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#### 'I' ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee

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Subject: Sixteenth Report of the European Anti-Fraud Office covering the period from 1 January to 31 December 2015  
– *Draft outcome of proceedings*

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1. On 31 May 2016, the European Anti-Fraud Office (OLAF) submitted to the Council its 2015 Annual Report<sup>1</sup>.
2. Pursuant to point (c) of Article 16(2) of Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by OLAF<sup>2</sup>, an interinstitutional exchange of views shall take place every year, allowing for a discussion, at political level, on the activities carried out by OLAF, including in relation to such reports.

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<sup>1</sup> Doc. 9172/16.

<sup>2</sup> OJ L 248, 18.9.2013, p. 1.

3. In view of the above and in order to facilitate the preparation of the next interinstitutional exchange of views in 2016, the Working Party on Combating Fraud examined this report on 6 June 2016 and agreed to establish an outcome of proceedings. An agreement on the text of the outcome was reached on 22 June 2016.
  4. The Permanent Representatives Committee is invited to endorse the draft outcome of proceedings as set out in the Annex to this document.
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DRAFT OUTCOME OF PROCEEDINGS

On 6 June 2016, the European Anti-Fraud Office (OLAF) presented its annual report, the "Sixteenth report of the European Anti-Fraud Office, 1 January to 31 December 2015"<sup>1</sup>, to the Working Party on Combating Fraud.

The OLAF representatives gave the following key messages:

- having implemented its re-organisation in 2012, OLAF has reached what it refers to as "cruising altitude", with a stabilisation in the flow of incoming information, the number of cases opened, closed and recommendations issued;
- OLAF considers that by now the statistical analysis shows, that it has achieved significant efficiency gains across all activity areas as a result of the re-organisation of 2012, in particular when considering the reduction in staff numbers; in that context it highlighted the number of 304 investigations being concluded in 2015, the highest number yet;
- as in the previous year, the policy area with the largest number of incidents of fraud and/or irregularities and the largest amount implicated by such fraud and/or irregularities among the cases investigated by OLAF was Cohesion policy (notably Structural and Social Funds);
- OLAF pointed out that its current powers limit its achievements as it may only issue judicial recommendations to national authorities; OLAF, therefore, stressed that the establishment of an independent European Public Prosecutor's Office would significantly improve the possibilities to judicially pursue persons committing fraud;
- as regards its cooperation with the Supervisory Committee, OLAF re-assured delegations that it is cooperating to the best of its ability with the Committee and is providing information requested by the Committee as timely and completely as possible within the remit of its competencies and, in its view, in line with relevant legislation.

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<sup>1</sup> Doc. 9172/16.

In terms of its cooperation with its partners and prevention policies, OLAF reported positive cooperation with national authorities such as AFCOS and through the Hercules programme and Joint Customs Operations, as well as the conclusion of further Administrative Cooperation Arrangements.

Delegations acknowledged the positive development of OLAF's investigative activities, noted with satisfaction the reported efficiency gains and made some further comments:

- delegations appreciated the concision of the report; some delegations would have preferred a higher level of details regarding the data provided, notably on the split between fraud and irregularities, between cases detected by OLAF and by national authorities or between the cases of fraud and/or irregularities concerning the different Structural Funds;
- given the large contribution of the Cohesion policy funds to amounts affected by fraud, the concern was raised whether this area warrants specific attention;
- it was requested to provide a better link between OLAF's investigation policy priorities (IPPs) and the EU's spending priorities.

In addition, delegations asked for the following clarifications:

- Why were the figures relating to the Social Fund cases separated from those relating to the Structural Fund cases (figure 10 of the report)?
- Can a comparison be made between the follow-up of a recommendation and the complexity and duration of an investigation?
- Could the quality of OLAF case reports be questioned, given that the indictment rate is for some countries very low when compared to the recommendations issued by OLAF (figure 22 of the report)?
- Were the efficiency gains mainly a result of OLAF's reorganisation or were there other elements influencing the investigative results?

- Were there learnings from OLAF's reorganisation that could be shared with other institutions and bodies as 'best practices' in order to achieve efficiency gains in those institutions and bodies?
- Can the gap between the amount of financial recommendations and the amount of money actually recovered be explained?

In response to these comments and questions, the OLAF representatives explained that the annual activity report was not meant to replicate the same level of detail as the Commission's annual report on the protection of the European Union's financial interests - Fight against fraud (the "PIF-Report"), which will be issued in July 2016 under Article 325 TFEU.

OLAF explained that the Social Fund cases were singled out for the sake of clarity, since in previous years many questions had been raised on the share of these cases within the Structural Funds caseload.

OLAF confirmed that the efficiency gains were related mainly to its reorganisation and the new procedures. The increase in incoming information reflected that OLAF is, at present, recognised as the most relevant body to tackle fraud and irregularities in relation to the EU budget at EU level. In that context, awareness raising actions have been bearing fruit.

As regards the Cohesion policy, OLAF pointed out that no new trends were identified and that fraud and irregularities in the field of cohesion consistently represented the highest number of OLAF cases.

As regards the indictment rate, OLAF acknowledged that it could be improved. It was explained that a number of recommendations concerned the older SAPARD programmes, which were disbursed with the use of intermediary agents. In those cases, sometimes no intention of fraud by the beneficiary can be established. Therefore, indictments are less common.

As to the gap between the total amount of financial recommendations and the amount actually recovered, OLAF underlined that there is no correlation between these two amounts in any given year.