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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 325 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The Union institutions and the Member States attach great importance to the protection of the financial interests of the Union and to the fight against fraud, corruption and any other illegal activity affecting those interests. The Commission's responsibility in that connection is closely bound up with its duty to implement the budget pursuant to Article 317 of the Treaty on the Functioning of the European Union (TFEU) and the importance of action to that end is confirmed by Article 325 TFEU.

(2) All available means should be deployed fully to attain that objective, notably in the context of investigative duties devolving upon the Union, while the current distribution and balance of responsibilities between the Union and the Member States should be maintained.

(3) To reinforce the means available for combating fraud, while respecting the principle of each institution's internal organisational autonomy, the Commission, by Decision 1999/352/EC, ECSC, Euratom[(3)], has established the European Anti-Fraud Office ('the Office') among its own services with responsibility for conducting administrative fraud investigations. The Commission has given the Office full independence to exercise its investigative function. Decision 1999/352/EC, ECSC, Euratom provides that for the purposes of investigations the Office is to exercise the powers conferred by Union law.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) Regulation (EC) No 1073/1999 of the European Parliament and of the Council[(4)] was adopted to regulate investigations conducted by the Office. In order to make the Office's investigative activities more effective, and in the light of the evaluations of its activities made by the Union institutions, in particular the Commission's evaluation report of April 2003 and the Special Reports No 1/2005[(5)] and No 2/2011[(6)] of the Court of Auditors concerning the management of the Office, there is a need to revise the current legal framework.

(5) The Office's mandate should comprise the conduct of investigations within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ('institutions, bodies, offices and agencies') and the exercise of the power of investigation conferred on the Commission by the relevant Union acts, as well as providing the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities. The Office should also contribute to the design and development of methods for preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the Union, based on its operational practice in this field.

(6) The responsibility of the Office as set up by the Commission also extends beyond the protection of financial interests to include all activities relating to safeguarding Union interests against irregular conduct liable to result in administrative or criminal proceedings.

(7) This Regulation should apply without prejudice to more extensive protection which may derive from the provisions of the Treaties.

(8) Given the need to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union, the Office should be able to conduct internal investigations in all the institutions, bodies, offices and agencies.

(9) In the context of external investigations, the Office should be entrusted with the exercise of the powers conferred on the Commission by 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[(7)]. The Office should also be allowed to exercise the other powers conferred on the Commission to conduct on-the-spot checks and inspections in the Member States, notably for the purpose of detecting irregularities as required by Article 9 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests[(8)].

(10) The operational efficiency of the Office depends greatly on cooperation with the Member States. There is a need for the Member States to identify their competent authorities which are able to provide the Office with the assistance needed in the performance of its duties. In cases where a Member State has not set up a specialist department at national level with the task of coordinating the protection of the financial interests of the Union and the fight against fraud, a service (the anti-fraud coordination service) should be designated to facilitate effective cooperation and exchange of information with the Office.

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(11) The Office should have access to any relevant information held by the institutions, bodies, offices and agencies of the Union in connection with external investigations.

(12) Investigations should be conducted in accordance with the Treaties and in particular with Protocol No 7 on the privileges and immunities of the European Union, while respecting the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68[(9)] ('the Staff Regulations') and the Statute for Members of the European Parliament, and with full respect for human rights and fundamental freedoms, in particular the principle of fairness, for the right of persons involved to express their views on the facts concerning them and for the principle that the conclusions of an investigation may be based solely on elements which have evidential value. To that end, the institutions, bodies, offices and agencies should lay down the terms and conditions under which internal investigations are to be conducted.

(13) Internal investigations can be conducted only if the Office is guaranteed access to all premises of the institutions, bodies, offices and agencies and to all information and documents held by them.

(14) The accuracy of the information sent to the Office in connection with its mandate should be assessed promptly. To that end, the Office, prior to the opening of an investigation, should have access to any relevant information in databases held by the institutions, bodies, offices or agencies, when this is indispensable for assessing the basis in fact of allegations.

(15) The Office should be placed under precise obligations to inform the institutions, bodies, offices and agencies of investigations in progress where an official, other servant, member of an institution or body, head of office or agency, or staff member is concerned by the matter under investigation or where precautionary measures may be required in order to protect the financial interests of the Union.

(16) Clear rules should be laid down which, while confirming the priority enjoyed by the Office for conducting internal investigations on matters affecting the financial interests of the Union, enable the institutions, bodies, offices and agencies quickly to conduct such investigations in cases where the Office decides not to intervene.

(17) To ensure the independence of the Office in carrying out the tasks conferred on it by this Regulation, its Director-General should be able to open an investigation on his own initiative. Where the Office is conducting an investigation, the relevant institutions, bodies, offices or agencies should not conduct an investigation into the same facts in parallel, unless agreed otherwise with the Office.

(18) Investigations should be conducted under the authority of the Director-General, in full independence from the institutions, bodies, offices and agencies and from the Supervisory Committee. To that end, the Director-General should be able to adopt guidelines on investigation procedures for the staff of the Office. Those guidelines should provide practical guidance to the staff of the Office on the conduct of investigations and the procedural guarantees and rights of persons concerned or witnesses, and details on the internal advisory and control procedures to be followed,

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including a legality check. In order to provide greater transparency with regard to the conduct of investigations, those guidelines should be available to the public on the Office's website. Those guidelines should not create or alter any rights or obligations arising under this Regulation.

(19) In accordance with Article 21 of the Staff Regulations, the staff of the Office should conduct the investigations in accordance with the guidelines on investigation procedures and on the basis of individual instructions given by the Director-General in specific cases.

(20) In accordance with the Staff Regulations, the staff of the Office should carry out their investigative tasks in full independence and should avoid conflicts of interest. Members of the staff of the Office should immediately inform the Director-General if an investigation concerns a matter in which they have any personal interest such as to impair, or to be seen as impairing, their independence, in particular if they are or have been involved in another capacity in the matter under investigation.

(21) External and internal investigations by the Office follow, in part, distinct rules. However, the Office should be allowed, whenever necessary, to combine in one single investigation the aspects of an external and an internal investigation, without having to open two separate investigations.

(22) It is necessary, in the interests of legal certainty, to specify the procedural guarantees applicable to investigations conducted by the Office, taking into account the administrative nature of those investigations.

(23) The procedural guarantees and fundamental rights of persons concerned and of witnesses should be respected without discrimination at all times and at all stages of both external and internal investigations, in particular when information about ongoing investigations is provided. Provision of any information concerning investigations conducted by the Office to the European Parliament, the Council, the Commission or the Court of Auditors, whether bilaterally or as part of an exchange of views, should respect the confidentiality of investigations, the legitimate rights of the persons concerned and, where applicable, the national provisions governing judicial proceedings. Information transmitted or obtained during investigations should be treated in accordance with Union law on data protection. Exchanges of information should be governed by the principle of proportionality and by the need-to-know principle.

(24) In order to strengthen the protection of the individual rights of persons under investigation, conclusions referring by name to a person concerned should not be drawn, at the final stage of an investigation, without that person being given the opportunity to comment on facts concerning him.

(25) The Director-General should ensure that any information supplied to the public respects the legitimate rights of the persons concerned.

(26) The Office and the institutions, bodies, offices and agencies involved in the investigation should protect freedom of expression, in accordance with the Charter of Fundamental Rights of the European Union, and journalistic sources.

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(27) It should be incumbent on the Director-General to ensure the protection of personal data and respect for confidentiality of information gathered in the course of investigations. Officials and other servants of the Union should be assured of legal protection equivalent to that provided for by the Staff Regulations.

(28) To ensure that the findings of investigations conducted by the Office are taken into account and that the requisite follow-up action is taken, the reports should have the status of admissible evidence in administrative or judicial proceedings. To that end, those reports should be drawn up in a manner compatible with the rules governing administrative reports in the Member States.

(29) Where it is found that facts brought to light by the final report on an internal investigation could give rise to criminal proceedings, the information to that effect should be transmitted to the national judicial authorities of the Member State concerned. In the recommendations accompanying the final investigation report, the Director-General should indicate whether, in the light of the nature of the facts and the scale of their financial impact, internal measures by the institution, body, office or agency concerned would allow for a more effective follow-up.

(30) In cases where the Director-General transmits to the judicial authorities of the Member State concerned information obtained by the Office in the course of internal investigations, that transmission of information should be without prejudice to subsequent classification in law by the national judicial authority as to whether investigative proceedings are required.

(31) It is for the competent authorities of the Member States or the institutions, bodies, offices or agencies, as the case may be, to decide what action should be taken on completed investigations on the basis of the final investigation reports drawn up by the Office.

(32) In order to improve its efficiency, the Office should know how the results of its investigations have been followed up. Hence, the institutions, bodies, offices and agencies of the Union and, where appropriate, the competent authorities of the Member States should report to the Office, at its request, on the action taken, if any, on the basis of the information transmitted to them by the Office.

(33) In view of the major benefits of strengthening cooperation between the Office, Eurojust, Europol and the competent authorities of the Member States, the Office should be able to conclude with them administrative arrangements which may, in particular, aim at facilitating practical cooperation and exchange of information on technical and operational matters, without creating any additional legal obligations.

(34) In order to strengthen the cooperation between the Office, Eurojust and the competent authorities of the Member States in respect of deeds which may be the subject of a criminal investigation, the Office should inform Eurojust of, in particular, those cases of suspected fraud, corruption or any other illegal activity affecting the financial interests of the Union and involving serious forms of criminality. The transmission of information to the competent authorities of the Member States concerned should occur, as appropriate, before the information provided by them is transmitted by the Office to