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From: Working Party on Combating Fraud
To: Permanent Representatives Committee

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Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013, as regards the secretariat of the Supervisory Committee of the European Anti-Fraud Office (OLAF) (first reading)
– *Confirmation of the final compromise text with a view to agreement*

1. On 4 March 2016, the Commission transmitted to the European Parliament and to the Council the above mentioned proposal for a Regulation.
2. This proposal is based on Article 325 TFEU on combating fraud and is aimed at changing the framework for the implementation of the budgetary appropriations relating to the Members and the secretariat of the Supervisory Committee in a way which avoids any appearance of a possible interference by the European Anti-Fraud Office (OLAF) in their duties.

The European Court of Auditors delivered its opinion on 15 April 2016¹.

¹ OJ C 150, 27.4.2016, p. 1.

3. After examination of the proposal in the Working Party on Combating Fraud, the Permanent Representatives Committee gave a mandate to the Presidency on 4 May 2016¹ to enter into informal trilogues with the European Parliament.
4. As a result of the trilogue held on 30 May 2016, the European Parliament and the Council reached an agreement on the Regulation amending Regulation (EU, Euratom) No 883/2013, as regards the secretariat of the Supervisory Committee. That compromise largely endorses the position agreed by the Council. The Commission proposed the unilateral statement recorded in ANNEX 2, to be published in the C-series of the *Official Journal of the European Union*.
5. The Working Party on Combating Fraud examined the compromise text during its meeting on 6 June 2016, and agreed, by qualified majority, to the text as set out in ANNEX 1 to this note.
6. The Permanent Representatives Committee is invited to:
 - confirm the final compromise text with a view to an agreement on the text as set out in ANNEX 1 to this note;
 - confirm that the Presidency can indicate to the European Parliament that, should the European Parliament adopt its position at first reading in the exact form as set out in ANNEX 1 to this note, subject to revision by the legal linguists of both institutions, the Council would approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

¹ Doc. 8284/16.

**Proposal for a
Regulation of the European Parliament and of the Council
amending Regulation (EU, EURATOM) No 883/2013, as regards the secretariat of the
Supervisory Committee of the European Anti-Fraud Office (OLAF)**

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,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

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 Auditors,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Supervisory Committee of the European Anti-Fraud Office ("the Office") is tasked with regularly monitoring the implementation by the Office of its investigative function, in order to reinforce the Office's independence.

- (2) The framework for the implementation of the budgetary appropriations relating to the Members of the Supervisory Committee should be set up in a way which avoids any appearance of a possible interference of the Office in their duties. Regulation (EC, EURATOM) No 883/2013 should be adapted in order to allow for such a framework, *while guaranteeing the same transparency of the appropriations for the operation of the Supervisory Committee as before.*
- (2a) **█** *In order to guarantee an effective and efficient functioning of the Supervisory Committee, its secretariat █ should be provided directly by the Commission, independently from the Office, and the Commission should provide the secretariat with appropriate means to fulfil its function.* The Commission should refrain from interfering with the *monitoring* functions of the Supervisory Committee, *in order to safeguard the Supervisory Committee's independence.*
- (3) Where the Office appoints a Data Protection Officer in accordance with Article 10(4) of Regulation No 883/2013, that Data Protection Officer should continue to be competent for the processing of data by the secretariat of the Supervisory Committee.
- (4) Confidentiality obligations for the staff of the secretariat of the Supervisory Committee should continue to apply.
- (5) The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 █ and █ on *18 March 2016 decided not to issue any comment █*,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU, EURATOM) No 883/2013 is amended as follows:

(1) Article 10 is amended as follows:

(a) in paragraph 4, the following subparagraph is added:

"The Data Protection Officer shall be competent for the processing of data by the Office and the secretariat of the Supervisory Committee."

(b) in paragraph 5, the second subparagraph is replaced by the following:

"In accordance with the Staff Regulations, the staff of the Office and the staff of the secretariat of the Supervisory Committee shall refrain from any unauthorised disclosure of information received in the exercise of their functions, unless that information has already been *lawfully* made public or is accessible to the public, and shall continue to be bound by that obligation after leaving the service.

The members of the Supervisory Committee shall be bound by the same obligation of professional secrecy in the exercise of their functions, and shall continue to be bound by that obligation after the end of their mandate.

(2) In Article 15(8), the last sentence is replaced by the following:

"Its secretariat shall be provided by the Commission, independently from the Office and in close cooperation with the Supervisory Committee. ***Before the appointment of any staff to the secretariat, the Supervisory Committee shall be consulted and its views shall be taken into account. The secretariat shall act on the instructions of the Supervisory Committee and independently from the Commission. Without prejudice to its control over the budget of the Supervisory Committee and its secretariat,*** the Commission shall ***not*** interfere ***with the monitoring*** functions of the Supervisory Committee.

Officials assigned to the secretariat of the Supervisory Committee shall neither seek nor take instructions from any government or any institution, body, office or agency relating to the exercise of the monitoring functions of the Supervisory Committee.

(3) Article 18 is replaced by the following:

"Article 18

Financing

The total appropriations for the Office shall be entered under a specific budget line within the section of the general budget of the European Union relating to the Commission and shall be set out in detail in an Annex to that section. The appropriations for the Supervisory Committee and its secretariat shall be entered into the section of the general budget of the European Union relating to the Commission.

The establishment plan of the Office shall be annexed to the establishment plan of the Commission. The establishment plan of the Commission shall include the secretariat of the Supervisory Committee."

Article 2

This Regulation shall enter into force on the [first day of the month] following that of its publication in the *Official Journal of the European Union*. It shall apply as from 1 January 2017.

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

COMMISSION STATEMENT

"The Commission is fully committed to the independent functioning of the Secretariat of the OLAF Supervisory Committee. The main purpose of the proposed amendment to the OLAF Regulation (EU, Euratom) No 883/2013 is to add further guarantees to the independence of the Secretariat. The implementation of the amended Regulation will be guided by this aim.

As confirmed by Vice-President Georgieva to the Chairman of the Supervisory Committee by letter of 20 May 2016, the Commission intends to attach the Secretariat of that Committee, as of the date of application of the amended Regulation, to PMO. This attachment will be of a purely administrative nature, with a view to facilitating certain organisational and budgetary aspects. It will not affect the independent functioning of the Secretariat.

As also mentioned in that letter, the administrative attachment of the Secretariat to PMO will have no impact on its current staffing and budgetary means. The Head of the Secretariat will be in charge of the management and appraisal of his staff. The appraisal of the Head of the Secretariat will be based on a report of the Supervisory Committee.

The Commission will consider, after consulting the Supervisory Committee, putting in place appropriate internal rules on mobility limiting the duration of the postings of the Secretariat, while ensuring continuity in order to render their independence effective, and avoid risks of conflicts of interests or of revolving doors issues with OLAF.

The modification of the Regulation does not affect the access of the Supervisory Committee to information such as that contained in OLAF's IT systems, databases and documents.

The offices of the staff of the secretariat of the Supervisory Committee will be maintained within the building currently housing OLAF, protecting the independence of the Supervisory Committee and of OLAF while ensuring ease of contact."