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THE EUROPEAN UNION**

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ADDENDUM TO "I" ITEM NOTE

from : Working Party on Combating Fraud

to : Permanent Representatives Committee

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COM(2011) 135 final + SEC(2011) 343 final

Subject : 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

OUTCOME OF PROCEEDINGS

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**

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,

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 Auditors¹,

Having regard to the opinion of the European Data Protection Supervisor²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

[...]³

HAVE ADOPTED THIS REGULATION:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ The Recitals included in the Commission proposal have not been examined yet.

Article 1

Regulation (EC) 1073/1999 is amended as follows¹:

"Article 1

Objectives and tasks

1. In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Union and of the European Atomic Energy Community (hereinafter "the Union" when the context so requires), the European Anti-Fraud Office established by Commission Decision 1999/352/EC, ECSC, Euratom (hereinafter "the Office") shall exercise the powers of investigation conferred on the Commission by:
 - (a) the Union rules and Regulations in force in those areas and
 - (b) the cooperation and mutual assistance agreements concluded by the Union with third countries and international organisations in those areas.
2. The Office shall assist the Member States in organising close and regular cooperation between their competent authorities in order to coordinate their activities for the purpose of protecting the Union's financial interests against fraud. The Office shall contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the Union. The Office shall promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field of the protection of financial interests of the Union, as well as support joint anti-fraud actions undertaken by Member States on a voluntary basis.

¹ The present text is based on a consolidated version of the Commission proposal, COM(2011) 135 final, prepared for the purposes of the examination by the Working Party.

3. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties (hereinafter "the institutions, bodies, offices and agencies"), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end it shall investigate serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or members of the staff of institutions, bodies, offices or agencies not subject to the Staff Regulations of officials and the Conditions of employment of other servants of the European Union ("the members or staff members").
4. For the application of this Regulation, competent authorities of the Member States, institutions, bodies, offices or agencies may establish non-legally binding administrative arrangements with the Office. These administrative arrangements may notably concern the transmission of information and the conduct of investigations.

Article 2

Definitions

Within the meaning of this Regulation:

- "administrative investigations" (hereinafter "investigations") shall mean all inspections, checks and other measures undertaken by the Office in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation. These investigations shall not affect the powers of the Member States' competent authorities to bring criminal proceedings;

- "person concerned" shall mean a natural or legal person, or any other entity without legal personality, suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and which is therefore subject to investigation by the Office;
- "economic operator involved indirectly" shall refer to any natural or legal person or any other entity without legal personality taking part in public works, supply or service contracts in favour of beneficiaries of Union funding as set out in Directive 2004/18/EC, as well as to suppliers, customers, subcontractors, carriers, customs and/or forwarding agents, insurers, processors and warehouse proprietors or tenants, having a commercial relationship with any person concerned;
- "Staff Regulations" shall mean the Staff Regulations of Officials and Conditions of Employment of other Servants of the European Union¹.

Article 3

External investigations

1. The Office shall exercise the power conferred on the Commission by Regulation (Euratom, EC) No 2185/96 to carry out on-the-spot inspections and checks in the Member States and, in accordance with the cooperation agreements in force, in third countries and on the premises of international organisations.

As part of its investigative function, the Office shall carry out the inspections and checks provided for in Article 9(1) of Regulation (EC, Euratom) No 2988/95² and in the sectoral rules referred to in Article 9(2) of that Regulation in the Member States and, in accordance with the cooperation agreements in force, in third countries and on the premises of international organisations.

¹ OJ L56, 4.3.1968.

² OJ L 312, 23.12.1995, p.1-4.

2. With a view to establishing that there has been fraud, corruption or any other illegal activity referred to in Article 1 in connection with a grant agreement or decision or a contract concerning Union funding, the Office may, in accordance with the procedures laid down by Regulation (Euratom, EC) No 2185/96, conduct on-the-spot checks and inspections on persons concerned or economic operators involved indirectly in such funding in order to obtain access to information relevant to the matter under investigation or request from them such information in writing.
3. During on-the-spot checks and inspections, the Office's staff shall act, subject to the EU law applicable, in compliance with the rules and practices of the Member State concerned, and the procedural guarantees provided in this Regulation.

At the Office's request, the competent authority of the Member State concerned shall provide the Office's staff with the assistance needed in order to carry out their task, as specified in the written authorisation referred to in Article 6(2). If this assistance requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for.

The Member State concerned must ensure that the Office's staff are allowed access, under the same terms and conditions as its competent authorities and in compliance with its national law, to all information and documents relating to the matter under investigation which prove necessary for the on-the-spot checks and inspections to be carried out effectively and efficiently.

4. Member States shall, for the purposes of this Regulation, designate a service (hereinafter "the anti-fraud coordination service") to facilitate an effective cooperation and information exchange with the Office. Where appropriate, in accordance with national law, the anti-fraud coordination service may be regarded as "a competent authority" within the meaning of this Regulation.

5. During an external investigation, the Office may have access to any relevant information, held by the institutions, bodies, offices and agencies, connected with the matter under investigation, where necessary in order to establish that fraud, corruption or any other illegal activity affecting the financial interests of the Union has occurred. Article 4(2) and (4) shall apply for that purpose.

6. Where the Office has to handle, prior to an external investigation, information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, the Office may inform the competent authorities of the Member States concerned and, where necessary, the competent Commission services. Without prejudice to the sectoral rules referred to in Article 9(2) of Regulation (EC, Euratom) No 2988/95, the competent authorities shall ensure that appropriate action is taken and, where necessary, undertake investigations, in which the Office may take part, in compliance with national law. Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of such information, in compliance with Article 8.

Article 4

Internal investigations

1. In the areas referred to in Article 1, the Office shall carry out administrative investigations within the institutions, bodies, offices and agencies (hereinafter "internal investigations").

These internal investigations shall be conducted under the conditions provided for in this Regulation and in decisions adopted by each institution, body, office and agency.

2. Provided that the provisions referred to in paragraph 1 are complied with:
 - the Office shall have the right of immediate and unannounced access to any information held by the institutions, bodies, offices and agencies, and to their premises. The Office shall be empowered to inspect the accounts of the institutions, bodies, offices and agencies. The Office may take a copy of and obtain extracts from any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearing,
 - the Office may request oral and written information from members of the institutions and bodies, from managers of offices and agencies and from the staff of the institutions, bodies, offices and agencies.
3. In accordance with the procedures laid down by Regulation (Euratom, EC) No 2185/96, the Office may carry out on-the-spot checks and inspections at the commercial or professional premises of persons concerned or economic operators involved indirectly in order to obtain access to information relevant to the matter under internal investigation or request from them such information in writing.
4. The institutions, bodies, offices and agencies shall be informed whenever employees of the Office conduct an investigation on their premises or consult a document or requests information held by them. Without prejudice to Articles 8 and 9 of this Regulation, the Office may at any time forward to the institution, body, office or agency concerned the information obtained in the course of internal investigations.
5. The institutions, bodies, offices and agencies shall put in place appropriate procedures and take necessary measures to guarantee the confidentiality of the investigations.

6. Where investigations reveal that a member or staff member may be concerned by an internal investigation, the institution, body, office or agency to which he belongs shall be informed.

In exceptional cases where the confidentiality of the investigation cannot be guaranteed, the Office shall use appropriate alternative channels for transmitting information.

7. The decision to be adopted by each institution, body, office or agency as provided for in paragraph 1, shall in particular include a duty on the part of the members or staff members of the institutions, bodies, offices and agencies, to cooperate with and supply information to the Office, while guaranteeing the confidentiality of the investigation.

Article 5

Opening of investigations

1. The Office may open an investigation when sufficient suspicions, which may also be based on anonymous information, exist that acts of fraud or corruption or other illegal acts affecting the financial interests of the Union have been committed. The decision whether or not to open an investigation shall take account of the investigation policy priorities and the Office's annual management plan determined in accordance with Article 12(4). That decision shall also take account of the need for efficient utilisation of the Office's resources and for proportionality in the means deployed.

With regard to internal investigations, specific account shall be taken of the institution, body, office or agency best placed to conduct them, based, in particular, on: the nature of the facts, the actual or potential financial impact of the case, and the perspective of any judicial follow-up.

2. The decision whether or not to open an investigation shall be taken by the Director-General.

The decision to open an external investigation shall be taken by the Director-General, acting on his own initiative or following a request from a Member State concerned or one of the institutions, bodies, offices or agencies of the Union.

The decision to open an internal investigation shall be taken by the Director-General, acting on his own initiative or following a request from the institution, body, office or agency within which the investigation is to be conducted.

3. While the Office is conducting an internal investigation, the institutions, bodies, offices or agencies concerned shall not open a parallel investigation into the same facts. That shall not prevent institutions, bodies, offices or agencies concerned to open a disciplinary investigation on the same facts after the closure of the investigation conducted by the Office.
4. Within two months of receipt by the Office of a request as referred to in paragraph 2, a decision on whether or not to open an investigation at this point in time shall be taken. It shall be communicated without delay to the Member State, institution, body, office or agency which made the request. Reasons shall be given for a decision not to open an investigation. At the expiry of the time limit of two months, the silence of the Office on the opening of an investigation shall be deemed to represent a decision not to open an investigation.

Where a member or staff member of an institution, body, office or agency, acting in accordance with Article 22a of the Staff Regulations, provides information to the Office relating to a suspected fraud or irregularity, the Office shall inform him of the decision whether or not to open an investigation into the facts in question.

5. If the Office decides not to open an internal investigation, it shall without delay send the information available to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules that are applicable to it. In appropriate cases the Office shall agree with that institution, body, office or agency on suitable measures to protect the confidentiality of the source of that information and shall ask, if necessary, to be informed of the action taken.

Article 6

Investigations procedure

1. The Director-General shall direct the conduct of investigations. He may issue written instructions to individual members of the staff of the Office to direct the conduct of investigations. Investigations shall be conducted under his direction by staff nominated by him.
2. The Office's staff shall carry out their tasks on production of a written authorisation showing their identity and their capacity. That authorisation shall be issued by the Director-General indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the investigative powers stemming from those bases.
3. The Member States' competent authorities shall, in conformity with national provisions, give the necessary support to enable the Office's staff to fulfil their tasks. The institutions, bodies, offices and agencies shall ensure that their members and staff members provide the necessary assistance to enable the Office's staff to fulfil their tasks.
4. Investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case.

5. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall, without delay, inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:
- (a) the identity of the member(s) or staff member(s) concerned and a summary of the facts in question;
 - (b) any information that may assist the institution, body, office or agency in deciding whether it is appropriate to take precautionary administrative measures in order to protect the financial interests of the Union;
 - (c) any special measures of confidentiality recommended in particular in cases entailing the use of investigative measures falling under the competence of a national judicial authority or, in the case of an external investigation, under the competence of a national authority, in accordance with the national provisions applicable to investigations.

The institution, body, office or agency concerned may take at any moment any appropriate precautionary administrative measures, and shall inform the Office without delay of the decision to take such measures.

6. Where it is found that an investigation cannot be closed within 12 months after it has been opened, the Office shall, at intervals of 6 months, inform the Supervisory Committee of the reasons and of the remedial measures envisaged with the objective to speed up the investigation.

Article 7
Duty to inform the Office

1. The institutions, bodies, offices and agencies shall forward to the Office without delay any information relating to possible cases of fraud or corruption or any other illegal activity affecting the financial interests of the Union.
2. The institutions, bodies, offices and agencies and, in so far as their national law allows, the Member States' competent authorities shall, at the request of the Office or on their own initiative, forward any document or information they hold which relates to an ongoing investigation of the Office.
3. The institutions, bodies, offices and agencies, and, in so far as their national law allows, the Member States' competent authorities shall also send the Office any other document or information considered pertinent, which they hold relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

Article 7a
Procedural guarantees

1. In its investigation the Office shall seek evidence for and against the person concerned. Investigations shall be conducted objectively and impartially and in accordance with the principle of the presumption of innocence and the procedural guarantees set out in this article.

2. The invitation to an interview, whether with a witness or with a person concerned, must be sent with ten working days' notice. The period of notice may be shortened with the express consent of the person to be interviewed or for duly motivated reasons of the urgency of the investigation. In the latter case it shall not be inferior to 24 hours. The invitation shall include a list of the rights of the person to be interviewed, notably the right of the person concerned to be assisted by the person of his choice. These notices do not apply to the taking of statements in the context of on-the-spot checks and inspections.

The Office shall draw up a record of the interview and shall give the person interviewed access to it so that he may either approve the record or add observations. A copy of the records of the interview shall be given to the person concerned.

When, in the course of the interview, evidence emerges that the person interviewed may be concerned by the investigation, the procedural rules provided for in paragraphs 3 and 4 shall apply at once. That person shall be immediately informed of his rights as "person concerned" and receive, upon request, a copy of the records of his past statements.

3. As soon as an investigation reveals that a member or staff member of an institution, body, office or agency may be concerned, that member or staff member shall be informed, provided that this does not jeopardise the conduct of the investigation or investigative proceedings falling within the remit of a national judicial authority.
4. Without prejudice to Articles 4(6) and 6(5) conclusions referring by name to a person concerned may not be drawn once the investigation has been completed without that person concerned being given the opportunity to comment on facts concerning him in writing or at an interview with staff designated by the Office, and being provided with the information required by Articles 11 and 12 of Regulation 45/2001. The final case report shall make reference to those comments. The person concerned must be given a summary of such matters in the invitation to comment and shall submit his comments within the time limits indicated by the Office in accordance with paragraph 2.

In duly justified cases where it is necessary to preserve the confidentiality of the investigation and entailing the use of investigative proceedings falling within the remit of a national judicial authority, the Director-General may decide to defer the fulfilment of the obligation to ask the person concerned to make his views known. In case of an internal investigation, the Director-General shall take the decision in agreement with the institution, body, office or agency to which the person concerned belongs. Failure of the institution, body, office or agency to reply within one month shall be deemed as agreement.

- 4a. Any person interviewed, including the person concerned, is entitled to use the official Union language of his choice; however, officials or other servants of the Union may be required to use an official Union language of which they have a thorough knowledge. Any person interviewed, including the person concerned, shall be entitled to avoid self-incrimination.
5. The rules of this Regulation shall apply without prejudice to¹:
 - (a) The Protocol on the Privileges and Immunities of the European Union;
 - (b) The specific Statute for the Members of the Union institutions;
 - (c) The Staff Regulations;
 - (d) Regulation (EC) 45/2001.

¹ Recital 27 of the Commission proposal shall be modified in order to refer to the Charter of Fundamental Rights of the European Union in its entirety.

Article 7b
Review procedure

1. The Director-General shall put in place, within the Office, a review procedure.
2. The persons entrusted by the Director-General with the review procedure shall not take instructions from anyone in the performance of their duties.

If the persons entrusted with the review procedure consider that a measure taken by the Director-General calls their independence into question, they shall immediately inform the Supervisory Committee.

The Supervisory Committee shall be consulted before any disciplinary proceedings concerning the persons entrusted with the review procedure are initiated in accordance with provisions of the Staff Regulations.

3. A member, staff member or a person concerned by an investigation may ask the persons entrusted with the review procedure to give an opinion regarding the procedural guarantees provided for in Article 6(4) and Article 7a. The request may be filed during the investigation or at the latest one month after the member, staff member or person concerned having been informed that the investigation has been closed.

As soon as possible but at the latest within one month after the receipt of the request, the persons entrusted with the review procedure shall communicate their opinion to the Director-General and shall send a reasoned reply to the person concerned. The Director-General shall take the appropriate measures.

4. Submission of a request under paragraph 3 does not suspend the investigation.

5. The persons entrusted with the review procedure shall report regularly to the Supervisory Committee on their activities; they shall present it, with regular statistical and analytical reports on questions related to the procedural guarantees. These reports may not refer to individual cases under investigation.

Article 8

Confidentiality and data protection

1. Information obtained in the course of external investigations, in whatever form, shall be protected by the relevant provisions.
2. Information forwarded or obtained in the course of internal investigations, in whatever form, shall be subject to professional secrecy and shall enjoy the protection given by the provisions applicable to the institutions of the Union.
3. The institutions, bodies, offices or agencies concerned shall ensure that the confidentiality of the investigations conducted by the Office is respected, together with the legitimate rights of the persons concerned, and, where judicial proceedings have been instituted, that all national provisions applicable to such proceedings have been adhered to.
4. The Office shall process only such personal data as necessary to fulfil its tasks under this Regulation. Such processing of personal data shall be done in conformity with Regulation (EC) No 45/2001. Such information may not be communicated to persons other than those within the institutions of the Union or in the Member States whose functions require them to know, nor may it be used for purposes other than to prevent fraud, corruption or any other illegal activity.

The Office shall appoint a Data Protection Officer in accordance with Article 24 of Regulation (EC) No 45/2001.

5. The Director-General shall ensure that any information to the public is given neutrally, impartially and in accordance with the principles set out in this article and in Article 7a.

Article 9

Investigation report and action taken following investigations

1. On completion of an investigation by the Office, a report shall be drawn up, under the authority of the Director-General, which shall give an account of the legal basis for the investigation, the procedural steps followed, the facts established and their preliminary legal qualification, the respect of the procedural guarantees in accordance with Article 7a, the impact on the financial interests of the Union, if any, and the conclusions of the investigation, including recommendations on follow up action that should be taken.
2. In drawing up such reports, account shall be taken of the national law of the Member State concerned. Reports drawn up on that basis shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports.
3. Reports drawn up following an external investigation and any useful related documents shall be sent to the competent authorities of the Member States concerned in accordance with the rules relating to external investigations and, if necessary, to the competent Commission services.

4. Reports drawn up following an internal investigation and any useful related documents shall be sent to the institution, body, office or agency concerned. The institution, body, office or agency shall take such action, in particular disciplinary or legal, on the internal investigations, as the results of those investigations warrant, and shall report thereon to the Office, within a deadline laid down in the recommendations of the report.
 - 4a. On request of the Office, the competent authorities of the relevant Member States shall in due time send to the Office information on action taken following transmission by the Office of its investigation reports according to paragraph 3 and information transmitted by the Office according to paragraph 4.
5. Where the report drawn up after an internal investigation reveals the existence of facts which could give rise to criminal proceedings, this information shall be transmitted to the judicial authorities of the Member State concerned unless, in the light of the nature of the facts and the limited scale of the financial impact¹, appropriate internal administrative measures are available, and in particular disciplinary and financial sanctions.
6. Without prejudice to paragraph 4, if, on completion of an investigation, no evidence has been found against the person concerned, the investigation into that person shall be closed by the Director-General, who shall, within ten working days, inform the person concerned.
7. An informer who has provided the Office with information relating to suspected fraud or irregularity may, if he so requests, be informed by the Office that an investigation has been closed. The Office may, however, refuse the request when it considers that it is such as to prejudice the legitimate interests of the person concerned, the effectiveness of the investigation and the action to be taken subsequent thereto or any confidentiality requirements.

¹ A Recital shall mention an indicative minimum threshold, which could be set at EUR 5 000.

Article 10

Exchange of information between the Office and the Member States' competent authorities

1. Without prejudice to Articles 8 and 9 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may at any time forward to the competent authorities of the Member States concerned information obtained in the course of external investigations in due time in order to enable them to take appropriate action, in accordance with their national law.

2. Without prejudice to Articles 8, 9 and 11 of this Regulation, the Director-General shall, in the course of internal investigations, forward to the judicial authorities of the Member State concerned information obtained by the Office concerning facts which fall within the jurisdiction of a national judicial authority. This transmission of information is without prejudice to the subsequent appreciation by the national judicial authority as to whether investigative proceedings are required.

However, in accordance with Article 4 and without prejudice of Article 8, he shall also inform the institution, body, office or agency concerned. The information forwarded shall include the identity of the person concerned, a summary of the facts established, a preliminary legal evaluation and an estimate of any financial impact.

Article 7a(4) shall apply.

3. The competent authorities of the Member State concerned shall, without prejudice to their national law, inform the Office in due time, on their own initiative or upon the Office's request, of the action taken on the basis of the information forwarded to them under this Article.

4. The Office may provide evidence in proceedings before national courts in conformity with national law and the Staff Regulations.

Article 10a

Cooperation of the Office with Eurojust, Europol and international organisations

1. Within its mandate to protect the financial interests of the Union, the Office shall cooperate, as appropriate, with Eurojust and with the European Police Office (Europol). When necessary to facilitate this cooperation, the Office shall agree with Eurojust and Europol on legally non-binding administrative arrangements. Such working arrangements may concern exchange of operational, strategic or technical information, including personal data and classified information.

Where applicable, the exchange of personal data between the Office, Europol and Eurojust shall be limited to and shall not exceed what is necessary to fulfill their mandates.

Where this may support and strengthen coordination and cooperation between national investigating and prosecuting authorities, or when the Office has forwarded to the competent authorities in the Member States information giving grounds for suspecting the existence of fraud, corruption and any other illegal activity referred to in Article 1 in the form of serious crime, it shall transmit relevant information to Eurojust, within the mandate of Eurojust.

2. Within the same mandate, the Office may also agree, as appropriate, on legally non-binding administrative arrangements with competent authorities in third countries and international organisations. Before concluding these arrangements, the Office shall coordinate with the Commission services concerned and the European External Action Service.

Such arrangements may concern exchange of operational, strategic or technical information. To the extent that their application entails the transfer of personal data from the Office to other entities, any such transfer shall take place according to the conditions laid down in Article 9 of Regulation (EC) 45/2001.

3. The relevant Member States' competent authorities shall be informed by the Office before information provided by them is to be transmitted by the Office to Eurojust, Europol, competent authorities in third countries or international organisations.

The Office shall keep a record of all transmissions of personal data, including the grounds for such transmissions.

Article 11

Supervisory Committee

1. The Supervisory Committee shall reinforce the Office's independence by regular monitoring of the implementation of the investigative function.

The Supervisory Committee shall in particular:

- (a) monitor the functioning of information exchange between the Office and the institutions, bodies, offices and agencies¹;
- (b) monitor developments concerning the application of procedural guarantees and the duration of investigations in the light of the information supplied by the Director-General and the opinions and analysis reports regularly drawn up by the person(s) entrusted with the review procedure.

¹ A Recital will indicate that this monitoring shall address the functioning of the information exchange and shall not concern its content. The same Recital will also indicate that the functioning of the information exchange between the Office and the Member States' competent authorities may also be addressed when necessary, in exceptional situations.

The Supervisory Committee shall address opinions to the Director-General. These opinions may be delivered on its own initiative. They shall also be delivered at the request of the Director-General or at the request of an institution, body, office or agency, without however interfering with the conduct of investigations in progress.

The institutions, bodies, offices or agencies shall be provided with a copy of such opinions.

The Supervisory Committee may ask the Office for additional information on investigations in duly justified situations, without however interfering with the conduct of investigations.

2. The Supervisory Committee shall be composed of five independent members having experience in senior judicial or investigative functions or comparable functions relating to the Office's areas of activity. They shall be appointed by common accord of the European Parliament, the Council and the Commission.

The decision of appointment of the members of the Supervisory Committee may also provide for a list of potential members who shall be appointed should any of the members referred to in that decision die, become permanently incapacitated or resign.

3. The term of office of members shall be five years and shall not be renewable. Every 30 months there shall be a partial replacement. Three and two members shall be replaced alternatively.
4. On expiry of their term of office, members shall remain in office until they are replaced.
- 4a. Members of the Supervisory Committee shall be reimbursed for expenses they may incur in the course of their duties, and shall receive a daily payment for each day spent on those duties. The amount of that payment and the procedure for reimbursement shall be determined by the Commission.

- 4b. If a member of the Supervisory Committee no longer fulfils the conditions required for the performance of his duties or if he has been found guilty of serious misconduct, the Court of Justice may, on common application by the European Parliament, the Council and the Commission, impose his compulsor resignation.
5. In carrying out their duties, they shall neither seek nor take instructions from any government or any institution, body, office or agency.
6. The Supervisory Committee shall appoint its chair. It shall adopt its own rules of procedure, which shall, before adoption, be submitted to the European Data Protection Supervisor, the European Parliament, the Council and the Commission for information. Meetings of the Supervisory Committee shall be convened on the initiative of its chair or the Director-General. It shall hold at least 10 meetings per year. The Supervisory Committee shall take its decisions by a majority of its component members. Its secretariat shall be provided by the Office.
7. The Director-General shall forward to the Supervisory Committee each year the Office's annual management plan. He shall keep the Supervisory Committee periodically informed of the Office's activities, the implementation of its investigative function and the action taken by way of follow-up to investigations.

The Director-General shall inform the Supervisory Committee periodically:

- (a) of cases in which the institution, body, agency or office concerned has not followed the recommendations made by the Office;

(b) of cases in which information has been forwarded to the judicial authorities of the Member States and of cases in which he decided not to transmit information on internal investigations to the national judicial authorities concerned in accordance with Article 9(5)¹;

(c) on the duration of investigations in accordance with Article 6(6).

8. The Supervisory Committee shall adopt at least one report on its activities per year, covering in particular the assessment of the Office's independence, the application of procedural guarantees and the duration of investigations. These reports shall be sent to the European Parliament, the Council, the Commission and the Court of Auditors.

The Committee may submit reports to the European Parliament, the Council, the Commission and the Court of Auditors on the results of the Office's investigations and the action taken thereon.

Article 11a

Exchange of views with the institutions

1. The European Parliament, the Council and the Commission shall meet periodically the Office or the Supervisory Committee for an exchange of views at political level to discuss the Office's policy of investigations. The Director-General and the chair of the Supervisory Committee shall participate in the exchange of views. Members of Europol, Eurojust or the Court of Auditors may be invited to attend on an ad-hoc basis upon request of one of the above-mentioned institutions, the Office or the Supervisory Committee.

¹ A Recital shall indicate that the Director-General shall complete this information by providing the total number of cases dealt with by the same Member States' judicial authorities.

2. The exchange of views may relate to:
 - (a) the strategic priorities for the Office's investigative policies;
 - (b) the activity reports and the opinions of the Supervisory Committee provided by Article 11(1);
 - (c) the reports under Article 12(3) Subparagraph 2 of the Director-General;
 - (d) the relations between the Office and the institutions, bodies, offices and agencies;
 - (e) the relations between the Office and the of the Member States' competent authorities;
 - (f) the effectiveness of the work of the Office with regard to investigations and that of the Supervisory Committee.
3. All participating institutions shall ensure that the exchange of views does not interfere with the conduct of investigations in progress.
4. The Office shall take action, as appropriate, taking into account the opinions expressed in the exchange of views and shall provide information on the actions taken in the reports referred to in the second subparagraph of Article 12(3).

Article 12
Director-General

1. The Office shall be headed by a Director-General. The Director-General shall be appointed by the Commission, in accordance with the procedure specified in paragraph 2. The term of office of the Director-General shall be seven years and shall not be renewable.

2. In order to appoint a new Director-General, the Commission shall publish a call for applications in the Official Journal of the European Union. This publication shall take place at the latest six months before the end of the mandate of the Director-General in office. After a favourable opinion has been given by the Supervisory Committee on the selection procedure carried out by the Commission, the Commission shall draw up a list of suitably qualified candidates. After consultations with the European Parliament and the Council, the Commission shall appoint the Director-General.

3. The Director-General shall neither seek nor take instructions from any government or any institution, body, office or agency in the performance of his duties with regard to the opening and carrying out of external and internal investigations or to the drafting of reports following such investigations. If the Director-General considers that a measure taken by the Commission calls his independence into question, he shall immediately inform the Supervisory Committee, and decide whether to bring an action against the Commission before the Court of Justice.

The Director-General shall report regularly to the European Parliament, the Council, the Commission and the Court of Auditors on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and, where appropriate, national provisions applicable to judicial proceedings.

4. The Director-General shall each year determine, within the context of the annual management plan, the investigation policy priorities of the Office.
5. The Director-General may delegate the exercise of certain of his functions under Articles 5 and 6(1) to one or more members of the staff of the Office by a written document specifying the conditions and limits governing the delegation.
6. The Director-General shall adopt a manual of procedures, after consultation of the Supervisory Committee, the Office's Data Protection Officer, and the person or persons entrusted with the review procedure in accordance with Article 7b. This manual shall provide guidelines on the practical application of the administrative investigations by the Office, as well as instructions on the handling of data protection, in conformity with Regulation (EC) 45/2001. This manual shall be published in the Office's website.
7. If the Director-General no longer fulfils the conditions required for the performance of his duties or if he has been found guilty of serious misconduct, the Commission shall take the necessary action in accordance with the Staff Regulations. Before imposing any disciplinary penalty against the Director-General, the Commission shall consult the Supervisory Committee.

Disciplinary penalties against the Director-General shall be the subject of reasoned decisions, which shall be forwarded for information to the European Parliament, to the Council and to the Supervisory Committee.

8. Any reference to the "Director" of the Office in the Staff Regulations, the Financial Regulation¹ and in any other legal text should be read as a reference to the Director-General.

¹ OJ L 248, 16.9.2002, p. 1-48.

Article 12a
Deputising director(s)

The Commission rules on deputising shall apply.

By derogation, the Director-General, after consultation of the Supervisory Committee may designate one or two of his Directors as deputising Director(s). If none of the deputising Directors is available, the Commission rules on deputising shall apply again.

Article 13
Financing

The appropriations for the Office, the total amount of which shall be entered under a specific budget line within the section of the general budget of the Union relating to the Commission, shall be set out in detail in an Annex to that section.

The establishment plan of the Office shall be annexed to the Commission's establishment plan.

Article 14
Evaluation report

At the latest on [*date of entry into force of this Regulation + 4 years*], the Commission shall transmit to the European Parliament and the Council a report on the application of this Regulation, together with an opinion by the Supervisory Committee. The report shall state whether there is a need to amend this Regulation."

Article 2

Regulation (Euratom) No 1074/1999 is repealed. Regulation (EC) 1073/1999, as modified by the present Regulation, shall apply to the European Atomic Energy Community.

Article 3

1. This Regulation shall enter into force on *[the 1st day of the month following its publication in the Official Journal of the European Union]*.
2. Article 11 (3) of Regulation (EC) 1073/1999 as amended by this Regulation shall apply to the duration of the term of office of the members of the Supervisory Committee in office when this Regulation enters into force. Immediately after the entering into force of this Regulation, the President of the European Parliament shall choose by lot two members whose duties are to end, by way of derogation from the first sentence of Paragraph 3 of Article 11 of Regulation (EC) 1073/1999 as amended by this Regulation, upon expiry of the first 30 months of their term of office.
3. The third sentence of the first paragraph of Article 12 of Regulation (EC) 1073/1999 as amended by this Regulation shall apply to the mandate of the Director-General in office when this Regulation enters into force.
4. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President