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'I' ITEM NOTE

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

Subject: OLAF Supervisory Committee's Activity Report for the year 2017
- *Outcome of proceedings*

1. On 31 May 2018, the OLAF Supervisory Committee submitted to the Council its 2017 Activity Report¹.
2. Pursuant to point (b) of Article 16(2) of Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by OLAF², an interinstitutional 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.

¹ WK 6685/2018.

² 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 the 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

At its meeting on 19 July 2018, 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 for the year 2017.

Mr Jan Mulder, current Chair of the Committee, presented the SC report together with two other members of the Committee, Ms Grażyna Stronikowska and Mr Petr Klement.

Mr Mulder highlighted the following:

- 2017 was a transition period with an almost completely changed Committee and the resignation of OLAF's Director-General (DG);
- on access to information: considerably better but room for further progress. He also pointed out that the DG is always welcome at the Committee's meetings, which facilitates an open exchange of information and better understanding of the issues. However, the first comment of the Committee still concerns the ability to determine which information it needs - as spelled out by the opinion of the three Legal Services - by improving access to OLAF's database of cases. He also stressed that whenever OLAF opens an investigation in a Member State, cooperation between national authorities and OLAF should be mandatory;
- on moving the secretariat from OLAF to PMO: the move did not live up to the high expectations, in particular, the new premises at the PMO are not considered appropriate; the Committee will issue recommendations on this in October, after having discussed the situation with Commissioner Oettinger, the Director-General of Human Resources and the Director-General of OLAF.

- relationship with EPPO: adaptation to the future cooperation with EPPO is the biggest current challenge facing OLAF, as OLAF will have to support EPPO, which will should involve, among other things a secured channel of communication or even an eventual new unit. Work of OLAF will not diminish, but be more complex. Some staff might will be transferred to EPPO and the Committee is concerned about the capacity of resources available to OLAF in order to handle its work load in the future;
- selection procedure for the new DG was closely followed and found to be correct, but recommendations for improvement of the selection procedure might be formulated later.

Ms Stronikowska, the only member of the Committee named before 2017, criticized again the quality of 12 months OLAF reports based on Article 7(8) of Regulation No 883/2013 on investigations lasting more than a year. She pointed out that lengthy investigations put at stake fundamental rights of people concerned by investigations and may jeopardize national inquiries due to statutory limitations, so any long duration has to be properly justified on the basis of the complexity and severity of the case. An analysis by the SC of over 400 12-month reports showed that the majority of these reports are insufficient for examining the reasons for non-completion of investigations and the remedial measures envisaged to speed up these proceedings. She called on OLAF to improve reporting and proposed to develop in collaboration with OLAF a new suitable template for providing information. The template should be used both by the Committee for monitoring and the Director-General for managerial control of investigations. She expressed her hope for further progress with the new DG.

Mr Klement spoke about the situations where judicial recommendations made by OLAF were not followed by national authorities and by one EU authority. The reasons given were quite diverse, ranging from different findings in subsequent proceedings led by national authorities to lack or insufficient evidence, lack of proven intention, inability to demonstrate culpability or that damages remained under the national legal threshold. SC sees gaps in application of rules that require evidence to be collected in the first stage of the investigation and concerning admissibility in trial. Many problems could have been avoided by coordinating at an earlier stage with national authorities.

OLAF welcomed the report and thanked SC for acknowledging the improvement in the flow of information since the arrival of the new Committee members and for the standing invitation to the works of the Committee. OLAF saluted a good and open dialogue and the efforts made to forge a new relationship. There was confidence that Mr Itälä, the new DG, will strengthen the relation with SC and the Committee was encouraged to sign working arrangements with OLAF, as it was important to have a formalised agreement on how information should be shared and transmitted in the future.

One delegation thanked for the report and saluted the improvement in the relationship between OLAF and its SC, noting that it was different in the past.

The Presidency asked the SC about signing the working arrangements as required by OLAF, and Mr Mulder answered that discussions on this will start after a period of accommodation for the new DG.
