



Brussels, 22 September 2021
(OR. en)

11917/21

FIN 693
GAF 52
ECOFIN 856

'I' ITEM NOTE

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

Subject: Twenty-first report of the European Anti-Fraud Office covering the period from 1 January to 31 December 2020
– *Outcome of proceedings*

1. On 14 June 2021, the European Anti-Fraud Office (OLAF) submitted to the Council its 2020 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 7571/2021.

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 2 December 2021, the members of the Working Party on Combating Fraud examined this report during an informal videoconference held on 16 June 2021 and agreed to establish an outcome of proceedings. An agreement on the text of the outcome was reached on 20 September 2021.
 4. The Permanent Representatives Committee is invited to endorse the outcome of proceedings as set out in the Annex to this document.
-

OUTCOME OF PROCEEDINGS

On 16 June 2021, the European Anti-Fraud Office (OLAF) presented its annual report covering the year 2020 to the Working Party on Combating Fraud (GAF)⁴.

The following key messages from the report were highlighted by Mr Olivier Salles, Head of Unit Coordination and Communication of OLAF:

- OLAF's investigative performance was illustrated with 290 new investigations opened, more than the previous year, despite the difficulties brought by the COVID-19 crisis, unlike the selection procedures analysed, 1098, a lower figure than the previous one. There was an increase in the number of investigations concluded (230), leading to 375 recommendations issued to competent authorities at EU and national level. As a result of its investigations, OLAF recommended the recovery of EUR 293.4 million to the EU budget.
- The main trends in fraud and irregularities revealed by OLAF investigations in 2020 were:
 - COVID-19 related fraud - over 1000 suspicious operators, over 44 million items seized (e.g. hand sanitizer with dangerously high levels of methanol);
 - conflicts of interest and collusion between beneficiaries and contractors;
 - false or inflated invoices and corruption targeting agricultural and rural development funding, and associated money laundering;
 - fraud with research funding;
 - cigarette and tobacco smuggling (e.g. water-pipe tobacco smuggling);
 - fraud affecting the environment and biodiversity (e.g. illicit and/or counterfeit pesticides, HFC smuggling).

These were illustrated with specific cases (knitting machines sold at inflated prices, import of counterfeit bearings, a fictitious joint venture for a waste water plant).

⁴ Doc. WK 7571/2021.

- 47 investigations into EU staff and members of the Institutions were concluded in 2020, 37 of them with recommendations.
- The indictment rate over the period 2016-2020 is 37 %, lower than in the annual report of the previous year.
- Over the same period, 42 actions were taken by the appointing authorities following the 101 disciplinary recommendations by OLAF.

Delegations took note of the report and addressed, among others, the following points:

- One delegation thought that it was very important to put in place appropriate and effective mechanisms for combating irregularities and fraud, both in the context of the COVID-19 pandemic and natural disasters, and in the context of the Recovery and Resilience Fund (RRF). In this respect, contrary to what was mentioned in the report, OLAF was considered not to have been convincing in the steps taken towards developing EU anti-fraud policies. OLAF was expected to provide to Member States key information related to mutual communication, cooperation, information exchange, options regarding irregularity reporting modules and other important segments related to the control mechanisms related to RRF.
- On the other hand, while some delegations recognised the importance of OLAF in the context of RRF, other delegations wanted to know if in 2020 OLAF focused more on COVID-19 pandemic related cases than on its usual areas of investigation and wondered what was the link between the protection of health, safety and environment, and the mandate of OLAF to protect the financial interests of the EU. On the same line, another delegation - while thanking OLAF for the proactive role and the relationships established with the national authorities during the pandemic crisis - asked for possible figures on the EU revenue and/or EU expenses safeguarded thanks to the activities done in the frame, for example, of the hand sanitiser cases illustrated in the report.

- One delegation stated that, after the revision of the OLAF Regulation, it would have expected OLAF not only to expand its powers in relation to the conduct of investigations, but to play a more pro-active role in developing real EU policies and analyse the anti-fraud systems in the Member States, including the institutions that are part of those systems and relations between them, identifying possible loopholes and formulating recommendations. As an example, the said delegation presented the situation of whistle-blowers who would benefit from having a competent body that acts on administrative level as a consequence of their alerts. The same delegation was of the opinion that there are no sufficient tools and mechanisms to prevent fraud on the expenditure side of the EU budget. The said delegation thought that in all these aspects OLAF should analyse the need to amend the legal acts that regulate the protection of the financial interests of the EU.
- Some delegations wanted to have more information on the amounts actually recovered as a result of OLAF's recommendations and asked what are the problems faced by OLAF in delivering this information, especially in the context of the newly established unit tasked with monitoring the follow-up of recommendations.
- One delegation wanted to know why the number of recommendations is the highest after 2016, but the amount recommended for recovery is the lowest.
- One delegation asked clarifications about the wording in the report related to the working arrangements between OLAF and the EPPO that could be interpreted as allowing OLAF to conduct investigations in parallel to the EPPO.
- One delegation asked if the report next year could focus more on results and have a deeper analysis where the results are deficient.
- Other interventions were related to the long time needed to conclude the investigations and to the criteria used in the opening of investigations, focusing on the importance of the potential financial impact, since the mandate regards the protection of the EU financial interests.

OLAF answered that it indeed focused on health and safety scams related to COVID-19 because this was the most important crisis confronting the authorities and Member States wanted them to be more active. It welcomed the encouragement for more ambition, but pointed out that its responsibility is shared with the Commission that has in place an anti-fraud policy and that more action is limited by the means it has at its disposition. On the RRF, OLAF cannot impose on Member States how to organise control and implementation mechanisms and its comments come as part of the dialogue the whole Commission has in relation to the implementation of the Recovery and Resilience Plans. On the amounts recovered, OLAF admitted that data monitoring was more difficult than expected and promised more details in next year's report, once the data is validated within the Commission. There is no relationship between the number of recommendations and the amount recommended for recovery in a particular year, it depends on the impact and complexity of the cases, the latter also accounting for the length of investigations. Regarding the criteria for opening investigations, Mr Salles mentioned that the first one is whether the case is within the remit of OLAF or not, followed by the potential financial impact, exemplarity, proportionality and reputational risk for the EU and the Member State. On the working arrangements with the EPPO, OLAF stated that it is bound by the main provisions of the funding regulation and the overall principle of complementarity to the EPPO, and although the details in procedure are specific and complex, the overall principles of complementarity and non-duplication with the EPPO still apply.
