



Brussels, 22 September 2021
(OR. en)

11918/21

FIN 694
GAF 53

'I' ITEM NOTE

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

Subject: OLAF Supervisory Committee's Activity Report for the year 2020
- *Outcome of proceedings*

1. On 15 June 2021, the OLAF Supervisory Committee submitted to the Council its 2020 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 7632/2021.

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 to be held on 2 December 2021, the members of the Working Party on Combating Fraud examined the 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 16 September 2021.
 4. The Permanent Representatives Committee is invited to endorse the outcome of proceedings as set out in the Annex to this document.
-

DRAFT OUTCOME OF PROCEEDINGS

On 16 June 2020, in an informal videoconference, the Working Party on Combating Fraud (GAF) held an exchange of views with the representatives of the OLAF Supervisory Committee (SC) and with OLAF on the SC's Activity Report for the year 2020¹.

Mr Jan MULDER, Chairman of the SC, presented the activity report.

Mr Mulder started by thanking the Council and the European Parliament for two important changes in the OLAF Regulation that allow the SC to have access to all information it needs to work and remove the obligation that the siege of SC be separated from OLAF. On the other hand, he recalled that the SC would have liked to be also assigned the function of controller of procedural guarantees, but accepted the democratic decision of the two legislative institutions. Mr Mulder stated that the cooperation with OLAF was satisfactory for both parties, with OLAF's Director-General participating in the meetings of the SC, which was a very good experience. The report calls for the Council and the European Parliament not to reduce OLAF's budget with the creation of the European Prosecutor, as the workload of OLAF does not decrease. Moving on to the findings of the report, Mr Mulder stated that the SC got access and investigated 11 complaints against OLAF, finding that OLAF dealt with them correctly. The SC also monitored the duration of cases and was of the opinion that there were too many cases that lasted too long. A specific report is in preparation on this subject. The SC is also of the opinion that the indictment rate as a result of OLAF recommendations is too low. Mr Mulder reminded that the SC issued its Opinion No 1/2021 on this matter in February 2021. The main recommendation of the report is that OLAF establishes cooperation with the Member States involved as early as possible in the case, so that the national authorities know what OLAF is doing. Another opinion expressed in the report was that the increasing number of guarantees granted to the European Investment Bank (EIB) should be given special attention, as the EU budget should be under the control of the EU law. On the Working Arrangements (WA) between OLAF and the EPPO, Mr Mulder stated that comments expressed by delegations in GAF were taken to heart in the recommendations. The SC recommended to the parties to review the WA after one year. He mentioned that the SC is in the process of signing its own WA with OLAF, with the purpose of having a good functioning and very independent Office.

¹ Doc. WK 7632/2021.

Delegations that took the floor expressed their agreement to the findings related to the length of OLAF cases and the indictment rate, looking forward to the specific report on the very long cases. One delegation inquired about the shortcomings of OLAF's case management system (OCM) and another delegation asked about the budgetary consequences of the controller of procedural guarantees, pointed out that staff and means need to be dealt with in the budgetary context and resources dedicated by OLAF to the implementation of RRF need to be found by reprioritization, and asked if the access to OLAF systems was part of the WA between OLAF and the SC.

Mr Mulder answered that the SC has access to all the information it needs and there is no reason to put this in the WA. He admitted that OCM had shortcomings and costed a lot of money, but there had been some improvements and a decision needs to be taken on going along with it or changing to the system currently employed with the EPPO and other institutions. On the indictment rate, Mr Mulder pointed out that one of the sources of the problem is the unwillingness of some Member States to follow recommendations and to cooperate with OLAF from the onset. The report on the lengthy cases is only at the first draft stage, has not been sent to OLAF for checking, but hopefully will be ready before the end of the year. The budgetary issues are left for the next SC, as the mandate of the current SC is drawing to a close.

Speaking on behalf of OLAF, Mr Olivier SALLES, Head of Unit Coordination and Communication, thanked the SC for the overview and confirmed that the positive developments in the relationship between OLAF and the SC will be embedded in the WA. On OCM, he stated that due to the implementation of the relevant provisions of the amended OLAF Regulation, new functionalities had to be developed, so an improved version of this large and complex project will be launched, hopefully before the end of the year. If this version works well, there would be no more budgetary demands, except for the maintenance costs.