



Council of the
European Union

Brussels, 25 November 2020
(OR. en)

10008/20

Interinstitutional File:
2018/0170 (COD)

GAF 35
FIN 520
CODEC 705

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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

REGULATION (EU, Euratom) 2020/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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

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,

Having regard to 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 Auditors¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 42, 1.2.2019, p. 1.

² Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and position of the Council at first reading of ... (not yet published in the Official Journal). Position of the European Parliament of ... (not yet published in the Official Journal).

Whereas:

- (1) The adoption of Directive (EU) 2017/1371 of the European Parliament and of the Council¹ and Council Regulation (EU) 2017/1939², substantially strengthened the means available to the Union to protect its financial interests by means of criminal law. The establishment of the European Public Prosecutor's Office (EPPO) is a key priority in the Union's criminal justice and anti-fraud policy, having the power to carry out criminal investigations and bring indictments related to criminal offences affecting the financial interests of the Union, within the meaning of Directive (EU) 2017/1371, in the participating Member States.
- (2) To protect the financial interests of the Union, the European Anti-Fraud Office (the 'Office') conducts administrative investigations into administrative irregularities as well as criminal conduct. At the end of its investigations, it may make judicial recommendations to the national prosecution authorities, in order to enable them to pursue indictments and prosecutions in Member States. In the Member States participating in the EPPO, it will report suspected criminal offences to the EPPO and collaborate with the EPPO in the context of the EPPO's investigations.

¹ 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).

² 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) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹ should be amended and adapted in light of the adoption of Regulation (EU) 2017/1939. The provisions of Regulation (EU) 2017/1939 governing the relationship between the Office and the EPPO should be reflected in, and complemented by, provisions in Regulation (EU, Euratom) No 883/2013, in order to ensure the highest level of protection of the financial interests of the Union through synergies between them, while ensuring close cooperation, information exchange, complementarity and the avoidance of duplication.
- (4) In view of their common goal of preserving the integrity of the Union budget, the Office and the EPPO should establish and maintain a close relationship based on the principle of sincere cooperation and aiming to ensure the complementarity of their respective mandates and the coordination of their action, in particular as regards the scope of the enhanced cooperation for the establishment of the EPPO. The relationship between the Office and the EPPO should contribute to ensuring that all means are used to protect the financial interests of the Union.

¹ 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).

- (5) Regulation (EU) 2017/1939 requires the Office, as well as the institutions, bodies, offices and agencies of the Union and competent authorities of Member States, to report to the EPPO without undue delay suspected 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 interests of the Union, it is ideally placed and equipped to act as a partner and privileged source of information for the EPPO.
- (6) Elements pointing to possible criminal conduct falling within the competence of the EPPO may be present in initial allegations received by the Office or emerge only in the course of an administrative investigation opened by the Office on the grounds of a suspicion of administrative irregularity. In order to comply with its duty to report to the EPPO, the Office should therefore report suspected criminal conduct at any stage before or during its investigations.
- (7) Regulation (EU) 2017/1939 specifies the minimum elements that reports are to contain. The Office may need to conduct a preliminary evaluation of allegations to ascertain those elements and collect the necessary information. The Office should conduct such an evaluation expeditiously and by means which do not risk jeopardising a possible future criminal investigation. Upon completion of its evaluation, the Office 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 established by, or on the basis of, the Treaties (‘institutions, bodies, offices and agencies’) should be able to make use of the Office to conduct such a preliminary evaluation of allegations reported to them.
- (9) In accordance with Regulation (EU) 2017/1939, the Office should in principle not open an administrative investigation in parallel with an investigation conducted by the EPPO into the same facts. However, in certain cases, the protection of the financial interests of the Union 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 whether financial, disciplinary or administrative action should be taken. Such a complementary investigation may be appropriate, inter alia, to recover amounts due to the Union budget that are subject to specific time-barring rules, where the amounts at risk are very high, or where there is the need to avoid further expenditure in risk situations through administrative measures.
- (10) For the purpose of the application of the requirement of non-duplication of investigations, the notion of ‘same facts’ should be considered, in light of the case-law of the Court of Justice of the European Union (CJEU) on the *ne bis in idem* principle, to mean that the material facts under investigation are identical or substantially the same and understood in the sense of the existence of a set of concrete circumstances which are inextricably linked in time and space.

- (11) Regulation (EU) 2017/1939 provides that the EPPO may request the Office to carry out complementary administrative investigations. In the absence of such a request, such complementary investigations should be possible on the initiative of the Office under specific conditions after consulting the EPPO. 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 certain acts pertaining to one of its investigations, in particular with a view to preserving the effectiveness of its investigation and powers. The Office should refrain from performing an action to which the EPPO has raised an objection. Where the Office opens an investigation in the absence of such an objection, it should conduct that investigation, consulting the EPPO on an ongoing basis.
- (12) The Office should actively support the EPPO's investigations. In this regard, the EPPO should be able to request the Office to support or complement its criminal investigations through the exercise of powers under Regulation (EU, Euratom) No 883/2013. The Office should provide such support within the limits of its powers and within the framework provided for in that Regulation.

- (13) To ensure effective coordination, cooperation and transparency, the Office and the EPPO should exchange information on an ongoing basis. The exchange of information prior to the opening of investigations by the Office or the EPPO is particularly relevant to ensure proper coordination between their respective actions, to guarantee complementarity and to avoid duplication. To that end, the Office and the EPPO should make use of the hit/no -hit functions in their respective case management systems. The Office and the EPPO should specify the procedure and conditions for that exchange of information in their working arrangements. In order to ensure the proper application of the rules that seek to avoid duplication and ensure complementarity, the Office and the EPPO should agree on certain time limits for their information exchanges.
- (14) The Commission Report on Evaluation of the application of Regulation (EU, Euratom) No 883/2013 of 2 October 2017 (the ‘Commission evaluation report’) 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 the persons concerned. At the same time, the Commission evaluation report highlighted some shortcomings which have an impact on the effectiveness and efficiency of investigations.

- (15) It is necessary to address the clearest findings of the Commission evaluation report by means of amendments to Regulation (EU, Euratom) No 883/2013. Those amendments are necessary in the short term to strengthen the framework for the Office's investigations in order that the Office remains strong and fully functioning and that it complements the EPPO's criminal law approach with administrative investigations, without changing the Office's mandate or powers. The amendments primarily concern areas where the lack of clarity of Regulation (EU, Euratom) No 883/2013 could hinder the effective conduct of investigations by the Office, such as the conduct of on-the-spot checks and inspections, the possibility of access to bank account information, or the admissibility of the case reports drawn up by the Office as evidence in administrative or judicial proceedings.

- (16) The amendments to Regulation (EU, Euratom) No 883/2013 do not affect the procedural guarantees applicable to the framework of investigations. The Office is bound by the procedural guarantees of Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96¹ and those contained in the Charter of Fundamental Rights of the European Union. That framework requires that the Office conduct its investigations objectively, impartially and confidentially, seeking evidence for and against the persons concerned, and carry out investigative acts on the basis of written authorisation and following a legality check. The Office is required to ensure respect for the rights of the persons concerned by its investigations, including the presumption of innocence and the right to avoid self-incrimination. When interviewed, the persons concerned have, inter alia, the right to be assisted by a person of their choice, to approve the record of the interview, and to use any of the official languages of the institutions of the Union. The persons concerned also have the right to comment on the facts of the case before conclusions are drawn.
- (17) Persons reporting fraud, corruption and any other illegal activity affecting the financial interests of the Union should be afforded the protection of Directive (EU) 2019/1937 of the European Parliament and of the Council².

¹ 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).

² Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

- (18) Where the Office performs, within its mandate, supporting measures at the request of the EPPO, in order to protect the admissibility of evidence, as well as fundamental rights and procedural guarantees, while at the same time avoiding duplication of investigations and providing for an efficient and complementary cooperation, the Office and the EPPO, acting in close cooperation, should ensure that the applicable procedural safeguards of Chapter VI of Regulation (EU) 2017/1939 are observed.
- (19) The Office has power to conduct on-the-spot checks and inspections, which allow it to access the 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. Such on-the-spot checks and inspections are carried out in accordance with Regulation (EU, Euratom) No 883/2013 and with Regulation (Euratom, EC) No 2185/96, which in some instances make the application of those powers subject to conditions of national law. The Commission evaluation report found that the extent to which national law applies is not completely clear, and as a result hinders the effectiveness of the Office's investigative activities.
- (20) It is therefore appropriate to clarify the instances in which national law is to apply in the course of investigations by the Office, without changing the powers of the Office or the way in which Regulation (EU, Euratom) No 883/2013 operates in relation to the Member States, reflecting the judgment of the General Court of 3 May 2018 in Case T-48/16, *Sigma Orionis SA v European Commission*¹.

¹ Judgment of the General Court (First Chamber) of 3 May 2018, *Sigma Orionis SA v European Commission*, T-48/16, ECLI:EU:T:2018:245.

- (21) The conduct by the Office of on-the-spot checks and inspections in situations where the economic operator concerned submits to the on-the-spot check and inspection should be subject to Union law alone. This would allow the Office 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 financial interests of the Union throughout the Union in accordance with Article 325 of the Treaty on the Functioning of the European Union.
- (22) In situations where the Office needs to rely on the assistance of the competent authorities of Member States, particularly where an economic operator resists 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. In order to safeguard the financial interests of the Union, the Commission should take any Member State's failure to comply with its duty to cooperate with the Office into account in considering whether to recover the amounts concerned through the application of financial corrections on Member States, in accordance with the applicable Union law.

- (23) The Office is able, under Regulation (EU, Euratom) No 883/2013, to enter into administrative arrangements with competent authorities of Member States, such as anti-fraud coordination services, and institutions, bodies, offices and agencies, in order to specify the arrangements for their cooperation under that Regulation, in particular concerning the transmission of information, the conduct of investigations and any follow-up action.
- (24) Regulation (EU, Euratom) No 883/2013 should be amended to introduce a duty on the part of economic operators to cooperate with the Office, in accordance with their obligation under Regulation (Euratom, EC) No 2185/96 to grant access for the carrying out of on-the-spot checks and inspections of premises, land, means of transport or other areas, used for business purposes, and with the obligation set out in Article 129 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council¹ that any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, including in the context of investigations by the Office.

¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (25) As part of that duty of cooperation, the Office should be able to require economic operators to supply relevant information where they may have been involved in the matter under investigation or may hold such information. When complying with such requests, economic operators should not be obliged to make self-incriminating statements, but they should be obliged to answer factual questions and provide documents, even if that information may be used to establish against them or against another economic operator the existence of illegal activity. To ensure the effectiveness of investigations in the context of current work practices, the Office should be able to request access to information in privately owned devices used for work purposes. Access by the Office should be given subject to the same conditions and to the same extent that apply to national control authorities, and only if the Office has reasonable grounds to suspect that the content of such devices may be relevant for the investigation, in accordance with the principles of necessity and proportionality, and should only concern information relevant to the investigation.

- (26) Economic operators should have the possibility to use any of the official languages of the Member State where the check takes place, and should have the right to be assisted by a person of their choice, including external legal counsel, during on-the-spot checks and inspections. The presence of legal counsel should not, however, represent a legal condition for the validity of on-the-spot checks and inspections. To ensure the effectiveness of 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 economic operator to consult legal counsel. It should accept only a short, reasonable delay pending consultation of legal counsel before starting the on-the-spot check and inspection. Any such delay should be kept to the strict minimum.
- (27) 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, including the procedural safeguards.

(28) In internal and, where necessary, external investigations, the Office has access to any relevant information held by the institutions, bodies, offices and agencies. It is necessary, as suggested in the Commission evaluation report, to clarify that such access should be possible irrespective of the type of medium on which that information or data are stored, in order to reflect evolving technological progress. In the course of internal investigations, the Office should be able to request access to information held on privately owned devices used for work purposes in situations where the Office has reasonable grounds to suspect that their content might be relevant for the investigation. It should be possible to subject access by the Office to specific conditions by the relevant institution, body, office or agency. Such access should comply with the principles of necessity and proportionality and should concern only information relevant to the investigation. To guarantee an effective and consistent level of access for the Office, as well as a high level of protection of the fundamental rights of the persons concerned, the institutions, bodies, offices and agencies should ensure the coherence of the rules on access to private devices adopted by the different institutions, bodies, offices and agencies in order to provide equivalent conditions in compliance with the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF)¹.

¹ OJ L 136, 31.5.1999, p. 15.

- (29) 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 in the Commission evaluation report where divergent rules are not justified. For instance, reports and recommendations drawn up following an external investigation should, if necessary, 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 following up its recommendations. Where the Office does not open an investigation, it should be able to send relevant information to Member States' authorities or to the institutions, bodies, offices or agencies for appropriate action to be taken. It should send such information where it decides not to open an investigation despite there being a sufficient suspicion of fraud, corruption or any other illegal activity affecting the financial interests of the Union. Before doing so, the Office should give due consideration to a possible interference with ongoing investigations by the EPPO.

- (30) Due to the large diversity of national institutional frameworks, Member States should, on the basis of the principle of sincere cooperation, have the possibility to notify to the Office the authorities that are competent to take actions upon recommendations of the Office, as well as the authorities that need to be informed, such as for financial, statistical or monitoring purposes, for the performance of their relevant duties. Such authorities may include national anti-fraud coordination services. In accordance with the settled case-law of the CJEU, the Office recommendations included in its reports have no binding legal effects on such authorities of Member States or on institutions, bodies, offices and agencies.
- (31) The Office should be provided with the necessary means to follow the money trail in order to uncover the modus operandi typical of much fraudulent conduct. The Office is able to obtain bank account 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, Regulation (EU, Euratom) No 883/2013 should specify the duty of competent national authorities to provide bank account information to the Office, as part of their general duty to assist the Office. Member States should notify to the Commission the competent authorities through which such cooperation is to take place. When giving such assistance to the Office, the national authorities should act under the same conditions that apply to the competent national authorities of the Member State concerned.

- (32) For the purpose of protecting and complying with procedural guarantees and fundamental rights, the Commission should create an internal function in the form of a Controller of procedural guarantees (the ‘Controller’), which should – with a view to an efficient use of resources – be administratively attached to the Supervisory Committee, and be provided with adequate resources. The Controller should handle complaints in a fully independent manner, including from the Supervisory Committee and from the Office, and should have access to all information necessary to fulfil his or her duties.
- (33) A person concerned should be able to lodge a complaint with the Controller regarding the Office’s compliance with procedural guarantees as well as on the grounds of an infringement of the rules applicable to investigations by the Office, in particular infringements of procedural requirements and fundamental rights. A complaints mechanism should be established to that end. The Controller should be responsible for issuing recommendations in response to such complaints, where necessary suggesting solutions to the issues raised in the complaint. The Controller should examine the complaint in a swift, adversarial procedure, while allowing the Office to continue the ongoing investigation. The Controller should give the complainant and the Office the opportunity to provide comments on or resolve the issues raised in the complaint. The Director-General should take appropriate action as warranted by the Controller’s recommendation. The Director-General should, in duly justified cases, be able to deviate from the Controller’s recommendations. The reasons for doing so should be attached to the final investigation report.

- (34) In order to increase transparency and accountability, the Controller should report on the complaints mechanism in his or her annual report. The annual report should cover in particular the number of complaints received, the types of infringements of procedural requirements and fundamental rights involved, the activities concerned and, where possible, the follow-up measures taken by the Office.
- (35) The early transmission of information by the Office for the purpose of adopting precautionary measures is an essential tool for the protection of the financial interests of the Union. In order to ensure close cooperation in this regard between the Office and the institutions, offices, bodies and agencies, 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.

- (36) Reports drawn up by the Office constitute 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. According to the Commission evaluation report this rule does not sufficiently ensure the effectiveness of the Office's activities in some Member States. To increase the effectiveness and the consistent use of reports of the Office, Regulation (EU, Euratom) No 883/2013 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 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. Regulation (EU, Euratom) No 883/2013 should also provide for the admissibility of the reports drawn up by the Office in administrative and judicial proceedings at Union level.

- (37) The anti-fraud coordination services of 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 Member States. The Commission evaluation report concluded that they have contributed positively to the work of the Office. The Commission evaluation report also identified the need to further clarify the role of those anti-fraud coordination services 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 that regard, the anti-fraud coordination services should be able to provide 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.

- (38) The duty of the Office to provide 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 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. Those 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 515/97¹ and Regulation (EU) No 608/2013 of the European Parliament and of the Council², as well as coordination activities relating to the European Structural and Investment Funds.
- (39) It should be clarified that when the competent authorities of Member States, including anti-fraud-coordination services, act in cooperation with the Office or with other competent authorities for the purposes of protecting the financial interests of the Union, they continue to be bound by national law.

¹ 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).

² Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15).

- (40) It should be possible for the anti-fraud coordination services in the context of coordination activities to provide assistance to the Office, 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.
- (41) The competent authorities of Member States, as well as the institutions, bodies, offices and agencies, should take the actions warranted by a recommendation of the Office. In order to allow the Office to followup on the development of its cases, where the Office makes judicial recommendations to the national prosecution authorities of a Member State, Member States should, upon request of the Office, send the Office the final decision of the national court. In order to fully maintain judicial independence, such transmission should take place only after the relevant judicial proceedings have been finally determined and the final court decision has become public.
- (42) In order to supplement the procedural rules on the conduct of investigations set out in Regulation (EU, Euratom) No 883/2013, the Office should lay down guidelines on investigation procedures to be followed by the staff of the Office.

- (43) It should be clarified that the Office may participate in joint investigation teams established in accordance with Union law and that it is entitled to exchange operational information acquired in that framework. The use of such information is subject to the conditions and safeguards provided for in the 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 a partner subject to legal constraints that may exist in Union or national law.
- (44) No later than five years after the date determined in accordance with the second subparagraph of Article 120(2) of Regulation (EU) 2017/1939, the Commission should evaluate the application of Regulation (EU, Euratom) No 883/2013 and in particular the efficiency of the cooperation between the Office and the EPPO in order to consider whether amendments are warranted on the basis of experience regarding that cooperation. The Commission should submit, where appropriate, a new comprehensive legislative proposal, no later than two years after that evaluation.

- (45) Since the objective of this Regulation, namely 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, by adopting rules governing the relationship between the Office and the EPPO to increase the effectiveness of the conduct of investigations by them, be better achieved at Union level, 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 achieve that objective.
- (46) This Regulation does not modify the powers and responsibilities of Member States to take measures to combat fraud, corruption and any other illegal activity affecting the financial interests of the Union.

(47) 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 Council¹ and delivered an opinion on 23 July 2018².

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

HAVE ADOPTED THIS REGULATION:

¹ 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).

² OJ C

Article 1

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

(1) Article 1 is amended as follows:

(a) in paragraph 3, point (d) is replaced by the following:

‘(d) Regulation (EU) 2016/679 of the European Parliament and of the Council*;

(e) Regulation (EU) 2018/1725 of the European Parliament and of the Council**.

* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

** Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).’;

(b) the following paragraph is inserted:

‘4a. The Office shall establish and maintain a close relationship with the European Public Prosecutor’s Office (EPPO) established in enhanced cooperation by Council Regulation (EU) 2017/1939*. That relationship shall be based on mutual cooperation, information exchange, complementarity and the avoidance of duplication. It shall aim in particular to ensure that all available means are used to protect the financial interests of the Union through the complementarity of their respective mandates and the support provided by the Office to the EPPO.

* 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).’;

(c) paragraph 5 is replaced by the following:

‘5. For the application of this Regulation, competent authorities of the Member States and institutions, bodies, offices and agencies may establish administrative arrangements with the Office. Those administrative arrangements may concern, in particular, the transmission of information, the conduct of investigations and any follow-up action.’;

(2) Article 2 is amended as follows:

(a) point 3 is replaced by the following:

‘(3) “fraud, corruption and any other illegal activity affecting the financial interests of the Union” shall have the meaning applied to those words in the relevant Union acts and the notion of “any other illegal activity” shall include irregularity as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95;’;

(b) 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 Member States to initiate and conduct criminal proceedings;’;

(c) the following point is added:

‘(8) “member of an institution” means a member of the European Parliament, a member of the European Council, a representative of a Member State at ministerial level in the Council, a member of the Commission, a member of the Court of Justice of the European Union (CJEU), a member of the Governing Council of the European Central Bank or a member of the Court of Auditors, with respect to the obligations imposed by Union law in the context of the duties they perform in that capacity.’;

(3) Article 3 is replaced by the following:

‘Article 3

External investigations

1. In the areas referred to in Article 1, the Office shall carry out on-the-spot checks and inspections in Member States and, in accordance with cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.

2. The Office shall carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance 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 written and oral information, including through interviews.
4. Where, in accordance with paragraph 3 of this Article, 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, the third subparagraph of Article 6(1) of Regulation (Euratom, EC) No 2185/96 and Article 7(1) of Regulation (Euratom, EC) No 2185/96 shall not apply insofar as those provisions require compliance with national law and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.

5. At the request of the Office, the competent authority of the Member State concerned shall, without undue delay, 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, documents and data relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance. Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an economic operator resists an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the economic operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay.

When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law, such authorisation shall be applied for.

7. The Office shall conduct on-the-spot checks and inspections upon production of written authorisation, as provided for in Article 7(2). It shall, at the latest at the start of the on-the-spot check and inspection, inform the economic operator concerned of the procedure applicable to the on-the-spot check and inspection, including the applicable procedural safeguards, and the economic operator's duty to cooperate.

8. In the exercise of the 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 the economic operator's choice. When making statements during an on-the-spot check and inspection, the economic operator shall be provided with the possibility to use any of the official languages of the Member State where that economic operator 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 on-the-spot check and inspection.
9. Where a Member State does not cooperate with the Office in accordance with paragraphs 5 and 6, the Commission may apply the relevant provisions of Union law in order to recover the funds related to the on-the-spot check and inspection in question.

10. 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 Member States and, in accordance with cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.
11. 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.
12. 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 accordance 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 referred to in the first subparagraph of this paragraph.’;

(4) Article 4 is amended as follows:

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

‘1. Investigations within the institutions, bodies, offices and agencies in the areas referred to in Article 1 shall be conducted in accordance with this Regulation and with the decisions adopted by the relevant institution, body, office or agency (“internal investigations”).

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, relating to the matter under investigation, irrespective of the type of medium on which it is stored, held by the institutions, bodies, offices and agencies, and to their premises. Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only to the extent that the devices are used for work purposes, under the conditions set in the decisions adopted by the relevant institution, body, office or agency and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

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, thoroughly documented in accordance with the applicable Union confidentiality and data protection rules.
- 3. Under the same rules and conditions as provided for 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 investigation within the institutions, bodies, offices and agencies.
- 4. The institutions, bodies, offices and agencies shall be informed whenever the staff of the Office conduct an internal investigation on their premises, consult documents or data, or request information held by them. Without prejudice to Articles 10 and 11, the Office may at any time forward to the institution, body, office or agency concerned the information obtained in the course of internal investigations.’;

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

‘8. 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) paragraphs 1, 2 and 3 are replaced by the following:

- ‘1. Without prejudice to Article 12d, the Director-General may open an investigation when there is a sufficient suspicion, which may be based on information provided by any third party or on anonymous information, that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The decision to open the investigation may take into account the need for efficient use of the Office’s resources and for the proportionality of the means employed. With regard to internal investigations, specific account shall be taken of the institution, body, office or agency best placed to conduct them, based, in particular, on the nature of the facts, the actual or potential financial impact of the case, and the likelihood of any judicial follow-up.
2. The decision to open an investigation shall be taken by the Director-General, acting on his or her own initiative or following a request from an institution, body, office or agency or from a Member State.

3. While the Director-General is considering whether or not to open an internal investigation following a request as referred to in paragraph 2, or while the Office is conducting an internal investigation, the institutions, bodies, offices or agencies concerned shall not open a parallel investigation into the same facts, unless agreed otherwise with the Office.

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

- (b) paragraphs 5 and 6 are replaced by the following:

- ‘5. If the Director-General decides not to open an investigation, he or she may without delay send any relevant information, as appropriate, to the competent authorities of the Member State concerned for appropriate action to be taken in accordance with Union and national law or to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be informed of the action taken.

6. Where the Director-General decides not to open an investigation despite there being a sufficient suspicion that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, he or she shall send the information referred to in paragraph 5 without delay.’;

(6) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The Director-General shall direct the conduct of investigations on the basis, where appropriate, of written instructions. Investigations shall be conducted under his or her direction by the staff of the Office designated by him or her. The Director-General shall not personally carry out concrete investigative acts.’;

(b) paragraph 3 is replaced by the following:

‘3. The competent authorities of 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, the competent authorities of Member States shall act in accordance with any national procedural rules applicable to them.’

- 3a. At the request of the Office, which shall be explained in writing, in relation to matters under investigation, the relevant competent authorities of the Member States shall, under the same conditions as those that apply to the national competent authorities, provide the Office with the following:
- (a) information available in the centralised automated mechanisms referred to in Article 32a(3) of Directive (EU) 2015/849 of the European Parliament and of the Council*;
 - (b) where strictly necessary for the purposes of the investigation, the record of transactions.

The request of the Office shall include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Such request shall refer only to information referred to in points (a) and (b) of the first subparagraph.

Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b) of the first subparagraph.

- 3b. The institutions, bodies, offices and agencies shall ensure that their officials, other servants, members, heads and staff members provide the necessary assistance to enable the staff of the Office to fulfil their tasks effectively and without undue delay.

* 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).’;

- (c) paragraph 6 is amended as follows:

- (i) in the first subparagraph, point (b) is replaced by the following:

‘(b) any information that could assist the institution, body, office or agency concerned in deciding on the appropriate precautionary administrative measures to be taken in order to protect the financial interests of the Union;’;

(ii) the second subparagraph is replaced by the following:

‘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. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.’;

(d) 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 replaced by the following:

‘Article 8

Duty to inform the Office

1. In the areas referred to in 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.

Where the institutions, bodies, offices and agencies report to the EPPO in accordance with Article 24 of Regulation (EU) 2017/1939, they may comply with the obligation set out in the first subparagraph of this paragraph by transmitting to the Office a copy of the report sent to the EPPO.

2. The institutions, bodies, offices and agencies and, unless prevented by national law, the competent authorities of Member States shall, at the request of the Office or on their own initiative, transmit without delay to the Office any document or information they hold which relates to an ongoing investigation by the Office.

Prior to the opening of an investigation they shall, at the request of the Office, which shall be explained in writing, transmit 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).

3. The institutions, bodies, offices and agencies and, unless prevented by national law, the competent authorities of Member States shall transmit without delay to the Office, at the request of the Office or on their own initiative, any other information, documents or data considered pertinent which they hold, relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.
4. 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 Chapter IV 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 Articles 34(8), 36(6), 39(4) and Article 101(3) and (4) of Regulation (EU) 2017/1939.

5. The provisions related to transmission of information in accordance with Council Regulation (EU) No 904/2010* shall remain unaffected.

* 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).’;

(8) Article 9 is amended as follows:

(a) in paragraph 2, the fourth subparagraph is replaced by the following:

‘The requirements referred to in the second and third subparagraphs shall not apply to the taking of statements in the context of on-the-spot checks and inspections. The procedural guarantees as referred to in Article 3(7) and (8) shall apply to the person concerned, in particular the right to be assisted by a person of his or her choice.’;

- (b) in paragraph 4, the second and third subparagraphs are replaced by the following:

‘To that end, the Office shall send the person concerned an invitation to comment either in writing or at an interview with staff designated by the Office. That invitation shall include a summary of the facts concerning the person concerned and the information required by Articles 15 and 16 of Regulation (EU) 2018/1725, and shall indicate the timelimit for submitting comments, which shall not be less than 10 working days from receipt of the invitation to comment. That notice period may be shortened with the express consent of the person concerned or on duly reasoned grounds of urgency of the investigation. The final investigation report shall make reference to any such comments.

In duly justified cases where necessary to preserve the confidentiality of the investigation or an ongoing or future criminal investigation 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) the following articles are inserted:

Article 9a

Controller of procedural guarantees

1. A Controller of procedural guarantees (the “Controller”) shall be appointed by the Commission, in accordance with the procedure specified in paragraph 2, for a non-renewable term of office of five years. On expiry of that term of office, the Controller shall remain in office until he or she is replaced.
2. The Controller shall be administratively attached to the Supervisory Committee. The Secretariat of the Supervisory Committee shall provide the Controller with all necessary administrative and legal support.
3. The Commission shall, from within its approved budget, allocate to the Supervisory Committee the personnel and financial means necessary for the Controller.
4. Following a call for applications in the *Official Journal of the European Union*, the Commission shall draw up a list of suitably qualified candidates for the position of the Controller. After consulting the European Parliament and the Council, the Commission shall appoint the Controller.

5. The Controller shall have the necessary qualifications and experience in the field of procedural guarantees.
6. The Controller shall exercise his or her functions in complete independence, including from the Office and from the Supervisory Committee, and shall neither seek nor take instructions from anyone in the performance of his or her duties.
7. If the Controller ceases to fulfil the conditions required for the performance of his or her duties, or if the Controller is found guilty of serious misconduct, the European Parliament, the Council and the Commission may, by common accord, relieve the Controller of his or her duties.
8. Pursuant to the mechanism referred to in Article 9b, the Controller shall monitor the Office's compliance with procedural guarantees referred to in Article 9, as well as the rules applicable to investigations by the Office. The Controller shall be responsible for handling complaints referred to in Article 9b.
9. The Controller shall report on the exercise of this function on an annual basis to the European Parliament, the Council, the Commission, the Supervisory Committee and the Office. He or she shall not refer to individual cases under investigation and shall ensure the confidentiality of investigations even after their closure. The Controller shall report to the Supervisory Committee on any systemic issue arising out of his or her recommendations.

Article 9b

Complaints mechanism

1. A person concerned shall be entitled to lodge a complaint with the Controller regarding the Office's compliance with the procedural guarantees referred to in Article 9, as well as on the grounds of an infringement of the rules applicable to investigations by the Office, in particular infringements of procedural requirements and fundamental rights. The lodging of a complaint shall have no suspensive effect on the conduct of the investigation that is the subject of the complaint.
2. Complaints shall be lodged within one month of the complainant becoming aware of the relevant facts that constitute an alleged infringement of the procedural guarantees or rules referred to in paragraph 1 of this Article. In any event, they shall be lodged no more than one month after the closure of the investigation.

Complaints related to the notice period referred to in Article 9(2) and (4) shall, however, be lodged before the expiry of the 10-day notice period referred to in those provisions.

3. The Controller shall inform the Director-General immediately upon receipt of a complaint.

Within 10 working days of the date of receipt, the Controller shall determine whether paragraphs 1 and 2 are complied with.

In the event of compliance with paragraphs 1 and 2, the Controller shall invite the Office to take action to resolve the complaint and inform the Controller accordingly within 15 working days.

In the event of non-compliance with paragraph 1 or 2, the Controller shall close the file and inform the complainant without delay.

4. Without prejudice to Article 10, the Office shall transmit to the Controller all information necessary for the Controller to assess whether the complaint is justified as well as information for the purpose of resolving the complaint and enabling the Controller to issue a recommendation.

5. The Controller shall issue a recommendation on how to resolve the complaint without delay and in any event within two months of the Office informing the Controller of the action it has taken to resolve the complaint. In the absence of receipt of information within the 15-day time limit referred to in the third subparagraph of paragraph 3, the Controller shall issue a recommendation within two-months of the expiry of that time limit.

In exceptional cases the Controller may decide to extend the period for issuing a recommendation by a further 15 calendar days. The Controller shall inform the Director-General of the reasons for such an extension in writing.

The Controller may recommend that the Office amend or repeal its recommendations or reports, on the grounds of an infringement of the procedural guarantees referred to in Article 9 or of the rules applicable to investigations by the Office, in particular infringements of procedural requirements and fundamental rights.

Before issuing a recommendation the Controller shall consult the Supervisory Committee for its opinion.

The Controller shall submit the recommendation to the Office and notify the complainant accordingly.

In the absence of a recommendation by the Controller within the time limits set out in this paragraph, the Controller shall be deemed to have dismissed the complaint without a recommendation.

6. The Controller shall examine the complaint in an adversarial procedure without interfering with the conduct of the investigation under way.

The Controller may also ask witnesses to provide written or oral explanations that the Controller considers relevant to ascertaining the facts. Witnesses may refuse to provide such explanations.

7. The Director-General shall take appropriate action as warranted by the recommendation. If the Director-General decides not to follow the Controller's recommendation, the Director-General shall communicate to the complainant and to the Controller the main reasons for that decision, unless such a communication would affect the on-going investigation. The Director-General shall state the reasons for not following the Controller's recommendation in a note attached to the final investigation report.
8. The complaint mechanism under this Article is without prejudice to the means of redress available under the Treaties, including actions relating to compensation for damage.

9. The Director-General may request the opinion of the Controller on any matter related to procedural guarantees or fundamental rights that falls within the Controller's mandate, including on a decision to defer informing the person concerned under Article 9(3). The Director-General shall indicate in any such request the time limit within which the Controller shall respond.
10. Without prejudice to the time limits provided for in Article 90 of the Staff Regulations, where a complaint has been lodged with the Director-General by an official or other servant of the Union in accordance with Article 90a of the Staff Regulations and the official or other servant has lodged a complaint with the Controller related to the same issue, the Director-General shall await the recommendation of the Controller before replying to the complaint.
11. The Controller shall, after consulting the Supervisory Committee, adopt implementing provisions for the handling of complaints.

Those implementing provisions shall cover, in particular, detailed rules regarding:

- (a) the lodging of a complaint;
- (b) the exchange of information between the Supervisory Committee, the Controller and the Director-General;

- (c) the process for addressing the issues raised in a complaint by the Office;
- (d) the examination of a complaint in an adversarial procedure in accordance with the first subparagraph of paragraph 6;
- (e) the issuing and communication of the Controller's recommendation;
- (f) duly justified cases in which the Director-General may deviate from the Controller's recommendation and the procedure to be followed in such cases.;

(10) Article 10 is amended as follows:

(a) the following paragraphs are inserted:

‘3a. Directive (EU) 2019/1937 of the European Parliament and of the Council* shall apply to the reporting of fraud, corruption and any other illegal activity affecting the financial interests of the Union and the protection of persons reporting such breaches.

- 3b. Where the Office recommends a judicial follow-up, without prejudice to the confidentiality rights of whistle-blowers and informants, and in accordance with the applicable confidentiality and data protection rules, the person concerned may request the Office to provide the report drawn up under Article 11 to the extent that it relates to the person concerned. The Office shall communicate that request without delay to all recipients of that report and shall grant access only with the explicit consent of the recipients. The recipients shall reply within a period of 12 months of receipt of the request. In the absence of an objection within that period, the Office shall grant access.

The competent authority may also authorise the Office to grant access before this period has expired.

* Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).’;

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

‘4. The Office shall designate a Data Protection Officer in accordance with Article 43 of Regulation (EU) 2018/1725.’;

(11) Article 11 is amended as follows:

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

‘The report shall, where appropriate, be accompanied by recommendations of the Director-General on action to be taken. Those recommendations shall, where appropriate, indicate any disciplinary, administrative, financial or judicial action to be taken 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) paragraphs 2 and 3 are replaced by the following:

‘2. In drawing up the reports and recommendations referred to in paragraph 1, 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.

Reports drawn up on the basis of the first subparagraph, together with all evidence in support and annexed thereto, shall constitute admissible evidence:

(a) in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;

- (b) 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 and 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;
- (c) in judicial proceedings before the CJEU and in administrative proceedings in the institutions, bodies, offices and agencies.

Member States shall notify to the Office any rules of national law relevant for the purposes of point (b) of the second subparagraph.

With regard to point (b) of the second subparagraph, Member States shall, upon request of the Office, send to the Office the final decision of the national courts once the relevant judicial proceedings have been finally determined and the final court decision has become public.

The power of the CJEU and national courts and 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.

- 2a. The Office shall take appropriate measures to ensure the consistent quality of reports and recommendations referred to in paragraph 1.
 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 and, if applicable, the 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 timelimit 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 to deal with such reports, recommendations and documents.’;
- (c) 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, together with the recommendations, shall be transmitted without delay to the judicial authorities of the Member State concerned, without prejudice to Articles 12c and 12d.

At the request of the Office, the competent authorities of the Member States concerned shall, within a time limit laid down in the recommendations, send to the Office information on the action taken, if any, and the reasons for non-implementation of the recommendations, where applicable, following the transmission by the Office of any information in accordance with the first subparagraph of this paragraph.’;

(d) paragraph 6 is deleted;

(e) paragraph 8 is replaced by the following:

‘8. Where an informant provided the Office with information which led to the investigation, the Office shall notify that informant that the investigation has been closed, unless it considers that this information is such as to prejudice the legitimate interests of the person concerned and the effectiveness of the investigation and of the action to be taken subsequent thereto, or any confidentiality requirements.’;

(12) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may transmit to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time to enable them to take appropriate action in accordance with their national law. It may also transmit such 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 without delay, and in any event within 12 months of receipt of the information transmitted to them in accordance with this Article, of the action taken on the basis of that information.’;

(c) the following paragraph is added:

‘5. The Office may provide relevant information to the Eurofisc network established by Regulation (EU) No 904/2010. Eurofisc working field coordinators may transmit relevant information from the Eurofisc network to the Office under the conditions laid down in Regulation (EU) No 904/2010.’;

(13) The following Articles are inserted:

‘Article 12a

Anti-fraud coordination services

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

2. Upon request of the Office, before a decision has been taken as to whether or not to open an investigation, as well as during or after an investigation, the anti-fraud coordination services shall provide or coordinate the necessary assistance for the Office to carry out its tasks effectively. Such assistance shall include in particular assistance from the competent authorities of Member States provided in accordance with Article 3(5) and (6), Article 7(3) and Article 8(2) and (3).
3. The anti-fraud coordination services may provide assistance to the Office upon request so that the Office may conduct 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 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-country authorities and international organisations. For the purpose 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 shall, where appropriate, draw up a report on the coordination activities conducted and transmit it to the competent authorities of Member States 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 in that framework exchange operational information acquired pursuant to this Regulation.

Article 12c

Reporting criminal conduct to the EPPO

1. The Office shall submit a report to the EPPO without undue delay on any criminal conduct in respect of which the EPPO could exercise its competence in accordance with Chapter IV of Regulation (EU) 2017/1939. The report shall be sent without undue delay before or during an investigation of the Office.
2. The report referred to in paragraph 1 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 or other persons involved.

3. The Office shall not be bound to report to the EPPO manifestly unsubstantiated allegations.
4. Where the information received by the Office does not include the elements set out in paragraph 2 of this Article, and there is no ongoing investigation of the Office, the Office may conduct a preliminary evaluation of the allegations. The evaluation shall be carried out without delay and in any case within two months of receipt of the information. In the course of that evaluation, Article 6 and Article 8(2) shall apply. Following this preliminary evaluation, the Office shall report to the EPPO any criminal conduct as referred to in paragraph 1 of this Article.
5. Where the criminal conduct referred to in paragraph 1 of this Article comes to light during an investigation by the Office, and the EPPO opens an investigation following the report referred to in that paragraph, the Office shall not continue its investigation into the same facts other than in accordance with Article 12e or 12f.

For the purpose of applying the first subparagraph of this paragraph, 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 a time limit to be set in accordance with Article 12g.

6. 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, paragraphs 1 to 4 shall apply *mutatis mutandis*. The Office shall inform the institution, body, office or agency concerned of the results of the preliminary evaluation, unless providing such information could jeopardise an investigation conducted by the Office or by the EPPO.
7. 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

1. Without prejudice to Articles 12e and 12f, the Director-General shall discontinue an ongoing investigation and shall not open a new investigation under Article 5 where the EPPO is conducting an investigation into the same facts. The Director-General shall inform the EPPO about each decision to discontinue taken on such grounds.

For the purpose of applying the first subparagraph of this paragraph, 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 a time limit to be set in accordance with Article 12g.

Where the Office discontinues its investigation in accordance with the first subparagraph of this paragraph, Article 9(4) and Article 11 shall not apply.

2. The EPPO may, with a view to enabling the Office to consider appropriate administrative action in accordance with its mandate, provide relevant information to the Office about cases where the EPPO has decided not to conduct an investigation or has dismissed a case. Where new facts which were not known to the EPPO at the time of the decision to dismiss as referred to in Article 39(1) of the Regulation (EU) 2017/1939 become known to the Office, the Director General may ask the EPPO to reopen an investigation, in accordance with Article 39(2) of that Regulation.

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 accordance 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.

When providing support to the EPPO, the Office shall refrain from performing acts or measures which could jeopardise the investigation or prosecution.

2. A request referred to in paragraph 1 shall be transmitted in writing and shall specify at least:
 - (a) the information relating to the EPPO investigation in so far as relevant for the purpose of the request;
 - (b) the measures which the EPPO requests the Office to perform;
 - (c) where appropriate, the envisaged timing for carrying out the request.

Where necessary, the Office may request additional information.

3. In order to protect the admissibility of evidence as well as fundamental rights and procedural guarantees, where the Office performs, within its mandate, supporting measures requested by the EPPO pursuant to this Article, the EPPO and the Office, acting in close cooperation, shall ensure that the applicable procedural safeguards of Chapter VI of Regulation (EU) 2017/1939 are observed.

Article 12f

Complementary investigations

1. Where the EPPO is conducting an investigation and 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.

After receipt of such information and within a time limit to be set in accordance with Article 12g, the EPPO may object to the opening of an investigation or to the performance of certain acts pertaining to the investigation. Where the EPPO objects to the opening of an investigation or to the performance of certain acts pertaining to an investigation, it shall notify the Office without undue delay when the grounds for the objection cease to apply.

In the event that the EPPO does not object within the time limit to be set in accordance with Article 12g, the Office may open an investigation, which it shall conduct in consultation with the EPPO on an ongoing basis. If the EPPO subsequently objects, the Office shall suspend or discontinue its investigation, or refrain from performing certain acts pertaining to the investigation.

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 such 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 of this Article shall apply.

Article 12g

Working arrangements and exchange of information with the EPPO

1. The Office shall agree on working arrangements with the EPPO. Such working arrangements shall establish, inter alia, practical arrangements for the exchange of information, including personal data, operational, strategic or technical information and classified information, and complementary investigations.

The working arrangements shall include detailed arrangements on the continuous exchange of information during the receipt and verification of allegations for the purpose of determining the competence over investigations. They shall also include arrangements on the transfer of information between the Office and the EPPO, when the Office acts in support or in a complementary manner to the EPPO. They shall provide for time limits for answering each others requests.

The Office and the EPPO shall agree on the time limits and the detailed arrangements with regard to Article 12c(5), Article 12d(1), and Article 12f(1). Until such agreement is reached, the EPPO shall reply to the Office's requests without delay, and in any case within 10 working days of a request as referred to in Article 12c(5) and Article 12d(1) and 20 working days of a request for information as referred to in the first subparagraph of Article 12f(1).

Prior to the adoption of the working arrangements with the EPPO, the Director-General shall send the draft to the Supervisory Committee, and to the European Parliament and to the Council for information. The Supervisory Committee shall deliver an opinion without delay.

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 Office and the EPPO. 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.

The technical and security aspects of the reciprocal access to the case management systems, including internal procedures to ensure that each access is duly justified for the performance of their functions and is documented, shall be established in the working arrangements.

3. The Director-General and the European Chief Prosecutor shall meet at least annually to discuss matters of common interest.’;

(14) In Article 13(1), the first subparagraph is replaced by the following:

- ‘1. Within its mandate to protect the financial interests of the Union, the Office shall cooperate, as appropriate, with the European Union Agency for Criminal Justice Cooperation (Eurojust) and with the European Union Agency for Law Enforcement Cooperation (Europol). Where necessary in order to facilitate that cooperation, the Office shall agree with Eurojust and Europol on administrative arrangements. Such working arrangements may concern exchange of operational, strategic or technical information, including personal data and classified information and, on request, progress reports.’;

(15) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The Supervisory Committee shall regularly monitor the implementation by the Office of its investigative function, in order to reinforce the Office’s independence in the proper exercise of the competences conferred upon it by this Regulation.

The Supervisory Committee shall in particular monitor developments concerning the application of procedural guarantees and the duration of investigations.

The Supervisory Committee shall address to the Director-General opinions, including where appropriate, recommendations on, inter alia, the resources needed to carry out the investigative function of the Office, on the investigative priorities of the Office and on the duration of investigations. Those opinions may be delivered on its own initiative, at the request of the Director-General or at the request of an institution, body, office or agency, without however interfering with the conduct of investigations in progress.

The Office shall publish on its website its replies to the opinions delivered by the Supervisory Committee.

The institutions, bodies, offices or agencies shall be provided with a copy of opinions delivered pursuant to the third subparagraph.

The Supervisory Committee shall be granted access to all the information and documents it considers necessary for the performance of its tasks, including reports and recommendations on closed investigations and cases dismissed, without however interfering with the conduct of investigations in progress and with due regard to the requirements of confidentiality and data protection.’;

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

‘8. 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, the Commission and the European Data Protection Supervisor for information. Meetings of the Supervisory Committee shall be convened on the initiative of its chair or the Director-General. It shall hold at least 10 meetings per year. The Supervisory Committee shall take its decisions by a majority of its component members. Its secretariat shall be provided by the Commission and in close cooperation with the Supervisory Committee. Before the appointment of any staff to the secretariat, the Supervisory Committee shall be consulted and its views shall be taken into account. The secretariat shall act on the instructions of the Supervisory Committee and independently from the Commission. Without prejudice to its control over the budget of the Supervisory Committee and its secretariat, the Commission shall not interfere with the monitoring functions of the Supervisory Committee.’;

(16) In Article 16, paragraphs 1 and 2 are replaced by the following:

- ‘1. The European Parliament, the Council and the Commission shall once a year meet the Director-General for an exchange of views at political level to discuss the Office’s policy relating to methods of preventing and combating fraud, corruption or any other illegal activity affecting the financial interests of the Union. The Supervisory Committee shall participate in the exchange of views. The European Chief Prosecutor shall be invited to attend the exchange of views. Representatives of the Court of Auditors, the EPPO, Eurojust and Europol may be invited to attend on an ad hoc basis upon request of the European Parliament, of the Council, of the Commission, of the Director-General or of the Supervisory Committee.
2. Within the objective of paragraph 1, the exchange of views may relate to any subject the European Parliament, the Council and the Commission agree on. In particular, the exchange of views may relate to:
 - (a) the strategic priorities for the Office’s investigation policies;
 - (b) the opinions and activity reports of the Supervisory Committee provided for under Article 15;

- (c) the reports of the Director-General under Article 17(4) and, as appropriate, any other reports by the institutions relating to the mandate of the Office;
- (d) the framework of the relations between the Office and the institutions, bodies, offices and agencies, in particular the EPPO, including any horizontal and systemic issues encountered in the follow-up to the Office's final investigation reports;
- (e) the framework of the relations between the Office and the competent authorities of Member States, including any horizontal and systemic issues encountered in the follow-up to the Office's final investigation reports;
- (f) the relations between the Office and the competent authorities in third countries as well as international organisations in the framework of the arrangements referred to in this Regulation;
- (g) the effectiveness of the work of the Office with regard to the performance of its mandate.';

(17) Article 17 is amended as follows:

(a) paragraphs 2 to 5 are replaced by the following:

- ‘2. In order to appoint a new Director-General, the Commission shall publish a call for applications in the *Official Journal of the European Union*. Such publication shall take place at the latest six months before the end of the term of office of the Director-General in office. The Commission shall draw up a list of suitably qualified candidates. After a favourable opinion has been given by the Supervisory Committee on the selection procedure applied by the Commission, the European Parliament and the Council shall in due time agree on a shortlist of three candidates from the list of suitable candidates drawn up by the Commission. The Commission shall appoint the Director-General from that shortlist.
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 or her 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 or her independence into question, he or she shall immediately inform the Supervisory Committee and shall decide whether to bring an action against the Commission before the CJEU.

4. The Director-General shall report regularly, and at least annually, to the European Parliament, to the Council, to the Commission and to the Court of Auditors 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 of informants, and, where appropriate, national law applicable to judicial proceedings. Those reports shall also include an assessment of the actions taken by the competent authorities of Member States and the institutions, bodies, offices and agencies, following reports and recommendations drawn up by the Office.
- 4a. At the request of the European Parliament or of the Council, in the context of their budgetary control rights, the Director-General may provide information about the Office's activities, respecting the confidentiality of investigations and follow-up proceedings. The European Parliament and the Council shall ensure the confidentiality of information provided in accordance with this paragraph.
5. The Director-General shall keep the Supervisory Committee periodically informed of the Office's activities, the implementation of its investigative function and the action taken by way of follow-up to investigations.

The Director-General shall inform the Supervisory Committee periodically:

- (a) of cases in which the recommendations made by the Director-General have not been followed;
 - (b) of cases in which information has been transmitted to judicial authorities of the Member States or to the EPPO;
 - (c) of cases in which no investigation has been opened and of cases dismissed;
 - (d) on the duration of investigations in accordance with Article 7(8).’;
- (b) paragraph 7 is replaced by the following:
- ‘7. The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned and of the national law of the Member States concerned, with particular reference to Article 11(2). The legality check shall be carried out by Office staff who are experts in law and investigative procedures. Their opinion shall be annexed to the final investigation report.’;

- (c) in paragraph 8, the first subparagraph is replaced by the following:
- ‘8. The Director-General shall adopt guidelines on investigation procedures for the staff of the Office. Those guidelines shall be in accordance with this Regulation and shall cover, inter alia:
- (a) the practices to be observed in implementing the mandate of the Office;
 - (b) detailed rules governing investigations procedures;
 - (c) the procedural guarantees;
 - (d) details on the internal advisory and control procedures, including the legality check;
 - (e) data protection and policies on communication and access to documents as laid down in Article 10(3b);
 - (f) relations with the EPPO.’;
- (d) in paragraph 9, the first subparagraph is replaced by the following:
- ‘9. Before imposing any disciplinary penalty on the Director-General or waiving his or her immunity, the Commission shall consult the Supervisory Committee.’;

(18) Article 19 is replaced by the following:

‘Article 19

Evaluation report and possible revision

1. No later than five years after the date determined in accordance with the second subparagraph of Article 120(2) of Regulation (EU) 2017/1939, the Commission shall submit to the European Parliament and to the Council an evaluation report on the application and impact of this Regulation, in particular as regards the effectiveness and efficiency of the cooperation between the Office and the EPPO. That report shall be accompanied by an opinion of the Supervisory Committee.
2. No later than two years after the submission of the evaluation report pursuant to the first paragraph, the Commission shall, where appropriate, submit a legislative proposal to the European Parliament and to the Council to modernise the Office’s framework, including additional or more detailed rules on the setting up of the Office, its functions or the procedures applicable to its activities, with particular regard to its cooperation with the EPPO, cross-border investigations and investigations in Member States not participating in the EPPO.’

Article 2

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

However, Articles 12c to 12f of Regulation (EU, Euratom) No 883/2013, as inserted by point (13) of Article 1 of this Regulation, shall apply from a date to be 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 ...,

For the European Parliament

The President

For the Council

The President
