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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: Twentieth report of the European Anti-Fraud Office covering the period from 1 January to 31 December 2019  
– *Outcome of proceedings*

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1. On 14 September 2020, the European Anti-Fraud Office (OLAF) submitted to the Council its 2019 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> WK 9379/2020.

<sup>2</sup> 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 (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 on 1 December 2020, the members of the Working Party on Combating Fraud examined this report during an informal videoconference held on 22 September 2020 and agreed to establish an outcome of proceedings. An agreement on the text of the outcome was reached on 28 October 2020.
  4. The Permanent Representatives Committee is invited to endorse the outcome of proceedings as set out in the Annex to this document.
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OUTCOME OF PROCEEDINGS

On 22 September 2020, the European Anti-Fraud Office (OLAF) presented its annual report, the "Twentieth report of the European Anti-Fraud Office, 1 January to 31 December 2019"<sup>3</sup>, to the Working Party on Combating Fraud.

The following key messages from the report were highlighted by Mr Olivier Salles, Head of Unit Coordination and Communication of OLAF:

- OLAF's investigative performance was illustrated with 223 new investigations opened, a bit more than the previous year, having analysed information in 1 174 selection procedures, a lower figure than the previous one. There was an increase in the number of investigations concluded (181), leading to 254 recommendations issued to competent authorities at EU and national level. As a result of its investigations, OLAF recommended the recovery of EUR 485 million to the EU budget.
- The main trends in fraud and irregularities revealed by OLAF investigations in 2019 were:
  - manipulation of procurement procedures;
  - complex and sophisticated cross-border fraud schemes that make detection more difficult;
  - frequent targeting of projects in third countries;
  - continued targeting of research funding;
  - smuggling and counterfeiting, involving complex cross-border networks.

These were illustrated with specific cases (knitting machines sold at inflated prices, import of counterfeit bearings, a fictitious joint venture for a waste water plant).

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<sup>3</sup> WK 9379/2020.

- 28 investigations into EU staff and members of the Institutions were concluded in 2019, 21 of them with recommendations. Mr Salles pointed out the sensitivity around internal investigations: they are low in numbers, but any fraud or irregularity within the institutions is unacceptable and treated with zero tolerance.
- The indictment rate over the period 2015-2019 is 39 %. This is a little higher than in the annual report of the previous year when the indictment rate over the past five years was 36 %, while remaining below the indictment rate of the annual report of 2017 (42 %). This is due mostly to the difference in the assessment by national judicial authorities of the evidence submitted (considered insufficient or as not meeting the threshold for indictments) and time barring. OLAF is working with national authorities to make its reports and recommendations more useful in eventual judicial pursuits and considers that early cooperation with the relevant judicial authorities might partly address this issue. Moreover, the new OLAF Regulation is expected to lead to an improvement on the pursuit of cases.
- The comparatively higher effectiveness of OLAF investigations in relation to the EU's own resources has been specifically mentioned.

Delegations took note of the report and asked a good number of questions, addressing, among others, the following points:

- It was asked, what OLAF's criteria would be for assigning a case to a Member State in cases of several Member States being concerned, and whether OLAF's statistics reflect such cases appropriately.
- Delegates were interested to better understand the causes of the low indictment rate following an OLAF recommendation, as well as why cases were dismissed by OLAF in the selection phase. It was highlighted that the focus of the Working Party on Combating Fraud is on results, therefore, an unduly long duration of cases is of concern to delegations.

- In the context of efficient investigations it was also asked, if OLAF's case management system (OCM) benefits or rather harms OLAF's efficiency, given the issues that have occurred around the upgrading of the case management system.
- Delegations were asking about the content and the goals of the Administrative Arrangement OLAF has with the European Court of Auditors (ECA) and what a cost-benefit analysis would show.
- The improvements on the cooperation of OLAF with the Supervisory Committee were noted with satisfaction. Delegations asked, if the difficulties of the Supervisory Committee's access to case files are now in the past.
- One delegation highlighted tables 5 and 6 of the report, where some figures on the number of controls by OLAF are higher for Member States that show particularly high rates of effective controls. It was asked what the general link was between the number of investigations conducted by Member States on the one hand and by OLAF on the other hand.
- As in previous years, delegations were interested to see data on the amounts actually recovered, not only on amounts recommended for recovery.

OLAF answered that in order to decide, in which Member State the fraudulent action or irregularity should be considered to have taken place, it looks at the relative weight of the actions and where they took place.

It was explained, that the reasons for the low percentage of indictments are specific to each Member State and have to be analysed in cooperation with national authorities and the national procedures applied by them. The EPPO's entry into operation should improve situation in this respect.

As regards OLAF's cooperation with ECA, Mr Salles described such cooperation as good and useful, as it could facilitate cooperation on specific cases and an exchange of information. Mr Salles announced a report on OLAF's Administrative Arrangement with ECA.

The relationship with the Supervisory Committee further improved in 2019, with the two sides working together on issues like the access to the case management system (OCM).

As for the implementation of the OCM, it is a complex and evolving system with new functionalities. All recommendations of Commission's Internal Audit Service on OCM have been implemented successfully. There is good progress now and new version of OCM is expected to be released in early 2021.

It was explained, that the precise assessment of OLAF's added value for recoveries is complex and that OLAF undertakes a statistical evaluation of its work's impact to show the importance of OLAF's work, but not to compare OLAF's efficiency with that of national authorities. In terms of amounts recovered, OLAF can try to provide better data, and a permanent Task Force Monitoring was established for this purpose in the recent internal reorganisation of June 2020. It was recalled, however, that responsibility for recoveries lies with the Directorates-General of the Commission and with Member States.