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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	OLAF Supervisory Committee's Activity Report for the year 2015 - <i>Draft outcome of proceedings</i>

1. On 21 April 2016, the OLAF Supervisory Committee submitted to the Council its 2015 Activity Report.
2. Pursuant to point (b) of Article 16(2) of Regulation (EU, Euratom) No 883/2013¹ concerning investigations conducted by OLAF, an inter-institutional exchange of views shall take place every year, allowing for a discussion, at political level, on the activities carried out by the European Anti-Fraud Office, including in relation to the reports of the Supervisory Committee.

¹ OJ L 248, 18.9.2013, p. 1.

3. In view of the above and in order to facilitate the preparation of the next inter-institutional exchange of views in 2016, the Working Party on Combating Fraud examined the 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

At its meeting on 6 June 2016, the Working Party on Combating Fraud held an exchange of views with the representatives of the OLAF Supervisory Committee (SC) and with OLAF on the SC's Activity Report for the year 2015.

Mr ZIMINIANITIS and Mr DENOLF, members of the SC, stressed that the SC's mission is to support OLAF in its role as anti-fraud body and to have good cooperation. They gave an overview of the SC's activities during 2015 and highlighted in particular the following:

- opinion No 2/2015 relating to procedural guarantees and legality of investigations: SC mentioned the high qualifications of the staff of OLAF responsible for selecting and reviewing cases and referred to its opinion for concrete proposals, in particular on in-house relations within OLAF and an increased role of fundamental rights and procedural guarantees;
- investigation policy priorities (IPPs) for 2016: the lack of a "filtering function" of the IPPs was criticized, as well as the absence of a full inter-service consultation of stakeholders before the IPPs for 2016 were presented. Furthermore, the SC's criticised the absence of a link between the IPPs and EU spending priorities;

- duration of OLAF's investigations: the SC highlighted the number of 476 reports, which concern investigations lasting more than 12 months, as well as the perceived attitude of OLAF, that a duration of 24 months for an investigation was considered "normal". As in past years, the lack of detailed information provided by OLAF in specific cases was criticized, given that it made it impossible for the SC to verify whether there were unjustified delays and whether the duration was proportionate to the complexity of cases and circumstances;
- follow-up of SC's recommendations: finally, the SC criticized the fact that OLAF has only implemented 16 out of SC's 50 recommendations, of which only 9 fully, and that the SC has not received any feed-back from OLAF on its recommendations.

The OLAF representatives generally confirmed also OLAF's willingness to engage in a constructive dialogue with the SC. However, OLAF expressed its disappointment that the SC's Activity Report did not include a reference to the efforts invested in updating the Working Arrangements that govern the practical cooperation between these two bodies. On the specific criticisms of the SC, the OLAF representatives replied as follows:

- as regards the lack of information provided to the SC on specific cases, OLAF contested this and reiterated that it was complying with the relevant legal provisions and the current Working Arrangements. Furthermore, data protection rules prevent OLAF from passing on case-specific information without proper justification, which needs to be verified in each case;
- as regards the follow-up of the SC's recommendations, OLAF disagreed with the SC's assessment and is of the view that it has implemented 45 out of 50 recommendations and has justified where it has deviated from the SC's recommendation. It would, in its view, be useful to agree on a procedure for "closing" recommendations with the option to "agree to disagree" as many recommendations date back from 2012 and have been reported on since then by OLAF;

- in relation to the IPPs, OLAF stressed that a full inter-service consultation within the Commission would not be appropriate to determine these priorities, since it would not be in line with OLAF's investigative independence. It was confirmed, though, that consultations have taken place through the Fraud Prevention and Detection Network and the inter-institutional exchange of views.

Delegations expressed satisfaction about the recent agreement on the amendment² of Regulation (EU, Euratom) No 883/2013, which will lead to more administrative independence of the secretariat of the SC. They voiced the hope that this will lead to a better cooperation between OLAF and the SC in the future. As regards the practical working arrangements, work started by the legal services of the European Parliament, the Council and the Commission mediating the main points of disagreement was considered a possible way to resolve the ongoing conflicts. Delegations were of the view that a reduction in the number of recommendations issued by the SC could have positive effects and render each recommendation more significant; they were interested to receive more information on how a better follow-up of the SC's recommendations by OLAF can be achieved. Finally, delegations pointed out that, indeed, a link between OLAF's IPPs and the EU's spending policies would be a good way to make the IPPs more meaningful.

Mr ZIMINIANITIS and Mr DENOLF agreed that support from the Legal Services could be of great help to end the debate on how the SC and OLAF should work together and expressed the view that an amendment of Regulation No 883/2013 after its mid-term evaluation would provide a long term solution by clarifying the details of the cooperation required by both, the SC and OLAF. As regards the follow-up of SC's recommendations, they pointed out that the SC had already taken on board a number of comments and suggestions on how to improve the usefulness of its recommendations and agreed that fewer recommendations would be preferable. As regard the IPPs, the SC reiterated its view that OLAF has to improve the consultation of stakeholders in order to make its IPPs more meaningful.

² ST 9793/16.