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NOTE

From:	Presidency
To:	Delegations
Subject:	Summary of Presidency activities

The purpose of this document is to summarise the main items that were discussed in the Working Party on Combating Fraud (GAF Working Party) for future reference.

The Italian Presidency dealt with mainly five items:

1. the Commission's 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 (documents ST 10943/14 and ST 12075/14);
2. the Report from the Commission to the European Parliament and the Council - Protection of the European Union's financial interests - Fight against fraud 2013 Annual Report (document ST 12213/14) (so-called "PIF-Report");
3. the Report from the Commission to the European Parliament and the Council under Article 12(5) of Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation (doc. ST 12917/14);

4. the amended proposal for a Regulation of the European Parliament and the Council on mutual administrative assistance for the protection of the financial interests of the European Community against fraud and any other illegal activities (document ST 12854/06) (the "MAA-Proposal"); and

5. a questionnaire issued by the Italian Presidency on whether or not Member States were in favour of a new legal instrument enabling mutual administrative assistance between national administrations to combat fraud in the area of Structural Funds.

1. 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* (Annex 1)

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") with a view to establishing a controller of procedural guarantees. The function of such a "controller of procedural guarantees" would be twofold:

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

During the meetings of the GAF Working Party on 22 July and 26 September, almost all delegations voiced strong reservations against the Commission proposal, considering the proposal premature (in the light of the very recent adoption of Regulation No 883/2013 and its review in 2017) as well as disproportionate in terms of costs and administrative burden. These reservations were recorded in an "outcome of proceedings" document (ST 10934/14) for the Commission to take into account.

2. Report from the Commission to the European Parliament and the Council - Protection of the European Union's financial interests - Fight against fraud 2013 Annual Report (document ST 12213/14, so-called "PIF report")

The above-mentioned report has been presented by the Commission on 26 September and on 22 October 2014 to the GAF Working Party. An exchange of views took place on the findings and recommendations given by the Commission in the report.

As it was the last report of the current Commission, giving a summary view of the anti-fraud activities over the past five years, the Presidency proposed an *outcome of proceedings* with the following suggestions addressed to the Commission to improve the quality of future PIF reports and allow for a better comparability of statistical data:

- to focus on improving and harmonising the procedures for collecting and reporting cases of irregularity and fraud;
- to strive to improve, as far as possible, the statistical evaluation of cases of irregularities and fraud reported by Member States, in order to arrive at objectively comparable data; as acknowledged by the Commission, this is currently only possible to a limited extent and only at the macro level;
- to better define the role and activities of the Anti-fraud Coordination Services (AFCOS), notably by introducing some specific explanatory points in the questionnaire submitted to Member States for the purposes of Article 325 TFEU;
- to address specific recommendations to the adequate competent authorities of the Members States.

While a number of delegations supported the general approach of an *outcome of proceedings* with suggestions for future reports, no consensus could be found for the proposed concrete suggestions, given that the structure of reporting and the statistical data submitted to the Commission is very different from Member State to Member State.

Some delegations called for more comparable data and seemed in favour of harmonising the collection and reporting of cases of irregularities and fraud. Other delegations strongly opposed any harmonisation of their statistical set-up and reporting. In particular, the third recommendation relating to AFCOS did not find full support.

Given the divergent reactions, a consensual *outcome of proceedings* with recommendations to the Commission could not be adopted.

3. Report from the Commission to the European Parliament and the Council under Article 12(5) of Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation (document ST 12917/14)

The above-mentioned report was presented by the Commission to the GAF Working Party on 22 October.

Member States took note of the report. Some Member States' delegations asked for an extension of the deadline from 15 February to 15 April (each year) for Member States' reports due under Article 12 of Regulation (EU) No 1210/2010 on their activities as regards authentication of euro coins (number of controls and of coin-processing machines checked). Furthermore some modifications and corrections to the Report were sent to the General Secretariat of the Council to be forwarded to the Commission.

4. Amended proposal for a Regulation of the European Parliament and the Council on mutual administrative assistance for the protection of the financial interests of the European Community against fraud and any other illegal activities (doc. ST 12854/06)

On 22 October 2014 the above-mentioned (dormant) proposal was included on the agenda of the GAF Working Party in order to trigger a debate on whether delegations saw a need for a legislative act providing for mutual assistance in the field of structural funds.

Many delegations were critical of debating the dormant proposal dating from 2006, arguing that their positions had not changed. One of the main criticisms of the proposal was the fact that it includes reporting on VAT data in a file that is not adopted under a legal basis on taxation. The Commission took note of the position of the GAF Working Party.

Consequently, the Presidency decided to not pursue this specific file, but to rather engage in a more general debate on whether or not mutual administrative assistance was needed in the area of Structural Funds (see point 5 below).

5. Questionnaire on the usefulness of a legal instrument on mutual administrative assistance between Member States to combat fraud in the area of Structural Funds (ESF, ERDF) (COMBUD 404/14, Annex 2)

In order to clarify whether or not Member States considered it appropriate and useful to have a legal instrument on mutual administrative assistance to combat fraud in the area of Structural Funds, the Presidency issued a relevant questionnaire (see Annex 2). The questionnaire was also inspired by the conclusions from the Conference *"Operational aspects of fighting fraud in structural funds"* held in Rome, on 13 and 14 October 2014, during the Italian Presidency, which indicated that there may be a need for such a legal instrument.

The replies can be grouped as follows (inverted order):

- 12 delegations considered that such a legal instrument would be useful. The main arguments in favour of such mutual administrative assistance were that the existing legal instruments cover other issues (fraud in the area of customs and agriculture: Regulation 515/97, fraud investigations by the Commission: OLAF Regulation 883/2013 and cooperation on VAT fraud: Regulation 1798/2003). Hence it was considered useful to have a legal instrument on mutual administrative assistance to counter fraud in both, the area of Structural Funds (ESF-ERDF) and ESIF funds. Even though this group of delegations supports a legal instrument, it was pointed out that such an instrument should not overlap with existing instruments and should not cause an undue administrative burden.

- 11 delegations replied that they do not consider that such an instrument was needed. The main arguments brought forward were that this was premature, as new implementation rules for the new programmes were still being adopted. It was also considered that the existing and future legal framework (implementing rules, OLAF, Regulation 515/97 and EPPO) would be sufficient.

- 5 delegations gave no reply or were undecided.

The Presidency, when concluding the debate during the GAF Working Party meeting on 24 November 2014, highlighted that the existing legal framework does not provide a specific legal basis at European level on administrative cooperation between Member States and between Member States and the European Commission in the area of the expenditure side of the EU Budget. Therefore, a legal instrument on mutual administrative assistance could be an useful tool to address the increasing cross-border character of illegal activities in the area of Structural Funds.

The Commission asked to be informed about the Presidency's document resuming the matter.

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 Assessment¹, 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.

¹ 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"². Thus, any possible way forward will have to take into account the above-expressed views of delegations.

² Doc. 17494/13.

COMBUD 404/14

**FRAUD IN THE AREA OF STRUCTURAL FUNDS
AND MEASURES TO FIGHT SUCH FRAUD**

QUESTIONNAIRE FOR THE MEMBER STATES

Within the various initiatives organised by the Presidency in the area of fraud against the EU budget, is noteworthy the Conference "*Operational aspects of fighting fraud in structural funds*" held in Rome, on 13 and 14 October 2014.

The two-day conference has been an occasion to deepen the most topical and interesting issues as regards fraud in the area of structural funds and to examine, in depth, the most effective methodologies to counter the afore-mentioned illegal phenomena.

Among the participants, there were experts from the Member States (magistrates, investigators belonging to the Anti-Fraud Coordination Service AFCOS) who discussed some possible initiatives, even at an investigative level, to improve the cross-border cooperation in the said area.

During the conference, made up of three specific workshops (*1. The role of AFCOS in the fight against Structural Funds fraud; 2. Corruption in structural funds; 3. Organized crime and the structural funds*) the following was also highlighted:

- the number of cases of irregularities/fraud in the area of "Structural Funds" accounts for almost 70 % of the total, in terms of financial impact for the 2009-2013 period;
- according to the most recent experiences made by the investigative authorities, a cross-border increase of cases of fraud in structural funds has been registered;
- unlike the other delicate areas as regards the EU financial interests (VAT; customs and agriculture) there are, as of today, no tools for mutual administrative assistance among Members States in the area of "Structural Funds".

In view of the above, the Presidency considers it appropriate, to promote a discussion, at GAF level, on the possibility and usefulness to have a legal instrument to fight fraud, in the framework of mutual administrative assistance among Member States, also in the area of Structural Funds (ESF, ERDF).

This would complement the rules already regulating the matter in other areas, namely agriculture and customs.

In consideration of the above, the Member States are kindly requested to express their views on the questions contained in the attached questionnaire, if possible by 19 November 2014, prior to the next GAF meeting, scheduled for 24 November 2014.

**Questionnaire of the Italian Presidency
on the usefulness of a legal instrument to fight fraud in the area of Structural Funds**

Question 1:

- a. Do Member States consider it appropriate and useful to have a legal instrument on mutual administrative assistance between Member States to counter fraud in the area of Structural Funds (ESF-ERDF), thus complementing the regulatory framework already existing for other areas subject to fraud (Agriculture and Customs)?

☐ **YES**

FOR WHAT REASON:

☐ **NO**

FOR WHAT REASON:

Question 2:

- b. In view of the new provisions of the multiannual financial framework for the period 2014-2020, would Member States consider it useful to extend the afore-mentioned legal instrument to the wider category of ESIF funds (ESF measures, ERDF, CF, EMFF and EARFRD) so as to guarantee a horizontal approach to the protection of the financial interests of the European Union?

☐ **YES**

FOR WHAT REASON:

☐ **NO**

FOR WHAT REASON:
