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GAF 51

'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Inter-institutional Exchange of Views pursuant to Article 16 of Regulation (EU, Euratom) No 883/2013 – Mandate for the meeting on 03 December 2024

I. BACKGROUND

1. In accordance with Article 16 of Regulation (EU, Euratom) No 883/2013¹ (the OLAF Regulation), as last amended by Regulation 2020/2223², "*the European Parliament, the Council and the Commission shall once a year meet the Director-General for an exchange of views at political level to discuss the Office's policy relating to methods of preventing and combating fraud, corruption or any other illegal activity affecting the financial interests of the Union*".

¹ 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) (OJ L 248, 18.9.2013, p. 1).

² 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).

2. The representatives of the European Parliament, the Council and the Commission agreed by common accord, as foreseen in the relevant Working Arrangements³, to hold the ninth Inter-institutional Exchange of Views on 25 October 2023. A technical preparatory meeting, as provided for in Recital 41 of the OLAF Regulation, took place on 22 June 2023.
3. On the basis of Commission proposals, a draft annotated agenda for the exchange of views was discussed between representatives of the three institutions and agreed subsequently in writing. The draft annotated agenda was presented to the members of the Working Party on Combating Fraud at its meeting on 25 September 2023 and was accepted (see ANNEX). At the same meeting, the Commission provided and presented information notes on the two agenda items (see Annex to the ANNEX).
4. In line with the provisions of point 3.1 of the practical arrangements for the Inter-institutional Exchange of Views⁴, this year's meeting will be hosted and chaired by the European Parliament.

II. **GUIDANCE FOR THE EXCHANGE OF VIEWS**

5. Based on the draft annotated agenda presented to the members of the Working Party on Combating Fraud, including the background documents, and on the outcomes of proceedings on the OLAF Annual Report⁵ and on the Supervisory Committee's Annual Activity Report⁶, this mandate intends to provide guidance to the delegation composed of the Hungarian, Polish and Danish Permanent Representatives representing the Council at the Inter-institutional Exchange of Views.

³ Doc. 14556/16.

⁴ Doc. 14556/16.

⁵ Doc. 13492/1/23 REV 1.

⁶ Doc. 13495/1/23 REV 1.

6. The lines to take to represent the Council's position on the two main agenda items are as follows:

a) The protection of the EU's financial interests in Ukraine

- The Council welcomes this topic of discussion and is highly interested to hear the views of the institutions involved in the protection of the EU's financial interests in Ukraine. However, it is of utmost importance that actions taken are strictly within the mandate of each institution.
- The cooperation between OLAF, the EPPO, Eurojust, Europol and the European Court of Auditors (ECA) is indeed crucial, and so is the regular and organised exchange of information among the EU anti-fraud actors and relevant Commission services. The cooperation and exchange of information must also involve the national authorities, who have to be notified immediately of cases involving citizens or businesses falling under their jurisdiction, in order to ensure smooth investigation and successful follow-up within the national legal and administrative systems.
- Coordination in terms of control actions with third parties providing assistance to Ukraine must also be considered, in order to avoid both potential blind spots and overlapping.
- Coordination between the institutions and with third parties and national authorities should include communication and reporting, in order to provide a unified and coherent picture and prevent disinformation.

b) The enforcement of EU sanctions against Russia and Belarus

- The Council is highly interested to hear the views of the participant institutions and insists on strong cooperation in this matter with the national competent authorities.

- The necessity to correctly enforce the EU sanctions against Russia and Belarus is indisputable. OLAF's contribution, within its current mandate, is welcome, but adds to the already broad range of areas where OLAF is acting, whilst not being directly linked to its core mandate, which is the protection of the EU budget as such.
- In general, while the opportunity to interact to a wide spectrum of views is to be appreciated, the focus of the Inter-institutional meeting should remain within the lines provided by the OLAF Regulation.

III. CONCLUSION

7. Against this background, the Permanent Representatives Committee is invited to entrust the mandate set out under point II. 6 above to the delegation composed of the Spanish, Belgian and Hungarian Permanent Representatives, representing the Council at the Inter-institutional Exchange of Views meeting on OLAF's policy relating to methods of preventing and combating fraud, corruption or any other illegal activity affecting the EU's financial interests.
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DRAFT ANNOTATED AGENDA

2023 INTER-INSTITUTIONAL EXCHANGE OF VIEWS on OLAF (EoV)

25 October 2023, 15.00-17.00

Welcome by Chair and adoption of the agenda (5 minutes)

Agenda Item 1: The protection of the EU's financial interests in Ukraine (55 minutes)

The cooperation between OLAF, EPPO, Eurojust, Europol and the European Court of Auditors is crucial for the prevention and fight against fraud concerning EU funds to Ukraine and the protection of the EU's financial interests in Ukraine in general. Making the EU anti-fraud architecture work at its very best with regard to Ukraine is therefore of the essence.

Concretely, the work should focus on:

- Regular and organised exchange of information among the EU anti-fraud actors;
- Investigation of illegal activities, recovery of funds unduly spent, prosecution of criminal offences, recommendation on administrative follow-up actions, i.e. exclusion and/or financial penalties;
- Fraud prevention, including through the Early detection and Exclusion System (for funds disbursed under direct management or indirect management), and capacity building for national authorities.

Reference document: Information note by OLAF on the protection of the EU's financial interests in Ukraine (to be shared by OLAF one month in advance of the EoV, as per Practical Arrangement)

- *The Chair (CONT Chair) will open the Exchange of Views and invite the representatives of the European Court of Auditors, Eurojust, Europol, EPPO, and then the OLAF Director-General to present their respective roles in the protection of the EU's financial interests in Ukraine. (5 minutes each)*
- *The Chair will invite the Institutions (European Parliament, Council and European Commission) as well as the Supervisory Committee of OLAF to express their views and discuss the ideas put forward. (4 minutes each)*
- *The representatives of the European Court of Auditors, Eurojust, Europol, EPPO, and the OLAF Director-General will respond to comments made by the Institutions and the Supervisory Committee of OLAF. (10 minutes in total)*
- *The Chair will conclude the agenda item.*

Agenda Item 2: The enforcement of EU sanctions against Russia and Belarus (55 minutes)

Sanctions in the areas of finance, transport, trade and energy formed part of the first responses of the EU to the Russian attacks on Ukraine in February 2022. Since then, the EU has adopted 11 sanction packages that include import and export bans on a number of goods. The sanctions are designed to reduce the Kremlin's ability to finance the war, impose clear economic and political costs on Russia's political elite and diminish Russia's economic base.

In order to maximise the effectiveness of anti-fraud tools at both administrative and criminal side and ensure coherent messages among the Commission, OLAF, Eurojust, Europol, the EPPO and Member States' competent authorities, within their respective mandates, the debate will explore how each EU anti-fraud actor contributes to the enforcement of EU sanctions.

Reference document: Information note by OLAF on the enforcement of EU sanctions against Russia and Belarus (to be shared by OLAF one month in advance of the EoV, as per Practical Arrangement)

- *The Chair (CONT Chair) will open the Exchange of Views and invite the representatives of the European Court of Auditors, Eurojust, Europol, EPPO, and then the OLAF Director-General to introduce their respective roles in the enforcement of EU sanctions against Russia and Belarus. (5 minutes each)*
 - *The Chair will invite the Institutions (European Parliament, Council and European Commission) as well as the Supervisory Committee of OLAF to express their views and discuss the ideas put forward. (4 minutes each)*
 - *The representatives of the European Court of Auditors, Eurojust, Europol, EPPO, and the OLAF Director-General will respond to comments made by the Institutions and the Supervisory Committee of OLAF. (10 minutes in total)*
 - *The Chair will conclude the agenda item and the meeting.*
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Information note for the Inter-institutional Exchange of Views

25 October 2023

Agenda Item 1: Ukraine – the protection of EU’s financial interests in Ukraine

The EU has provided **unwavering support to Ukraine** in the face of Russia’s unprovoked and unjustified war of aggression and the illegal annexation of Ukrainian territory by the Russian Federation. This includes nearly €40 billion in financial and humanitarian assistance.

The cooperation between OLAF, the EPPO, Eurojust, Europol and the European Court of Auditors (ECA) is crucial for the prevention and fight against fraud concerning EU funds to Ukraine and for the protection of the EU’s financial interests in Ukraine in general. Making the EU anti-fraud architecture work at its very best with regard to Ukraine is therefore of the essence.

OLAF has long-standing experience of working with the Ukrainian authorities on individual investigations and policy matters. **Investigative cooperation** takes place both on **expenditure** and on **revenue** (in particular fighting against cigarette smuggling). As per the existing legal framework, OLAF actively conducts administrative investigations on the territory of Ukraine, where applicable in close interaction with the Ukrainian authorities.

In view of the unprecedented amount of EU funds to be spent for the reconstruction of Ukraine, all the actors of the EU anti-fraud architecture are faced with a common challenge that requires:

- a common EU message and contribution of OLAF, the EPPO, Eurojust, Europol and ECA in order to avoid any possible duplications and blind spots;
- close cooperation with the Ukrainian authorities carrying out audit, control, administrative and criminal investigations and prosecution;
- close coordination with other international donors.

Concretely, the work should focus on:

- Regular and organised exchange of information among the EU anti-fraud actors and relevant Commission services, as appropriate;
- Investigation of illegal activities, recovery of funds unduly spent, prosecution of criminal offences, recommendation on administrative follow-up actions, i.e. exclusion and/or financial penalties;
- Fraud prevention, including through the Early detection and Exclusion System (for funds disbursed under direct management or indirect management), and capacity building for national authorities.

The discussion on this point will be an occasion for OLAF, the EPPO, Eurojust, Europol and ECA to exchange views and update each other on their current and planned actions towards Ukraine.

Information note for the Inter-institutional Exchange of Views

25 October 2023

Agenda Item 2: Sanctions against Russia - the enforcement of EU sanctions against Russia and Belarus

Restrictive measures (sanctions) in the areas of **finance, transport, trade and energy** formed part of the first responses of the EU to the Russian illegal annexation of Crimea in March 2014 and the Russian war of aggression against Ukraine in February 2022. Since then, the EU has adopted **11 sanction packages** that include import and export bans on a number of goods. The sanctions are designed to reduce the Kremlin's ability to finance the war, impose clear economic and political costs on Russia's political elite and diminish Russia's economic base.

OLAF has been monitoring the situation and performing **analytical work to identify possible violations of EU sanctions through administrative irregularities and other breaches of the relevant Council Regulations (especially with regard to prohibitions or restrictions imposed on certain goods exported to or imported from Russia)**.

OLAF has also been **actively supporting Member States' authorities** in their enforcement of sanctions by using its expertise and experience by providing operational intelligence, coordinating operational actions and requesting mutual assistance from third countries.

OLAF is **well versed in identifying attempts to violate sanctions** as the methods employed by operators to try and circumvent sanctions are often the same as those used to evade customs duties and restrictions.

OLAF has the capacity to analyse irregular behaviour at the level of individual operators, to spot unusual **patterns of trade or movements of goods** as well as **origin of goods** and other suspicious activity. OLAF can also **cross check different open source data**. We promptly relay this information to national authorities in the EU's Member States and help join the dots where needed.

OLAF has opened **mutual assistance cases** where it either coordinates operational activities or carries out investigative activities. Some of these cases concern imports of sanctioned goods into the EU, as well as exports of prohibited goods.

The cooperation at the EU level aims to make it easier for national authorities to investigate, prosecute and punish violations of EU sanctions in all Member States alike and avoid an inconsistent enforcement of EU sanctions.

In order to maximise the effectiveness of anti-fraud tools at both administrative and criminal level and ensure coherent messages among the Commission, OLAF, Eurojust, Europol, the EPPO, as well as Member States' competent authorities the debate will explore how each EU anti-fraud actor contributes to the enforcement of EU sanctions within their respective mandates.