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THE EUROPEAN UNION**

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STATEMENT OF THE COUNCIL'S REASONS

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 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
- Statement of the Council's reasons
Adopted by the Council on 25 February 2013

I. INTRODUCTION

On 5 July 2006, the Commission submitted to the Council its proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹.

During its Plenary session on 20 November 2008, the European Parliament adopted its position at first reading and the accompanying legislative resolution².

On 6 July 2010, the Commission issued a reflection paper on the reform of OLAF³, with the purpose to identify convergent and divergent points in the views expressed by the European Parliament and the Council on the Commission's initial proposal, and to achieve consensus on the main issues at stake.

As a result of thorough discussions within its Working Party on Combating Fraud, the Council issued on 6 December 2010 conclusions on the Commission's reflection paper⁴.

Following this reflection process, the Commission submitted on 18 March 2011 an amended proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) and repealing Council Regulation (Euratom) No 1074/1999.

The European Parliament established its negotiating mandate on the Commission's amended proposal by reaffirming its position at first reading on the Commission's initial proposal.

Opinions were delivered by the European Court of Auditors on 12 July 2011⁵ and by the European Data Protection Supervisor on 1 June 2011⁶.

¹ Doc. 11281/06.

² Doc. 15961/08.

³ Doc. SEC(2010) 859.

⁴ Doc. 16833/10.

⁵ OJ C 254, 30.8.2011, p. 1.

⁶ OJ C 279, 23.9.2011, p. 11.

In accordance with paragraphs 16 to 18 of the Joint Declaration on Practical Arrangements for the Codecision Procedure¹, the Presidency, operating under a mandate from the Permanent Representatives Committee², negotiated with the European Parliament, in the context of informal tripartite discussions which took place from October 2011 to June 2012, with a view to reaching an agreement at the stage of Council's first reading.

On 25 July 2012, the Permanent Representatives Committee endorsed the compromise text agreed at the last informal trilogue of 8 June. This agreement was also confirmed by the European Parliament's Committee on Budgetary Control (CONT) on 8 October, following which its Chairman sent a letter to the Chairman of the Permanent Representatives Committee confirming that, should the Council adopt that text, he would recommend Plenary to accept Council's first reading position without amendments.

Subsequently, at its meeting on 4 December, the Council confirmed the political agreement on the agreed text as set out in documents 16546/12 and 12735/12 ADD1.

II. OBJECTIVE OF THE PROPOSAL

The purpose of the Regulation is to amend Regulation (EC) No 1073/1999, which is the basic legal act regulating investigations conducted by OLAF.

The proposal aims mainly at strengthening OLAF's independence, increasing the efficiency and effectiveness of OLAF's investigations and improving the cooperation and the exchange of information between the various institutions and authorities involved in the different phases of the investigations.

¹ OJ C 145, 30.6.2007, p. 5.

² Doc. 12140/11 ADD1.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

On the basis of the Commission's amended proposal, the European Parliament and the Council have conducted negotiations with a view to concluding an agreement at the stage of Council's position at first reading.

The tripartite discussions focussed, in particular, on the following key issues, and the text of the Council's position fully reflects the compromise reached between the co-legislators, as endorsed by the Permanent Representatives Committee in July 2012 and approved by CONT in October 2012:

Investigation procedures

More detailed provisions were defined, clarifying the tasks and duties of the various stakeholders in the opening, conduct and closing of OLAF's investigations. Furthermore, the co-legislators agreed that OLAF's Director-General shall put in place an internal advisory and control procedure, including a legality check.

Role of OLAF's Director-General

The tasks, duties and the scope of action of OLAF's Director-General were more explicitly outlined, taking stock of the current practice and aiming at streamlining procedures, making them more transparent and reducing their duration. Moreover, in order to strengthen OLAF's independence, the once renewable five-year term under the current rules was replaced by a non-renewable seven-year term.

Specific reference to the applicable procedural guarantees

In line with the charter of fundamental rights of the EU, the procedural rights of persons concerned by OLAF's investigations, witnesses and informants were set out in the Regulation and further strengthened with respect to the current practice in EU bodies.

Role of the Supervisory Committee (SC)

The SC's fundamental task - to ensure that OLAF exercises its mission in full independence - was reaffirmed. In addition to its current duties, the SC was also mandated to monitor the application of the procedural guarantees. With respect to its appointment, in order to preserve the continuity of the SC's action, the co-legislators agreed to introduce a five-year term and a staggered renewal of its members.

Information flows and cooperation arrangements

Rules were improved in order to allow for a more timely and effective exchange of information between OLAF and EU institutions, offices, bodies and agencies, as well as with Member States' competent authorities, during the various phases of the investigations. More clear reporting processes were set out, particularly on the follow-up given to the recommendations of OLAF's Director-General. It was also agreed that Member States would designate a service ("the anti-fraud coordination service") to facilitate effective cooperation and exchange of information with OLAF.

Furthermore, the co-legislators clearly set out in the Regulation the possibility for OLAF to conclude administrative arrangements with Europol, Eurojust, third countries' competent authorities and international organisations.

Exchange of views

An agreement was reached on the introduction of a regular exchange of views between OLAF's Director-General, the European Parliament, the Council and the Commission. Such meetings at political level would cover, *inter alia*, the strategic priorities for OLAF's investigation policies and the effectiveness of OLAF's work with regard to the performance of its mandate, without in any way interfering with OLAF's independence in the conduct of its investigations.

Access to information in databases prior to the opening of an investigation

OLAF's right of immediate and unannounced access to information held by EU institutions, bodies, offices or agencies was extended to the stage prior to the opening of an investigation in order to assess the basis in fact of allegations.

IV. CONCLUSION

Council's position at first reading reflects the compromise reached during the negotiations between the European Parliament and the Council, with the support of the Commission. This compromise was confirmed by a letter from the CONT Chairman to the Chairman of the Permanent Representatives Committee dated 12 October 2012. In this letter, the CONT Chairman indicated that he would recommend CONT members, and subsequently Plenary, to accept Council's position at first reading without amendments at European Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.

The Council believes that its position at first reading represents a balanced package and that, once adopted, the new Regulation will make a significant contribution to an increased protection of the Union's financial interests and to fight against fraud, corruption and any other illegal activity affecting those interests.
