



## **WORKING ARRANGEMENT**

### **BETWEEN**

### **THE EUROPEAN ANTI-FRAUD OFFICE ("OLAF")**

### **AND THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE ("EPPO")**

The European Anti-Fraud Office (hereafter referred to as "OLAF") and the European Public Prosecutor's Office (hereafter referred to as "the EPPO"), together referred to as "The Parties",

Having regard to Articles 86 and 325 of the Treaty on the Functioning of the European Union,

Having regard to the Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF), Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by OLAF (hereafter "the OLAF Regulation"), and Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (hereafter "the EPPO Regulation"),

Taking into account Articles 1(4a) and 12g of the OLAF Regulation, and Article 101(1) of the EPPO Regulation, which stipulate the need for cooperation amongst the Parties,

Considering that it is within the common interest of OLAF and the EPPO to establish a close co-operation, in an effort to make the fight against fraud, corruption and any other criminal offence or illegal activity adversely affecting the European Union's financial interests as efficient as possible and to avoid duplication of effort wherever possible,

Agree to cooperate within the scope of their respective mandates as set out below:

## **1. Purpose**

**1.1.** The purpose of this working arrangement is to establish close cooperation between OLAF and the EPPO in the exercise of their investigative and prosecutorial mandates, within the existing limits of the respective legal frameworks, in particular through the exchange of information and mutual support between the Parties including personal data.

**1.2.** This arrangement does not cover the exchange of information and cooperation in relation to OLAF investigations carried out in accordance with Article 4 of the OLAF Regulation concerning the persons listed in Article 110(1) of the EPPO Regulation.

**1.3.** This arrangement does not create any additional rights and obligations under European Union law and is without prejudice to the provisions governing the mandate of OLAF and of the EPPO. The time-limits laid down in sections 4.5 and 6.2.3 give effect to Articles 12d(1), 12c(4) and 12f(1), respectively, of the OLAF Regulation and are binding as a matter of that Regulation.

## **2. Definitions**

For the purpose of this working arrangement:

- "EU Staff" means any official, other servant, member of an institution or body, head of office or agency, or staff member subject to the Staff Regulations and Conditions of Employment.
- "Serious misconduct" means any serious facts linked to the performance of professional activities which may constitute a breach of obligations by EU Staff likely to lead to disciplinary and, in appropriate cases, criminal proceedings.

## **3. Scope of the cooperation**

The cooperation between OLAF and the EPPO will include, inter alia, the following activities:

- Exchange of information;
- Reporting and transmission of potential cases;
- Support in investigations;
- Complementary investigations of OLAF;
- Information exchange on trends;
- Training and staff exchange;
- Communication with the media.

#### **4. Exchange of information**

**4.1.** The Parties agree that regular exchanges, as appropriate, are essential to develop and enhance their cooperation, as well as to monitor the implementation of this working arrangement. In addition, the Parties agree to provide each other, spontaneously or upon request, with information that might be relevant for the other Party in terms of the purpose of this working arrangement and the exercise of their respective mandates, in conformity with the relevant rules on confidentiality and data protection.

**4.2.** The Parties agree that for the purpose of reporting to each other in accordance with point 5 of this working arrangement, the information transmitted should be as complete as possible. The Parties may agree on templates for the purpose of reporting. Where needed, these templates should be reviewed from time to time.

**4.3.** Unless otherwise stipulated in this working arrangement, a Party will reply to requests for information as provided for in this working arrangement expeditiously and in any case within 20 working days.

**4.4.** Before opening an investigation, when exchanging information related to any specific investigation, OLAF and EPPO will ensure that marking and handling requirements are respected. OLAF and EPPO will use encrypted electronic communication means where possible.

**4.5.** Before opening an investigation related to facts on which the EPPO could exercise competence, OLAF shall verify via the EPPO's case management system using the mechanism in point 4.6 of this arrangement whether the EPPO may be conducting investigations into the same facts. For the purpose of the application of Articles 12c(4) and 12d(1) of the OLAF Regulation, when OLAF requests further information from the EPPO, the deadline for the EPPO to reply to such a request will be 15 working days.

In the absence of a reply by the EPPO within that time-limit, if OLAF decides to take action under its mandate and where necessary to open an investigation, it will inform the EPPO before such action is taken.

**4.6. Exchange of information in accordance with Article 101(5) of the EPPO Regulation and Article 12g(2) of the OLAF Regulation**

In relation to the reciprocal indirect access to each other's electronic case management systems, searches of information shall be carried out only for the

purpose of identifying whether information available at one of the Parties' case management system matches with information processed by the other Party. In the case of a match found in the other Party's case management system, the respective Party will engage in a process to identify and exchange information necessary for the performance of the tasks of the other Party.

The technical and security aspects of this reciprocal indirect access, including the functional, technical, data accuracy, security and monitoring requirements as well as the internal procedures to ensure that each access is duly justified for the performance of their functions and is documented, will be defined between the Parties in a technical annex to this working arrangement.

## **5. Mutual Reporting and transmission of potential cases**

### **5.1. Reporting by OLAF to the EPPO in accordance with Article 24(1) of the EPPO Regulation and Article 12c of the OLAF Regulation.**

5.1.1. For the purpose of Article 24(1) of the EPPO Regulation and Article 12c of the OLAF Regulation, OLAF shall verify via the EPPO's case management system whether the EPPO is conducting an investigation and, where necessary, will request further information from the EPPO.

5.1.2. Once OLAF has reported to the EPPO, the EPPO will inform OLAF of its decision whether to open or not an investigation, within 5 working days of that decision being taken.

5.1.3. Where the EPPO requests clarification in relation to the information reported by OLAF, the latter will reply within 5 working days.

5.1.4. When OLAF reports to the EPPO in accordance with Article 24(1) of the EPPO Regulation, or once the EPPO has opened an investigation into the facts reported by OLAF, the latter may propose to the EPPO to conduct a complementary investigation or to provide support to the EPPO's investigation in accordance with point 6 of the present working arrangement.

### **5.2. Reporting by the EPPO to OLAF in accordance with Article 8 of the OLAF Regulation**

5.2.1. Whenever the EPPO cannot exercise competence on a case in accordance with the EPPO Regulation, but it considers that the facts may constitute illegal

activity affecting the financial interests of the Union, it will report this case to OLAF in accordance with Article 8(1) and (4) of the OLAF Regulation.

5.2.2 In the event the EPPO decides to refer a case to the national authorities, in accordance with Articles 25(3) and 34(1) to (3) of the EPPO Regulation, and the matter under investigation falls under OLAF's mandate, the EPPO will inform OLAF as relevant office in accordance with Article 34(8) of the EPPO Regulation.

5.2.3. The EPPO will report in particular information concerning the following cases:

- a) Cases of criminal offences provided for by Directive EU 2017/1371 (PIF Directive) on which the EPPO does not have competence or on which it cannot exercise its competence;
- b) Cases of criminal offences affecting the financial interests of the EU, which do not fall within the scope of the PIF Directive;
- c) Cases of non-fraudulent irregularities affecting the financial interests of the EU;
- d) Cases of serious misconduct of EU staff affecting the financial interests of the Union on which the EPPO does not have competence or on which it cannot exercise its competence.

5.2.4. Where OLAF requests clarification in relation to the information reported by the EPPO, the latter will reply within 5 working days.

### **5.3. Other cases of transmission of information from the EPPO to OLAF**

5.3.1. Outside the reporting provided for in Article 8(1) and (4) of the OLAF Regulation the EPPO will consider informing OLAF in the following situations:

- a) The EPPO decides not to evoke a case in accordance with Article 27 of the EPPO Regulation;
- b) The EPPO decides to prosecute a case in accordance with Article 36(6) of the EPPO Regulation;
- c) The EPPO decides not to conduct an investigation or to dismiss a case in accordance with Articles 39(4), Article 101(4) of the EPPO Regulation.

5.3.2. The Parties agree that the EPPO will consider informing OLAF in the situations above where, for the protection of the EU financial interests, follow-up action of a non-criminal nature could be appropriate. This concerns cases which may require action at EU level for precautionary measures, recovery, administrative follow-up, or disciplinary measures. This may occur when one or more of the following criteria are met:

- a) The case is dismissed because the criminal offences are statute barred, but an administrative investigation might be necessary, in view of protecting EU financial interests and proceed to the financial recovery;
- b) The case concerns Commission services or executive agencies managing the EU budget;
- c) The case concerns i) EU external aid to third parties, ii) investigations into EU staff, or iii) customs;
- d) The case involves Member States non-participating to the EPPO and/or third countries;
- e) Cases in relation to expenditure linked to European Green Deal policies (environment, climate, food security).

When, for reasons of effective protection of the EU's financial interests, it is necessary that immediate administrative action is taken, the EPPO will transmit the information concerning the above cases to OLAF without undue delay.

5.3.3. The EPPO will also consider reporting to OLAF any information it may receive concerning cases which do not affect the financial interests of the EU, in relation to which OLAF would be able to exercise its mandate. This would concern in particular cases concerning serious misconduct of EU staff which do not affect the financial interests of the Union, or cases concerning customs controls, agriculture legislation and the customs enforcement of intellectual property rights, in which OLAF is able to act in accordance with Regulation 515/97<sup>1</sup> and Regulation 608/2013<sup>2</sup>.

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<sup>1</sup> OJ L 082 22.3.1997, p. 1

<sup>2</sup> OJ L 181, 29.6.2013, p. 15–34

5.3.4. Where OLAF needs clarification in relation to the information provided, it will address the EPPO. The EPPO will reply within 5 working days.

## **6. Support, Complementary Investigations and Other Operational Cooperation**

### **6.1. Support to the EPPO by OLAF**

6.1.1. Requests by the EPPO to OLAF for support in the course of an EPPO investigation, in accordance with Articles 101(3) of the EPPO Regulation and 12e of the OLAF Regulation, may concern in particular:

- a) Providing the EPPO with information and expertise (e.g. on EU programmes and the application of EU rules and procedures in such programmes);
- b) Conducting operational analysis, including forensic activities, of documents or data in any format, acquired by the EPPO or OLAF in the course of their investigations;
- c) Operational support of any kind, included but not limited to the participation of OLAF staff in the EPPO investigation as expert, expert witness, adviser or any other equivalent capacity provided for by the law governing the investigation;
- d) The facilitation of coordination of specific actions of national administrative authorities and bodies of the Union;
- e) Any other act which OLAF may perform in accordance with its mandate.

6.1.2. As appropriate, OLAF and the EPPO may consult each other on the subject-matter of the request or on the proposed timeframe at any time before or after sending the request, and during its execution. Where appropriate, intermediate reporting, including its frequency and its content, could be agreed between OLAF and the EPPO (for example, when the execution of the requested measure is expected to require a long period of time).

6.1.3. Requests by the EPPO under this point will be made in writing and be addressed to the Director General of OLAF, and shall contain at least the elements included in Article 12e(2):

- a) Information on the EPPO investigation in so far as relevant for the purpose of the request;
- b) The measure or measures which the EPPO requests OLAF to perform; and
- c) Where appropriate, the envisaged timeline for their performance.

The EPPO may also transmit any other information or document that may be useful to OLAF in deciding on, and carrying out, the requested support activity.

6.1.4. OLAF will decide promptly on the EPPO's requests under this point, taking into account the complexity of the support activity requested, the timeline envisaged for its completion and the availability of resources. The requested measures will be executed without undue delay, in full compliance with the procedural framework applying to OLAF, including the procedural safeguards provided for in the OLAF Regulation. In accordance with Article 12e(3) of the OLAF Regulation, OLAF and the EPPO, acting in close cooperation, shall ensure that the applicable procedural guarantees of Chapter VI of the EPPO Regulation are observed.

6.1.5. Following the completion of the requested activity, OLAF will inform the EPPO in writing and will transmit to it any information or document it has acquired in the course of its support requested activity.

## **6.2. Complementary Investigations, in accordance with Article 101(3) of the EPPO Regulation and Article 12f of the OLAF Regulation**

6.2.1. OLAF's complementary investigations, whether proposed by OLAF in duly justified cases or requested by the EPPO, should aim at facilitating the collection of relevant information for the adoption of precautionary measures or the conduct of financial, disciplinary or administrative action and may concern, inter alia, the following cases:

- a) cases in which the statute of limitations applicable to the criminal offence under investigation by the EPPO poses a concrete risk for effective recovery;
- b) cases in which time-barring of recovery is imminent;
- c) cases in which there is a need to take administrative precautionary measures pending the criminal investigation by the EPPO;



- d) cases in which, by virtue of the possible damage deriving from the criminal offence, there is a very substantial financial risk to the Union budget;
- e) cases in which there are reasonable grounds to believe that recommendations could be issued for disciplinary or administrative measures to be taken, including recommendations to the EDES panel or administrative sanctions;
- f) cases where there is evidence of non-fraudulent irregularity.

6.2.2. When the EPPO has opened a criminal investigation, a proposal by OLAF to carry out a complementary investigation shall be in writing and contain:

- a) A description of the subject-matter of the investigation;
- b) A description of the reasons which justify the complementary investigation;
- c) A description, in so far as possible, of the physical persons or legal entities involved, of the investigative measures OLAF proposes to use in the complementary investigations, as well as a possible timeframe for the investigation.

6.2.3. When OLAF proposes the opening of a complementary investigation, the procedure laid down in Article 12f of the OLAF Regulation shall apply. The time limit referred to in Article 12f(1) of the OLAF Regulation shall be set at 20 working days.

6.2.4. When deciding on the need for a complementary investigation, on OLAF's request or on the EPPO's initiative, the EPPO should take into account *inter alia* the state of the ongoing criminal investigation and any risk to its integrity, as well as the need to ensure the effective protection of the Union's financial interests through every available means.

6.2.5. Should the decision of the EPPO on a proposal from OLAF be negative, the EPPO will inform OLAF without delay of the decision and the grounds on which it is based. It will also inform OLAF if the grounds for its objection cease to exist.

6.2.6. In its request or in the reply to a request from OLAF, the EPPO may indicate specific modalities for the complementary investigation of OLAF which may be necessary to preserve the integrity of the ongoing criminal investigation.

6.2.7. OLAF and the EPPO will coordinate and consult regularly during the course of the complementary investigation. They will inform each other about information which may be relevant for the purpose of the complementary investigation. Where appropriate, intermediate reporting, including its frequency and its content, could be agreed between OLAF and the EPPO.

6.2.8. Once OLAF has concluded the complementary investigation, it will forward to the EPPO the final report drawn up in accordance with Article 11 of the OLAF Regulation, as well as any additional information or evidence collected in the course of the complementary investigation, which may be relevant in the course of the EPPO's criminal investigation, to the extent possible based on the applicable legal framework.

### **6.3. Joint Investigation Teams (JITs)<sup>3</sup>**

If the EPPO is a member of a Joint Investigation Team, it will consider, when appropriate, informing OLAF and to propose to the other parties to consider inviting OLAF to participate in the Joint Investigation Team. In particular, such cases could concern complex fraud schemes requiring in-depth analysis of the EU administrative legal framework, analysis and forensic operations, and investigations involving both participating and non-participating EU Member States and third countries.

### **6.4. Assistance from the EPPO to OLAF**

6.4.1. Where the assistance of a prosecutorial authority is needed for OLAF to carry out an investigative activity in a Member State participating to the EPPO, OLAF may address a request to the EPPO in order to obtain the assistance of the competent European Delegated Prosecutor for carrying out the investigative activity, in accordance with EPPO's mandate, and provided OLAF is acting in support or complementarity in accordance with Articles 12e and 12f of the OLAF Regulation.

6.4.2. To this end, OLAF will address a written request for assistance to the EPPO contact point, containing:

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<sup>3</sup> "Joint Investigation Team" (JIT), as referred to in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 3) and in the Framework Decision 2002/465/JHA on Joint Investigation Teams (OJ L 162, 20.6.2002, p. 1.).

- a) A summary description of the subject-matter of the investigation,
- b) A description of the investigative measure to be carried out and the reasons for requesting assistance, including where necessary to overcome the resistance on the part of an economic operator,
- c) A proposed timeframe for the performance of the investigative measure.

6.4.3. The EPPO will decide promptly on OLAF's requests under this point, taking into account the complexity of the support activity requested, the proposed timeline envisaged for its completion and the availability of resources. If necessary, before a decision is taken, OLAF and the EPPO may consult each other on the subject-matter of the request or on the proposed timeframe. Following such consultation, OLAF may, if appropriate, amend or withdraw the request.

## **7. Information exchange on trends**

Within the limits of their respective mandates, OLAF and the EPPO may exchange strategic information either spontaneously or on request. Examples of such information may include:

- a) Operational structures of the organisations involved in the fraudulent activities, as well as the links between these organisations operating inside or outside the European Union;
- b) Strategies, modi operandi, techniques and the financing of these organisations.
- c) Trends in criminality related to fraud, corruption or any other illegal activities affecting the European Union's financial interests.

## **8. Professional training, staff exchange and liaison officers**

8.1 Subject to the availability of resources, the partners will cooperate in the area of training, including staff exchange. They will inform each other of, and invite each other to relevant seminars, workshops, conferences and other similar activities. Staff exchanges may be subject to a separate arrangement.

8.2 The Parties may agree to the secondment of liaison officer(s) or expert(s). Their liaison officers' tasks, rights and obligations, their number, and the costs involved shall be governed by a separate instrument agreed between the Parties.

## **9. Structures of cooperation**

**9.1.** OLAF and the EPPO will set up the following structures of cooperation:

- a) Structures for institutional relations and high-level strategic cooperation:
  - The Parties will organise high - level meetings between the Director-General of OLAF and the European Chief Prosecutor at least once a year, to discuss issues relating to this working arrangement and on matters of common interest;
  - as relevant, OLAF's Director-General will be invited to attend a meeting of the College of the EPPO and the European Chief Prosecutor will be invited to attend a meeting of OLAF's senior management in order to exchange views and to discuss matters of common interest;
  - OLAF and the EPPO representatives will meet regularly to discuss matters of common interest for the purpose of realising their objectives and coordinating their respective activities;
  
- b) Structures for operational cooperation
  - OLAF and the EPPO will designate contact points for the implementation of the working arrangement.
  - They will notify each other of such designation by means of exchange of letters at the time of signature of this arrangement. Any subsequent change of the designated contact points will be notified without delay in writing.
  - Where OLAF and the EPPO, respectively, designate an ad-hoc contact point for a particular case, they will notify each other without delay by any means.
  - Any new request for information exchange, cooperation or support should be addressed:
    - o By the EPPO to the Director General of OLAF, via the OLAF contact points.

- By OLAF to the European Chief Prosecutor, via the EPPO contact points.

## **10. General Rules**

### **10.1. Confidentiality, use of information by the partners and in relation to third parties**

10.1.1. Information communicated or acquired under this working arrangement is protected by professional secrecy in accordance with Article 108 of the EPPO Regulation and in accordance with Article 10 of the OLAF Regulation.

10.1.2. When the Parties provide information to each other from their respective case files this information should be limited to what is strictly necessary.

10.1.3. OLAF and the EPPO will not exchange information, if disclosure to the other Party is prohibited by the law governing the Party possessing the information.

### **10.2. Secure communication line**

The establishment, implementation and operation of a secure communication line for the purpose of exchange of information between OLAF and the EPPO may be agreed upon between the Parties in a separate arrangement.

### **10.3. Data Protection**

10.3.1. Personal data may only be processed by OLAF or by the EPPO in full compliance with the respectively applicable data protection framework applicable to such processing. Any personal data processed by OLAF or by the EPPO shall be processed only in compliance with the principles of lawfulness and fairness, data minimisation, accuracy, storage limitation, integrity and confidentiality and accountability. Both Parties shall ensure that all receipts of personal data, as well as any transfers thereof, are duly logged and traceable, including, where required in line with these or other implementing rules, the grounds for their transfer. No personal data shall be kept longer than necessary for the purpose for which it has been processed, or than required due to other legal obligations.

10.3.2. Where a data subject exercises its rights pursuant to Articles 17-20 of Regulation (EU) 2018/1725 or Articles 59 and 61 of the EPPO Regulation in relation to personal data transmitted by the Parties on the basis of the present arrangement, the transmitting Party should be consulted before a decision on the

data subject's request is taken. The final decision shall be subsequently notified to the other party.

10.3.3. At the moment that parties exchange personal data for investigative purposes, and the relevant data subject has already been notified of the processing of their data by the transmitting party, this shall be notified to the receiving party.

10.3.4. As soon as one of the Parties becomes aware of a data breach concerning personal data transmitted on the basis of the present arrangement, it should inform the other Party accordingly. The communication should describe the nature of the personal data breach as well as any remedial action taken, as appropriate.

10.3.5. Personal data shall be transmitted with a purpose and shall not be processed in a manner incompatible with the purpose for which it was transmitted.

Any restriction on the use of information exchanged, or instructions relating to deletion or destruction, including possible access restrictions in general or specific terms, shall be respected by the Parties

## **11. Communication with the media**

The Parties agree to consult each other before communicating with the media on operations in which they were both involved. The Parties may agree the text of a joint or individual press release on results thereof. Each Party will react to the request for such consultation as soon as possible, and preferably within 48 hours.

## **12. Evaluation of cooperation**

**12.1.** The Parties will evaluate periodically the application of this working arrangement and the necessity for amendments.

**12.2.** OLAF's Director-General and the European Chief Prosecutor, or their nominees, will consult each other regularly on the application of this working arrangement.

**12.3.** The Parties will provide information on their collaboration in their respective annual reports.

### **13. Expenses**

The Parties shall bear their own expenses which arise in the course of implementation of the present arrangement, unless otherwise stipulated in this arrangement.

### **14. Amendments and supplements**

The Parties will monitor the good functioning of this arrangement on a continuous basis. One year after the start of the application of this Agreement and at least once a year after that, the Parties will meet to discuss its application and the need for amending it.

This arrangement may be amended in writing at any time by mutual consent between the Parties. Any amendment must receive the appropriate approval in line with of the Parties' respective legal frameworks.

### **15. Entry into force**

This working arrangement will apply from the first day after its signature.

Done at Luxembourg, the 5th July 2021, in two originals in the English language.

For the EPPO



Laura Codruța KÖVESI

European Chief Prosecutor

For OLAF



Ville ITÄLÄ

Director-General