Council of the European Union

Brussels, 9 December 2020
(OR. en)

13846/20

Interinstitutional File: 2018/0170(COD)

GAF 69
FIN 938
CODEC 1304

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 805 final
Subject:	Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations

Delegations will find attached document COM(2020) 805 final.

Encl.: COM(2020) 805 final

EUROPEAN
COMMISSION

Brussels, 8.12.2020
COM(2020) 805 final

2018/0170 (COD)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Regulation amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations

2018/0170 (COD)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Regulation amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations

1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2018) 338 final – 2018/0170 COD):	24 May 2018
Date of the Opinion of the Court of Auditors:	15 November 2018
Date of the position of the European Parliament, first reading:	16 April 2019
Date of adoption of the position of the Council:	4 December 2020

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The aim of this proposal is:

(a) To adapt the operation of the European Anti-Fraud Office (OLAF) investigations to the establishment of the European Public Prosecutor's Office (EPPO) in view of ensuring maximum complementarity; and

(b) To enhance the effectiveness of OLAF's investigative function as regards a number of specific issues, including on-the-spot checks, inspections, and assistance of national authorities, bank account information, admissibility of OLAF-collected evidence, anti-fraud coordination services and coordination activities.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council as adopted in the 1st reading fully reflects the agreement reached in the trilogue between the European Parliament, the Council, and the Commission, as concluded on 26 June 2020. The main points of this agreement include the following:

– it sets up a framework for close relationship between OLAF and the EPPO, based on sincere cooperation, complementarity of their mandates, and coordination of their action; in particular, it allows OLAF to open, in duly

justified cases, and if the EPPO does not object within a deadline, complementary investigations to those of the EPPO to facilitate recovery, the adoption of administrative precautionary measures or other actions in a timely manner; it also provides that, when OLAF supports the EPPO, the EPPO and OLAF must ensure, acting in close cooperation, that the procedural safeguards of Chapter VI of the EPPO Regulation are observed;

- it enhances OLAF's investigative powers by allowing the Office to request bank account information – namely to registries of account holders and, where strictly necessary, to transactions – through the cooperation of national authorities, under the same conditions that apply to national competent authorities, and subject to a reasoned request justifying its appropriateness and proportionality;
- it strengthens the procedural rights of the person concerned by an OLAF investigation by allowing this person to request and have access to the final report, but only with the consent of all recipients of that report, and in accordance with the applicable confidentiality and data protection rules;
- it adds another layer of protection of the procedural rights and guarantees by establishing a Controller of procedural guarantees, administratively attached to the Supervisory Committee and appointed by the Commission after consulting the European Parliament and the Council, who is tasked with reviewing complaints lodged by persons concerned by the investigation (regarding the Office's compliance with procedural guarantees and with the rules applicable to its investigations) and is able to issue recommendations to the Office on how to resolve the issue raised in the complaint; and
- it allows OLAF, in the course of its investigations, to access privately- owned devices used for work purposes if it has reasonable grounds to suspect that their content may be relevant for the investigation; in external investigations, the access will be under the same conditions and to the same extent as national authorities are allowed to investigate into private devices; in internal investigations, access shall be based on the internal rules to be adopted by each institution, body, office or agency concerned with regard to its respective staff and Members of the institution.

The Commission supported the agreement reached at the trilogue, which paves the way for a fruitful cooperation between OLAF and the EPPO, and which enhances the effectiveness of OLAF investigations in several respects. In this regard, it achieves the objectives of the Commission proposal. The Commission maintained concerns regarding certain elements of the agreement. In particular, it regretted that the higher procedural guarantees applicable when OLAF supports the EPPO entail no improved admissibility of OLAF-collected evidence in subsequent criminal procedures, and that the new provisions on access to private devices were not accompanied by procedural rules in the Regulation itself. However, the Commission signalled it could accept these elements for the purposes of an overall final agreement.

4. CONCLUSION

The Commission accepts the position taken by the Council.