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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council 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

- Statement of the Council's reasons
- Adopted by the Council on 4 December 2020

I. INTRODUCTION

1. On 23 May 2018, the Commission submitted to the European Parliament and the Council a proposal to amend Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations (the OLAF Regulation). The proposal is based on Article 325 TFEU (ordinary legislative procedure).
2. The Court of Auditors delivered its opinion No 8/2018 on 15 November 2018¹.
3. On 16 April 2019, the Plenary of the European Parliament adopted a legislative resolution for a position at first reading². That resolution, containing 140 amendments, is based on the report of the Committee on Budgetary Control and on the opinions of the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs.
4. The Working Party on Combating Fraud has discussed the file at numerous meetings between June 2018 and May 2019. On 12 June 2019, the Permanent Representatives Committee adopted a mandate to begin negotiations with the European Parliament³.
5. Several technical meetings, both physical and virtual with the European Parliament, took place since November 2019, settling a large number of issues. An agreement on compromise texts and points of principle was found during a political trilogue on 26 June, followed by clarifications brought about during some more technical meetings in July.
6. The Committee of Permanent Representatives endorsed the final compromise text on 30 September 2020.⁴

¹ OJ C 42, 1.2.2019, p. 1.

² Doc. 8570/19.

³ Doc. 10095/19.

⁴ Doc. 11108/20 + ADD1 + COR 1.

II. OBJECTIVE

7. This proposal aims, primarily, at adapting the OLAF Regulation to ensure smooth cooperation between OLAF and the European Public Prosecutor's Office (the EPPO), which is foreseen to become operational in the beginning of 2021. Moreover, the proposal aims at addressing the main shortcomings in the effectiveness of OLAF investigations, such as lack of access to bank account transactions, admissibility of reports and recommendations of OLAF in national proceedings, and to clarify certain procedural provisions.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. Procedural context

8. The European Parliament and the Council conducted negotiations with a view to concluding an agreement at the stage of the Council's position at first reading ("early second-reading agreement"). The text of the Council's position at first reading reflects the compromise package agreed between the two co-legislators, with the support of the Commission.

B. Summary of the main improvements

9. The main improvements can be summarised as follows:
 - Privately owned devices (Articles 3(5) and 4(2) point (a)): under the appropriate legal safeguards, OLAF will be allowed access to privately owned devices to the extent those are used for work purposes and to the same extent as the national investigation authorities, insofar as external investigations are concerned; with regards to internal investigations reference is made to the decisions adopted by the respective institution, body, office or agency;

- Access to bank account transactions (Article 7(3), (3a) and (3b)): a compromise wording was found, which limits OLAF's rights of access to those of national investigators that have access to bank accounts;
- Controller of procedural guarantees (Articles 9a and 9b): an independent function that is attached in organisational terms to the Supervisory Committee has been agreed; the scope of the controller's function covers also the rules applicable to OLAF investigations, in particular procedural requirements and fundamental rights; the controller can issue recommendations to the Director-General of OLAF;
- Access to OLAF reports (Article 10(3b)): the person concerned is allowed to request access to OLAF's final report under the condition that explicit consent is given within a period of 12 months by the relevant national authorities who conduct the ensuing national proceedings;
- Admissibility of evidence (Article 11): the admissibility of OLAF reports as evidence in administrative proceedings and the communication with OLAF on issues encountered with the admissibility have been strengthened;
- Higher procedural standards for OLAF investigations in support of the EPPO (Article 12e(3)): upon an opinion from the OLAF Supervisory Committee, the European Parliament requested the application by OLAF of procedural standards that would be equivalent to those in criminal investigations in order to protect the admissibility of evidence gathered in ensuing criminal proceedings; the compromise found obliges the EPPO to cooperate closely with OLAF to ensure that the procedural standards are observed, without OLAF's mandate being enlarged;

- Cooperation between OLAF and the EPPO (Articles 12b to 12g): a compromise has been found whereby the EPPO's consent will be required for OLAF to conduct complementary investigations; the EPPO may not remain silent, but it is under no obligation to justify its objections to OLAF;
- Supervisory Committee (Article 15): the access of the Supervisory Committee to OLAF's case files has been regulated, thus resolving a long dispute between the two bodies;
- Follow-up reporting from Member State authorities to OLAF (Articles 11 and 16): an improvement has been foreseen in order to allow OLAF to better monitor its cases and identify shortcomings.

IV. CONCLUSION

10. The Council's position at first reading reflects the fair and balanced compromise reached in the negotiations between the Council and the European Parliament, facilitated by the Commission. Numerous contentious points were resolved, taking into account highly sensitive issues regarding the differences between national criminal procedures and investigative set-ups of the Union's Member States. Both aims of the amendment of the OLAF Regulation were achieved: providing for a good cooperation between OLAF and the EPPO, as well as improving a number of procedural aspects to enable OLAF to conduct its investigations more effectively.
