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Meeting of the EP CONT Committee, 4th May 2015

Presentation of the 2014 Annual Report of the OLAF Supervisory Committee

Honourable Chair of the CONT Committee, honourable Members of the European Parliament,

As Chairman of the OLAF Supervisory Committee I have the pleasure to present you the highlights of the OLAF Supervisory Committee Annual Report of 2014, submitted to the Institutions pursuant to Article 15 (9) of European Parliament and Council Regulation (EU) No 883/2013 on the investigations of OLAF.

The Supervisory Committee is an independent high level committee of external experts appointed by common accord between the European Parliament, Council and the Commission and the Committee has its own role in the governance and accountability arrangements with OLAF with a mission to ensure independence of the investigative function of OLAF and to monitor developments in the duration of investigations and in the application of procedural guarantees.

In its role the Supervisory Committee often presents criticisms which aim to be constructive and to make OLAF stronger in its core mission.

The critical role of the Supervisory Committee shall not shadow the significance of the work of OLAF for the European Union and its citizens which the SC recognised and calls upon all the Institutions to recognise. Efficient and effective fight against fraud and investigations of fraud and all suspected illegal activities in Union institutions, bodies and agencies are an integral part of the rule of law and good administration in the European Union and contribute to the trust the Union citizens' have and can have towards the Union. The important, professional work carried out by OLAF deserves all of our appreciation and the role of the Supervisory Committee is, by its statutory role, to improve this work and to contribute to the trust towards the investigative activities of OLAF.

OLAF has a specific inter-institutional position and role with functional independence in its investigative functions. This sets specific requirements for accountability arrangements. Independence comes with clear accountability. The Supervisory Committee has its role in the accountability arrangements over the investigative function of OLAF whereas the European Commission is the Institution responsible for management oversight and policies of OLAF while, at the same time, respecting the functional independence of the investigative function of OLAF. The role of the Supervisory Committee is to ensure, by regular monitoring, the independence of the investigative function of OLAF and to monitor developments in the duration of investigations and application of procedural guarantees and is the guarantor of the independence of OLAF including the role assigned to it in the case of disciplinary proceedings against DG OLAF. The Supervisory Committee also has an advisory function to the European Parliament, Council and the Commission and also, to the Director-General of OLAF in a wide range of issues including the investigative policy priorities, guidelines on investigation procedures to OLAF staff and on the procedure of the appointment of the Director-General of OLAF.

Main content of the Supervisory Committee Annual Report: improve accountability procedures

This Activity Report provides an overview of the monitoring activities performed by the Supervisory Committee during 2014. Chapter 1 offers an account of the implementation and management of OLAF's investigative function whereas Chapter 2 focuses on the cooperation with OLAF and stakeholders and, in particular, on the follow-up by OLAF to the Supervisory Committee's recommendations. Chapter 3 gives an overview of the governance of the Supervisory Committee in the light of the broader notion of accountability. In page 6 of the Annual Report you will find the statistics of the Supervisory Committee's own work.

The key message of the Supervisory Committee is that the Institutions should improve the procedures ensuring the accountability of OLAF and its senior management in the performance of their duties in order to make OLAF stronger. This message has two dimensions:

- 1) the accountability and the responsibilities of the Supervisory Committee itself and its members shall be clarified and improved
- 2) the accountability procedures of OLAF and its senior management shall be clarified and improved.

The European Parliament, the Council and the Commission are in the position as Union legislators and also as Institutions of oversight and control to improve the accountability procedures concerning both the accountability and responsibility of the Supervisory Committee and of OLAF and its senior management. This is not to say that there would not be accountability but to say that there is room for improvement in procedures and roles and, given the sensitive task of OLAF, doing so would be good for the Union and for the fight against fraud.

The Supervisory Committee has signalled to the European Commission that the status and responsibilities of the members of the Supervisory Committee under European Union law should be clarified. Long term solutions here require changes in the legislation also.

The Supervisory Committee Secretariat is vital for the monitoring activities of the Supervisory Committee. The SC secretariat receives information provided to the SC and carries out the initial examination. The Secretariat must be able to assist the SC in implementing its monitoring functions in a loyal and efficient manner without being exposed to the risk of potential conflicts of interest as OLAF staff subordinate to the OLAF DG. However, while the SC Secretariat is functionally attached to the SC, it is administratively fully subordinated to the OLAF DG. As a result, the Secretariat of the supervisory body is under the (administrative) control of the supervised body. This situation leads to conflicts of interest.

The SC has identified four basic conditions ensuring the independent functioning of the Secretariat: (i) recruitment, appraisal and promotion of the Head of the Secretariat on the basis of the SC's decisions; (ii) reclassification of the Head of the Secretariat as a senior manager; (iii) recruitment, appraisal and promotion of the staff of the Secretariat by its Head; (iv) sub-delegation of the Secretariat's budget implementation to its Head. The Supervisory Committee welcomes that this sub-delegation in budgetary matters to the Head of the Supervisory Committee Secretariat is recognised.

The SC welcomed also the commitment of the DG OLAF to support a separate budget line for SC secretariat and the clarification of the responsibilities of the SC Head of secretariat. The budget line, and whilst awaiting it, the documentation in the Union budget on the total resources of the SC secretariat, will still need to be secured but the Supervisory Committee is ready to welcome the willingness of OLAF, expressed by the DG, to include this documentation in the OLAF Preliminary Draft Budget. This issue is, however, in the hands of the Budgetary Authority referring to you.

The exact role of and expectations concerning the Supervisory Committee should be better defined by the EP, Council and the Commission

The Supervisory Committee has devoted considerable time and energy to improving its working relations with OLAF and also to improve the Working Arrangements with OLAF. Discussions and technical work is still on-going and there is a fairly intense dialogue between the Supervisory Committee and the senior management of OLAF. However, the core issue is not the implementation of the working arrangements but **the lack of clarity concerning the role and mandate of the Supervisory Committee**. The fundamental issue ultimately to be solved in legislation, is whether the SC is an advisory panel to the Director General of OLAF in case DG OLAF fears or is subject to infringement of the independence or whether the SC is a broader external oversight body performing systemic monitoring and external control with independent access to information necessary for the performance of its duties. In the first approach the SC performs regular monitoring on reports at a very general level and reacts only on the basis of the reporting by the DG OLAF. **The SC considers it necessary that the Institutions should confirm the interpretation on the precise role of the SC within the framework of current legislation and they should consider, developing further the points presented in Special Report 1/2014 of the Supervisory Committee, clarifying this further in the Union legislation including the right of access to information and its limits.**

The SC has focused in 2014 on the duration of investigations

In 2014 the Supervisory Committee's work has focused on the reporting on the duration of the investigations and on OLAF's independence. The Supervisory Committee has adopted **Opinion 4/2014 on the Duration of the Investigations**. OLAF has formally complied with the reporting obligations concerning investigations lasting longer than 12 months but currently the reported information is insufficient to properly monitor and to have a fair overview on the duration of the OLAF investigations and on the reasons affecting the duration of investigations. The Supervisory Committee prepared an **Opinion 5/2014 on OLAF External Reporting on the Duration of Investigations**.

These opinions provide a fairly comprehensive view of the statistics and of the issues why the essential percentage of the investigations last longer than 12 months which is in the Regulation (EU) No 883/2013, the bench-mark for a closer Supervisory Committee oversight and more detailed OLAF reporting obligations. It is no surprise that agricultural expenditure and structural funds related investigations represent nearly half of the investigations lasting longer than 12 months. Complexity of the case is the most common reason for not being able to close the investigation in 12 months' time.

Concerning external reporting of the duration of investigations, the change of method for calculation had an impact on the view provided by OLAF reports. Compared to 2010 and 2011 and the situation prior to that, however, a declining trend is to be observed in the overall duration of the investigations.

Main findings and recommendations of the Supervisory Committee are:

- the current reporting on the duration of investigations should be improved to provide a comprehensive view of the investigative performance of OLAF. The average duration of investigations provides only a limited view of the development of the duration of investigations.
- OLAF should also report more and transparently of the longest lasting investigations. The content of reporting on cases lasting longer than 12 months should also be enriched; the SC and OLAF have already begun to work together on this issue. The SC has sought to enhance good management controls within OLAF on the duration of investigations. OLAF has focused on the internal monitoring of the duration of investigations and has put in place a number of relevant tools and procedures: the challenge is still to optimise their use.

The Supervisory Committee continues its work on statistics on the investigations and on the external reporting on the investigative function. The Supervisory Committee has, after the adoption of the Annual Report accepted the request of the Director-General of OLAF to prepare an Opinion addressing the anonymous allegations on the false and misleading statistics in OLAF. This is in the Supervisory Committee work programme for 2015.

Since the duration of investigations is an important benchmark for OLAF, the issue could and should be followed in the inter-institutional dialogue foreseen in Art. 16 of the OLAF Regulation.

The Supervisory Committee Special Report 3/2014 on the 423 Cases opened in 2012 relates also to statistics but the main issue there is whether sufficiently serious suspicions were present to justify the opening of the investigations and whether OLAF conducted sufficient assessment of the incoming information. The opening of the investigation always has an impact on the legal position of the persons concerned and therefore the appropriate assessment of the incoming information is very important before an investigation is opened. The report concludes that the OLAF did not conduct appropriate assessments before the investigations were opened. OLAF's view is that this was a one-off operation. *The Supervisory Committee calls upon the importance of the appropriate assessment of the underlying information before any investigation is launched.*

The Supervisory Committee continues its comprehensive assessment of the selection of investigations and review of incoming information; the results will be presented this year in an Opinion.

The Supervisory Committee has also analysed the **Investigative Policy Priorities for 2015**. The Supervisory Committee raises the issue of what is in fact currently the actual role of the investigative policy priorities in ensuring the proportionate use of resources within OLAF. The legislator and budgetary authority have here the role to signal also the expectations concerning the strategic management role of the Investigative Policy Priorities and the inter-institutional dialogue is one of the good occasions to do so.

The Supervisory Committee issued in 2014 a Special Report 2/2014 on the Implementation by OLAF of the Supervisory Committee Recommendations. The Supervisory Committee has continued to work together with OLAF on the follow-up of its own recommendations. The SC has agreed a prioritisation of recommendations with the aim of clearance of the state of play of the implementation or agreement to disagree of its old recommendations while the SC has improved its own procedures to issue recommendations; the idea is to have fewer but weightier recommendations. The Supervisory Committee expects this issue to be taken up in the inter-institutional dialogue and has discussed also with the Vice-President of the European Commission, Ms. Georgieva with regard to the preparation of the follow-up of the recommendations for the inter-institutional dialogue.

The Supervisory Committee has developed its hearing and commenting procedures with OLAF during the reporting period. Increased dialogue also means that the differences of opinion are brought to light; in many of the individual recommendations OLAF has different opinions. A good future indicator would be also a reasoned, substantiated agreement to disagree.

Concerning the investigative independence of OLAF, the Supervisory Committee recalls its Report 1/2014 Safeguarding OLAF's Investigative Independence which is still relevant for the EP when discussing the Commission proposal for the amendments of the OLAF Regulation. The Supervisory Committee draws attention to the fact that the so called clearing house meetings may still contain an inherent risk to the independence of OLAF investigation, albeit the Institutions need to know under strict conditions shall be secured.

The Supervisory Committee draws attention to the fact that the DG OLAF and two staff members called the Supervisory Committee to defend OLAF's independence against misleading statements and undue influence by some members of the European Parliament. The SC reply is explained in pages 8 – 9 of the SCAR.

To conclude: SC shares the overall mission of the effective fight against fraud

The Supervisory Committee shares with OLAF the overall mission to strengthen the rule of law and good administration by reliable, high quality and efficient investigations of fraud and illegal activities

respecting fundamental rights and procedural guarantees. The Supervisory Committee is and will continue to be at the service of the European Union Institutions to ensure a high level of accountability and combine that with full respect of the independence of investigations. **The Supervisory Committee would also be interested to have a formal feedback from the Institutions concerning its Annual Report.**

If the Chair allows, I would ask my colleagues in the Supervisory Committee to present

- main results on the follow-up of the SC recommendations and external reporting on the investigative performance
- main results of the SC analyses concerning the reporting on cases lasting longer than 12 months.
- report on 423 cases