



Council of the  
European Union

Brussels, 22 June 2015  
(OR. en)

10163/15

GAF 18  
FIN 450

**"I" ITEM NOTE**

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

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Subject: Activity Report of the OLAF Supervisory Committee: February 2014- March 2015  
- *Outcome of proceedings*

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1. On 27 April 2015, the OLAF Supervisory Committee submitted to the Council its 2014 Activity Report.
2. Pursuant to point (b) of Article 16(2) of Regulation (EU, Euratom) No 883/2013<sup>1</sup> 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.

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<sup>1</sup> 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 2015, the Working Party on Combating Fraud examined the report on 18 May 2015 and agreed to establish an outcome of proceedings. An agreement on the text of the outcome was reached on 16 June 2015.
  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 18 May 2015, 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.

Mr PÖYSTI, Chairman of the SC, stressed the following four main issues that are addressed in the SC's activity report under the SC's monitoring function: (1) impact of the working relations between the SC and OLAF on the monitoring function, (2) monitoring of the duration of OLAF's investigations, (3) monitoring of the implementation by OLAF of its investigative policy priorities, (4) implementation by OLAF of the SC's recommendations. He highlighted in particular the following:

- working relations between SC and OLAF: the Chairman was of the view that a modification of Regulation (EU, Euratom) No 883/2013<sup>2</sup> might be necessary to clarify the SC's role and competences, since there are divergent views as regards the type and level of detail of information that OLAF should communicate to the SC;
- duration of OLAF's investigations: the Chairman, as well as Ms PIGNON, member of the SC, referred to the SC's Opinions No 4/2014 on "the control of the duration of investigations conducted by OLAF" and No 5/2014 on "OLAF external reporting on the duration of investigations". She concluded that the SC received a high number of reports, but not always of sufficient detail to enable the SC to assess the proportionality of the duration of an investigation. As regards the method of calculating the duration of investigations, Ms Pignon could not draw clear conclusions, since the method changed in 2012 and the SC did not have sufficient information to examine whether the duration could be optimised;

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<sup>2</sup> OJ L 248, 18.9.2013, p. 1.

- monitoring of the implementation of investigative policies by OLAF: Mr ZIMIANITIS, member of the SC, could not draw conclusions on the implementation of the past Investigative Policy Priorities as the relevant assessments by OLAF are missing. He highlighted in particular the simultaneous opening of 423 cases in February 2012, without an individual assessment of each case (SC's Opinion No 5/2014);
- follow-up of the SC's recommendations: Mr DENOLF, member of the SC, expressed concerns as regards the implementation of the SC's recommendations and pointed out that the SC had not received in 2015 feed-back from OLAF on the implementation of past recommendations. He also expressed doubts as regards OLAF's presentation of its investigative performance, which the SC considers altered as a result of the simultaneous opening of 423 cases in 2012 and the closing of a number of these shortly thereafter.

Mr KESSLER, Director-General of OLAF, welcomed the monitoring function of the SC and acknowledged its importance in order to ensure OLAF's independence and the supervision of its work. He expressed his disagreement, however, with many of the points raised by the SC, namely:

- as regards the cooperation with the SC, he highlighted the increased amount (658) of information on cases lasting longer than 12 months sent to the SC, which involved considerable workload for OLAF staff, especially in times of staff reductions;
- as regards the duration of investigations, he explained that irrespective of the calculation method applied, the duration had decreased and that this was visible from OLAF's replies, as well as from the SC's Opinion No 5/2014.;
- on the simultaneous opening of 423 cases, Mr Kessler explained that this was due to the reorganisation of OLAF and confirmed that even though no individual report was issued for each case, an individual assessment had indeed taken place. Furthermore, OLAF had transparently reported on this measure in the 2012 and 2013 OLAF Report.

Delegations expressed concerns about the working relations between OLAF and the SC and called upon both bodies to resolve their differences concerning the type and amount of information that should be exchanged. Delegations reminded the SC and OLAF of the agreement on working arrangements that was reached in January 2014. In this respect, delegations reiterated views previously expressed<sup>3</sup>: any possible change to Regulation No 883/2013 would have to be carefully evaluated, including a cost-benefit analysis, at the timing foreseen by Article 19 of the Regulation. Several delegations stressed that it was important to focus on the quality of the investigations and not so much on their duration. Delegations would prefer to receive substantive information on the assessment of OLAF's work rather than merely on procedural issues.

Furthermore delegations asked for clarifications on the following issues:

- whether the SC would set up a website, which would contain its opinions and reports;
- whether it would be possible to draw a report which is more accessible for all parties: reducing the volume of the SC's report by eliminating the annexed opinions and reports, while at the same time covering the point of view of OLAF.

Mr PÖYSTI confirmed that the SC would set up its own website, which would include its opinions and reports, and would endeavour to improve the readability of its annual report. As regards the working arrangements, Mr Pöysti considered that efforts are still needed to ensure that they are implemented in a satisfactory manner for both SC and OLAF. He insisted on the relevance of reporting on the duration of investigations, since this is a very important parameter for assessing the quality of an investigator (because of the risk of criminal offences becoming time-barred).

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<sup>3</sup> Docs. 17494/13 and 14075/14.