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From: General Secretariat of the Council

To: Permanent Representatives Committee

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Subject: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Improving OLAF's governance and reinforcing procedural safeguards in investigations: A step-by-step approach to accompany the establishment of the European Public Prosecutor's Office"

- Outcome of proceedings

At its meeting of 4 December 2013, 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: Communication from the Commission "Improving OLAF's governance and reinforcing procedural safeguards in investigations: A step-by-step approach to accompany the establishment of the European Public Prosecutor's Office" (COM (2013) 533 final)

- Outcome of proceedings

At its meeting of 8 November 2013, the Working Party on Combating Fraud held an exchange of views with the Commission on the above-mentioned communication.

Delegations took note of the communication and asked for clarifications, particularly with respect to:

- the timing expected for its concrete follow-up;
- the estimated impact, in terms of financial and human resources, of the measures sketched in the communication;
- the scope of action envisaged for the "Controller of procedural safeguards", also in relation to existing institutional and administrative roles and practices.

Several delegations indicated that the measures envisaged "to further consolidate OLAF's legal framework" seemed premature, in the light of the following considerations:

- Regulation No. 883/2013 (hereinafter referred to as "the OLAF Regulation") has just come into force, after lengthy and very complex negotiations, and an appropriate impact assessment of the new provisions could be carried out only after having taken stock of its application over an adequate period of time;
- An evaluation exercise is already provided for in the OLAF Regulation (Article 19) to assess its application and in order to consider whether it would need to be amended;
- The OLAF Regulation sets out more detailed provisions on the investigations' procedure, envisaging an internal advisory and control procedure, including a legality check;

- In addition to this, OLAF's governance is already based on important elements such as the monitoring function of the Supervisory Committee (SC) and other inter-institutional arrangements;
- In line with the charter of fundamental rights of the EU, the procedural rights of persons concerned by OLAF investigations, witnesses and informants are now set out in the OLAF Regulation and they are further strengthened with respect to the current practice in the EU bodies.
- The OLAF Regulation, while reaffirming its fundamental task, to ensure that OLAF exercises its mission in full independence, has also mandated the SC to monitor the application of the applicable procedural guarantees;
- There seems to be no such urgency to change the OLAF Regulation in order to introduce the necessary adjustments resulting from the proposed establishment of the European Public Prosecutor's Office (EPPO), since the Commission had to review this latter proposal following the reasoned opinions of non-compliance with the principle of subsidiarity recently submitted by national parliaments.

Furthermore, recalling the Conclusions on the "Reform of the European Anti-Fraud Office" adopted by the Council on 6 December 2010¹, and particularly points 3, 19 and 20 therein, several delegations expressed concerns about increasing administrative burden and delays as well as the additional costs which would result from the creation of the office of a "Controller of procedural safeguards".

The Presidency invites the Commission to take stock of this exchange of views on its communication and to keep it in mind when defining possible next steps.

¹ Doc. 16833/10 GAF 16 FIN 645.