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From: General Secretariat of the Council  
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  
establishment of a controller of procedural guarantees  
- *Outcome of proceedings*

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On 8 October 2014, the Working Party on Combating Fraud agreed to approve the note presented in the Annex and to invite the Permanent Representatives Committee to endorse it.

NOTE FROM THE PRESIDENCY

**Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 as regards the establishment of a controller of procedural guarantees (doc. 10943/14)**

- *Outcome of proceedings*

On 22 July 2014, the European Anti-Fraud Office (OLAF), presented its proposal for the amendment of Regulation (EU, Euratom) No 883/2013 ("OLAF Regulation"), together with the relevant Impact Assessment<sup>1</sup>, with a view to establishing a controller of procedural guarantees.

The objective of this proposal is to further strengthen the procedural guarantees in place for all persons that are under investigation by OLAF. This proposal aims at accompanying the proposal on the establishment of the European Public Prosecutor's Office (EPPO) that was adopted by the Commission in July 2013 and that is still under discussion. The need to maintain consistency in the legal framework of OLAF and the future EPPO was the main driving element of the proposed amendment. Past discussions on a "review advisor" that took place during the negotiations on the above-mentioned OLAF Regulation and more recently some concerns expressed by the European Parliament about the protection of the procedural rights of persons subject to OLAF investigations, were also taken into consideration.

In its Impact Assessment, the Commission presented several options and their impact on how the safeguarding of the procedural guarantees could be set up. Finally, the Commission chose the option of introducing a "controller of procedural guarantees". The function of such a "controller of procedural guarantees" would be twofold:

1. handling complaints by persons concerned by an OLAF investigation about an infringement of their procedural rights; and
2. deciding on whether to grant prior authorisation to OLAF before conducting certain investigative measures concerning members of institutions.

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<sup>1</sup> See doc. 8406/13 as regards the analysis of Impact Assessments within the Council.

During the meetings of the Working Party on Combating Fraud on 22 July and 26 September, almost all delegations voiced strong reservations against the Commission proposal. Mainly **four** points of opposition were raised:

- The Proposal was considered **premature**. The proposal establishing the EPPO is still under negotiations, therefore, according to many delegations, the alignment of OLAF's legal framework was not considered necessary at this stage. In their view, the mid-term review of the OLAF Regulation foreseen for 2017, pursuant to Article 19 of that Regulation, should be carried out first, before tabling any new proposal aiming at reforming OLAF.
- The Proposal was considered **disproportionate in terms of benefits**. Only very few cases have been brought so far as regards the protection of procedural rights thus, putting in question the need for the establishment of any additional control body.
- The Proposal was considered **disproportionate in terms of costs**. It foresees the employment of 3 staff (2 AD and 1 AST), the Controller and his substitute (AD 15 grade Special Advisors). In light of the very few cases that have occurred in the past, the running cost for such a function was considered excessive.
- Finally, delegations raised **doubts about** the envisaged **legal improvements** in the functioning of OLAF stemming from the establishment of this new control body, in particular as regards the added value of that body in respect of already existing control mechanisms, and expressed a preference for first seeing the outcome of the negotiations on the establishment of the EPPO.

In conclusion, delegations **re-confirmed** their position expressed previously and recorded in the outcome of proceedings adopted in December 2013 on the Communication from the Commission on "Improving OLAF's governance and reinforcing procedural safeguards in investigations: A step by step approach to accompany the establishment of the EPPO"<sup>1</sup>. Thus, any possible way forward will have to take into account the above-expressed views of delegations.

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<sup>1</sup> Doc. 17494/13.