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'I' ITEM NOTE

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

Subject: Twenty-third report of the European Anti-Fraud Office covering the period from 1 January to 31 December 2022
– *Outcome of proceedings*

1. On 7 June 2023, the European Anti-Fraud Office (OLAF) submitted to the Council its 2022 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 7380/2023.

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 25 October 2023, the members of the Working Party on Combating Fraud examined this report on 21 June 2023 and agreed to establish an outcome of proceedings. An agreement on the text of the outcome was reached on 25 September 2023.
 4. The Permanent Representatives Committee is invited to take note of the outcome of proceedings as set out in the Annex to this document.
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OUTCOME OF PROCEEDINGS

On 21 June 2023, the European Anti-Fraud Office (OLAF) presented its annual report covering the year 2022 to the Working Party on Combating Fraud (GAF)¹.

Mr Ville Itälä, Director-General (DG) of OLAF, welcomed the support OLAF receives from the Member States and praised the relationship with Member States' authorities. Thereafter, he highlighted the following key messages from the report:

- OLAF's investigative performance was illustrated with 192 new investigations opened and 256 investigations closed, leading to 275 recommendations issued to competent authorities at EU and national level. As a result of its investigations, OLAF recommended the recovery of EUR 426.8 million to the EU budget and managed to prevent EUR 197.9 million from being unduly spent. 71 cases were reported to the European Public Prosecutor's Office (EPPO), resulting in 42 criminal investigations.
- The main trends in fraud and irregularities revealed by OLAF investigations in 2022 were the same as observed over past years, with some increase in digital fraud.
- The specific feature of 2022 was that various strands of EU money were directed to react to different new aims like aid to Ukraine under Russian attack or recovery after the COVID-19 crisis via the RRF.
- On the other hand, the year was also marked by a high-level affair: Qatargate.

¹ Doc. WK 7380/2023.

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

- Almost all delegations that took the floor, starting with the Presidency, expressed their appreciation for the layout of the report and for the fact that it was presented by the OLAF DG himself. Importance given to cooperation with Member States' authorities was also appreciated. The digital version of the report was also well received, but one delegation would have welcomed a better distinction between irregularity and fraud and another delegation would have liked more clarity on statistics.
- One delegation expressed its mixed feelings about the broad spectrum of areas where OLAF is acting. While understanding the background, it emphasized that OLAF's core mandate lies in the protection of the EU's financial interests.
- Another delegation complained about the fact that the various reports produced on anti-fraud measures and activities, not only by OLAF, but by other institutions involved (PIF report, the EPPO report) have a disproportionate impact in the media. Most journalists use exclusively the press releases and draw conclusions from a few cases. Those conclusions are not confirmed by the OLAF report itself and are missing the whole picture. The delegation thought that media and political impact at national level should be considered, and that information and data provided should follow a standardized procedure, with the aim of reaching a univocal reading, taking into account the annual PIF report's approach. Recalling the holistic approach requested by the European Parliament last year, the delegation proposed a single EU document encompassing the entirety of the anti-fraud action, both at national and EU level, so that media can get a clearer picture of the general state of play.
- Some delegations asked questions related to the follow-up to OLAF recommendations and the amount actually recovered. One delegation asked for a written account of the stocktaking exercises by OLAF with DG BUDG on the financial and administrative recommendations.
- Some delegations inquired about the cooperation between OLAF and the EPPO and wanted to know if the transfer of human resources between the two offices is finished.

- One delegation praised the strong investigative performance of OLAF and the fact that the positive results were consistent with the past several years but expressed its concern about the fact that 2022 has seen the highest number of investigations lasting more than 12 months in the last five years (38). The same delegation, supported by another delegation, also expressed concern about the general duration of investigations.
- Another delegation wanted to know the reasons for the low indictment rate and asked if any measures were considered to change this situation. The same delegation wanted to know if there was any follow-up to the 2021 recommendations from the Supervisory Committee, notably in the revision of the guidelines for investigations.

In his answer, the OLAF DG:

- Stated that OLAF has been always acting within its mandate, which is not expanding. In certain cases, OLAF needs to adapt to exceptional circumstances by redirecting the investigation focus to different elements of its mandate, as it is the case for dealing with the circumvention of sanctions against Russia. However, as it is always the case, OLAF works with national authorities to clarify the limits of each other's action. Another extra task for OLAF is related to the Recovery and Resilience Fund (RRF), where it had an early start, with several ongoing cases, each of a different nature, going from conflict of interest to tender irregularities. The OLAF DG added that OLAF's work would be helped by a pan-European database.
- Explained, about the media visibility of the reports, that it is difficult to control how the media interprets things. They have a tendency towards provocative headlines. If there are more cases in one Member State, this does not necessarily mean more fraud. Instead, it could mean better cooperation with OLAF. He thought that a holistic overview is a very good idea, which was also explored, at the demand of the Commission, in a meeting he had with the European Prosecutor, Europol, Eurojust and the three Commissioners responsible for OLAF, to look at how they could better cooperate. This is why OLAF would like to invite Europol, Eurojust and the European Court of Auditors to this year's Inter-institutional Exchange of Views.

- Pointed out that, on the follow-up of recommendations, one needs to look at the long term to have a clear picture. For 2012-2022, the amount recovered is EUR 8.5 billion. On the other hand, OLAF's mandate stops at issuing recommendations and the responsibility for recoveries belongs to DG BUDG. In that sense, the OLAF DG agreed that it would be a good idea to invite DG BUDG in GAF to provide information about stocktaking. Recoveries themselves are huge compared to OLAF's budget. For example, only the UK customs recommendation resulted in EUR 3 billion being paid back to the EU budget. Therefore, cutting OLAF's budget kills the milking cow, OLAF DG argued, saying that he is not asking for a bigger budget, but for a stop in reducing OLAF's resources.
- Assessed the cooperation with the EPPO as very good. OLAF and the EPPO hold a clearing house meeting every two weeks to sort out problems in the various cases. On the other hand, reporting interaction needs more fine-tuning. Only 9 of the over 1000 cases the EPPO worked on were sent to OLAF. The OLAF DG thought that more cases dismissed by the EPPO because of no criminal consequences should be sent to OLAF to get a recommendation for a financial recovery. On the other hand, the best cases OLAF is working on now are in complementarity with the EPPO, meaning that OLAF deals with the administrative side, while the EPPO continues with the criminal investigation, which takes longer.
- Stated that the transfer of human resources to the EPPO is finished, but the 45 posts transferred, together with an increased workload, had an impact, for example, on the duration of investigations. In the same vein, the OLAF DG added that the length of investigations is proportional to the size of the case investigated and that the COVID-19 crisis influence could also still be felt in 2022.

- Admitted that the figure for judicial recommendations is too low, but explained that OLAF works with judicial authorities, which are independent and follow their own timelines. OLAF involves at a very early stage in an investigation both national authorities and Eurojust. The OLAF DG reminded that after its creation, EPPO, took over the criminal cases for participating countries. He added that there are also different attitudes from one Member State to another and said, in conclusion, that while some think a 50 % indictment rate is very good, the number should go closer to 100 %.
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