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**Investigations conducted by the European Anti-Fraud Office (OLAF) \*\*\*I**

P6\_TA(2008)0553

**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) (COM(2006)0244 — C6-0228/2006 — 2006/0084(COD))**

(2010/C 16 E/39)

(Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0244),
  - having regard to Articles 251(2) and 280(4) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0228/2006),
  - having regard to Court of Auditors' Opinion No 7/2006 <sup>(1)</sup>,
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Legal Affairs (A6-0394/2008),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

<sup>(1)</sup> OJ C 8, 12.1.2007, p. 1.

**TED\_COD(2006)0084**

**Position of the European Parliament adopted at first reading on 20 November 2008 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 280 thereof,

Having regard to the proposal from the Commission **||**,

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



Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) *The European Parliament has invited the Commission to press ahead without further delay with consolidating the legal texts on Community administrative investigations. This consolidation aims to strengthen the efficiency of the European Anti-Fraud Office ('the Office') and to clarify the legal framework of its mission.*
- (2) *It is appropriate to ensure that the staff of the Office can execute their mission in full independence. To this end, it is appropriate to manage human resources in a way that better responds to the operational needs of the Office; particularly by seeking a better balance between temporary staff and permanent staff.*
- (3) *While drawing attention to the responsibility of every department of the Commission and of the other institutions, bodies, offices and agencies of the European Union and European Communities (hereinafter 'institutions, bodies, offices and agencies') to protect the Community's financial interests, and recognising the importance of prevention aspects when defining European policy in this field, including the fight against fraud and corruption, there is a need to widen the task of the Office to include those aspects. The design of legislative and administrative measures at European level needs to be based on the Office's operational practice in this field.*
- (4) *Given the scale of the Community funds allocated to the external-aid sector, the number of investigations carried out by the Office in that sector and the existence of international cooperation for investigation purposes, a legal basis should be established which will enable the Commission to seek assistance from the competent authorities in third countries and from international organisations in the performance of the Office's tasks.*
- (5) *Clear rules should be laid down which, while confirming the priority enjoyed by the Office for conducting internal investigations, establish mechanisms enabling the institutions, bodies, offices and agencies quickly to take over the investigation of cases in which the Office decides not to intervene.*
- (6) *It needs to be made clear that the decision as to whether to open an investigation is left to the discretion of the Office, which may decide not to open an investigation in cases of minor importance or not falling within the investigative priorities set annually by the Office. Such cases should then be handled, where internal investigations are concerned, by the institutions and, where external investigations are concerned, by the competent national authorities in accordance with the rules applicable in each Member State.*
- (7) *The accuracy of the information sent to the Office in connection with its remit has to be checked as quickly as possible. Hence it should be made clear that the institutions, bodies, offices and agencies will grant the Office immediate and automatic access to databases relating to the management of Community funds and to any other database and any other relevant information.*

<sup>(1)</sup> OJ C 8, 12.1.2007, p. 1.

<sup>(2)</sup> Position of the European Parliament of 20 November 2008.

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- (8) The Office must be placed under precise obligations to inform the institutions, bodies, offices and agencies in good time of investigations in progress where a member, manager, official or other servant or staff member is personally implicated in the matter under investigation or where administrative measures may be required in order to protect the Union's interests.
- (9) In order to make the Office's investigative activity more effective and in the light of the evaluations of its activities made by the institutions, in particular the Commission's evaluation report of April 2003 and the Court of Auditors' special report No 1/2005 on the management of the Office <sup>(1)</sup>, certain aspects need clarifying and certain measures the Office can take in conducting its investigations need improving. The Office *should* therefore be given the power to carry out the inspections and checks provided for by 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 <sup>(2)</sup> in connection with internal investigations and in cases of fraud linked to contracts concerning Community funding, and have access to information held by the institutions, bodies, offices and agencies ¶ in connection with external investigations.
- (10) *The Office's operational practice depends greatly on cooperation with Member States. There is a need for the Member States to identify their competent authorities for the Office who are able to provide Office staff with the required assistance in the exercise of their duties, particularly in cases where a Member State has not set up a specialist department with the task of coordinating the fight against Community fraud at national level.*
- (11) *If the operational, legal and administrative framework for combating fraud is to be improved, the Office must know how the results of its investigations have been followed up. Hence the Member States' competent authorities and the institutions, bodies, offices and agencies (and also — with assistance from the Commission — third-country authorities and international organisations) should be required to report regularly to the Office on progress made as regards action taken in response to the final investigation report issued by the Office.*
- (12) *In view of the major benefits of strengthening cooperation between the Office, the European Police Office (Europol) and the European Union's Judicial Cooperation Unit (Eurojust), a legal basis must be introduced which will enable the Office to conclude agreements with those two agencies. In order to bolster the respective powers of Eurojust, the Office and the Member States' competent authorities in respect of deeds liable to criminal investigation, the Office should be called upon to inform Eurojust in cases of suspected illegal activity damaging to the European Communities' financial interests and involving serious forms of criminality and at least two Member States.*
- (13) It is necessary, in the interests of legal certainty, to **codify in this Regulation** the **fundamental** procedural guarantees applicable in internal or external investigations conducted by the Office. That does not affect any more extensive protection which may derive from the rules of the Treaties, **the Protocol on the Privileges and Immunities of the European Communities, the Charter of Fundamental Rights of the European Union, the Statute for Members of the European Parliament**, the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations') and any relevant national provisions.
- (14) *The procedural guarantees and the legitimate rights of persons who are under investigation should be upheld and applied without any difference in treatment stemming from the type of investigation carried out by the Office.*

<sup>(1)</sup> OJ C 202, 18.8.2005, p. 1.

<sup>(2)</sup> OJ L 292, 15.11.1996, p. 2.

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- (15) *In order to ensure that the Office's operational activities are as transparent as possible, particularly in respect of the principles governing investigation procedure, the legitimate rights of the persons concerned and procedural safeguards, data protection provisions, the policy for providing information on certain aspects of the Office's operational activities, reviewing the legality of investigation activities and appeals procedures for the persons concerned, it is necessary to provide a legal basis for adoption of a procedural code for OLAF investigations. The code should be published in the Official Journal of the European Union.*
- (16) *In order to ensure that procedural guarantees are upheld at every stage of the investigation, checks on legality must be carried out by the Office. Such checks should be carried out in particular prior to the opening and the closing of an investigation and prior to any forwarding of information to the Member States' competent authorities. Such checks should be carried out by legal experts who may play a judicial role within a Member State and who will work within the Office. The Director General of the Office should also request those experts' opinion on behalf of the Office's Investigations and Operations Executive Board (hereinafter 'the executive board').*
- (17) *In order to strengthen the protection of the individual rights of persons under investigation, and without prejudice to Article 90a of the Staff Regulations and the powers of the Court of Justice of the European Communities under the Treaty, a person implicated personally should be entitled, at the final stage of an investigation, to be provided with the conclusions and recommendations of the final investigation report ■.*
- (18) *For the sake of greater transparency, it is necessary to ensure an adequate degree of information for informers, who should be informed of the initial decision as to whether or not to open an investigation and, on their express request, of the outcome of the action taken on the information supplied.*
- (19) *In order to make it possible to provide objective information to European taxpayers and to guarantee freedom of the press, all EU bodies involved in the investigation should respect the principle of protecting journalists' sources in accordance with national legislation.*
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- (20) *Experience based on 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 by a written document specifying the conditions and limits governing the delegation.*
- (21) *The fundamental rights of the persons concerned by investigations should be respected at all times, particularly when providing information. There is a need to clarify the basic principles of the Office's information policy. 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 concertation procedure, 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. There is a need to introduce a legal basis enabling the Office to conclude agreements with the institutions concerned on the provision of information. The Director General of the Office should ensure that any information supplied to the public complies with the principles of neutrality and impartiality. The procedural code for OLAF investigations should spell out the consequences of unauthorised dissemination of information.*
- (22) *It is appropriate to strengthen the Supervisory Committee's role and to revise the criteria and procedure for appointing its members. At the time of their selection, candidates should be engaged in high-level judicial or investigative tasks, or comparable functions. They should be appointed for a non-renewable five-year period. Some members should be appointed at staggered intervals in order to retain the expertise of the committee.*

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- (23) *It is appropriate to widen and strengthen the tasks of the Supervisory Committee arising from its mandate and to safeguard the Office's independence in its investigative function. The Committee should monitor trends concerning procedural safeguards and the length of investigations. It should be informed of investigations lasting more than 12 months and deliver opinions to the Director General of the Office and, if needs be, to the institutions on investigations that are not completed within 18 months. It should be made clear that the Supervisory Committee does not interfere in the running of ongoing investigations.*
- (24) *There is a need to evaluate the judicial, institutional and operational context for the fight against fraud, corruption and any other activity detrimental to the European Communities' financial interests. To this end the institutions should be asked to coordinate their action and encouraged to consider the major aspects of European anti-fraud strategy. A concertation procedure needs to be set up between the European Parliament, the Council and the Commission. This concertation should cover certain areas of cooperation in this field between the Office and the Member States and the institutions of the European Union, and also relations with third countries and international organisations, and should also cover the Office's investigative policy and reports and assessments by the Supervisory Committee. The Director General of the Office and the chair of the Supervisory Committee should participate in the concertation, which should take place at least once a year.*
- (25) *In order to allow the Supervisory Committee to carry out its mission effectively, in full independence and in an efficient way, it is essential that the Office ensure that all conditions are put in place for the secretariat of the Supervisory Committee to work in an independent way under the chair of the committee and its members exclusively.*
- (26) *In order to reinforce complete independence in the running of the Office, the Director General of the Office should be appointed for a term of five years, renewable once. At the time of their selection, candidates should occupy or have occupied a senior judicial post or an executive investigative post and have operational professional experience of at least ten years in a position of high management responsibility. A significant portion of this professional experience should have been acquired in the area of the fight against national or Community fraud. The appointment procedure should be completed within nine months. The Director General of the Office should be designated by common agreement between the European Parliament and the Council and be appointed by the Commission.*
- (27) *Considering the sensitivity of the position, it is appropriate to stipulate that the Director General of the Office will inform the Commission if he intends to engage in any new occupational activity within two years of leaving the post, in conformity with Article 16 of the Staff Regulations. This information should be included in the Commission's annual report on the fight against fraud.*
- (28) *In order to strengthen respect for procedural guarantees, any person who is under investigation by the Office should be able to lodge a complaint with the Supervisory Committee. Complaints will be dealt with by a Review Adviser acting in complete independence, appointed by the Director General of the Office, on a proposal of the Supervisory Committee. The Review Adviser should deliver his opinion within 30 working days and will forward it to the plaintiff, to the Director General of the Office and to the Supervisory Committee.*

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- (29) *After a four-year period, the application of this Regulation should be assessed. The Commission should submit a report to the European Parliament and to the Council, accompanied by an opinion issued by the Supervisory Committee. Following that assessment this Regulation should be able to be revised. In any event, this Regulation should be revised after the creation of a European Public Prosecutor's Office.*
- (30) Regulation (EC) No 1073/1999 <sup>(1)</sup> should be amended accordingly.
- (31) This Regulation clarifies and strengthens the courses of action which may be taken by the Office in external investigations, and does so only in isolated respects where legal loopholes have been found in the existing system and where only more effective action by the Office can ensure that reliable external investigations are conducted, which can be used by the authorities of the Member States. In addition, procedural guarantees need to be extended to external investigations in order to provide a uniform legal framework for all investigations conducted by the Office. This Regulation fully respects the principle of subsidiarity as set out in Article 5 of the Treaty. 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 achieve those objectives.
- (32) 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 47 and 48 thereof,

HAVE ADOPTED THIS REGULATION:

#### Article 1

Regulation (EC) No 1073/1999 *shall be amended as follows:*

- (1) *In Article 1, paragraphs 1 and 2 shall be replaced by the following:*

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

*Fraud, corruption and any other illegal activity detrimental to the Community's financial interests, including irregularity, are defined in Community regulations and the provisions of agreements in force in this field.*

*2. The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their activities for the purpose of protecting the European Community's financial interests against fraud. The Office shall contribute to the design and development of methods of preventing and of fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community.'*

<sup>(1)</sup> OJ L 136, 31.5.1999, p. 1.

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(2) Article 3 *shall be 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 agreements in force, in third countries and 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 2988/95 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 in force, in third countries **and in 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 Community funding, the Office may, in accordance with the procedures laid down by Regulation (Euratom, EC) No 2185/96, conduct on-the-spot checks and inspections on economic operators concerned **directly or indirectly** by such funding.

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

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

4. Where the Office has to hand, prior to an investigation, information which suggests that there has been fraud, corruption or any other illegal activity referred to in Article 1, the *Director General* of the Office **informs** the competent authorities of the Member States concerned and, without prejudice to the sectoral rules, those authorities shall ensure that appropriate action is taken and, where necessary, undertake investigations in accordance with national law, in which staff of the Office may take part. The competent authorities of the Member States concerned shall inform the *Director General* of the Office **of the action taken and** of their findings on the basis of such information. **it**

5. **When the Office decides not to open an investigation it shall inform Eurojust that it has forwarded to the competent authorities in the Member States information giving grounds for suspecting the existence of fraud, an act of corruption or any other illegal activity referred to in Article 1, in the form of serious crime involving two or more Member States. Eurojust shall also be notified by the Office as soon as an Office investigation comes within its competence, in accordance with the procedures laid down in the cooperation and mutual assistance agreements concluded between them.'**

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- (3) *The following article shall be inserted:*

*'Article 3a*

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

*Pursuant to the powers and responsibilities conferred upon it under this Regulation, the Office may conclude cooperation and mutual assistance agreements with Eurojust and Europol. The aim of these agreements shall be to clarify the respective powers and responsibilities of these bodies and to define the cooperation between them within the framework of the area of freedom, of security and of justice.*

*The Office may also conclude cooperation and mutual assistance agreements with other international organisations.'*

- (4) Article 4 shall be amended as follows:

- (a) *paragraph 1, subparagraph 2, shall be replaced by the following:*

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

- (b) *paragraph 3 shall be replaced by the following:*

*'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.'*

- (c) *paragraph 5 shall be deleted.*

- (5) Article 5 shall be replaced by the following:

*'Article 5*

*Opening of investigations*

1. The Office may open an investigation when sufficiently strong suspicions exist that acts of fraud or corruption or other illegal acts referred to in Article 1 have been committed. The decision whether or not to open an investigation shall take account of the investigation policy priorities and the Office's programme of investigative activities determined in accordance with Articles 11a and 12(6). **Anonymous information may also be taken into account if it constitutes sufficiently strong grounds for suspicion.**

2. **The decision to open an investigation shall be taken by the Director General of the Office after consulting the Office's executive board and in accordance with the provisions concerning checks on legality which are laid down in Article 14.**

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

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The decision to open an internal investigation shall be taken by the *Director General* of the Office, acting on his own initiative or following a request from a Member State concerned or ***one of the institutions of the European Communities or of the European Union*** within which the investigation is to be conducted.

While the Office is conducting an internal investigation within the meaning of this Regulation, the institutions, bodies, offices or agencies shall not open a parallel investigation into the same facts.

4. When an institution, body, office or agency plans to open an investigation acting under its own administrative authority, it shall ask the Office whether the facts in question are already the subject of an internal investigation. The Office shall state within fifteen working days of that request if an investigation is already open or if it is planning to open an investigation under *paragraph 5*. Failure to reply shall be deemed to be a decision on the part of the Office not to open an internal investigation.

5. The decision on whether or not to open an investigation shall be taken within two months of receipt by the Office of a request as referred to in *paragraphs 3 or 4*. It shall be communicated without delay to the institution, body, office or agency or the Member State which made the request. Reasons shall be given for a decision not to open an investigation.

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

***Prior to the opening and throughout the duration of an investigation, the institutions, bodies, offices and agencies shall provide the Office with immediate and automatic access to databases relating to with the management of Community funds and to any other database containing relevant data and any other information which will enable the Office to check that the information forwarded is accurate.***

6. If the Office decides, on the basis of what it deems appropriate or on the basis of its priorities for investigative action, 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.

If the Office decides, on the basis of what it deems appropriate or on the basis of its priorities for investigative action, not to open an external investigation, Article 3(4) shall apply.'

(6) Article 6 shall be amended as follows:

(a) *paragraph 1 shall be replaced by the following:*

***'1. The Director General of the Office shall direct the conduct of investigations. He may issue written instructions to an operational Director of the Office to direct the conduct of investigations. Investigations shall be conducted under the authority and the responsibility of the Director General of the Office by agents nominated by the Office.'***

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(b) *paragraph 3 shall be replaced by the following:*

*'3. The Office's employees shall be equipped for each intervention with a written authority issued by the Director General of the Office 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.'*

(c) *the following paragraph shall be inserted:*

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

(d) *Article 6(4) shall be replaced by the following:*

*'4. During on-the-spot inspections, [...] checks and investigations, the Office's employees shall adopt an attitude in keeping with the rules and practices governing investigators of the Member State concerned, with the Staff Regulations and with the decisions referred to in the second subparagraph of Article 4(1). The Office's employees shall act in accordance with the principle of impartiality. They shall immediately notify the Director General of the Office if they find themselves in a position of conflict of interest in the context of their investigation. The Director General of the Office shall decide whether a conflict of interest exists. If it does, the Director General of the Office shall give instructions for replacing the employee.'*

(e) *paragraph 5 shall be replaced by the following:*

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

(f) *the following paragraph shall be inserted:*

*'As soon as investigations reveal that a member, manager, official, servant or any other person serving an institution, body, office or agency may be implicated or show that it might be appropriate to take precautionary or administrative measures to protect the interests of the Union, **the Office shall inform** the institution, body, office or agency concerned **without delay** of the investigation in progress. The information supplied shall include the following:*

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

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

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- (c) any special measures of confidentiality recommended.

*The provision of this information to the institution, body, office or agency may be deferred in cases requiring absolute secrecy to be maintained for the purposes of the investigation or requiring recourse to investigative procedures falling within the competence of a national judicial authority, in accordance with national law applicable to investigations. The Director General of the Office shall give reasons for his decision in accordance with the provisions concerning checks on legality which are laid down in Article 14.*

The institution, body, office or agency shall decide whether any precautionary or administrative measures are appropriate, with due account being taken of the importance of guaranteeing the effectiveness of the conduct of the investigation and of the specific confidentiality measures recommended by the Office. *The institution, body, office or agency shall inform the Office without delay of the decision to take any measures under this Article or, where appropriate, of the need to initiate an additional disciplinary procedure on matters for which there is an appropriate competence under the Staff Regulations of Officials of the European Communities. An additional disciplinary procedure may be initiated after consulting the Office.;*

- (g) in paragraph 6, the following subparagraph shall be added:

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

- (h) the following paragraph shall be added:

*'Where it is found that an investigation cannot be closed within 12 months after it has been opened, the Director General of the Office may decide to extend the period by up to six months. The Director General of the Office shall ascertain the need for the investigation to be extended. Before taking this decision, the Director General of the Office shall inform the Supervisory Committee of the reasons preventing the investigation from being concluded and of the likely period of time needed for it to be completed.'*

*If an investigation is not completed within 18 months after it has been opened, the Supervisory Committee shall be informed by the Director General of the Office of the reasons which have prevented him from closing the investigation and shall issue an opinion on the extension and, where appropriate, the subsequent running of the investigation.*

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

*The Director General of the Office shall submit to the budgetary authority an annual report on the reasons which have prevented him from closing investigations within 30 months after they have been opened. The Supervisory Committee shall submit an opinion on those reasons to the budgetary authority.'*

- (7) In Article 7, paragraphs 1 and 2 shall be replaced by the following:

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

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

(8) The following Articles shall be 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 the procedural code for OLAF investigations referred to in Article 15a.**

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

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

In cases requiring absolute secrecy to be maintained for the sake of the investigation **or** entailing use of investigative proceedings falling under the jurisdiction of a national judicial authority or, in the case of an external investigation, that of a competent national authority, the *Director General* of the Office may decide to defer fulfilment of the obligation to ask the person implicated to make his views known, **while complying with the provisions on reviewing legality laid down in Article 14.** In the case of an internal investigation, the *Director General* of the Office shall take his decision **after having informed** the institution, body, office or agency to which the person concerned belongs.

**The institution, body, office or agency shall, where necessary, decide on the expediency of any precautionary or administrative measures, taking due account of the interest of ensuring effective management of the investigation and of any particular confidentiality measures that the Office has recommended. The institution, body, office or agency shall inform the Office as soon as possible of the decision to take any measures under this Article or, where appropriate, of the need to initiate an additional disciplinary procedure on matters for which there is an appropriate competence under the Staff Regulations. An additional disciplinary procedure may be initiated after consulting the Office.**

3. The invitation to any interview, whether with a witness or with a person implicated personally within the meaning of paragraph 2, must be sent with at least **ten** working days' notice; the period of notice may be shortened with the **express consent** of the person to be interviewed. The invitation shall include a list of the rights of the person interviewed. The Office shall draw up a record of the interview and shall give the person interviewed access to it so that he may either approve the record or add observations.

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When, in the course of the interview, **evidence emerges** that the person interviewed may be involved in the facts under investigation, the procedural rules provided for in paragraph 2 shall apply at once.

4. The procedural guarantees provided for in this Article shall apply without prejudice:
- (a) to more extensive protection which may derive from the rules of the Treaties, **the Charter of Fundamental Rights of the European Union** or any **other** relevant national **or Community** provisions, **including the Protocol on the Privileges and Immunities of the European Communities**;
  - (b) to rights and obligations conferred by the **Statute for Members of the European Parliament or the Staff Regulations**.

#### Article 7b

Information about decisions to close an investigation and take no further action

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

#### Article 7c

##### **Protection of journalistic sources**

***In order to make it possible to provide objective information to European taxpayers and to guarantee freedom of the press, all EU bodies involved in the investigation must respect the principle of protecting journalists' sources in accordance with national legislation.***

- (9) In Article 8, paragraphs 3 and 4 *shall be* replaced by the following:

'3. The Office shall observe the Community and national provisions on the protection of personal data, in particular those provided for in Regulation (EC) No 45/2001 of the European Parliament and of the Council (\*).

4. The *Director General* of the Office shall ensure that the provisions of this Article and of Article 287 of the Treaty are applied.

(\*) OJ L 8, 12.1.2001, p. 1.'

- (10) The following Article *shall be* inserted:

#### 'Article 8a

Notification of the final report on completion of the investigation

Before sending the final investigation report to the institutions, bodies, offices or agencies concerned or to the competent authorities of the Member States concerned, the Office shall communicate the conclusions and recommendations of the final report to the person implicated personally in the matter under internal or external investigation.

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

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

(11) Article 9 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

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

(b) paragraph 3 shall be 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. The competent authorities of the Member States concerned shall, in so far as is not incompatible with national law, inform the *Director General* of the Office of the action taken as a result of the investigation reports sent to them. **To this end, they shall send a progress report to the Director General of the Office every six months or, where applicable, within the period laid down by the Director General of the Office.**

**The Office shall send to the competent authorities of third countries, in accordance with the cooperation and mutual assistance agreements concluded with the Commission, and to international organisations, in accordance with the agreements concluded with the Commission, the conclusions and recommendations of the report drawn up following an external investigation and any useful related documents. The Commission shall ensure that the competent authorities of the third countries identified in the cooperation and mutual assistance agreements as the Office's points of contact inform the Director General of the Office, in so far as this is compatible with national law, of the action taken on the conclusions and recommendations of the final investigation report. The Commission shall likewise ensure that the international organisations inform the Director General of the Office of the action taken further to the conclusions and recommendations of the final investigation report. To this end, they shall send a progress report to the Director General of the Office every six months or, where applicable, within the period laid down by the Director General of the Office.'**

(c) the following paragraph shall be inserted:

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

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(d) *Article 9(4) shall be replaced by the following:*

***‘4. Reports drawn up following an internal investigation and any useful related documents shall be sent to the institution, body, office or agency concerned. The institution, body, office or agency shall take such action, in particular disciplinary or legal, on the internal investigations, as the results of those investigations warrant, and shall report thereon to the Director General of the Office [...]. To that end they shall send the Director General of the Office, every six months or, where appropriate, within the time-limits that the Director General of the Office has set, a report on the progress made.’***

(e) *the following paragraph shall be added:*

*‘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 persons concerned, the effectiveness of the investigation and the action to be taken subsequent thereto or any confidentiality requirements.’*

(12) *Article 10 shall be replaced by the following:*

*‘Article 10*

*Exchange of information between the Office and the national 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.

***The decision to forward such information shall be taken by the Director General of the Office, after consultation of the Office’s Executive Board and in accordance with the legality review provisions set out in Article 14(2).***

2. Without prejudice to Articles 8 and 9, the *Director General* of the Office shall, in the course of internal investigations, forward to the judicial authorities of the Member State concerned information obtained by the Office concerning facts entailing use of investigative proceedings within the jurisdiction of a national judicial authority or which are so serious as to require urgent criminal prosecution. In such a case he shall first inform the institution, body, office or agency concerned. The information forwarded shall include the identity of the person implicated by the investigation, a summary of the facts established, a preliminary legal evaluation and any financial loss.

***The decision to forward such information shall be taken by the Director General of the Office, after consultation of the Office’s Executive Board and in accordance with the legality review provisions set out in Article 14(2).***

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

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 *Director General* of the Office as quickly as possible of the action taken on the basis of the information forwarded to them under this Article.

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

(13) *The following Articles shall be inserted:*

**Article 10a**

**Exchange of information between the Office and the relevant interested institutions**

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

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

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

3. *The Office and the institutions concerned may reach agreements regarding the forwarding of any information necessary for the accomplishment of the Office's mission, in compliance with the principles set out in paragraphs 1 and 2.*

**Article 10b**

**Public information**

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

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

(14) *Article 11 shall be amended as follows:*

(a) *paragraph 1 shall be replaced by the following:*

*'The Supervisory Committee shall ensure that the Office exercises in full independence the competences conferred upon it by this Regulation by regular monitoring of the implementation of the investigative function. The Supervisory Committee shall:*

(a) *ensure that the rules governing information exchanges between the Office and the institutions, bodies, offices and agencies are complied with;*

(b) *monitor developments regarding the application of procedural guarantees and the duration of investigations in the light of the periodic statistics, information and investigation reports supplied to it by the Director General of the Office and the opinions drawn up by the Review Adviser*;

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- (c) *assist the Director General of the Office, ensuring that the Office has the resources needed to carry out its investigative task;*
- (d) *give opinions and recommendations on:*
  - *the identification of priorities for investigation;*
  - *the duration of investigations and action taken on investigations;*
  - *the procedural code for OLAF investigations;*
- (e) *give opinions on action by the Director General of the Office before the Court of Justice of the European Communities and the national courts;*
- (f) *assist the Director General of the Office in the concertation procedure.*
- (g) *The Supervisory Committee may bring the Commission or any other institution before the Court of Justice, when it considers that these institutions have taken measures which call the independence of the Director General of the Office into question.*

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

- (b) *paragraph 2 shall be replaced by the following:*

*'2. It shall be composed of five independent outside persons occupying, at the time of their appointment, senior judicial or investigative posts, or comparable posts, relating to the Office's areas of activity. They must possess knowledge of the workings of the institutions of the European Union and of a second official EU language.'*

*The members of the committee shall be appointed by common agreement of the European Parliament, the Council and the Commission. A call for applications shall be published in the Official Journal of the European Union. The five persons shall be chosen on the basis of a "pre-selection list" submitted by the Commission, comprising at least 12 candidates.'*

- (c) *paragraph 3 shall be replaced by the following:*

*'3. The term of office of members shall be five years and shall not be renewable. Some members shall be appointed at staggered intervals in order to preserve the Committee's expertise.'*

- (d) *paragraphs 6, 7 and 8 shall be 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 their opinion. Meetings of the Supervisory Committee shall be convened on the initiative of its chair or of the Director General of the Office. 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 of the Office shall forward to the Supervisory Committee each year the Office's programme of investigative activities. He shall keep the Supervisory Committee regularly informed of the Office's activities, the implementation of its investigative function and the action taken by way of follow-up to investigations.'*

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

- (a) of cases *in which* the institution, body, agency or office concerned has failed to act on the recommendations made by it;
- (b) of cases in which ***the competent authorities of the Member States have failed act on the recommendations made by it.***

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

(15) The following Article *shall be* inserted:

*'Article 11a*

***Concertation procedure***

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

***2. The concertation procedure shall relate to:***

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

- *coordination of actions taken pursuant to Article 1;*
- *the implementation and application of this Regulation, Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96, as well as of the Convention on the protection of the financial interests of the European Communities of 26 July 1995 and its protocols;*
- *the action taken on the Office's final investigation reports and the action taken further to the forwarding of information by the Office;*

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

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

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

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

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

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

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

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

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

(16) Article 12 shall be replaced by the following:

‘Article 12

Director General of the Office

1. The Office shall be placed under the authority of a Director General of the Office appointed by the Commission for a term of five years, which may be renewed once.

The European Parliament and the Council shall designate the Director General of the Office by common agreement on the basis of a list of 6 candidates put forward by the Commission. A call for applications shall be published in the Official Journal of the European Union.

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

If the European Parliament and/or the Council do not oppose the renewal of the Director General's mandate at the latest nine months before his first mandate expires, the Commission will proceed to extend the mandate of the Director General. Opposition to the extension of the mandate should be justified. Otherwise, the nomination procedure provided for in the third subparagraph of this paragraph applies.

2. The Director General of the Office shall be chosen from among the candidates from Member States who occupy or have occupied a senior judicial or an executive investigative post and who have operational professional experience of at least ten years in a position of high management responsibility. A significant portion of this professional experience shall have been acquired in the area of the fight against national and/or Community fraud. The Director General of the Office must have a thorough knowledge of the workings of the Union institutions and of a second official language of the Union. The candidate's independence must be beyond doubt.

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 for their opinion, and decide whether to bring an action against the institution concerned before the Court of Justice.

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*The Director General of the Office shall report regularly to the European Parliament, the Council, the Commission and the Court of Auditors, in the context of the concertation procedure referred to in Article 11a, on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and, where appropriate, national provisions applicable to judicial proceedings.*

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

4. Before adopting any disciplinary sanction against the *Director General of the Office*, the Commission shall consult the Supervisory Committee, meeting with representatives of the **European Parliament and of the Council** in the context of the **concertation procedure provided for in Article 11a**.

Measures relating to disciplinary sanctions against the *Director General of the Office* 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.

5. *The Director General of the Office will inform the Commission if he intends to engage in any new occupational activity within two years of leaving the post, in conformity with Article 16 of the Staff Regulations.*

6. The *Director General of the Office* shall each year, after securing the opinion of the Supervisory Committee, determine the programme of activities and the investigation policy priorities of the Office.

7. The *Director General of the Office* may delegate the exercise of certain of his functions under Articles 5, 6(3), 7b and 10(2) to one or more members of the staff of the Office by a written document specifying the conditions and limits governing the delegation.'

(17) *The following Article shall be inserted:*

**'Article 12a**

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

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

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

(18) Article 13 shall be 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 European 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.'

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(19) Article 14 shall be replaced by the following:

*'Article 14*

*Review of legality of the Office's investigations*

- 1. The review of legality of the Office's investigations shall relate to respect for procedural guarantees and the fundamental rights of the persons concerned by an Office investigation.*
- 2. The review of legality shall be carried out before the opening and before the close of an investigation, before any forwarding of information to the competent authorities in the Member States concerned within the meaning of Articles 9 and 10, and in connection with an evaluation of the absolute confidentiality of the investigation.*
- 3. The review of legality of investigations shall be carried out by Office experts in law and investigative procedure who are qualified to hold judicial office in a Member State. Their opinion shall be annexed to the final investigation report.*
- 4. The procedural code for OLAF investigations referred to in Article 15a sets out the procedure for the review of legality.'*

(20) The following Article shall be inserted:

*'Article 14a*

*Filing of complaints by persons concerned by Office investigations*

- 1. Any person personally concerned by an investigation may lodge a complaint with the Supervisory Committee alleging a violation of that person's procedural or human rights in the course of the investigation. Following reception of a complaint, the Supervisory Committee shall transmit the complaint without delay to a Review Adviser.*
- 2. The Director General of the Office, acting on a proposal from the Supervisory Committee, shall appoint a Review Adviser for a non-renewable term of five years. The Supervisory Committee shall base its proposal on a list of several candidates drawn up following a call for applications.*
- 3. The Review Adviser shall act in complete independence. He shall neither seek nor take instructions from anyone in the performance of his duties. He shall perform no functions within the Office other than those related to monitoring compliance with procedures.*
- 4. The Review Adviser is also competent for dealing with the complaints of the informers, including persons falling under Article 22 of the Staff Regulations.*
- 5. The Review Adviser shall, within no more than 30 working days of the forwarding of the complaint, give the complainant, the Supervisory Committee and the Director General of the Office his opinion.*
- 6. The Review Adviser shall report regularly to the Supervisory Committee on his activities. He shall present it, and the Commission, with regular statistical and analytical reports on questions related to complaints.'*

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(21) Article 15 *shall be replaced by the following:*

**'Article 15**

**Evaluation report**

*In the course of (\*)..., 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. In any event, this Regulation shall be amended after the creation of a European Public Prosecutor's Office.*

(\*) Fourth year after the entry into force of this Regulation.'

(22) The following Article **||** *shall be inserted:*

**'Article 15a**

**Procedural code for OLAF investigations**

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

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

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

**4. The procedural code for OLAF investigations may be updated at the proposal of the Director General of the Office. In this case the adoption procedure referred to in this Article shall apply.**

**5. The procedural code for OLAF investigations adopted by the Office shall be published in the Official Journal of the European Union.'**

**||**

**Article 2**

The provisions of Article 12(1) of Regulation (EC) No 1073/1999 as amended by this regulation shall not apply to the Director General of the Office in office at the date of entry into force of this regulation, whose term of office has been renewed for a period of five years.

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## Article 3

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

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

Done at ..., on ...

For the European Parliament  
The President

For the Council  
The President

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**Draft amending budget No 8/2008**

P6\_TA(2008)0554

**European Parliament resolution of 20 November 2008 on Draft amending budget No 8/2008 of the European Union for the financial year 2008 (15765/2008 — C6-0426/2008 — 2008/2287(BUD))**

(2010/C 16 E/40)

*The European Parliament,*

- having regard to Article 272 of the EC Treaty and Article 177 of the Euratom Treaty,
  - having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup>, and particularly Articles 37 and 38,
  - having regard to the general budget of the European Union for the financial year 2008, as finally adopted on 13 December 2007 <sup>(2)</sup>,
  - having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management <sup>(3)</sup>,
  - having regard to Preliminary draft amending budget No 9/2008 of the European Union for the financial year 2008, which the Commission presented on 6 October 2008 (COM(2008)0619),
  - having regard to Draft amending budget No 8/2008, which the Council established on 18 November 2008 (15765/2008 — C6-0426/2008),
  - having regard to Rule 69 of and Annex IV to its Rules of Procedure,
  - having regard to the report of the Committee on Budgets (A6-0453/2008),
- A. whereas Draft amending budget No 8 to the general budget 2008 concerns only the European Economic and Social Committee and covers the budgetary adjustments resulting from the fact that the increase in salaries and pensions was lower than that used as a basis for drawing up the 2008 preliminary draft,

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<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

<sup>(2)</sup> OJ L 71, 14.3.2008.

<sup>(3)</sup> OJ C 139, 14.6.2006, p. 1.