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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 2021 - <i>Outcome of proceedings</i>

1. On 11 February 2022, the OLAF Supervisory Committee submitted to the Council its 2021 Activity Report¹.
2. Pursuant to point (b) of Article 16(2) of Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by OLAF², as last amended by Regulation 2020/2223³, 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 opinions and reports of the Supervisory Committee.

¹ Doc. WK 2135/2022.

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 Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations (OJ L 437, 28.12.2020, p. 49).

3. In view of the above and in order to facilitate the preparation of the next interinstitutional exchange of views to be held on 26 October 2022, the members of the Working Party on Combating Fraud examined the report on 28 June 2022 and agreed to establish an outcome of proceedings. An agreement on the text of the outcome was reached on 21 September 2022.
 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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DRAFT OUTCOME OF PROCEEDINGS

On 28 June 2022, the OLAF Supervisory Committee (SC) presented its Activity Report for the year 2021⁴ to the Working Party on Combating Fraud (GAF). The presentation was made by Mr Jan MULDER, Chairman of the SC.

Mr Mulder started by pointing out that this is the last report he presents as chairman of the SC, as his mandate, together with the mandate of two other members, expires on 23 September 2022. He praised the significantly improved relationship with the OLAF Director-General (DG) compared to the experience he had had at the beginning of his mandate with the previous DG.

2021 was a very important year, since it was the first full year of application of the changes brought to the OLAF Regulation. It was also the first year of application of the Working Arrangements (WA) agreed between OLAF and the EPPO. The SC had issued an opinion on the WA making a number of suggestions which were all implemented by the two parties. For the SC, these WA should be subject to regular revision, especially after the first year of implementation. The SC also made comments about the new investigation practices of OLAF and took a closer look at the cooperation between OLAF and the national authorities. Regarding the duration of OLAF investigations, the SC issued an opinion on OLAF investigations lasting more than 36 months and amongst others, recommended that any critical decision which had a material impact on the handling of an investigation was always taken by senior management. The SC is pleased to note that all of its recommendations were adopted by OLAF and some already implemented.

There was also a first meeting with the newly appointed Controller of procedural guarantees (Controller), due to start working this year.

2021 came also with new rules of proceedings for the SC itself and with a changed role for its Secretariat. The SC has also requested the Commission to take the necessary steps to ensure that the Secretariat is administratively reattached to OLAF rather than to the PMO.

⁴ Doc. WK 2135/2022.

Looking to the future, Mr Mulder thought that the human resources problem in OLAF is becoming a real issue. Given the increased work OLAF will have to carry out in the area of the Recovery and Resilience Fund (RRF), it is not wise to diminish its investigation capacity. Moreover, the SC still has doubts whether OLAF's case management system should be kept and not be replaced.

Delegations that took the floor praised the work of the SC and the improved cooperation with OLAF, highlighting the fact that the SC Report is as important a source of information, as are the SC opinions.

One delegation made reference to paragraph 31 of the report and emphasized that OLAF's focus must in any case be on the protection of the EU's financial interests.

Another delegation asked information about the process of transmission of files from the SC to the Controller.

Mr Mulder answered that during the transition period (the period between the adoption of the new OLAF Regulation and the appointment of the Controller), a complainant was given by OLAF the choice either to have the complaint dealt with by OLAF only, or wait until the Controller is in place. There are already a number of complaints submitted to OLAF that will be transferred to the Controller once she is in place.
