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## 'I' ITEM NOTE

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

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Subject: Eighteenth Report of the European Anti-Fraud Office covering the period  
from 1 January to 31 December 2017  
– *Outcome of proceedings*

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1. On 19 June 2018, the European Anti-Fraud Office (OLAF) submitted to the Council its 2017 Annual Report<sup>1</sup>.
2. Pursuant to point (c) of Article 16(2) of Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by OLAF<sup>2</sup>, an interinstitutional exchange of views shall take place every year, allowing for a discussion, at political level, on the activities carried out by OLAF, including in relation to such reports.

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<sup>1</sup> WK 7526/2018.

<sup>2</sup> 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.).

3. In view of the above and in order to facilitate the preparation of the next interinstitutional exchange of views on 24 September 2018, the Working Party on Combating Fraud examined this report on 19 July 2018 and agreed to establish an outcome of proceedings. An agreement on the text of the outcome was reached on 13 September 2018.
  4. The Permanent Representatives Committee is invited to endorse the outcome of proceedings as set out in the Annex to this document.
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OUTCOME OF PROCEEDINGS

On 19 July 2018, the European Anti-Fraud Office (OLAF) presented its annual report, the "Eighteenth report of the European Anti-Fraud Office, 1 January to 31 December 2017"<sup>3</sup>, to the Working Party on Combating Fraud.

The following key messages from the report can be highlighted:

- OLAF's investigative performance was good, with 215 new investigations opened, having analysed information in 1 111 selection procedures. During the reporting period 197 investigations were concluded, leading to 309 recommendations issued to competent authorities at EU and national level. As a result of its investigations, OLAF recommended the recovery of over EUR 3 billion to the EU budget, sum which is significantly higher than in previous years and stems from major undervaluation fraud cases concluded by OLAF during the year;
- the monitoring of the follow up of OLAF's financial and judicial recommendations shows that:
  - i) the amount of financial recommendations from OLAF is significant, and sometimes also exceeds the entire financial impact of the investigative and control activities of Member States, however, actual recovery from OLAF recommendations cannot be precisely measured due to the recovery procedures and that other entities than OLAF are responsible for pursuing the recoveries; and
  - ii) the follow-up of judicial recommendations by indictments can be further improved (42 % of recommendations led to an indictment) due to issues related to the admissibility of OLAF reports as evidence and possible consequential time bars, as well as OLAF's limited investigation powers;

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<sup>3</sup> WK 7526/2018.

- the duration of investigations was further reduced to 17.6 months, with the selection duration corresponding to those cases remaining at an average of 1.8 months;
- as in the previous year, the structural funds sector remained at the core of OLAF's investigative activity, closely followed by the centralised expenditure sector, where the number of investigations has continued to increase;
- for the second consecutive year, based on the analysis of the information gathered through its investigations, OLAF pointed out that: corruption, conflict of interest and manipulation of tender procedures - mainly in the form of collusion between the winner of a tender and either consultants or the beneficiary of the funding - were still encountered in fraud cases affecting EU structural funds. A new trend seems to be fraud related to new financial instruments in the use of Structural Funds to finance risk capital funds;
- funds destined for research or the refugee crisis were increasingly seen an attractive marketplace for fraudsters;
- in its 2017 annual activity report OLAF presented an in-depth overview of its recent activities in fighting revenue fraud. Transnational criminal schemes are used to evade customs duties by means of undervalued imported goods entering the EU with false declarations, as well as to abuse customs procedures to obtain a VAT exemption. The evasion of anti-dumping and countervailing duties, as well as smuggling activities were targeted. These types of fraud have a very high financial impact and are on the rise. An update of Regulation No 515/97 allowed OLAF to create new IT systems (Container Status Messages database, an Import, Export and Transit Directory) to better track and trace suspicious shipments for customs purposes;
- OLAF welcomed the creation of EPPO, which should improve the indictment rate in criminal investigations, as well as the ongoing reform of Regulation No 883/2013, as tools needed to match the complexity of the cases investigated and the current fraud landscape.

Delegations took note of the report, acknowledging the positive development of OLAF's investigative activities and the efficiency gains.

Delegations encouraged OLAF to make use of comparative data when presenting its recommendations to compare the recovery amount indicated by the national accounting officer and the amount of recovery recommended by OLAF. In response to this comment, the OLAF representative explained that OLAF's recommendations follow the OLAF's investigative work and always depend on the amount, type and quality of information received from national authorities or EU institutions. The actual recoveries are outside OLAF's remit, since OLAF is not mandated to do corrective measures on its own. The investigators are encouraged to engage in discussions with the services concerned in order to bring down the gap.

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