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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 2023 - <i>Outcome of proceedings</i>

1. On 10 July 2024, the OLAF Supervisory Committee submitted to the Council its 2023 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 9842/2024.

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, the members of the Working Party on Combating Fraud examined the report on 18 July 2024 and agreed to establish an outcome of proceedings. An agreement on the text of the outcome was reached on 3 October 2024.
 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 18 July 2024, the OLAF Supervisory Committee (SC) presented its Activity Report for the year 2023¹ to the Working Party on Combating Fraud (GAF). The presentation was made by Ms Teresa ANJINHO, Chair of the SC.

Among the key messages highlighted by Ms Anjinho from the report:

- 2023 was marked by an in-depth reflection on the OLAF-EPPO working methods, on which the SC issued an opinion. The core issue examined was the complementary investigations, which the SC decided to monitor every year. The opinion is based on an examination of the closed complementary investigations, 42 out of the 70 complementary investigations conducted by OLAF between June 2021 and November 2023. The SC recommended OLAF to formalize the exchanges with the EPPO when proposing to open complementary investigations, so that there is a written trace, both for OLAF's arguments and for the EPPO's objections, in line with the regulation. The second recommendation to OLAF is to make sure that the procedure is also reflected in OLAF's Guidelines on Investigation Procedures (GIPs).
- In 53.2 % of the cases handled by OLAF, the duration of investigations exceeded 12 months. The issue of the duration is also one of the main aspects the SC will address in its opinion on OLAF's revised new GIPs.
- In 2023, three complaints related to procedural guarantees were handled directly by OLAF, and one against OLAF was submitted to the Ombudsman. The SC found that in the three cases OLAF provided sufficient explanations, while the Ombudsman concluded that no maladministration occurred.

¹ Doc. WK 9842/2024.

- The ability of the SC to carry out its tasks had been substantially undermined by the understaffing issues of its Secretariat, which is also involved in ensuring that deadlines imposed on the Controller of procedural guarantees for the handling of complaints against OLAF are respected.

Three delegations took the floor:

- One delegation asked whether the 2024 GIPs are adopted and whether the SC comments were considered.
- Another delegation asked the SC if it is going to participate in the mid-term evaluation of the OLAF Regulation.
- Noting that the data presented on the complementary investigations carried out by the EPPO and OLAF prove that these are very effective with an average duration of 8 months, the third delegation asked whether the criminal proceedings and related complementary investigations have a higher priority for OLAF. The same delegation brought up the need for appropriate staffing, raising the issue of the vacancy rate at OLAF, and asking for the reasons for it.

In her answers, the OLAF SC Chair:

- confirmed that the SC adopted its draft Opinion on OLAF's GIPs in its last plenary meeting of July and will formalise it in November after having received OLAF's comments on it.
- confirmed that the SC will participate in the mid-term evaluation of the OLAF regulation, and will issue an opinion in 2025, in line with the requirement of Article 19 OLAF Regulation.

- rejected the idea that criminal proceedings and related complementary investigations have a higher priority for OLAF. The many complementary investigations conducted in the first three years by OLAF can be considered as the “first generation” of complementary cases, for which OLAF was in a privileged position, as it had all information about these cases before their transfer to the newly created EPPO due to their criminal content. That meant that OLAF could complete the complementary investigations in a short period of time and, where necessary, recommend to the Commission to take precautionary measures to block suspected companies in the Early Detection and Exclusion System (EDES). For the “second generation” of complementary investigations, it is the EPPO that is expected to take the lead, by asking OLAF to conduct administrative investigations that appear complementary to its own criminal investigations.

The OLAF representative (Petra Kneuer, director OLAF D – Legal, Resources and Partnerships), intervened to provide an answer to the vacancy rate issue, explaining that the current vacancy rate is 2 %, compared to 4-5 % in general in the Commission. A previously higher unoccupancy was justified by transfers to the EPPO, which implied that OLAF had to make the posts vacant in advance. On the other hand, OLAF complained that it is understaffed, particularly having in mind the additional mandates it has received lately, such as the Recovery and Resilience Facility (RRF) and the Ukraine funds.
