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'I' ITEM NOTE

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

Subject: Seventeenth Report of the European Anti-Fraud Office covering the period from 1 January to 31 December 2016
– *Outcome of proceedings*

1. On 1 June 2017, the European Anti-Fraud Office (OLAF) submitted to the Council its 2016 Annual Report¹.
2. Pursuant to point (c) 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 OLAF, including in relation to such reports.

¹ Doc. 9739/17.

² 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 23 November 2017, the Working Party on Combating Fraud examined this 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

On 7 June 2017, the European Anti-Fraud Office (OLAF) presented its annual report, the "Seventeenth report of the European Anti-Fraud Office, 1 January to 31 December 2016"¹, to the Working Party on Combating Fraud.

The following key messages could be highlighted from the report:

- OLAF's investigative performance was very good, with 219 investigations opened, out of 1 157 selections of incoming information. During the reporting period 272 investigations were concluded, leading to 346 recommendations issued to competent authorities at EU and national level. As a result of its investigations, OLAF recommended the recovery of EUR 631 million to the EU budget;
- the duration of investigations was further reduced to 18.9 months, with the selection duration corresponding to those cases remaining at an average of 1.7 months;
- as in the previous year, the structural funds sector remained at the core of OLAF's investigative activity, closely followed by the customs and trade sector, where the number of investigations has continued to increase;
- from the analysis of the information gathered through its investigations, OLAF pointed out that: public procurement was still an attractive marketplace for fraudsters; research and employment grants constitute also a lucrative fraud business; complex transnational schemes are used by criminal networks in order to evade customs duties and finally OLAF observed a change in the nature of the illicit trade on tobacco products (from branded to non-branded cigarettes);
- in order to match the complexity of the cases investigated and the current fraud landscape, OLAF argued that the tools granted by the legislators need to be updated, including through the reform of Regulation No 883/2013.

¹ Doc. 9739/17.

Delegations acknowledged the positive development of OLAF's investigative activities, and welcomed the reported efficiency gains, while noting that figures presented were more positive than the ones in OLAF Supervisory Committee's Annual Activity report. Delegations made some further comments:

- they encouraged OLAF to provide the link between the amounts recommended for recovery and the amounts recovered in a given year and the number of years elapsed between those two reporting moments;
- given the importance of making the differentiation between fraud and irregularities, some delegations would have preferred that such difference is more visible and highlighted in the report;
- delegations also requested regular updates on the follow up of cases where the amounts involved were significant, such as the investigation conducted by OLAF on a major case of customs fraud, where OLAF estimates that the loss to the EU budget could reach nearly EUR 2 billion;
- delegations also called for more information on the actions taken to increase the rate of implementation of judicial and financial recommendations;
- delegations requested to be informed by OLAF of the outcome concerning the follow up of its judicial recommendations.

In addition, delegations asked for the following clarifications:

- is Horizon 2020 included under the title Research and Employment Grants?
- was there an intention to decrease the number of Administrative Cooperation Arrangements (ACA)?
- which Institutions were participating in the Fraud Prevention and Detection Network (FPDNet)?
- did OLAF foresee an increase in the number of Joint Customs Operations (JCO) in 2017?

In response to these comments and questions, the OLAF representatives explained that the cases referred to in the report concern the FP7 programme, as well as Structural Funds, but not Horizon 2020, as the investigations are related to years when Horizon 2020 was not yet active.

OLAF clarified that a number of ACA had been discontinued because they were outdated. ACA with Member States were, in general, no longer necessary since cooperation was covered by the legislation. Given that negotiations of such arrangements were so time consuming, OLAF is, however, focusing on ACA with third countries.

OLAF explained that the FPDNet is a network of Commission services' experts that meets 4 times per year. It is aimed at sharing experience in the fight against fraud between Commission services. Given that the experience that is shared in the FPDNet is mostly related to Commission services, participation is limited to Commission, Executive Agencies and EEAS staff.

Finally, OLAF clarified that the number of JCO would increase if there would be sufficient resources available. These were also dependent on the cooperation with Member States, third countries and institutions. In this sense, the Hercule III programme was also being used to the extent possible.