



Brussels, 3 March 2016
(OR. en)

6741/16

GAF 9

"I" ITEM NOTE

From: Presidency
To: Permanent Representatives Committee (Part 2)

Subject: Interinstitutional exchange of views pursuant to Article 16 of Regulation (EU, Euratom) No 883/2013
- Letter to Vice-President Georgieva on the Working Arrangements between OLAF and its Supervisory Committee

1. On 28 September 2015, the interinstitutional exchange of views, held in accordance with Article 16 of Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹, took place in the presence of the delegation composed of the Luxembourg, Dutch and Slovak Permanent Representatives, representing the Council.
2. Under a point on the agenda, the European Parliament, the Council and the Commission, together with the Director General of OLAF and the Supervisory Committee of OLAF (SC) discussed the Working Arrangements between OLAF and its Supervisory Committee. Following the mandate given by Coreper², the representatives of the Council expressed the view that OLAF and the SC should "overcome their differences and come to joint conclusions on their working arrangements". This view was supported by the European Parliament.

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).

² Doc. 12127/15.

3. In this context Vice-President GEORGIEVA committed to finding a final solution to this situation. Against this background, on 16 December 2015, the Commission sent a letter (ANNEX 1) proposing that the legal services of the European Parliament, the Council and the Commission work together with a view to reaching a common understanding on the three points which remained outstanding, namely:
- The relationship between electronic access to OLAF databases and the reporting obligations of the Director General of OLAF under the OLAF Regulation;
 - The access of the SC to cases which are sent to national authorities - Article 17 (5), recital 45 and Article 15 (1) (second paragraph);
 - The access of the SC to additional case-related information to closed cases only, or to all cases (Article 15 (1) fifth subparagraph and recital 37 - "not to interfere with the conduct of investigations in progress").
4. Following Commission's letter, the Permanent Representatives Committee is invited to approve the draft letter in ANNEX 2.



Kristalina Georgieva
Vice-president
Budget and Human Resources

Brussels,
A(2015)

Subject: Outstanding issues on the Working Arrangements between OLAF and the OLAF Supervisory Committee

Your Excellency Ambassador Braun,

Following our discussions at the inter-institutional exchange of views of 28 September 2015, I met with the Director-General of OLAF - Mr. Kessler and the Chairman of the Supervisory Committee - Mr Pöysti. The meeting was aimed at helping to make progress on the Working Arrangements between the two bodies, a process which I have committed to support in response to concerns expressed by both the Council and the European Parliament.

The meeting was fruitful and constructive. Mr Kessler and Mr Pöysti informed me that they had agreed on a majority of outstanding issues and that they will continue negotiating on the remaining points. However, within the scope of the Working Arrangements, three points remained outstanding due to doubts or divergences in the legal interpretation and for which all participants agreed that the opinion of the Legal Services of the three institutions would be useful. Those issues are:

- The relationship between electronic access to OLAF databases and the reporting obligations of the Director General of OLAF under the OLAF Regulation;
- The access of the SC to cases which are sent to national authorities – Article 17 (5), recital 45 and Article 15 (1), second paragraph);
- The access of the SC to additional case-related information to closed cases only or to all cases (Article 15 (5) and recital 37 – *“not to interfere with the conduct of investigations in progress”*).

With the aim of reaching a common understanding on these issues, I would appreciate if you could authorize the Legal Service of your institution to get in contact with the Legal Service of the Commission. In advance of eventual meeting of the Legal Services, my cabinet will organize a meeting at which OLAF and OLAF SC can present their position on the issues at stake.

H.E. Christian BRAUN
Ambassador Extraordinary and Plenipotentiary
Permanent Representative Luxembourg

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If in the course of the negotiations of the Working Arrangements, additional points of divergence are identified, I will forward them to you.

I would be grateful for your engagement in this process which gives the institutions the possibility to support the cooperation between OLAF and its Supervisory Committee.

I have addressed a letter with the same proposal to the European Parliament.

Yours sincerely,



Kristalina Georgieva

Copy: Pieter de Gooijer, Ambassador Extraordinary and Plenipotentiary Permanent Representative of the Netherlands

DRAFT LETTER

from: Mr Pieter de GOOIJER, Chairman of the Committee of Permanent Representatives of the Council

to: Ms Kristalina GEORGIEVA, Vice-President of the European Commission

Subject: Outstanding issues on the working arrangements between OLAF and the OLAF Supervisory Committee

Madam,

Further to your letter of 16 December 2015, I am pleased to inform you that the Council Legal Service is prepared to take part in an exchange of views together with the Legal Services of the Commission and of the European Parliament in order to assess the possibility of a common interpretation regarding the three outstanding issues concerning the Working Arrangements between OLAF and the Supervisory Committee of OLAF, as identified in your letter and namely:

"The relationship between electronic access to OLAF databases and the reporting obligations of the Director General of OLAF under the OLAF Regulation;

The access of the SC to cases which are sent to national authorities - Article 17 (5), recital 45 and Article 15 (1), second paragraph);

The access of the SC to additional case-related information to closed cases only, or to all cases (Article 15 (1) fifth subparagraph and recital 37 - 'not to interfere with the conduct of investigations in progress').".

The Council Legal Service is looking forward to working together with the Legal Services of the Commission and of the European Parliament on those outstanding issues.

(Complimentary close)