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DRAFT 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 establishing the Union Anti-Fraud Programme
– Draft Statement of the Council's reasons

I. INTRODUCTION

1. On 30 May 2018, the Commission submitted to the European Parliament and the Council a proposal for a Regulation establishing the EU Anti-Fraud Programme (the Programme)¹.
2. On 12 February 2019, the Plenary of the European Parliament adopted a legislative resolution for a position at first reading.²
3. The Working Party on Combating Fraud examined the Commission proposal in several meetings between June and December 2018. On 12 December 2018, the Permanent Representatives Committee adopted a partial mandate to begin negotiations with the European Parliament, given some horizontal provisions related to the then ongoing negotiations on the multiannual financial framework (MFF).³
4. Several technical meetings took place between April and November 2020. A large number of issues were resolved with compromises from both sides during those meetings.

¹ Doc. 9539/18 + ADD 1 + ADD 2 (COM(2018) 386 final + ANNEX + SWD(2018) 281 final).

² Doc. 6207/19.

³ Doc. 15467/18.

5. The members of the Working Party on Combating Fraud were consulted on the text after the political agreement on the MFF was reached on 10 November 2020. On the basis of that consultation, which confirmed the Presidency's mandate, the Presidency hosted on 8 December 2020 a trilogue by videoconference, in which a provisional agreement was reached, subject to legal-linguistic review.
6. On 18 December 2020, the provisional agreement was presented and discussed at the informal videoconference of the members of the Working Party on Combating Fraud, which had no objections to the text of the agreement.
7. The Permanent Representatives Committee confirmed the final compromise text on 8 January 2021.⁴
8. That text was submitted to the confirmation vote by European Parliament's Committee on Budgetary Control (CONT) on 11 January 2021. On the same day, the Chair of CONT signed a letter to the Chair of the Permanent Representatives Committee (2) stating that, should the Council transmit formally to the European Parliament its position in the form as it stands in the annex to that letter, she would recommend to the European Parliament's plenary that the Council's position be accepted without amendment, subject to legal-linguistic verification, at European Parliament's second reading.

II. OBJECTIVE

9. The programme aims to support Member States' efforts to fight fraud, corruption and other illegal activities and irregularities affecting the financial interests and the budget of the Union, as well as to finance targeted training and the exchange of information and best practice between anti-fraud enforcers across Europe. It will also provide support for investigative activities through the purchase of technical equipment used in detecting and investigating fraud, as well as facilitate access to secure information systems.

⁴ Doc. 14259/20 + ADD1.

The new programme will replace the current Hercule III Programme, and will be managed and implemented by the European Anti-Fraud Office (OLAF).

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

10. 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").
11. The text of the Council's position at first reading reflects the fair compromise reached in the negotiations between the European Parliament and the Council, facilitated by the Commission.

The agreement focuses on:

- a balance between the procedural provisions and the contained size of the Programme. In particular, the work programme is adopted by means of implementing acts without comitology (*Article 11*) and the Commission is empowered to adopt delegated acts developing a monitoring and evaluation framework of the Programme and amending the annex to the Regulation including a list of monitoring indicators (*Article 12*);
- a requirement for the Commission to report annually on the Programme's performance to the European Parliament and to the Council in the framework of the report on the protection of the Union's financial interests. The Commission should duly take into account recommendations from the European Parliament expressed in this context (*Article 12*);

- an indicative breakdown of the financial envelope between three components of the Programme, and a ceiling of 2 % for expenditure on technical and administrative assistance in the implementation of the programme (*Article 3*);
- a non-exhaustive list of actions eligible for grants (*Article 8*) and a maximum co-financing rates for grants set at 80 % of eligible costs, which, in exceptional cases, can be increased to a maximum of 90 % of eligible costs (*Article 9*);
- a commitment from the Commission to ensure independency and objectivity when conducting the evaluations (*Article 13*);
- provisions on the retroactive application of the Programme from 1 January 2021 to allow continuity of activities funded by the Programme (*Articles 18 and 19*);
- in addition to standard provisions on the third countries participation, a recital introducing the encouragement of the participation of entities established in third countries having an association agreement in force with the Union, with a view to strengthening the protection of the financial interests of the Union through cooperation relating to customs and through the exchange of best practices (*Recital 20*);
- a recital introducing the climate target despite the limited budget and the specific focus of the Programme (*Recital 33*).

IV. CONCLUSION

12. The Council believes that its position at first reading represents a good balance and that, once adopted, the new Regulation will fulfil the objectives of supporting the protection of the financial interests, reporting on irregularities and providing mutual administrative assistance and cooperation in customs and agricultural matters.