



Decision No 14-2024 on cooperation of the European Court of Auditors (“ECA”) with the European Anti-Fraud Office (“OLAF”) and with the European Public Prosecutor’s Office (“EPPO”) concerning cases of suspected illegal activities identified by the ECA during its audit work or provided to it as unsolicited denunciations from third parties

THE EUROPEAN COURT OF AUDITORS

HAVING REGARD TO the Treaty of the European Union, and in particular Article 4 (3) thereof and to the Treaty on the Functioning of the European Union, and in particular Articles 86, 287 and 325 thereof;

WHEREAS by its Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 the Commission established the European Anti-Fraud Office (“OLAF”);

WHEREAS OLAF's responsibilities are set out in greater detail in Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, as amended by Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 (hereafter “the OLAF Regulation”);

WHEREAS 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”) set up the EPPO;

WHEREAS the EPPO’s competences are set out in the EPPO Regulation and in Directive (EU) 2017/1371 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;

WHEREAS 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, the Court of Auditors established a close cooperation with OLAF and the EPPO in Administrative/Working Arrangements of 22 May 2019 and of 3 September 2021 respectively;

HAS DECIDED:

Article 1

This decision applies to the treatment by the ECA of:

1. any case of suspicion of fraud, corruption or other illegal activity affecting the financial interests of the Union, identified by the ECA during its audit work, in respect of which OLAF could exercise its competence in accordance with the OLAF Regulation;
2. any case of suspicion of criminal offences affecting the financial interests of the Union, identified by the ECA during its audit work, in respect of which the EPPO could exercise its competence in accordance with the EPPO Regulation;
3. any unsolicited information received by the ECA from third parties indicating the possibility of illegal activities/criminal offences affecting the financial interests of the Union; and
4. any requests made by OLAF or the EPPO relating to the ECA's audit work, not linked to points 1 to 3 above.

This decision applies without prejudice to the provisions of Articles 22a and 22b of the Staff Regulations.

Article 2

For each case to be shared with OLAF, the President sends details to the Director-General of OLAF, requesting that OLAF:

- o acknowledges receipt of the information;
- o informs the ECA when it decides to open an investigation, or comes to the decision not to investigate including the underlying reasons; and
- o informs the ECA of any subsequent change in the investigative status of the case.

When the case of suspected fraud sent to OLAF arises from the ECA's audit work and concerns an activity in a Member State, the President shall inform the ECA's Member of that Member State.

Article 3

For each case to be shared with the EPPO, the President sends details to the EPPO's Head of Operations, using the "European Crime Report" template established by the EPPO. All cases shall be transferred to the EPPO through the EPPO's Case Management System.

Article 4

When the information communicated to OLAF/the EPPO has been provided by an informant who has requested that his/her identity not be disclosed, the ECA shall inform OLAF/the EPPO thereof. If OLAF/the EPPO asks the ECA to identify the person who provided the information, the ECA will consult the informant before taking a decision.

For cases of suspected illegal activities/criminal offences identified during the ECA's audit work, the ECA shall not inform the EU institution, agency or other body concerned that it has transmitted the case to OLAF/the EPPO, unless OLAF/the EPPO have been consulted on

whether the institution, agency or other body concerned can be informed. However, the ECA shall communicate the resulting errors (without reference to any suspicion) to the auditee following its standard audit approach, along with its other findings.

Article 5

When OLAF or the EPPO require additional information on individual cases transmitted by the ECA, their request shall be forwarded to the contact person at operational (auditor) level, who will collect the relevant information available at the ECA to be transmitted to OLAF/the EPPO.

When OLAF or the EPPO address the ECA with a reasoned request for information or documentation regarding its audit work but not linked to cases forwarded under Articles 2 and 3, the audit chamber concerned – together with the Legal Service – shall identify any relevant material. The President shall make the information and documentation available, as appropriate to the Director-General of OLAF, the European Prosecutor or the European Delegated Prosecutor who made a request.

Article 6

The President shall prepare an annual report - taking account of the information received from OLAF and the EPPO - covering the cooperation with OLAF and the EPPO for consideration by the ECA's college.

Article 7

After notifying a case of suspected illegal activities/criminal offences identified during its audit work to OLAF/the EPPO, the ECA will continue with the related audit task in accordance with its normal practice, unless this risks disrupting any OLAF or EPPO investigation into the case. If the ECA is made aware of any ongoing OLAF or EPPO investigation into an area it plans to audit, it may request, at the initiative of the audit chamber concerned, information from OLAF/the EPPO to determine what impact this could have.

Article 8

The President is assisted by the Legal Service which coordinates and provides guidance on fraud-related matters throughout the institution, and liaises with OLAF and the EPPO at operational level.

Article 9

This Decision repeals and replaces Decision No 43-2017 of 14 September 2017. It shall enter into force on the day of its signature.

Done at Luxembourg, 29 February 2024.

Tony Murphy
President