

Proposal for an amendment of Regulation 883/2013

Consultation strategy

1. Background to the initiative

The protection of the EU financial interests is an important element of the Commission's political agenda. [The European Anti-Fraud Office \(OLAF\)](#) was set up in [1999 by a Commission Decision](#) with the task, in particular, of conducting administrative investigations against fraud and any other illegal activity affecting the EU financial interests, as well as of assisting Member States (MS) in the fight against fraud. OLAF's investigative mandate is currently defined by [Regulation 883/2013 concerning investigations conducted by the OLAF](#) (hereinafter "the Regulation").

On 2 October 2017, the Commission adopted [the Commission Report on Evaluation of the application of Regulation 883/2013, COM\(2017\) 589](#), accompanied by an [evaluation Staff Working Document, SWD\(2017\) 332](#). The report was also accompanied by the [OLAF's Supervisory Committee's Opinion 2/2017](#). Although the evaluation concludes that the Regulation has allowed OLAF to deliver concrete results in the protection of the EU budget, it identified some shortcomings which impact on the effectiveness and efficiency of investigations. The Commission Report announces a possible **amendment of Regulation 883/2013**.

Moreover, on 12 October 2017, the Council adopted the Regulation implementing enhanced cooperation on the establishment of [the European Public Prosecutor's Office \(EPPO\)](#). The EPPO will change the EU institutional anti-fraud landscape significantly. It will have the power to conduct criminal investigations and prosecute before national courts of the 20 currently participating Member States as regards criminal offences affecting the EU's financial interests¹. This will impact on the operation of OLAF and the relationship between the two bodies needs to be regulated. The intention to adapt the OLAF legal framework by the time the EPPO becomes operational was acknowledged already in [the Commission Communication on 'Improving OLAF's governance and reinforcing procedural safeguards in investigations: A step-by-step approach to accompany the establishment of the EPPO'](#).

The amended Regulation should enter into force before the EPPO becomes operational (envisaged end 2020).

2. Proposal for the amendment of Regulation 883/2013

The Commission prepared a roadmap for a proposal to amend Regulation 883/2013 that was [published for stakeholder feedback](#). In context of the establishment of the EPPO, which is the main driver for the amendment, and in response to the shortcomings identified by the evaluation of the Regulation, the roadmap identifies the objectives of the initiative as follows:

¹ Offences defined in Directive (EU) 2017/1317 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.

The **overall objective** of the initiative is to **strengthen the mechanisms for the protection of the EU's financial interests**.

The **specific objectives** are:

1. To adapt the operation of OLAF to the establishment of the EPPO.

The EPPO Regulation already lays down the main principles for the future relationship between the EPPO and OLAF, requiring that both bodies act in a complementary way to ensure that all available means are used to protect the Union's financial interests. This needs to be mirrored in Regulation 883/2013 with the introduction of concrete procedures for complementarity and cooperation, and complemented by working arrangements.

2. To enhance the effectiveness of OLAF's investigative function.

The evaluation identified a number of shortcomings that impact on the effectiveness and efficiency of OLAF investigations. The proposal targets to address the most unambiguous findings of the evaluation that would allow strengthening the framework in which OLAF operates and ensure that OLAF is a strong partner to the EPPO.

3. To clarify and simplify.

This objective aims at addressing issues identified in the evaluation that demand clarification or simplification of certain provisions in the Regulation that cannot be addressed by different means than change to the Regulation.

To develop a proposal for the amendment of the Regulation that can ensure the above objectives are met, the Commission will prepare an assessment in line with the Better Regulation principles. As part of this work, consultation of stakeholders will be carried out.

3. Stakeholder consultation

Stakeholder consultation is a formal, on-going process by which the Commission collects information and views from stakeholders on a concrete initiative or policy. The formal stakeholder consultation complements the Commission's regular interaction with stakeholders in the course of its daily implementation of the initiatives or policies. It has to comply with [the Commission's Better Regulation Guidelines](#) that set the general principles and minimum standards for stakeholder consultation. In compliance with these, this document sets the consultation strategy for the proposal to amend Regulation 883/2013.

Given the character of the Regulation, the public at large cannot be considered as directly impacted by the provisions of the Regulation, or responsible for their application, or possessing specific evidence that is needed for the revision. Therefore **an open public consultation will not be carried out**. However, **the roadmap for the initiative will stay open for 4 weeks to public feedback**. In addition, a **targeted stakeholder consultation** will be carried out as outlined in the following sections. They provide a mapping of the relevant groups of stakeholders and identify consultation tools and methods which will be used to target these groups.

Please note that a **wide consultation of stakeholders was carried out in 2016-2017 for the evaluation of the application of Regulation 883/2013**. Results of the consultation carried out for the evaluation **will be used to support the analytical work accompanying the proposal**.

a. Identification of stakeholders and interested parties

Regulation 883/2013 affects relatively well defined groups of stakeholders in a way that depends on the role they play in relation to OLAF investigations, as defined below.

Stakeholders to be consulted:

AFCOS: The Anti-fraud Coordination Services are designated by each Member State to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. They are OLAF's entry gate to Member States and connect OLAF with other authorities possibly involved in investigations.

Judicial authorities: The operational efficiency of OLAF and the effective conduct of investigations depend greatly on cooperation with relevant national authorities. Judicial authorities are usual partners for OLAF investigations that might need to be involved at any stage of the investigation process.

IBOAs: OLAF's mandate comprises conduct of investigations within the EU institutions, bodies, offices and agencies (IBOAs). IBOAs are concerned by the Regulation both in internal and external investigations.

Experts dealing with OLAF related matters: Expertise and experience of academics and practicing lawyers, especially defence lawyers, is important for the conceptual work on the amendment of the Regulation as they can provide a complementary view to those directly concerned by the Regulation.

Supervisory Committee: OLAF's Supervisory Committee regularly monitors the implementation of its investigative function, in order to reinforce OLAF's independence in the proper exercise of the competences conferred upon it by the Regulation.

Note that OLAF staff will also contribute to the process, drawing on the experience and expertise as regards the conduct of investigations or conduct of activities as Regulation 883/2013 impacts primarily OLAF itself.

b. Consultation methods and tools

Stakeholder group	Consultation method	Consultation period	Consultation subject	Comment
Public at large	Feedback on roadmap	Q4 2017 (4-week feedback period)	Roadmap – scope of the proposal to amend the Regulation	Given the character of the Regulation, the public at large cannot be considered as directly impacted by the provisions of the Regulation, or responsible for their application, or possessing specific evidence that is needed for the revision. Therefore an open public consultation will not be carried out. However, the roadmap will stay open for 4 weeks to public feedback.
AFCOS	Targeted questionnaires	Q4 2017-Q1 2018	Coherent application of OLAF investigative tools across MS Duties to cooperate and enforcement of OLAF's powers Role and mandate of AFCOS Clarification of OLAF's mandate in specific areas (e.g. coordination cases, VAT) Future interaction with OLAF in the context of the establishment of the EPPO	A questionnaire to be distributed to AFCOS contact points (for reply by the AFCOS and dissemination to other relevant national authorities).
Judicial authorities	Targeted questionnaires	Q4 2017-Q1 2018	Coherent application of OLAF investigative tools across MS Admissibility of OLAF reports as evidence	A request to AFCOS contact points to distribute a questionnaire to the relevant judicial authorities.

			<p>Duties to cooperate and enforcement of OLAF's powers</p> <p>Clarification of OLAF's mandate in specific areas (e.g. coordination cases, VAT)</p> <p>Future interaction with OLAF in the context of the establishment of the EPPO</p>	
EU IBOAs	Targeted questionnaires	Q4 2017-Q1 2018	<p>Coherent application of OLAF investigative tools and powers across EU IBOAs in internal and external investigations</p> <p>Cooperation with OLAF including OLAF recommendations and precautionary measures</p> <p>Future interaction between OLAF, the EPPO and the IBOAs with specific reference to the follow up of OLAF recommendations, including disciplinary matters</p>	A questionnaire to be distributed to IBOAs' contact points.
Academics/practitioners	Dedicated workshop(s)	December 2017 / January 2018	<p>Coherent application of OLAF investigative tools and powers across MS and EU IBOAs</p> <p>Future interaction with OLAF in the context of the establishment of the EPPO</p>	A dedicated meeting(s) will be organised with representatives of the Network of Associations for European Criminal Law and the Protection of the Financial Interests (PIF) of the EU, which represents academics and practitioners in the area of PIF, European Criminal Bar Association.
Supervisory Committee	Meeting	December 2017	Opinion 2/2017	Discussion of the Commission evaluation report and the Supervisory Committee's Opinion 2/2017 as regards the possible amendment of the Regulation.

4. Linguistic regime

The stakeholder consultation will be carried out in **English**. Answers in other EU languages will be allowed.

5. Data protection

The stakeholder consultation will be carried out in accordance with Regulation 45/2001. Information on [data protection is available on a dedicated OLAF Europa website](#).

6. Synopsis of the stakeholder consultation

A synopsis of the stakeholder consultation process and results will be provided in the analytical Staff Working Document accompanying the Commission proposal for the amendment of the Regulation.