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#### **'I' ITEM NOTE**

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From:	Working Party on Combating Fraud
To:	Permanent Representatives Committee
No. Cion doc.:	9313/18 + ADD 1 - COM(2018) 338 final + SWD(2018) 251 final
Subject:	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 <b>(first reading)</b> – <i>Mandate for negotiations with the European Parliament</i>

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#### **OUTCOME OF PROCEEDINGS<sup>1</sup>**

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<sup>1</sup> The compromise text covers mainly the enacting terms. Some evident adaptations to Recitals were already made and some Recitals form part of the mandate. A full review of the Recitals will be done once the enacting terms are stabilised.

**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**

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<sup>1</sup>,

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<sup>2</sup> and Council Regulation (EU) 2017/1939<sup>3</sup>, 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 ("**the** 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.

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<sup>1</sup> **OJ C 42, 1.2.2019, p. 1.**

<sup>2</sup> 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).

<sup>3</sup> 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).

- (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<sup>1</sup> should be amended following the adoption of Regulation (EU) 2017/1939. The provisions governing the relationship between the EPPO and the Office in Regulation (EU) 2017/1939 should be reflected and complemented by the rules in Regulation (EU, Euratom) No 883/2013 to ensure the highest level of protection of the financial interests of the Union through synergies between the two bodies.
- (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.

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<sup>1</sup> 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).

- (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<sup>1</sup>, 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.

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<sup>1</sup> 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.

(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.

**(14a) Where the Office does not open an external investigation, it should be able to send relevant information to Member States' authorities or to Union institutions, bodies, offices or agencies for appropriate action to be taken. Before doing so, the Office should give due consideration to a possible interference with ongoing investigations by the EPPO.**

(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<sup>1</sup> 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 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.

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<sup>1</sup> 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

- (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.
- (19a) The Office is able, under the current provisions of the Regulation, to enter into administrative arrangements with national competent authorities, such as anti-fraud coordination services, and Union institutions and bodies, in order to specify the modalities for their cooperation under this Regulation.**

- (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<sup>1</sup> 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~~ **may remain silent to the extent that otherwise they would** admit that they have committed an illegal activity, but they are obliged to answer factual questions and to provide documents, even if this information may be used to establish against them or against another operator the existence of an illegal activity.
- (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.

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<sup>1</sup> 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.



- (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 accordance 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.
- (25a) Due to the large diversity of the national institutional framework, based on the principle of sincere cooperation, the Member States should have the possibility to notify to the Office those authorities that are competent to take actions upon recommendations of the Office, as well as those authorities that need to be informed (for financial, statistical or monitoring purposes etc.), as the case may be, for the performance of their relevant duties. Such authority may be the national anti-fraud coordination service. In accordance with settled case law of the General Court, the Office recommendations included in the reports of the Office have no binding legal effects on such national authorities or EU institutions, bodies, offices and agencies.**

- (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. **Where applicable, this cooperation should, as a rule, primarily take place through the Financial Intelligence Units in the Member States relevant authorities, competent for anti-fraud administrative investigations for the purposes of Article 325 TFEU.** 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 cases of serious offences against the common VAT system within the European Union, but only insofar as the fraud, corruption or any other illegal activity is connected with the territory of two or more Member States of the Union and involves a total damage of at least EUR 10 000 000 or upon request of the Member States or the Member States concerned or with its/their consent.** In this field, the Office should be able to support and complement the activities of the **EPPO and the Member States** through investigations ~~conducted in accordance with its mandate, and~~ 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~~ **may provide** information ~~through~~ **to** the Eurofisc network established by Council Regulation (EU) No 904/2010<sup>1</sup> 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.

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<sup>1</sup> 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.

(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 States' administrative authorities and cooperation between those authorities and the Commission, in particular to Council Regulation (EC) No 515/97<sup>1</sup>.

**(31a) It should be clarified, that when competent authorities of the Member States, including anti-fraud-coordination services, act in cooperation with the Office or with other competent authorities for the purposes of protecting the Union's financial interests, they continue to be bound by their applicable national laws.**

(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.

**(32a) Finally, it should be clarified that the Office may participate in joint investigation teams established in accordance with applicable Union law and that it should be entitled to exchange operational information acquired in this framework. The use of such information shall be subject to the conditions and safeguards provided for in the relevant Union law on the basis of which the joint investigation teams have been established. When the Office participates in such joint investigation teams, it has a supporting capacity and takes the role of an external partner subject to legal constraints that may exist at Union law level and at national level.**

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<sup>1</sup> 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).

- (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<sup>1</sup> and delivered an opinion on ...<sup>2</sup>.
- (36) Regulation (EU, Euratom) No 883/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

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<sup>1</sup> 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).

<sup>2</sup> OJ C ....

## *Article 1*

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

**(-1) In Article 1, the following paragraph 2a is inserted:**

**"2a. With regard to VAT own resources the Office shall exercise its powers only in cases of serious offences against the common VAT system within the European Union or upon request of the Member State or Member States concerned or with its/their consent.**

**For the purposes of this Regulation, offences against the common VAT system of the European Union shall be considered to be serious where the intentional acts or omissions are connected with:**

- (a) the territory of two or more Member States or the Union and**
- (b) involve a total damage of at least EUR 10 000 000.**

**The "Member State(s) concerned" shall be considered being the state(s) where cooperation activities become necessary or the state(s) whose information shall be used.**

**When the Office exercises its powers with regard to VAT own resources at the request of or with the consent of a Member State or Member States concerned, it shall be able to exercise its powers only in that Member State or those Member States.";**

(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<sup>1</sup>. 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.

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 **and conduct** criminal proceedings.";

**(2a) In Article 2, the following point (8) is added:**

**"(8) "resistance" as referred to in Article 3(7) shall mean that an economic operator, who is subject to the on-the-spot check or inspection carried out by the Office, does not grant the necessary access for the Office to its premises or any other areas used for business purposes, or prevents the conduct of any of the activities that the Office needs to perform in the course of a check.";**

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

(3) 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.~~
- 3a. Where the economic operator concerned, in compliance with paragraph 3, 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.**



~~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 competent authorities** of 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.

- 7a. 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. It shall, at the latest at the start of the on-the-spot checks and inspections, 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.**
- 7b. In the exercise of these powers assigned to it, 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.**
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~~ **Under the same rules and conditions as foreseen in** 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. **When providing such assistance in accordance with this paragraph, the national competent authorities shall act in conformity with any national procedural rules applicable to the national competent authority concerned.**";

(b) ~~in~~ **after** paragraph 3, the following ~~second~~ subparagraph **3a** is ~~inserted~~ **added**:

**"3a.** At the **written and duly justified** 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<sup>1</sup> and other~~ relevant competent authorities of the Member States shall provide it, **unless prevented by national law**, with the following **information**:

- (a) information **available in the centralised automated mechanisms** referred to in ~~{~~Article 32a(3) of~~}~~ Directive (EU) 2015/849;<sup>2</sup>
- (b) when strictly necessary for the purposes of the investigation, the record of transactions.

**The requests of the Office shall provide reasons to justify the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation and can only refer to such information that the national authorities can access according to national law.**

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<sup>1</sup> ~~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).~~

<sup>2</sup> 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.

**The Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b).";**

**(ca) the last subparagraph of paragraph 3 becomes paragraph 3b;**

(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 first subparagraph is replaced by the following:**

**"1. Within the scope of Article 1, the institutions, bodies, offices and agencies shall transmit to the Office without delay any information relating to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union.";**

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

"Where the institutions, bodies, offices and agencies report to the EPPO in accordance with Article 24 of Regulation (EU) 2017/1939, they may ~~instead~~ **comply with the obligation set out in the previous subparagraph by transmitting** 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 **by the Office and at its request, which shall be based upon a written justification**, they **institutions, bodies, offices and agencies** 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).

**Prior to the opening of an investigation by the Office and at its request, which shall be based upon a written justification, the competent authorities of the Member States shall also transmit such documents or information to the Office, unless they have already submitted these to the EPPO and the EPPO decided to initiate an investigation or to exercise its right of evocation, in which case they may decide not to transmit such documents or information after informing the Office accordingly."**

(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.

**The provisions related to transmission of information according to Council Regulation (EU) No 904/2010 remain unaffected.**";

(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~~ **an ongoing or future criminal** ~~investigative proceedings falling within the remit of~~ **by** the EPPO or a national judicial authority, the Director-General may, **where appropriate after consulting the EPPO or the national judicial authority concerned**, 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.

**The following rules shall apply:**

(a) ~~Upon simple verification of their authenticity,~~ reports drawn up ~~on that basis~~ **in accordance with the first subparagraph** shall constitute admissible evidence in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;

(b) ~~R~~reports drawn up ~~by the Office~~ **in accordance with the first subparagraph** 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 ~~theis third subparagraph~~ **point**;

- (c) ~~Reports~~ drawn up by the Office shall constitute admissible evidence in judicial proceedings before the Union courts and in administrative proceedings in the Union.

**The power of national and Union courts or competent bodies in administrative and criminal proceedings to freely assess the evidential value of the reports drawn up by the Office shall not be affected by this Regulation.";**

- (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. **The competent authorities of the Member State concerned, the** 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.

**Member States may notify to the Office the relevant national authorities competent for receiving such reports, recommendations and documents.";**

- (ca) paragraph 5 is replaced by the following:

"5. **Where the report drawn up following an internal investigation reveals the existence of facts which could give rise to criminal proceedings, that information shall be transmitted to the judicial authorities of the Member State concerned. At the request of the Office, the competent authorities of the Member States concerned shall, in due time, send to the Office information on action taken, if any, following the transmission by the Office of any information in accordance with this paragraph.";**

**(cb) paragraph 6 is deleted.**

(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,~~ **provide** relevant information ~~with to~~ the Eurofisc network established by Council Regulation (EU) No 904/2010<sup>1</sup>. **Eurofisc working field coordinators may transmit relevant information from the Eurofisc network to the Office under the conditions laid down in Council Regulation (EU) No 904/2010.**";

(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.

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<sup>1</sup> 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).

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 **may provide assistance to the Office upon request** ~~when so that the Office may~~ 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,~~ **For the purposes of protecting the financial interests of the Union,** 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.

#### 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 Articles 22, 23 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 **only** 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 if~~ the Director-General, **in duly justified cases**, considers that an investigation **by the Office** should **also** 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~~ **measure(s), the actions and the person(s) concerned.**
- ~~Within 30 days~~ **After** receipt of this information the EPPO, **within a timeframe that will be agreed by both institutions,** ~~may~~ **shall consent or** 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.~~ **In cases where t**~~The EPPO objects to the opening of an investigation or to the performance of certain acts pertaining to an investigation,~~ **it** 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~~ **consents** within ~~the time period of the previous subparagraph,~~ **a timeframe that will be agreed by both institutions,** 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.

**In the event that the EPPO does not respond within the timeframe agreed by both institutions, the Office may enter into consultations with the EPPO to decide on the matter, within a timeframe agreed by both institutions.**

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 **and a timeframe for answering to each other's requests** for the exchange of information **or complementary investigations,** 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*

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