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'I' ITEM NOTE

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

Subject: Twenty-second report of the European Anti-Fraud Office covering the period from 1 January to 31 December 2021
– *Outcome of proceedings*

1. On 8 June 2022, the European Anti-Fraud Office (OLAF) submitted to the Council its 2021 Annual Report¹.
2. Pursuant to point (c) 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 OLAF, including in relation to such reports.

¹ Doc. WK 8374/2022.

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 on 26 October 2022, the members of the Working Party on Combating Fraud examined this 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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OUTCOME OF PROCEEDINGS

On 28 June 2022, the European Anti-Fraud Office (OLAF) presented its annual report covering the year 2021 to the Working Party on Combating Fraud (GAF)⁴.

The following key messages from the report were highlighted by Mr Ville ITÄLÄ, Director-General of OLAF:

- OLAF's investigative performance was illustrated with 234 new investigations opened and 212 investigations closed, leading to 294 recommendations issued to competent authorities at EU and national level. As a result of its investigations, OLAF recommended the recovery of EUR 527 million to the EU budget and nearly EUR 341 million to be prevented from being unduly spent.
- The main trends in fraud and irregularities revealed by OLAF investigations in 2021 were:
 - manipulation of procurement and tendering, collusion, mostly targeting agriculture and cohesion policy;
 - creation of artificial circumstances in agriculture in order to gain EU funding;
 - cases all around the world exploiting digital tools and professionalising the illicit business activities;
 - double funding;
 - new tactics helping frauds relating to green and digitalisation projects;
 - breaking up shipments of goods into smaller consignments, undervaluation cases;
 - use of shell companies;
 - cigarette and tobacco smuggling and illicit production;

⁴ Doc. WK 8374/2022.

- COVID-19 related fraud: bogus offers for vaccines (OLAF warned Member States about such situation, worth over EUR 16 billion) and other medical items (100 million counterfeit COVID-19 related products were seized).
- The indictment rate over the period 2017-2021 continued to decrease to 35 % compared to 37 % in the annual report of the previous year covering the period 2016-2020.
- Over the same period, 46 actions were taken by the appointing authorities following the 97 disciplinary recommendations made by OLAF.
- OLAF's partnership with the EPPO is going very well, a working arrangement between OLAF and the EPPO was signed in July 2021. OLAF was a considerable source of information for the EPPO. The total damage of the 85 criminal investigations opened by the EPPO as a result of OLAF's reporting was estimated at EUR 2.2 billion.
- A minor reorganisation of OLAF took place in 2021 with the aim to ensure an optimal coordination with the EPPO. Several posts were transferred from OLAF to the EPPO over the course of the past few years, it resulted in a perceptible cut in staff.

Delegations took note of the report and made the following points:

- Some delegations congratulated OLAF for its good results in a difficult year 2021, affected by COVID-19, were happy to hear about the good relationship with the EPPO and appreciated the improvements in the structure and content of the report. Two delegations mentioned with satisfaction the implication of OLAF in the Recovery and Resilience Fund (RRF) and appreciated in particular the cross-country activities.
- With regards to the relationships with the EPPO, one delegation asked for further details on the average timing of EPPO's replies to OLAF on the requests from the latter for opening complementary investigations. The information could be an indicator of the functioning of the mechanism established pursuant to Art. 12e and 12f of the OLAF Regulation⁵. The Director General of OLAF took note of the request and said he would collect the info and send a reply to the Group at a later stage.

⁵ 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).

- Some delegations were concerned about the lack of information on amounts actually recovered as result of OLAF recommendations and wanted to know if the new monitoring and reporting unit can provide clearer answers to this question.
- Another delegation wanted to know what OLAF is doing to increase the indictment rate and if they have an analysis on which efforts are most effective in this sense. The same delegation, echoed by others, was concerned about the extensive duration of investigations and about their use for eventual prosecutions. These concerns could be addressed in the guidelines on investigation procedures, which have just been revised in 2020, but could be further improved.
- The same delegation asked if the recommendations of the OLAF Supervisory Committee (SC) on the long investigations have been taken on board, same as on the relationship with the Member States, given the different challenges faced in each case.
- Some delegations were concerned about the human resources of OLAF, inquiring about the rather high vacancy rate and the efficient use of resources. The delegations who took the floor on this latter issue underlined the importance of OLAF focusing on its core task of fighting fraud and protecting the EU's financial interests and warned against expanding to subsidiary areas where other monitoring measures are already in place.

The OLAF Director-General answered that indeed, the follow up of OLAF's recommendations is really important, so a dedicated unit is looking into the issue of amounts actually recovered. In close cooperation with DG BUDG, OLAF examined last year how financial recommendations issued between 2012 and 2020 were followed up, with the result so far of about 27 % recovered from the amount recommended, excluding four big undervaluation cases. The recent judgment in the so-called UK case will have a notable impact here. There are lots of reasons for this situation, including bankruptcy. Concerning the recovery, OLAF's mandate ends with financial recommendation, and the follow-up is ensured by responsible national authorities and the Commission, notably DG BUDG.

He admitted that the indictment rates are low, and this is frustrating, but OLAF can only recommend the national judicial authorities, which are independent, to take action. The indictment rate will improve with the functioning of the EPPO and there are bilateral arrangements with certain Member States that have not joined the EPPO. As far as the direct relationship of OLAF with the Member States, national prosecutors are involved in investigations from the start and the results are much better.

He added that the duration of investigations is of particular importance to him and this issue is also checked by the SC. The SC's recommendations in this respect are implemented. Cases that take more than 24 months are subject to a special report. The main problem is the lack of human resources, which forces OLAF to choose between keeping up with the core business and being able to reduce the duration of investigations.

He attributed the longer duration of investigations to several factors, either external (e.g. companies' bankruptcy, need to give posts to the EPPO) or internal (long sick leave of colleagues, lack of resources combined with new priorities such as the RRF and the rule of law, high workload of the forensics team, etc.).

Related to the mandate of OLAF, the focus is indeed on the protection of the EU's financial interests, but there are also tasks related to Council Regulation (EC) No 515/97⁶, where the main issue is not only financial, but also impacts citizens' health and security.

There is a RRF dedicated task force, looking at national country plans on technical, not political actions, and there have already been 2 cases started concerning RRF, with others probably coming next year.

⁶ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).