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#### 'I' ITEM NOTE

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| From:          | Working Party on Combating Fraud   |
| To:            | Permanent Representatives Committee  |
| No. Cion doc.: | 9313/18 + ADD 1 - COM(2018) 338 final + SWD(2018) 251 final  |
| Subject:       | Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations <b>(first reading)</b><br>– <i>Mandate for negotiations with the European Parliament</i> |

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1. On 25 May 2018, the Commission submitted to the European Parliament and the Council a proposal to amend Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations (the OLAF Regulation).
2. This proposal aims, primarily at ensuring smooth cooperation between OLAF and the European Public Prosecutor's Office (the EPPO), which is foreseen to become operational at the end of 2020. Moreover, the proposal aims at addressing the main shortcomings in the effectiveness of OLAF investigations, such as lack of access to bank account transactions, admissibility of reports and recommendations of OLAF in national proceedings, and to clarify certain procedural provisions. A more far reaching revision of the OLAF Regulation is announced in the medium term.

3. The proposal is based on Article 325 TFEU (ordinary legislative procedure).
4. The Court of Auditors delivered its opinion No 8/2018 on 15 November 2018.<sup>1</sup>
5. On 16 April 2019, the Plenary of the European Parliament adopted a legislative resolution for a position at first reading.<sup>2</sup> That resolution is based on the report of the Committee on Budgetary Control and on the opinions of the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs.
6. The Working Party on Combating Fraud has discussed the file at numerous meetings between June 2018 and May 2019. Due to the closeness to national criminal procedural law, some of amendments proposed by the Commission were difficult to accept for Member States, however a compromise has finally been found.
7. The last and main point of contention is about the question, if OLAF has or should have a mandate for investigating VAT fraud. Whereas the Commission supports such a mandate and insists that it has always had such a mandate, a large number of delegations are strongly opposed. That latter group can only accept a limited mandate for cases of serious VAT fraud that is aligned to Directive (EU) 2017/1371<sup>3</sup> on the fight against fraud (PIF Directive). The proposal therefore now contains the following main restrictions (points (a) and (b) define what is a "serious case") and one option:
  - (a) the case concerns acts or omissions connected with the territory of two or more Member States; and
  - (b) the case involves a total damage of more than EUR 10 million;
  - (c) a Member State or several Member States may request or give consent for OLAF to investigate a case of VAT fraud (concerns mainly administrative cooperation cases).

The VAT fraud issue is supported by only a slim qualified majority and only with the support of the current and incoming Presidencies.

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<sup>1</sup> OJ C 42, 1.2.2019, p. 1.

<sup>2</sup> Doc. 8570/19.

<sup>3</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

8. The European Parliament accepts the Commission proposal as regards the cases of VAT fraud, i.e. an unlimited mandate.
9. The Council Legal Service has issued a contribution<sup>4</sup> regarding Article 12f, which regulates complementary investigations by OLAF where the EPPO also conducts an investigation. The Council Legal Service is of the opinion that the obligation on the EPPO to justify its objection to OLAF opening a complementary investigation "*where necessary to avoid jeopardising its own investigation or prosecution*", would unduly restrict the principle of non-duplication spelled out in Article 101(2) of Regulation (EU) 2017/1939.

The Commission, its Legal Service and the Member States agree with the wording of Article 12f as now proposed.

- 10 The Permanent Representatives Committee is invited to mandate the Presidency to start negotiations with the European Parliament on the basis of the outcome of discussions as set out in the Addendum.

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<sup>4</sup> Doc. 10036/19.