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INFORMATION NOTE

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

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)
- Outcome of the European Parliament's first reading
(Strasbourg, 4 to 7 July 2016)

I. INTRODUCTION

The rapporteur, Ms Ingeborg GRÄSSLE (EPP, DE), presented a report on the proposal for a Regulation on behalf of the Committee on Budgetary Control, proposing to take over the Commission proposal¹.

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ², a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ The report was presented in accordance with Rule 50(1) of the Rules of Procedure of the Parliament - Simplified procedure).

² OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, on behalf of the Committee, tabled a compromise amendment (amendment 1) to the proposal for a Regulation. This amendment had been agreed during the informal contacts referred to above.

In addition, the rapporteur, on behalf of the Committee, tabled an amendment (amendment 2), containing a Commission statement, to the legislative resolution.

II. VOTE

When it voted on 6 July 2016, the plenary adopted the compromise amendment (amendment 1) to the proposal for a Regulation, as well as the amendment to the legislative resolution (amendment 2).

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position. The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Secretariat of the OLAF Supervisory Committee *I**

European Parliament legislative resolution of 6 July 2016 on the 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) (COM(2016)0113 – C8-0109/2016 – 2016/0064(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0113),
- having regard to Article 294(2) and Article 325 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0109/2016),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the Court of Auditors of 5 April 2016¹,
- having regard to the undertaking given by the Council representative by letter of 8 June 2016 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rules 59 and 50(1) of its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control (A8-0188/2016),

1. Adopts its position at first reading hereinafter set out;

¹ OJ C 150, 27.4.2016, p. 1.

2. Takes note of the Commission statement annexed to this resolution;
3. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 6 July 2016 with a view to the adoption of Regulation (EU) 2016/... 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 Auditors¹,

Acting in accordance with the ordinary legislative procedure²,

¹ Opinion of 5 April 2016 (OJ C 150, 27.4.2016, p. 1).

² Position of the European Parliament of 6 July 2016.

Whereas:

- (1) In accordance with Article 15(1) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹, 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 that avoids any appearance of a possible interference of the Office in their duties. Regulation (EU, 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.***
- (3) ***In order to ensure that the Supervisory Committee functions effectively and efficiently, 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. In order to safeguard the Supervisory Committee's independence,*** the Commission should refrain from interfering with the ***monitoring*** functions of the Supervisory Committee.

¹ 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).

- (4) Where the Office appoints a Data Protection Officer in accordance with Article 10(4) of Regulation (EU, Euratom) No 883/2013, that Data Protection Officer should continue to be competent for the processing of data by the secretariat of the Supervisory Committee.
- (5) Confidentiality obligations for the staff of the secretariat of the Supervisory Committee should continue to apply.
- (6) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council¹ ***and on 18 March 2016 decided not to issue any opinion,***

HAVE ADOPTED THIS REGULATION:

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

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 by 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, paragraph 8* is replaced by the following:

'8. The Supervisory Committee shall appoint its chair. It shall adopt its own rules of procedure, which shall, before adoption, be submitted to the European Parliament, the Council, the Commission and the European Data Protection Supervisor for information. Meetings of the Supervisory Committee shall be convened on the initiative of its chair or the Director-General. It shall hold at least 10 meetings per year. The Supervisory Committee shall take its decisions by a majority of its component members. 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 from 1 January 2017.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

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.