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#### 'I' ITEM NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	12809/17 + ADD 1 - COM(2017) 589 final + SWD(2017) 332 final
Subject:	Outcome of proceedings on the Commission's report on the evaluation of the application of Regulation (EU, Euratom) No 883/2013 – <i>Endorsement</i>

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1. On 3 October 2017, the Commission submitted its report on the evaluation of the application of 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) (the "OLAF Regulation")<sup>1</sup>. This evaluation, accompanied by an opinion of OLAF's Supervisory Committee, is required pursuant to Article 19 of the OLAF Regulation.<sup>2</sup>

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<sup>1</sup> Doc. 12809/17 + ADD1.

<sup>2</sup> OJ L 248, 18.9.2013, p. 1.

2. The Working Party on Combating Fraud examined this report on 16 October and 6 December 2017. During the Interinstitutional Exchange of Views on 23 November 2017 and at the above-mentioned Working Party meeting on 6 December 2017, the Commission suggested the following two-step approach:
  - proposal of a light, targeted revision of the OLAF Regulation in the first semester of 2018 to address the relation between OLAF and the newly established European Public Prosecutor Office (EPPO) and a few additional issues, but which would not include a revision of OLAF's powers;
  - proposal of a more substantial revision at a later stage, possibly under the mandate of the new European Parliament and Commission post 2019.
3. At the Working Party meeting on 6 December 2017, it was agreed to establish an outcome of proceedings with a view to indicating to the Commission which topics should or should not be covered in its first, light revision. An agreement on the text of the outcome was reached following the Working Party meeting on 5 February 2018.
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 3 October 2017, the Commission submitted its report on the evaluation of the application of 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) (the "OLAF Regulation")<sup>1</sup>. This report was presented to the Working Party on Combating Fraud on 16 October and 6 December 2017. The Commission proposes to submit in the first half of 2018 a targeted revision of the said Regulation, which will address the relation between OLAF and the European Public Prosecutor's Office (EPPO) and possibly include additional targeted changes.

The Working Party on Combating Fraud agrees to limit the scope of the upcoming proposal as suggested in order to ensure a speedy adoption of such a targeted revision. It asks the Commission to focus primarily on the topics for this first revision that are necessary to enable OLAF to cooperate smoothly with EPPO<sup>2</sup> without, however, extending the competencies and powers that are currently endowed on OLAF:

- provisions that clarify the competences of OLAF in view of EPPO's competences, as set out in Regulation 2017/1939 (EPPO Regulation) in order to guarantee smooth cooperation with EPPO, whilst at the same time fully respecting their respective roles and mandates, such as:
  - o rules on the cooperation with EPPO during the selection proceedings to determine early on which office is competent for handling a specific case;
  - o rules for the possibility of supporting and complementary administrative investigations;
- provisions ensuring that there will be no duplication - while ensuring complementarity - in the activities of OLAF and EPPO, so that all available means are used in the most efficient manner to protect the Union's financial interests, such as:

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<sup>1</sup> Doc. 12809/17 + ADD 1 (COM(2017) 589 final).

<sup>2</sup> On the relation between OLAF and EPPO, see also Article 101 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

- rules on procedures to notify the respective other office - at stages to be foreseen in the revision - of the fact that they are carrying out a certain investigation, where this is legally possible;
- rules on the practicalities of the cooperation, such as liaison officers;
- provisions that regulate in detail the exchange of information between OLAF and EPPO;
- where necessary, provisions that regulate the cooperation of OLAF with Member States that do not participate in EPPO; in that context any modifications that could have negative consequences for non-participating Member States should be avoided;
- for those Member States participating in EPPO, rules on the cooperation between AFCOSs and OLAF in cases where EPPO is or could be implicated.

In addition, some delegations have expressed a wish to address the following topics:

- provisions in relation to AFCOSs:
  - on minimum common standards for the tasks and responsibilities of AFCOSs with a view to achieving greater harmonisation of AFCOSs;<sup>3</sup>
  - an obligation on OLAF to forward to AFCOSs its reports and recommendations;
  - rules on mutual cooperation and the exchange of information between AFCOSs, possibly facilitated by OLAF;
- common rules on the preparation and implementation of on-the-spot checks reflecting in particular, Articles 3 and 4 of Council Regulation No 2185/96 of 11 November 1996;<sup>4</sup>
- rules providing for the admissibility of final reports of OLAF as evidence in national administrative or judicial proceedings;<sup>5</sup>
- rules on the admissibility of evidence collected by OLAF and EPPO for use by the other office;<sup>6</sup>

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<sup>3</sup> Some delegations are opposed to including this topic.

<sup>4</sup> Some delegations are opposed to including common rules on on-the-spot checks in the revision of the OLAF Regulation.

<sup>5</sup> Some delegations are opposed to including this topic.

<sup>6</sup> Some delegations are opposed to including this topic.

- rules clarifying the right of access for the Supervisory Committee to information held by OLAF;<sup>7</sup>
- a possibility for the dismissal of the Director-General of OLAF.<sup>8</sup>

Generally, delegations requested that any additional administrative burden or additional resources to OLAF should be avoided, while ensuring that OLAF is equipped to continue exercising its mandate.

The Working Party on Combating Fraud would welcome a roadmap on the ensuing further revision of the OLAF Regulation.

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<sup>7</sup> See in this regard the Joint opinion of the Legal Services of the European Parliament, the Council and the Commission on three aspects of the relationship between OLAF and its Supervisory Committee (Doc 12091/2016).

<sup>8</sup> On the basis of a similar procedure as foreseen in Article 14 of Regulation 2017/1939 (EPPO Regulation).