

EVALUATION ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of the application of Regulation (EC, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)		
LEAD DG – RESPONSIBLE UNIT	OLAF.D.1	DATE OF THIS ROADMAP	11 / 2015
TYPE OF EVALUATION	Evaluation Mixed	PLANNED START DATE	3Q / 2015
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A. Purpose
(A.1) Purpose
The purpose of this evaluation is to assess the application of Regulation 883/2013 and whether there is a need to amend it. More particularly, the objectives of the evaluation are: the assessment of the key elements in the Regulation and the extent to which the objectives pursued have been met and remain relevant; and to assess the operation of the Regulation in the larger context of an evolving anti-fraud landscape.
(A.2) Justification
The evaluation is required by Article 19 of Regulation 883/2013, which provides that <i>"By 2 October 2017, the Commission shall submit to the European Parliament and the Council an evaluation report on the application of this Regulation. That report shall be accompanied by an opinion of the Supervisory Committee and shall state whether there is a need to amend this Regulation"</i> .

B. Content and subject of the evaluation
(B.1) Subject area
The Union and the Member States are required by the Treaty on the Functioning of the EU (TFEU, Article 325) to counter fraud and any other illegal activities affecting the financial interests of the Union. To this end, the European Parliament and the Council should adopt the necessary measures with a view to affording effective and equivalent protection of the EU's financial interests throughout the Union. In addition, the Commission – responsible for the implementation of the EU budget in accordance with Article 317 TFEU - should ensure that there is a framework in place to enable the effective prevention and detection of fraud.
To this end, the Commission established in 1999 the European Anti-fraud Office ¹ to, in particular, conduct investigations against fraud and any other illegal activity affecting the EU financial interests, as well as to assist Member States in the fight against fraud. The co-legislator regulated the conduct of investigations and the governance of OLAF in Regulation (EC) N° 1073/1999 and Regulation (Euratom) N 1074/1999. These regulations were replaced by Regulation 883/2013, which currently governs the exercise of OLAF's mandate, including the powers of investigation conferred on the Commission to fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Union.
(B.2) Original objectives of the intervention
In order to strengthen the protection of the European Union's financial interests and the procedural rights of persons concerned, the Commission proposed to revise the legal framework of OLAF's investigations, initially laid down in Regulations 1073 and 1074/1999 in the light, inter alia, of evaluations made by the Union institutions.

¹ Commission Decision 1999/352/EC, ECSC, Euratom

The revision of those previous instruments is the result of lengthy interinstitutional negotiations based on two successive proposals made by the Commission. A first proposal to reform OLAF was tabled by the Commission in 2004², with a view to introducing new rules of procedure, strengthening the flow of information between OLAF and the institutions and the control of the duration of investigations. A second proposal was tabled in 2006³, followed by a modified proposal in 2011, and provided the basis for the adoption of Regulation 883/2013.

According to the recitals of Regulation 883/2013, the objectives of the revision were: to improve the effectiveness, efficiency and accountability of OLAF while safeguarding its independence; to strengthen the procedural rights of persons subject to investigation; to strengthen cooperation with Member States, EU institutions and bodies and other partners; and to reinforce the governance of OLAF.

(B.3) How the objectives were to be achieved

Initial description of the intervention logic:

On the basis of Regulation 883/2013, OLAF conducts:

- external administrative investigations in Member States wherever the EU's financial interests are at stake, and in third countries and on the premises of international organisations in accordance with international agreements or other legal instruments in force;
- internal administrative investigations within the Union institutions, bodies, agencies and offices, concerning the protection of the Union's financial interests and serious matters relating to the discharge of professional duties;
- coordination of investigative activities by Member States' authorities and assistance to those authorities.

The Regulation confirms the investigative powers of OLAF, which include on-the-spot checks and inspections on the premises of economic operators and access to the premises of EU institutions, bodies, offices and agencies. On completion of an investigation, OLAF draws up a report concerning the matter investigated and the estimated financial impact of the facts established, and may adopt recommendations on whether or not action should be taken (disciplinary, administrative, financial and/or judicial) by the Union institutions and bodies, or by the competent authorities of the Member States. It is for the institution, body, office or agency concerned by an internal investigation to ensure an appropriate follow-up – in particular disciplinary or legal action - and report to OLAF. As regards external investigations, the competent authorities concerned shall inform OLAF, at its request, of any action taken. OLAF investigations do not affect the powers of the competent authorities of the Member States to initiate proceedings.

Regulation 883/2013, like the 1999 regulations, also contains provisions on the governance of OLAF, on inter-institutional issues, and on cooperation with its partners (EU institutions, bodies, offices and agencies, Member States, third countries, international organisations).

Regulation 883/2013, compared to the 1999 Regulations, focused on the effectiveness and efficiency of OLAF :

1) *Introducing criteria for the opening and conduct of OLAF's investigations*

- Principles of proportionality and subsidiarity and investigative priorities to start investigations
- The need for efficient use of the Office's resources
- Possibility for OLAF to adopt more comprehensive guidelines on investigation procedures
- Strengthened monitoring of the duration of investigations

2) *Strengthening the procedural guarantees of individuals subject to investigation*

- Procedural rights of the persons concerned by OLAF investigations, and rights of witnesses, enshrined in the Regulation
- Obligation to carry out internal legality checks on OLAF's investigative measures

3) *Improving cooperation with Member States*

- Member States to designate an anti-fraud coordination service (AFCOS) to facilitate cooperation and exchange of information
- Facilitating information exchange between OLAF and national competent authorities
- Possibility to establish administrative arrangements between OLAF and Member States'

² COM(2004) 103 and 104

³ COM(2006) 244 final

competent authorities

- Reporting by Member States of follow-up after an OLAF investigation
- OLAF to support joint anti-fraud actions undertaken by the Member States on a voluntary basis

4) *Strengthening cooperation with EU institutions, bodies, offices and agencies*

- Facilitating information exchange, between OLAF and the institution, body, office or agency concerned on investigations in progress in order to ensure the best possible protection of the EU's financial interests and to allow the adoption of precautionary administrative measures where necessary
- Review of administrative arrangements with Eurojust / Europol
- Clarification that access to information in databases held by EU institutions, bodies, offices and agencies is granted to OLAF at its request, in the selection phase prior to the opening of an investigation

5) *Strengthening cooperation with third countries and international organisations*

- Possibility for OLAF to conclude administrative arrangements with third country authorities and international organisations explicitly enshrined in the Regulation.

6) *Reinforcing the governance of OLAF*

- Clarification of the monitoring tasks of Supervisory Committee, which now explicitly include the duration of investigations and the respect of procedural rights
- New modalities of information to and consultation of the Supervisory Committee by OLAF
- Annual inter-institutional exchange of views

C. Scope of the evaluation

(C.1) Topics covered

The objective of the evaluation is twofold:

a) The assessment of the key elements in the Regulation (outlined above), and the extent to which the objectives pursued by Regulation 883/2013 have been met and remain relevant.

b) In addition, it appears necessary to assess the operation of Regulation 883/2013 in the larger context of an evolving anti-fraud landscape. A key issue in this regard is the impact on OLAF's investigative role of the proposed establishment of a European Public Prosecutor's Office (EPPO). On the basis of a new provision in the Lisbon Treaty (TFUE, Art. 86), on 17 July 2013 the Commission tabled a legislative proposal on the establishment of an EPPO⁴, which calls for an independent Union body for the investigation and prosecution in the Member States of offences affecting the Union's financial interests. The EPPO should operate as a single office consisting of a central level and decentralised level with European Delegated Prosecutors located in the Member States.

The establishment of the EPPO will call for a redefinition of OLAF's investigative role. This was already specifically acknowledged by Regulation 883/2013 (see recital 50: *"The Commission should assess the need for revision of this Regulation in the event that a European Public Prosecutor's Office is established"*). The legislative negotiations on the EPPO are quite advanced, and therefore it is appropriate to include in this evaluation the assessment of the impact of the EPPO to be established on the future of OLAF.

Following up to the commitment taken in its 2013 Communication on the governance of OLAF⁵, the Commission also proposed, already in June 2014, to establish a Controller of procedural guarantees⁶. Currently, negotiations are continuing on the proposed Regulation. The evaluation should therefore also cover the aspects dealt with in that proposal.

The time period covered by the evaluation will be 1 October 2013 (when Regulation 883/2013 entered into force) to 2016.

⁴ COM(2013) 534 final

⁵ COM(2013) 533 final

⁶ COM(2014) 340 final

(C.2) Issues to be examined

The evaluation exercise will focus on the application of Regulation 883/2013, and will be guided by the Commission's standard evaluation criteria of effectiveness, efficiency, coherence, and relevance.

The further criterion of EU added value is considered as addressed (and will not be covered by the evaluation), given that OLAF carries out a specifically European task - the protection of the EU's financial interests in the framework of 317 and 325 TFEU which cannot, in the same way, be carried out at national level. This is also acknowledged by the current work on the establishment of a European Public Prosecutor's Office.

At this stage, the evaluation is expected to examine issues related to the questions below. The questions will be further developed in the Terms of Reference, and may be further developed in line with the intervention logic during the inception phase with input from the external contractor.

Effectiveness:

How have the Regulation and, more specifically, its different elements contributed to the specific objectives of Regulation 883/2013 (in particular, reinforced procedural guarantees of persons concerned and better information and cooperation between OLAF and Institutions, bodies, agencies and other competent authorities) and to an improved protection of EU financial interests (recovery, prosecution, indictment and deterrence)?

Which are the external factors (in particular the follow-up responsibilities – once OLAF concludes an investigation - of Member States and other Commission services and EU institutions, bodies, offices and agencies) that have contributed to or influenced the achievement of the objectives of Regulation 883/2013, and how?

Can shortcomings be identified in the different elements of Regulation 883/2013 which negatively affect the achievements of its objectives?

Efficiency:

To what extent has the implementation of Regulation 883/2013 impacted on OLAF's resources and the use of those resources? Did OLAF use the possibility to open an investigation taking into account the need for efficient use of its resources or the subsidiarity principle?

Coherence:

Has the regulation achieved a proper balance between investigative powers and procedural rights?

To what extent has Regulation 883/2013 achieved a proper balance between independence, on the one hand, and cooperation, supervision and control, on the other?

To what extent does Regulation 883/2013 fit into the wider EU policies (and the various elements of these policies) for the protection of the EU's financial interests?

Relevance:

To what extent have the specific objectives of Regulation 883/2013 proven to be relevant for the overarching objective of protection the financial interests of the EU?

Outlook:

In the current institutional and legal framework, if shortcomings are identified in Regulation 883/2013 or its application, how could they be addressed?

To what extent should OLAF's mandate and powers be reviewed in the new institutional context emerging from the negotiation of the EPPO Regulation and the Directive on the protection of the EU's financial interests by means of criminal law ("PIF Directive")?

(C.3) Other tasks

This will be a mixed evaluation, supported by an external contractor.

The external contractor will in particular look at the functioning of the Regulation in the current legal environment (point a) in section C.1) . It will:

- Contribute to the evaluation design and methodology;
- Collect available evidence, conduct fact-finding, and assess and summarise the evidence base;
- Conduct stakeholder consultations, and analyse the results;
- Draw up evaluation conclusions (evaluation report).

Regarding point (b) in section C.1, the contractor's work is expected to provide relevant input for the analysis.

Nevertheless, due to the still evolving discussion on the set up of the planned European Public Prosecutor's Office at the level of the Council and the European Parliament, this issue will be covered in more detail in the Commission's own report.

To the extent that the evaluation conclusions point to the need to amend the Regulation, the evaluation will also support the evaluation aspects in the subsequent impact assessment.

D. Evidence base

(D.1) Evidence from monitoring

The following monitoring information is available:

- Member States reporting to the Commission on suspected and detected irregularities and fraud in the context of their reporting obligations in sectoral legislation in areas of shared management. On behalf of the Commission, OLAF manages the IMS (Irregularity Management System) in the expenditure area, and DG BUDG manages the OWNRES database in the revenue area.

- The Commission reports on the data above in the annual report on the "Protection of the European Union's financial interests — Fight against fraud" - http://ec.europa.eu/anti_fraud/about-us/reports/communities-reports/index_en.htm

- Concerning its investigative activity, when it itself conducts investigations into PIF cases, OLAF' reports statistical data in the annual OLAF Report - http://ec.europa.eu/anti_fraud/documents/reports-olaf

- OLAF Annual Management Plan and Annual Activity Report

- Information resulting from OLAF's internal information and Case Management System

Any information to the contractor from the mentioned databases will be provided in an aggregated and anonymous way and will be subject to confidentiality and data protection rules.

(D.2) Previous evaluations and other reports

This is the first evaluation of the operation of Regulation 883/2013. However, this Regulation replaces two earlier instruments (Regulations 1073/1999 and 1074/1999), which have been the subject of an evaluation by the Commission, and opinions from OLAF's Supervisory Committee and the European Court of Auditors. These documents – which underpin the objectives of Regulation 883/2013 – will all be taken into account for the evaluation.

Previous work which will feed into the evaluation includes in particular:

- European Commission, Evaluation of the Activities of the European Anti-Fraud Office (OLAF), COM (2003)154 final
- OLAF Supervisory Committee, Opinion No 2/03 accompanying the Commission's report, Evaluation of the activities of the European Anti-Fraud Office (OLAF)
- Court of Auditors, Special Report 1/2005 concerning the management of the European Anti-Fraud Office (OLAF)
- Court of Auditors, Opinion No 6/2005 on a proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) 1073/1999 and (Euratom) 1074/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)
- Court of Auditors, Opinion No 7/2006 on a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)
- European Commission, Reflection Paper on the reform of the European Anti-Fraud Office (OLAF), SEC(2010) 859
- Court of Auditors, Special Report No 2/2011, Follow-up of Special Report No 1/2005 concerning the management of the European Anti-Fraud Office (OLAF)
- Court of Auditors, Opinion No 6/2011 on the 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 Regulation (Euratom) No 1074/1999

- Analysis of impacts that accompanies the legislative proposal for the establishment of a Controller of procedural guarantees⁷.

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

Further evidence will result from the following sources:

- Reports and opinions from the Supervisory Committee which address issues related to the implementation of Regulation 883/2013 by OLAF - http://ec.europa.eu/anti_fraud/about-us/reports/supervisory_reports/index_en.htm

- Aggregated and anonymous information on complaints concerning OLAF investigations, subject to data protection and confidentiality rules.

(D.4) Consultation in the context of the evaluation study

The external contractor will conduct interviews of relevant OLAF staff (including management and staff in investigative, support and policy units). In particular, OLAF's operational units rely on Regulation 883/2013 in their investigative work for the protection of the Union's financial interests, and will therefore be a main source of information regarding the evaluation of the Regulation.

The external contractor will be asked to carry out targeted consultations of, in particular, the following interested parties and stakeholders:

- Commission services
- EU institutions
- EU bodies, offices and agencies;
- OLAF's Supervisory Committee;
- Member States (the relevant administrations and bodies will be mapped with support of an external contractor and the network of AFCOS);
- Third countries and international organisations with experience working with OLAF in the framework of Regulation 883/2013;
- Prosecutors' and defence lawyers' associations;
- Academia (fraud and criminal law associations).

The list of stakeholders will be further refined through stakeholder mapping with the support of an external contractor.

Stakeholder engagement will take place during 2016 through questionnaires, interviews, workshops, and dedicated meetings of relevant networks. Stakeholders will be consulted on their experience with the application of Regulation 883/2013, including on the way they use OLAF's investigative results, and consultations will be adapted to different stakeholders to reflect the elements of the Regulation that specifically concern them. The consultation will aim, on the one hand, at collecting data to be used as evidence base for the evaluation and, on the other hand, to gather stakeholders' views on the evaluation questions and the possible need to amend the Regulation. It is expected that these consultations will provide an opportunity to obtain quantitative and qualitative data from across the EU on the application of Regulation 883/2013. Stakeholders will also be consulted on how they see OLAF's role in the future anti-fraud landscape with a European Public Prosecutor's Office.

(D.5) Further evidence to be gathered

E. Other relevant information/ remarks

⁷ SWD(2014) 183 final