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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 2016
- *Outcome of proceedings*

1. On 24 May 2017, the OLAF Supervisory Committee submitted to the Council its 2016 Activity Report.
2. Pursuant to point (b) of Article 16(2) of Regulation (EU, Euratom) No 883/2013¹ 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.

¹ 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 on 23 November 2017, the Working Party on Combating Fraud examined the report on 7 June 2017 and agreed to establish an outcome of proceedings. An agreement on the text of the outcome was reached on 16 October 2017.
 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 7 June 2017, 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 2016.

Mr Mulder, current chairman of the committee presented the SC report, while stressing that this report had been prepared by the previous SC. From the report he highlighted in particular the following:

- Access to information: diverging points of view with OLAF's Director-General (DG) were still present during the reported year. The SC considered that it still did not have sufficient access to information in order to duly perform its duties;
- SC assessment of the DG's independence: the information received by the SC in relation to the Commission's decision to partially waive the immunity from legal proceedings of OLAF's DG was insufficient for the SC to form a conclusive view as to the potential impact on OLAF's independence;
- SC consideration of the application of procedural guarantees: SC pointed out that the protection of fundamental rights was put into question due to the lack of effective supervision. The SC called on OLAF's DG to make general improvements in the management of complaints system, in particular as regards legal remedies;
- duration of OLAF's investigations: as in past years, the lack of detailed information provided by OLAF in specific cases was criticised, given that it made it impossible for the SC to give assurance that investigations were conducted continuously and without undue delay having regard to the circumstances and complexity of the cases.

The OLAF representatives welcomed the open and constructive cooperation which was being established with the new SC and stressed that the report was prepared by the previous SC. Nevertheless, OLAF contested that there was a lack of information provided to the SC on specific cases, it considered that the SC had been provided with all the information which it had requested. OLAF expressed its disappointment that the SC's Activity Report did not taken into account some information provided to the SC by OLAF. OLAF expressed the hope that the SC would soon re-establish contact to work on new working arrangements, given that the previously agreed ones were withdrawn at the request of the SC, following the joint opinion issued by the legal services of the European Parliament, the Council and the Commission¹.

Delegations expressed their disappointment on the continuous divergence between OLAF and its SC. They expected that the recent amendment of Regulation (EU, Euratom) No 883/2013, which introduced more administrative independence to the SC's secretariat and the joint opinion of the three legal services, would have led to a better cooperation between OLAF and its SC. For delegations, this structural and systemic problem had to be addressed in a definitive manner. As regards the practical working arrangements, delegations also requested a clear timeline for the establishment of the new working arrangements and wondered if a new opinion from the three legal services would be necessary to resolve the ongoing conflicts. Some delegations expressed concerns over the Commission's provision of information on the follow-up of disciplinary recommendations from OLAF.

Mr Mulder welcomed delegations' observations and the call for a permanent solution to the SC's access to information and expressed the view that an amendment of Regulation No 883/2013 after its evaluation would provide a long term solution by clarifying the details of the cooperation required by both, the SC and OLAF. The current SC would also address this matter in the context of its opinion on the evaluation of Regulation No 883/2013. As regards the establishment of the new working arrangements, the SC was not able to provide a concrete timetable, but it was committed to work on this matter and come to a swift conclusion.

¹ Joint opinion of the Legal Services of the European Parliament, the Council and the Commission on three aspects of the relationship between OLAF and its Supervisory Committee (Doc. 12091/16).