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EXTERNAL RELATIONS OF THE EPPO: COOPERATION WITH OLAF

In May 2018, the Commission adopted a *Proposal* to amend Regulation No. 883/2013 concerning investigations conducted by the European Anti-fraud Office (OLAF). The overall purpose of the Proposal is to strengthen the protection of the financial interests of the European Union. This purpose can be divided into two more specific objectives:

- to enhance the effectiveness of OLAF’s investigations; and
- to adapt the organisation of OLAF to the establishment of the European Public Prosecutor’s Office (EPPO).

Indeed, as a consequence of the adoption of the EPPO Regulation (Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office), the OLAF Regulation No 883/2013 needs to be adapted in order to *define the future relationship between OLAF and the EPPO*. Unlike some earlier ideas, the EPPO Regulation does not provide for OLAF to become the investigative arm of the EPPO. Rather, OLAF will remain an independent office that continues to carry out administrative investigations.

The starting point for assessing the future relationship between OLAF and the EPPO is the rule of non-duplication laid down in Art. 101 of the EPPO Regulation. As a rule, there will be no parallel investigations into the same facts which are the object of an investigation by the EPPO. However, the EPPO Regulation (Art. 101) also provides for exceptions to this rule, namely:

- investigations in support and at the request of the EPPO; and
- complementary investigations on OLAF’s own initiative.

Accordingly, the Proposal defines how the EPPO can request OLAF to *support* the EPPO’s activities in accordance with Article 101(3) of the EPPO Regulation (Art. 12e of the Proposal); and provides that, in duly justified cases, OLAF may open or continue a parallel *administrative* investigation to complement a *criminal* investigation carried out by the EPPO (so-called ‘*complementary investigations*’, Art. 12f of the Proposal).

According to the Proposal, the conduct of complementary investigations by OLAF would be notified to the EPPO, and the absence of an EPPO objection

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within a certain deadline would be deemed to constitute approval. When OLAF supports or complements an EPPO investigation at the EPPO's request (Art. 101(3) EPPO Reg.), OLAF can provide information, analysis and expertise; it can coordinate specific actions; and it can carry out administrative – not criminal – investigations.

Complementary investigations would give OLAF the possibility to open or continue an investigation when the EPPO conducts a criminal investigation for the purpose of taking precautionary measures, or financial, disciplinary or administrative action. In every case, OLAF will report to the EPPO, which has the right to object to OLAF's investigations in order to safeguard its own criminal investigation. All complementary investigations would be conducted in close consultation with the EPPO.

Moreover, it is important to bear in mind that not all Member States will participate in the EPPO. In the five non-participating Member States (Denmark, Hungary, Ireland, Poland, Sweden), OLAF's role will remain exactly the same as today. In the participating Member States, OLAF will continue to investigate non-fraudulent irregularities, which actually constitute 93% of all irregularities reported to the Commission. Finally, restrictions to the competence of the EPPO enshrined in the EPPO Regulation mean that also in the participating Member States and with regard to criminal offences, OLAF will maintain a residual role.