financial interests. It is a further step, after the adoption of the Directive on the fight against fraud to the Union's financial interests by means of criminal law and of the EPPO Regulation, towards a strengthened legal framework which ensures that all available means are used effectively in the fight against fraud.

This is particularly relevant as the Union moves towards the next Multiannual Financial Framework. An efficient and proper spending of the Union budget is key to building trust of EU citizens and boosting the added value of the European project. The establishment of the EPPO and the strengthening of the OLAF legal framework contribute to the Treaty goal of a high level of protection of the Union budget in the whole territory of the Union (Article 325 TFEU).

Consistency with other Union policies

This initiative is consistent with other legislative developments aimed at making Union revenues, expenditure and assets more fraud-proof, and enhancing cooperation between law enforcement bodies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

The proposal is based on Article 325 TFEU and Article 106a of the Treaty establishing the European Atomic Energy Community.

Subsidiarity

OLAF carries out a specifically European task - the protection of the Union's financial interests in the framework of Articles 317 and 325 TFEU - which cannot, in the same way, be carried out at national level. The proposal concerns investigations by an office of the Union, which are currently regulated in a Union Regulation. It does not modify the Member States' powers and responsibilities for combating fraud affecting the Union's financial interests, a responsibility that Member States share with the Union, nor does it extend OLAF's powers and mandate.

The proposal concerns the relations with the EPPO, which will be a Union body set up on the basis of an EU Regulation. As a consequence, addressing the cooperation between OLAF and the EPPO requires action at Union level.

The amendments intended to better frame references to national law in OLAF's legal framework (in the context of on-the-spot checks and inspections and admissibility of OLAF reports) and the assistance provided by the Member States (in particular to provide OLAF with access to bank data) are necessary to ensure the effective and more coherent conduct of investigations of OLAF throughout the Union. This is required for OLAF to use its investigative tools effectively in all Member States in order to protect a European interest (the Union's financial interests), while ensuring appropriate procedural safeguards for economic operators subject to OLAF investigations. These objectives require action at EU level.

Proportionality

The proposed changes are limited to what is necessary in order to attain the proposed objectives, and are therefore compliant with the principle of proportionality.

The amendments related to the EPPO are the consequence of the adoption of Regulation 2017/1939. They are limited to what is necessary to adapt the functioning of OLAF to reflect the principles of the relationship between the EPPO and OLAF laid down in that Regulation.

In addition, certain limited aspects of the Regulation are addressed where practice has revealed shortcomings in the existing system. Although the conclusions of the evaluation were wide-ranging, amendments are only proposed where changes are essential in the short term to ensure the effectiveness of OLAF investigations. The concrete amendments do not go beyond what is necessary to achieve this objective and balance the various legal interests concerned. Provisions on the conduct of on-the-spot checks are modified only to the extent necessary to ensure that OLAF can use this investigative tool effectively across the Member States. These amendments do not impact the application of national law in the situations where it remains relevant, i.e. where national authorities are called on to assist OLAF in accordance with their national procedural rules. This principle also applies as regards the new provision on access to bank information: while it was necessary to clarify in the Regulation that national competent authorities should assist OLAF to access such information which is essential to uncover many types of fraud, they will do so in accordance with their national laws.

Choice of the instrument

Regulation No 883/2013 needs to be amended through the same type of instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Evaluation of Regulation No 883/2013

On 2 October 2017, the Commission adopted its Report on the Evaluation of the application of Regulation No 883/2013. It was accompanied by an opinion of OLAF's Supervisory Committee.

The evaluation concluded that the Regulation allowed OLAF to deliver concrete results in the protection of the EU budget. It also unveiled a number of shortcomings that negatively impact the effectiveness of OLAF investigations. These findings relate to a wide range of areas relating to the application of the Regulation. Those that are addressed in the proposal, and which are considered essential in the short term to strengthen the framework for OLAF investigations, are summarised below.

As regards the conduct of investigations, OLAF's investigative powers stem from various acts of Union law, including the Regulation. In various instances these acts make the application of those powers subject also to conditions of national law, notably as regards on-the-spot checks and inspections of economic operators and digital forensic operations conducted in the territory of the Member States. The evaluation showed that the extent to which Regulation No 883/2013 makes national law applicable is not completely clear. Different interpretations of the relevant provisions, and differences in national law, lead to a fragmentation in the exercise of OLAF's investigative powers and even hinder OLAF’s ability to conduct its investigations effectively in all Member States.

The evaluation also suggested that the need for and possibility of better access to bank account information under appropriate conditions, which could be central to uncovering many cases of fraud or irregularity, should be assessed. In the area of VAT, it showed that OLAF’s mandate should be clarified and strengthened.

The evaluation also identified certain instances in the cooperation with national authorities where it was difficult for OLAF to obtain the necessary assistance, while recognising that the anti-fraud coordination services introduced by Regulation No 883/2013 were a very positive development in that regard.

As regards the follow-up to investigations, the most important factor affecting the follow-up to OLAF recommendations identified by the evaluation relates to the rules on the admissibility of OLAF-collected evidence in national judicial proceedings. The Regulation provides that OLAF reports constitute admissible evidence in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. The evaluation suggested that in some Member States this rule does not sufficiently ensure the effectiveness of OLAF's activities.

The Regulation also mandates OLAF to provide the Member States with assistance to coordinate their action for the protection of the Union's financial interests. This is a key element of OLAF's mandate to support cross-border cooperation among the Member States. However, the Regulation does not contain detailed provisions on the modalities of coordination.

Finally, the evaluation identified a number of provisions in the Regulation which could benefit from clarification.

Stakeholder consultation

Regulation No 883/2013 regulates the conduct of OLAF investigations and cooperation mechanisms with institutional partners. The groups of stakeholders that it impacts are well-defined, for the most part within the Union institutional framework and relevant Member State authorities. The public at large cannot be considered as directly impacted by the provisions of the Regulation, or responsible for their application, or possessing specific evidence that is needed for the revision. Therefore, an open public consultation was not carried out.

The roadmap for the initiative stayed open for 4 weeks to public feedback; no feedback was received.

A targeted consultation of relevant groups of stakeholders was conducted:

– National authorities (anti-fraud coordination services, judicial, enforcement and managing authorities) were consulted in the framework of a survey. All Member States were targeted, with dissemination of the survey via the anti-fraud coordination services, and 44 responses from 21 different Member States were received;

– Union institutions, bodies, offices and agencies were consulted in the framework of a survey, to which 28 responses were received;

– Academics and defence lawyers expressed their views in a dedicated workshop.

The vast majority of stakeholders consulted agreed to the possible amendment of Regulation No 883/2013 in the light of the future creation of the EPPO, in order to allow OLAF and the EPPO to cooperate closely, and each of them to exercise effectively their mandate. There is a large consensus that clear rules are necessary, in order to avoid overlapping, as well as to ensure maximum complementarity and avoid gaps.

Stakeholders consulted agreed to different extents to the need to amend Regulation No 883/2013 in order to improve the effectiveness of OLAF's investigations. The need to improve OLAF's ability to conduct investigations in an effective and coherent manner across Member States was supported by a majority of responses. A majority also supported the

clarification and strengthening of the Regulation as regards VAT and OLAF's access to bank data. Respondents expressed divergent views on matters such as the admissibility in national proceedings of OLAF's reports, or the role and mandate of anti-fraud coordination services.

On 16 February 2018, COREPER endorsed an 'outcome of proceedings on the Commission's report on the evaluation of the application of Regulation (EU, Euratom) No 883/2013'. It calls on the Commission to focus primarily on the topics that are necessary to enable OLAF to cooperate smoothly with the EPPO without, however, extending the competencies and powers of OLAF. In addition, it lists a number of topics that certain delegations would wish to see addressed in the proposal.

The revision of Regulation No 883/2013 was also discussed by the Justice Ministers of the Member States, first at their informal meeting in Sofia on 26 January 2018, then in the Justice and Home Affairs Council in Brussels on 8-9 March 2018. The Council emphasised that the cooperation between the EPPO and OLAF is essential and should be based on a clear division of competences and responsibilities, complementarity, avoiding competition or duplication of work. Regulation No 883/2013 should reflect the provisions in the EPPO Regulation on the relationship between the two offices.

Opinion No 2/2017 of the Supervisory Committee of OLAF on the application of Regulation No 883/2013 was also considered in the preparation of the proposal. The Opinion highlights the amended Regulation should provide for uniform grounds for all the investigations in order to avoid fragmentation and interpretation difficulties, and to strengthen clarity of law and procedural guarantees. It addresses the need to access information related to bank accounts and money transfers, and to investigate intra-EU VAT fraud. The Opinion also calls for judicial review and strengthening the procedural guarantees and their control, particularly in the context of the establishment of the EPPO and in order to improve admissibility of OLAF evidence in judicial proceedings. It emphasises the need for clarity in the future interaction between OLAF and the EPPO. Finally, the Opinion calls for clarification of the Supervisory Committee's role and mandate, and its access to information related to OLAF's investigative function.

In addition, the wide consultation of stakeholders carried out for the evaluation of the application of Regulation No 883/2013 supports the analytical work accompanying the proposal.

Collection and use of expertise

The external study conducted for the evaluation of Regulation No 883/2013 and several independent studies were used in support of the preparation of the proposal. Experts were consulted in a dedicated workshop.

Impact assessment

An impact assessment was not considered necessary. The proposal is accompanied by an analytical staff working document which is based on an extensive use of the evaluation report, external studies and the results of the consultations mentioned above.

Fundamental rights

Fundamental rights are protected in the framework of OLAF investigations including by specific provisions on procedural guarantees in Regulation No 883/2013 and in Regulation No 2185/1996 applicable to on-the-spot checks and inspections. In addition, OLAF must generally ensure that its activities respect the rights enshrined in the Charter of Fundamental Rights of the European Union ('the Charter').

A new Article 9 on procedural guarantees was introduced when Regulation No 883/2013 was adopted. Article 9 restates a range of principles that are essential in OLAF investigations, including, notably, the duty of OLAF to seek evidence for and against the person concerned, the right to an objective and impartial investigation, the presumption of innocence and the right to avoid self-incrimination. Article 9 further contains specific provisions on, inter alia,

- the right of persons concerned and witnesses to prior notice before being interviewed/heard,
- for persons concerned, the right to comment on the facts of the case once the investigation has been completed and before conclusions are drawn up, and the duty of OLAF that the final investigation report makes reference to any such comments,
- for witnesses, if evidence emerges that they may be a person concerned, the right that an interview is ended and that the interviewee is informed of her/his rights,
- the right of persons interviewed to use any of the official languages of the institutions of the Union (officials or other servants of the Union may be required to use an official language of the institutions of which they have a thorough knowledge) and to approve or make comments on the record of the interview; for persons concerned, these are complemented by the right to be assisted by a person of the individual's choice and to receive a copy of the record of the interview,
- the right of officials, other servants, members of an Union institution or body, head of office or agency, or staff members to be informed when an investigation reveals they may be a person concerned by an investigation, and the right to comment where OLAF informs national authorities before opening or during an internal investigation.

The new Article 9 on procedural guarantees is complemented by provisions on:

- the need for written authorisation by the Director-General for the conduct of investigative tasks, indicating the subject matter, purpose and legal basis for the investigation, and the powers stemming from those bases (Article 7(2)),
- a legality check (Article 17(7)) for the review of legality (including respect of procedural guarantees and fundamental rights), proportionality and necessity of the investigative activities, prior to their conduct, and the overall review of final reports,
- provisions on confidentiality and data protection (Article 10),
- various internal and external controls (possibility for any person affected by an investigation to address a complaint to OLAF, and controls conducted by the Supervisory Committee, the European Data Protection Supervisor, the European Ombudsman, the European Court of Auditors and European Court of Justice, in accordance with their respective mandates).

This set of provisions and controls sets a standard for the safeguard of procedural guarantees and fundamental rights of persons involved in OLAF investigations that is appropriate and in line with the fact that OLAF conducts administrative investigations using administrative powers. Moreover, OLAF investigations are completed by a report and recommendations that are followed up, where appropriate, by other authorities. Where such other authorities prepare

a decision affecting the legal position of the persons concerned, further procedural rights and guarantees apply in accordance with the applicable legal framework.

The legal framework on procedural guarantees in OLAF investigations, as it resulted from Regulation No 883/2013, was generally recognised in the evaluation as a positive improvement for the protection of the rights of individuals subject to an OLAF investigation. In this regard, the evaluation has not shown a need to revise the existing provisions.

The amendments proposed do not have an impact on the overall balance between OLAF's investigative powers and the procedural rights of the persons investigated. OLAF's powers will not change with this initiative, although they will be clarified in several instances. The amendments proposed to the conduct of on-the-spot checks and inspections maintain the current powers, and would frame more clearly the application of national law, thereby providing also more clarity on the applicable safeguards and rights of the operators concerned.

Moreover, the proposal clarifies that the procedural guarantees provided for in Regulation No 883/2013, as well as in other Union acts, apply to these on-the-spot checks and inspections. This includes the rights against self-incrimination, to be assisted by a person of choice, and to use a language of the Member State where the check is conducted. Further guarantees will apply when the assistance of national authorities is necessary for the carrying out of the check if it is resisted by an economic operator, or in other cases in which the Member States' authorities assist OLAF in the framework of a check. In such cases, national law will apply, including procedural guarantees, in the context of the Member States' general duty to ensure that OLAF's action is effective.

The cooperation between OLAF and the EPPO, as well as new provisions on assistance from national authorities to access bank data and on cooperation with Eurofisc, may require the exchange of personal data. OLAF shall apply the provisions of Regulation No 45/2001 to such transfers. In order to reflect current practice, as well as to reinforce the data protection, the proposal modifies Article 10(4), which allowed OLAF to appoint a data protection officer, in order to make this an obligation.

4. BUDGETARY IMPLICATIONS

The amendments proposed to the Regulation do not have implications for the Union budget.

5. OTHER ELEMENTS

Implementation plans and monitoring, evaluation and reporting arrangements

In accordance with the Better Regulation Guidelines, there is no need to prepare an implementation plan for a Regulation.

In the context of the setting up of the EPPO and defining the detailed modalities of operational cooperation, working arrangements will have to be concluded between OLAF and the EPPO.

Detailed explanation of the specific provisions of the proposal

I. Relations with the EPPO

General principles

Articles 1(4a) and 12g set out the general principles of the relationship between OLAF and the EPPO. They mirror Article 101 of Regulation 2017/1939 that requires a close and complementary relationship so that all available means are used to protect the Union budget.

Working arrangements are provided for as they will be necessary to specify the concrete modalities of cooperation and exchange of information.

Reporting to the EPPO

Article 12c contains an obligation on OLAF to report to the EPPO without undue delay any conduct on which the EPPO may exercise its competence, as required by Article 24 of Regulation 2017/1939. The report should contain the minimum information of Article 24 of Regulation 2017/1939. OLAF is enabled to conduct a preliminary evaluation of incoming information, to ensure that the information supplied to the EPPO is sufficiently substantiated and contains the necessary elements. Article 12c also reflects the provision in Regulation 2017/1939 that OLAF may be asked by Union institutions, bodies, offices and agencies to perform this verification on their behalf.

Non-duplication of investigations, support to the EPPO and complementary investigations

Article 12d reflects Article 101(2) of Regulation 2017/1939, which provides that OLAF shall not open a parallel investigation into the same facts which are the object of an investigation by the EPPO. It also establishes a mechanism of consultation to ascertain whether the EPPO is conducting an investigation.

Article 12e contains the specific procedural rules applicable to requests from the EPPO to OLAF to support or complement the EPPO's activity in accordance with Article 101(3) of Regulation 2017/1939.

Article 12f provides that, in duly justified cases, with a view to allowing the adoption of precautionary measures or of financial, disciplinary or administrative action, OLAF may open or continue an administrative investigation to complement a criminal investigation being carried out by the EPPO. This is in keeping with Regulation 2017/1939, which specifies that all available means should be used to protect the Union's financial interests (Article 101(1)) and that the non-duplication rule should not prejudice the power of OLAF to start an administrative investigation on its own initiative, in close consultation with the EPPO (recital 103). This provision enables administrative investigations which are not aimed at ascertaining possible elements of a criminal offence, but which are focused at ensuring recovery, or at preparing the ground for administrative or disciplinary action. Instances where administrative action can usefully complement the EPPO's activity would include e.g. administrative recovery when there is a risk of time-barring or the amounts at stake are very high, or the need to avoid further expenditure in risk situations through administrative measures.

In order to protect the effectiveness of the EPPO investigations and prosecutions, Article 12f enables the EPPO to object to the opening or continuation of an investigation by OLAF, or to the performance of certain acts of this investigation. This possibility is consistent with Article 101(3) of Regulation 2017/1939, as in such cases the absence of an objection from the EPPO is equivalent, in functional terms, to a request made pursuant to that provision.

Other provisions

Several adaptations of existing provisions of Regulation No 883/2013 are proposed in order to reflect the establishment of the EPPO (Articles 8(1) and (4), 9(4), 16, 17(5) and (8)).

II. Enhancing the effectiveness of OLAF's investigative function

On-the-spot checks and inspections and assistance of national authorities

The proposal aims at removing ambiguities and obstacles revealed by the evaluation by better framing the references to national law, to ensure a more effective and coherent application of

OLAF's power to conduct on-the-spot-checks and inspections, without however changing the way the Regulation operates in relation to the Member States.

The amendment to Article 3 clarifies that the conduct by OLAF of on-the-spot checks and inspections, where economic operators submit to a check by OLAF, is subject to Union law alone (Regulations No 883/2013 and No 2185/1996). This includes the procedural guarantees of Regulation No 883/2013 and of Regulation No 2185/1996, whose application in the context of on-the-spot checks and inspections is clarified in Article 3(5). When the economic operator does not cooperate and OLAF needs to rely on the national authorities, or receives their assistance for other reasons, Articles 3(7) and 7(3) maintain the principle that such assistance will be provided in compliance with national law. Article 3(3) provides for the duty of economic operators to cooperate with OLAF in the course of its investigations.

These amendments to Article 3, regarding the applicable law to the conduct of on-the-spot checks and inspections, are clarifications in line with the interpretation of Regulation No 883/2013 given by the General Court in its recent ruling of 3 May 2018 in case T-48/16, *Sigma Orionis SA v European Commission*[1]. The Court ruled that, in the absence of opposition by the economic operator, on-the-spot checks and inspections are conducted by OLAF on the basis of Regulation No 883/2013 and Regulation No 2185/1996, and of the written authorisation of the Director-General of OLAF. Union law supersedes national law when a matter is regulated by Regulations No 883/2013 or No 2185/1996. Moreover, it finds that the provisions (in Regulation No 2185/1996) concerning the possible opposition of the economic operator concerned to a check do not entail the existence of a 'right to oppose' but simply provide for the consequence that the check may be imposed on them through the assistance of national authorities (on the basis of national law). As regards procedural guarantees, the Court recalls that OLAF must respect fundamental rights as laid down in Union law, in particular in the Charter.

The amendments to Articles 8(2) and (3) and 12(3) are intended to ensure the effectiveness of OLAF's action, in cases where the Regulation makes reference to the application of national law.

Bank account information

Article 7(3) is amended to clarify Member States' duty to assist OLAF by transmitting bank account information. In order to increase the effectiveness of OLAF investigations, this should include the information on bank account holders contained in the national centralised bank account registries or data retrieval systems in the Member States (5th Anti-Money laundering Directive, agreed by the Union co-legislators in December 2017). In those cases where the modus operandi of the fraud investigated requires such knowledge, information on financial transactions should as well be transmitted. The principle already enshrined in the Regulation that such assistance will be provided in compliance with national law will be maintained.

VAT

Article 3(1) is clarified to ensure that on-the-spot checks and inspections are available to OLAF in all areas of its mandate. In addition, to allow for an efficient cooperation with Member States, the amendment to Article 12(5) enables OLAF to exchange information with the Eurofisc network established by Regulation No 904/2010.

[1] Not yet reported. See paragraphs 73-118.

Admissibility of OLAF-collected evidence

The amendment to Article 11(2) maintains the principle of equivalence to the rules applicable to administrative reports drawn up by national administrative inspectors in the context of criminal proceedings. It introduces a principle of admissibility of OLAF reports - subject only to a verification of authenticity – in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States. Finally, the provision provides for the admissibility of the reports in administrative and judicial proceedings at Union level. This will improve the effective use of the results of OLAF investigations without interfering, however, with the assessment of such evidence.

Anti-fraud coordination services

Article 12a further specifies the role of the anti-fraud coordination services in the Member States in order to ensure that OLAF is provided with the assistance it needs for its investigations to be effective. Their organisation and powers remain the competence of each Member State. The anti-fraud coordination services may support OLAF in external and internal investigations and in coordination activities, as well as cooperate among themselves.

Coordination activities

Article 12b introduces a new provision specifying the coordination activities that OLAF can conduct.

III. Clarification and simplification

The amendment to Article 4(2) adapts the conduct of digital forensic operations to technological progress.

The amendments to Articles 3(9), 11(3) and 12(1) increase coherence of the rules on internal and external investigations.

The amendment to Article 7(6) clarifies that Union institutions, bodies, offices and agencies may consult OLAF at any time with a view to deciding on precautionary measures.

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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 Auditors[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) With the adoption of Directive (EU) 2017/1371 of the European Parliament and of the Council[3] and Council Regulation (EU) 2017/1939[4], 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.

(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.

(3) Therefore, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[5] should be amended following the adoption of Regulation (EU) 2017/1939. The provisions governing the relationship between the EPPO and the

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2 OJ C […], […], p. […].

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).

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).

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.

(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 interests of the Union and avoiding unnecessary duplication of efforts.

(5) Regulation (EU) 2017/1939 requires the Office, as well as all institutions, bodies, offices and agencies of the Union and competent national authorities, to report to the EPPO without undue delay 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.

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

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

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

(9) In conformity with Regulation (EU) 2017/1939, the Office should in principle not open an administrative investigation parallel to an investigation conducted by the EPPO into the same facts. However, in certain cases, the protection of the Union's financial interests may require that the Office carry out a complementary administrative investigation before the conclusion of criminal proceedings initiated by the EPPO with the purpose of ascertaining whether precautionary measures are necessary, or financial, disciplinary or administrative action should be taken. These complementary investigations may be appropriate, inter alia, when necessary to recover amounts due to the Union budget subject to specific time-barring rules, when the amounts at risk are very high, or where there is the need to avoid further expenditure in risk situations through administrative measures.

(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.

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

(12) To ensure effective coordination 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.

(13) The Commission Report on Evaluation of the application of Regulation (EU, Euratom) No 883/2013[6], 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.

(14) It is necessary to address the most unambiguous findings of the Commission evaluation through the amendment of Regulation (EU, Euratom) No 883/2013. These are essential changes necessary in the short term to strengthen the framework for the Office's investigations, in order to maintain a strong and fully-functioning Office that complements the EPPO's criminal law approach with administrative investigations, but which do not entail a change to the mandate or powers. They primarily concern areas where, today, the lack of clarity of the Regulation hinders the effective conduct of investigations by the Office, such as the conduct of on-the spot checks, the possibility of access to bank account information, or the admissibility as evidence of the case reports drawn up by the Office.

(15) These changes do not affect the procedural guarantees applicable in the framework of investigations. The Office is bound to apply the procedural guarantees of Regulation (EU, Euratom) No 883/2013, Council Regulation (Euratom, EC) No 2185/96[7] and those contained in the Charter of Fundamental Rights of the Union. This framework requires that the Office conducts its investigations objectively, impartially and confidentially, seeking evidence for and against the person concerned, and carries out investigative acts on the basis of a written authorisation and following a legality check. The Office must ensure the respect of the rights of persons concerned by its

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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.

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

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.

(16) The Office conducts on-the-spot checks and inspections, which allow it to access premises and documentation of economic operators in the framework of its investigations into suspected fraud, corruption or other illegal conduct affecting the financial interests of the Union. These are carried out in accordance with this Regulation and with Regulation (Euratom, EC) No 2185/96, which in some instances make the application of these powers subject to conditions of national law. The Commission evaluation has found that the extent to which national law should apply is not always specified, and as a result hinders the effectiveness of the Office's investigative activities.

(17) It is therefore appropriate to clarify the instances in which national law should apply in the course of investigations by the Office, without however changing the powers available to the Office or changing the way the Regulation operates in relation to the Member States. This clarification reflects the recent ruling of the General Court in case T-48/16, *Sigma Orionis SA v European Commission*.

(18) The conduct by the Office of on-the-spot checks and inspections, in situations where the economic operator concerned submits to the check, should be subject to Union law alone. This should allow it to exercise its investigative powers in an effective and coherent manner in all Member States, with a view to contributing to a high level of protection of the Union's financial interests across the Union, as required by Article 325 of the Treaty on the Functioning of the European Union.

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

(20) A duty for economic operators to cooperate with the Office should be introduced in Regulation (EU, Euratom) No 883/2013. This is in line with their obligation under Regulation (Euratom, EC) No 2185/96 to grant access for the carrying out of on-the-spot checks and inspections to premises, land, means of transport or other areas, used for business purposes, and with the obligation in Article 129[8] of the Financial Regulation that any person or entity receiving Union funds shall fully cooperate in the protection of the financial interests of the Union, including in the context of investigations by the Office.

(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

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

documents, even if this information may be used to establish against them or against another operator the existence of an illegal activity.

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

(23) To ensure transparency, when carrying out on-the-spot checks and inspections the Office should provide economic operators with appropriate information on their duty to cooperate and the consequences of a refusal to do so, and the procedure applicable to the check, including the applicable procedural safeguards.

(24) In internal investigations and, where necessary, in external investigations the Office has access to any relevant information held by the institutions, bodies, offices and agencies. It is necessary, as suggested by the Commission evaluation, to clarify that this access should be possible irrespective of the medium on which this information or data is stored, in order to reflect evolving technological progress.

(25) For a more coherent framework for the investigations of the Office, the rules applicable to internal and external investigations should be further aligned, in order to address certain inconsistencies identified by the Commission evaluation, where divergent rules are not justified. This should be the case, for instance, to provide that reports and recommendations drawn up following an external investigation may be sent to the institution, body, office or agency concerned for it to take appropriate action, as is the case in internal investigations. Where possible in acordance with its mandate, the Office should support the institution, body, office or agency concerned in the follow-up to its recommendations. To further ensure cooperation between the Office and institutions, bodies, offices and agencies, the Office should inform, where necessary, the Union institution, body, office or agency concerned when it decides not to open an external investigation, for instance when a Union institution, body, office or agency was the source of the initial information.

(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.

(27) The early transmission of information by the Office for the purpose of adopting precautionary measures is an essential tool for the protection of the Union's financial

interests. In order to ensure close cooperation in this regard between the Office and the institutions, offices, bodies and agencies of the Union, it is appropriate that the latter have the possibility to consult at any time the Office with a view to deciding on any appropriate precautionary measures, including measures for the safeguarding of evidence.

(28) Reports drawn up by the Office constitute today admissible evidence in administrative or judicial proceedings in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. The Commission evaluation found that in some Member States this rule does not sufficiently ensure the effectiveness of the Office's activities. To increase the effectiveness and the consistent use of reports of the Office, the Regulation should provide for the admissibility of such reports in judicial proceedings of a non-criminal nature before national courts, as well as in administrative proceedings in the Member States. The rule providing for equivalence with the reports of national administrative inspectors should continue to apply in the case of national judicial proceedings of a criminal nature. The Regulation should also provide for the admissibility of the reports drawn up by the Office in administrative and judicial proceedings at Union level.

(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 904/2010[9] in order to promote and facilitate cooperation in the fight against VAT fraud.

(30) The anti-fraud coordination services of the Member States were introduced by Regulation (EU, Euratom) No 883/2013 to facilitate an effective cooperation and exchange of information, including information of an operational nature, between the office and the Member States. The evaluation concluded they have positively contributed to the work of the Office. It also identified the need to further clarify their role in order to ensure that the Office is provided with the necessary assistance to ensure that its investigations are effective, while leaving the organisation and powers of the anti-fraud coordination services to each Member State. In this regard, the anti-fraud coordination services should be able to provide, obtain or coordinate the necessary assistance to the Office to carry out its tasks effectively, before, during or at the end of an external or internal investigation.

(31) The duty of the Office to provide the Member States with assistance in order to coordinate their action for the protection of the financial interests of the Union is a key element of its mandate to support cross-border cooperation among the Member States. More detailed rules should be laid down in order to facilitate the coordinating activities of the Office and its cooperation in this context with Member States' authorities, third countries and international organisations. These rules should be without prejudice to the exercise by the Office of powers conferred on the Commission in specific provisions governing mutual assistance between Member

[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.

States' administrative authorities and cooperation between those authorities and the Commission, in particular to Council Regulation (EC) No 515/97[10].

(32) Furthermore, it should be possible for the Office to request the assistance of the anti-fraud coordination services in the context of coordination activities, as well as for the anti-fraud coordination services to cooperate among themselves, in order to further reinforce the available mechanisms for cooperation in the fight against fraud.

(33) Since the objective of this Regulation to strengthen the protection of the financial interests of the Union by adapting the operation of the Office to the establishment of the EPPO and by enhancing the effectiveness of the investigations by the Office cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level through the adoption of rules governing the relationship between two Union offices and increasing the effectiveness in the conduct of investigations by the Office across the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

(34) This Regulation does not modify the powers and responsibilities of the Member States to take measures to combat fraud, corruption and any other illegal activity affecting the financial interests of the Union.

(35) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[11] and delivered an opinion on …[12].

(36) Regulation (EU, Euratom) No 883/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) in Article 1, the following paragraph 4a is inserted:

"4a. The Office shall establish and maintain a close relationship with the European Public Prosecutor's Office ('the EPPO') established in enhanced cooperation by Council Regulation (EU) 2017/1939[13]. 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 their respective mandates and the support provided by the Office to the EPPO.

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

11 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).

12 OJ C ….

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).

Cooperation between the Office and the EPPO shall be governed by Articles 12c to 12f".

(2) In Article 2, point 4 is replaced by the following:

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

(3) Article 3 is replaced by the following:

"Article 3
External investigations

1. Within the scope defined in Article 1 and points (1) and (3) of Article 2, the Office shall carry out on-the-spot checks and inspections in the Member States and, in accordance with the cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

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

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

4. The Office shall conduct on-the-spot checks and inspections upon production of a written authorisation, as provided for in Article 7(2) of this Regulation and Article 6(1) of Regulation (Euratom, EC) No 2185/1996. It shall inform the economic operator concerned of the procedure applicable to the check, including the applicable procedural safeguards, and the duty to cooperate of the economic operator concerned.

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 delay the start of the check.

6. 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).

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.

7. Where the economic operator concerned submits to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (Euratom, EC) No 2988/95 and the third subparagraph of Article 6(1) and Article 7(1) of Regulation (Euratom, EC) No 2185/96 shall not apply, insofar as those provisions require compliance with national law and may restrict access to information and documentation by the Office to the conditions applying to national administrative inspectors.

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.

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

8. As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9(2) of that Regulation in the Member States and, in accordance with the cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

9. During an external investigation, the Office may have access to any relevant information and data, irrespective of the medium on which it is stored, held by the institutions, bodies, offices and agencies, connected with the matter under investigation, where necessary in order to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. For that purpose Article 4(2) and (4) shall apply.

10. Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the institutions, bodies, offices and agencies concerned.

Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities of the Member States concerned shall ensure that appropriate action is taken, in which the Office may take part, in compliance with national law. Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of information as referred to in the first subparagraph of this paragraph.";

(4) Article 4 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. In the course of internal investigations:

(a) the Office shall have the right of immediate and unannounced access to any relevant information and data, irrespective of the medium on which it is stored, held by the institutions, bodies, offices and agencies, and to their premises. The Office shall be empowered to inspect the accounts of the institutions, bodies, offices and agencies. The Office may take a copy of, and obtain extracts from, any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearance;

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

(b) paragraph 3 is replaced by the following:

"3. In accordance with Article 3, the Office may carry out on-the-spot checks and inspections at the premises of economic operators in order to obtain access to information relevant to the matter under internal investigation.";

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

"Without prejudice to Article 12c(1), where, before a decision has been taken whether or not to open an internal investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the institution, body, office or agency concerned. Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.";

(5) Article 5 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

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

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

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

(c) paragraph 6 is replaced by the following:

"6. If the Director-General decides not to open an external investigation, he may without delay send any relevant information to the competent authorities of the Member State concerned for action to be taken where appropriate, in

accordance with Union law and national law. Where necessary, the Office shall also inform the institution, body, office or agency concerned.";

(6) Article 7 is amended as follows:

(a) in paragraph 3, the first subparagraph is replaced by the following:

"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.";

(b) in paragraph 3, the following second subparagraph is inserted:

"At the request of the Office in relation to matters under investigation, the Financial intelligence Units established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council[14] and other relevant competent authorities of the Member States shall provide it with the following:

(a) information referred to in [Article 32a(3) of] Directive (EU) 2015/849;[15]

(b) when strictly necessary for the purposes of the investigation, the record of transactions.";

(c) in paragraph 3, the following third subparagraph is added:

"When providing assistance in accordance with the previous subparagraphs, the national competent authorities shall act in conformity with any national procedural rules applicable to the national competent authority concerned.";

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

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

(e) paragraph 8 is replaced by the following:

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

(7) Article 8 is amended as follows:

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

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[14] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

[15] Article 32a(3) will be inserted in Directive (EU) 2015/849 by Directive (EU) 2018/XX of the European Parliament and of the Council amending Directive (EU) 2015/849, on which a political agreement has been reached on 19 December 2017 and which is expected to be adopted in the coming months.

"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.";

(b) paragraph 2 is replaced by the following:

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

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

(c) paragraph 3 is replaced by the following:

"3. The institutions, bodies, offices and agencies and, unless prevented by national law, the competent authorities of the Member States shall transmit 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.";

(d) the following paragraph 4 is added:

"4. This Article shall not apply to the EPPO as regards the criminal offences in respect of which it could exercise its competence in accordance with Articles 22 and 25 of Regulation (EU) 2017/1939.

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

(8) Article 9 is amended as follows:

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

"In duly justified cases where it is necessary to preserve the confidentiality of the investigation and/or entailing the use of investigative proceedings falling within the remit of the EPPO or a national judicial authority, the Director-General may decide to defer the fulfilment of the obligation to invite the person concerned to comment.";

(9) Article 10 is amended as follows:

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

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

(10) Article 11 is amended as follows:

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

"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.";

(b) paragraph 2 is replaced by the following:

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

Upon simple verification of their authenticity, reports drawn up on that basis shall constitute admissible evidence in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States.

Reports drawn up by the Office shall constitute admissible evidence in criminal proceedings of the Member State in which their use proves necessary in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall have the same evidentiary value as such reports.

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

Reports drawn up by the Office shall constitute admissible evidence in judicial proceedings before the Union courts and in administrative proceedings in the Union.";

(c) paragraph 3 is replaced by the following:

"3. Reports and recommendations drawn up following an external investigation and any relevant related documents shall be sent to the competent authorities of the Member States concerned in accordance with the rules relating to external investigations and, if necessary, to the institution, body, office or agency concerned. That institution, body, office or agency shall take such action as the results of the external investigation warrant, and shall report thereon to the Office, within a time-limit laid down in the recommendations accompanying the report, and, in addition, at the request of the Office.";

(11) Article 12 is amended as follows:

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

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

(b) paragraph 3 is replaced by the following:

"3. The competent authorities of the Member State concerned shall, unless prevented by national law, inform the Office in due time, on their own initiative or at the request of the Office, of the action taken on the basis of the information transmitted to them under this Article.";

(c) the following paragraph 5 is added:

"5. The Office may exchange, on its own initiative or on request, relevant information with the Eurofisc network established by Council Regulation (EU) No 904/2010[16].";

(12) The following Articles are inserted:

"Article 12a

Anti-fraud coordination services in the Member States

1. Member States shall, for the purposes of this Regulation, designate a service ('the anti-fraud coordination service') to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, in accordance with national law, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation.

2. Upon request of the Office, before a decision has been taken as to whether or not to open an investigation, as well as during or after an investigation, the anti-fraud coordination services shall provide, obtain or coordinate the necessary assistance for the Office to carry out its tasks effectively. That assistance shall include in particular the assistance from the national competent authorities provided in accordance with Article 3(6) and (7), Article 7(3) and Article 8(2) and (3).

3. The Office may request the assistance of the anti-fraud coordination services when conducting coordination activities in accordance with Article 12b, including, where appropriate, horizontal cooperation and exchange of information between anti-fraud coordination services.

Article 12b

Coordination activities

1. Pursuant to Article 1(2), the Office may organise and facilitate cooperation between the competent authorities of the Member States, institutions, bodies, offices and agencies, as well as, in accordance with the cooperation and mutual assistance agreements and any other legal instrument in force, third countries' authorities and international organisations. To this end, the participating authorities and the Office may collect, analyse and exchange information, including operational information. The staff of the Office may accompany competent authorities carrying out investigative activities upon request of those authorities. Article 6, Article 7(6) and (7), Article 8(3) and Article 10 shall apply.

2. The Office may draw up a report on the coordination activities conducted and transmit it, where appropriate, to the competent national authorities and institutions, bodies, offices and agencies concerned.

3. This Article shall apply without prejudice to the exercise by the Office of powers conferred on the Commission in specific provisions governing mutual assistance between Member States' administrative authorities and cooperation between those authorities and the Commission.

4. The Office may participate in joint investigation teams established in accordance with applicable Union law and exchange in this framework operational information acquired pursuant to this Regulation.

[16] 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).

Article 12c

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

1. The Office shall report to the EPPO without undue delay any criminal conduct in respect of which the EPPO could exercise its competence in accordance with 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.

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

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

   In cases where the information received by the Office does not include the elements set out in paragraph 2, and there is no investigation of the Office ongoing, the Office may conduct a preliminary evaluation of the allegations. The evaluation shall be carried out expeditiously, and in any case within two months of receipt of the information. In the course of this evaluation, Article 6 and Article 8(2) shall apply.

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

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

   For the purpose of applying the first subparagraph, the Office shall verify in accordance with Article 12g(2) via the EPPO's case management system whether the EPPO is conducting an investigation. The Office may request further information from the EPPO. The EPPO shall reply to such a request within 10 working days.

5. The institutions, bodies, offices and agencies may request the Office to conduct a preliminary evaluation of allegations reported to them. For the purposes of those requests, paragraph 3 shall apply.

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

Article 12d

Non-duplication of investigations

The Director-General shall not open an investigation in accordance with Article 5 if the EPPO is conducting an investigation into the same facts, other than in accordance with Articles 12e or 12f.

For the purpose of applying the first subparagraph, the Office shall verify in accordance with Article 12g(2) via the EPPO's case management system whether the EPPO is conducting an investigation. The Office may request further information from the EPPO. The EPPO shall reply to such a request within 10 working days.

Article 12e

The Office's support to the EPPO

1. In the course of an investigation by the EPPO, and at the request of the EPPO in accordance with Article 101(3) of Regulation (EU) 2017/1939, the Office shall, in conformity with its mandate, support or complement the EPPO's activity in particular by:

   (a) providing information, analyses (including forensic analyses), expertise and operational support;

   (b) facilitating coordination of specific actions of the competent national administrative authorities and bodies of the Union;

   (c) conducting administrative investigations.

2. Pursuant to paragraph 1, a request shall be transmitted in writing and shall specify the measure or measures which the EPPO requests the Office to perform and, where appropriate, the envisaged timeline for their performance. It shall contain information about the EPPO investigation in so far as relevant for the purpose of the request. Where necessary, the Office may request additional information.

Article 12f

Complementary investigations

1. In duly justified cases where the EPPO is conducting an investigation, where the Director-General considers that an investigation should be opened in accordance with the mandate of the Office with a view to facilitating the adoption of precautionary measures or of financial, disciplinary or administrative action, the Office shall inform the EPPO in writing, specifying the nature and purpose of the investigation.

   Within 30 days after receipt of this information the EPPO may object to the opening of an investigation or to the performance of certain acts pertaining to the investigation, where necessary to avoid jeopardising its own investigation or prosecution, and for as long as these grounds persist. The EPPO shall notify to the Office without undue delay when the grounds for the objection cease to apply.

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

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

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

Article 12g

Working arrangements and exchange of information with the EPPO

1. Where necessary to facilitate the cooperation with the EPPO as set out in Article 1(4a), the Office shall agree with the EPPO on administrative arrangements. Such working arrangements may establish practical details for the exchange of information, including personal data, operational, strategic or technical information and classified information. They shall include detailed arrangements on the continuous exchange of information during the receipt and verification of allegations by both offices.

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

(13) Article 16 is amended as follows:

(a) in paragraph 1, the third sentence is replaced by the following:

"Representatives of the Court of Auditors, the EPPO, Eurojust and/or Europol may be invited to attend on an ad hoc basis upon request of the European Parliament, the Council, the Commission, the Director-General or the Supervisory Committee.";

(b) in paragraph 2, point (d) is replaced by the following:

"(d) the framework of the relations between the Office and the institutions, bodies, offices and agencies, in particular the EPPO.";

(14) Article 17 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

(b) in paragraph 5, point (b) is replaced by the following:

"(b) of cases in which information has been transmitted to judicial authorities of the Member States and to the EPPO;",

(c) in the first subparagraph of paragraph 8, the following point (e) is added:

"(e) relations with the EPPO.";

Article 2

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

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*