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OLAF Supervisory Committee's annual report 2014

Greens/EFA motion for resolution

*Tabled by **Bart Staes** on behalf of the Greens/EFA group,*

The European Parliament,

- having regard to 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[1],
- having regard to its decision of 29 April 2015 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2013, Section III – Commission and executive agencies[2],
- having regard to its decision of 3 April 2014 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2012, Section III – Commission and executive agencies[3],
- having regard to its resolution of 3 July 2013 on the Annual Report 2011 on the protection of the EU's financial interests – Fight against fraud[4],
- having regard to its resolution of 11 March 2015 on the Annual Report 2013 on the protection of the EU's financial interests – Fight against fraud[5],
- having regard to the 2014 Annual Activity Report of the OLAF Supervisory Committee (hereinafter 'the SC'),
- having regard to Opinion No 4/2014 of the SC, entitled 'Control of the duration of investigations conducted by the European Anti-fraud Office',
- having regard to OLAF's response to Opinion No 4/2014 of the SC,
- having regard to Opinion No 5/2014 of the SC, entitled 'OLAF external reporting on the duration of investigations',

- having regard to OLAF’s response to Opinion No 5/2014 of the SC,
- having regard to Report No 1/2014 of the SC, entitled ‘Safeguarding OLAF’s investigative independence’,
- having regard to Report No 2/2014 of the SC, entitled ‘Implementation by OLAF of the Supervisory Committee’s recommendations’,
- having regard to Report No 3/2014 of the SC, entitled ‘Opening of cases in OLAF in 2012’,
- having regard to OLAF’s response to Report No 3/2014 of the SC,
- having regard to the SC’s Note on the Supervisory Committee’s Analysis of the OLAF Draft IPPs for 2015,
- having regard to the SC’s 2013 Annual Activity Report,
- having regard to Opinion No 2/2013 of the SC, entitled ‘Establishing an internal OLAF procedure for complaints’,
- having regard to Opinion No 1/2014 of the SC, entitled ‘OLAF Investigation Policy Priorities’,
- having regard to Opinion No 2/2014 of the SC, entitled ‘Case selection in OLAF’,
- having regard to the SC’s observations on investigation procedures in OLAF,
- having regard to the SC’s 2012 Recommendations,
- having regard to the SC paper entitled ‘Mission, competences and objectives of the Supervisory Committee of the European Anti-Fraud Office – Mid-term strategy (2014-2015)’,
- having regard to the SC’s Working Arrangements with OLAF,
- having regard to the questions to the Commission and to the Council on the OLAF Supervisory Committee’s annual report 2014 (O-000060/2015 – B8-0553/2015, O-000061/2015 – B8-0554/2015 and O-000066/2015 – B8-0555/2015),
- having regard to Rules 128(5) and 123(2) of its Rules of Procedure,

A. whereas in its Annual Activity Report 2014 the OLAF Supervisory Committee (SC) noted that at the time of the reorganisation of OLAF (1 February 2012), 423 cases were opened on the same day by a single decision of the Director-General of OLAF (OLAF DG); whereas, on the basis of its analysis, the SC concluded that (i) OLAF did not conduct any appropriate assessment of the incoming information for any of the cases analysed by the SC, (ii) for the vast majority of cases there was not even a trace of any assessment activity, and (iii) the OLAF DG opened all the cases in question without establishing beforehand the existence of a sufficiently serious suspicion that there had been fraud, corruption or any other illegal activity affecting the financial interests of the Union – which is in contradiction with the legal requirement for opening an OLAF investigation in force at that time;

B. whereas the SC, in its communications to the EU institutions, has pointed out that in spite of a clear obligation set out in Article 17(5) of Regulation No 883/2013, the OLAF DG did not report to the SC in 2014 on those OLAF recommendations which were not implemented;

C. whereas in the first half of its mandate the SC issued 50 recommendations to OLAF, of which only 8 were fully implemented, 6 were partially implemented, 1 is pending and 20 were not implemented, and whereas in 15 cases the SC was not able to verify implementation owing to insufficient substantive information;

D. whereas the SC – in its note on the OLAF draft Investigation Policy Priorities (IPPs) for 2015 – observed that OLAF had not taken into account the three recommendations made in the SC's Opinion No 1/2014: (i) the OLAF DG had not issued guidelines on the application of the selection principles arising from Regulation No 883/2013 (efficient use of resources, proportionality, subsidiarity/added value) and, instead of reviewing the financial indicators to adapt them to the reality of spending programmes, had abolished them completely; (ii) the draft IPPs for 2015 appeared to take into consideration several documents from stakeholders, but no dialogue with the stakeholders seemed to have taken place with regard to financial indicators and to possible follow-up of the cases showing sufficient suspicion of fraud, but which had been dismissed on the basis of the IPPs or the selection principles; (iii) the OLAF DG had not forwarded to the SC an assessment of the application of the previous IPPs or a summary of the feedback provided by stakeholders, despite a previous commitment to do so;

E. whereas the SC had constantly pointed out its inability to supervise OLAF's independence, its investigative function, the application of procedural guarantees and the duration of investigations, on account of the lack of access to necessary information;

F. whereas the SC has stated that the core of the problem with regard to the effectiveness of its supervisory role is not poor implementation of the Working Arrangements, but a fundamental difference of views between the SC and the OLAF DG in their perceptions of the SC's role;

G. whereas Parliament, in its aforementioned resolutions on the Annual Reports 2011 and 2013 on the protection of the EU's financial interests – Fight against fraud, called for an improvement in the SC's ability to fulfil its role;

H. whereas the SC has on several occasions called on the EU institutions either to reinforce its competences, in particular through full access to OLAF case files, or to take other measures to ensure OLAF's accountability;

I. whereas in March 2014 the OLAF DG committed to report to the SC once a year on the number of complaints received, the timeliness of their processing and their classification as either justified or not; whereas, however, the SC reports that it has not received any such information;

J. whereas Regulation No 883/2013 reinforced the SC's role in monitoring the duration of OLAF's investigations; whereas, notwithstanding OLAF's formal compliance with its obligation to report regularly to the SC on investigations lasting more than 12 months, the SC concluded, in its Opinion No 4/2014 entitled 'Control of the duration of investigations conducted by OLAF', that the information provided to it had been insufficient to enable it to properly and effectively monitor the duration of OLAF's investigations;

K. whereas, in its Opinion No 5/2014 entitled 'OLAF external reporting on the duration of investigations', the SC concluded that the reporting on the duration of investigations by OLAF had not provided a comprehensive view of its investigative performance; whereas, while OLAF stated in its annual report that 'investigations are being completed in less time', the SC concluded that the improvement in the results of OLAF investigations was due to the introduction of new calculation methods;

L. whereas, in its Report No 1/2014 entitled 'Safeguarding OLAF's independence', the SC called for clarification of OLAF's role in the implementation of the Commission's anti-fraud policy in the cigarette

sector;

M. whereas for two years in a row the SC has expressed, in its Annual Activity Report, its concerns about the lack of transparency regarding OLAF's participation in the Commission 'Clearing House' meetings and the inherent risks with regard to OLAF's investigative independence;

N. whereas the SC has drawn the EU institutions' attention to the need to implement the requirements of Regulation No 883/2013 concerning the independent functioning of the SC Secretariat;

O. whereas the SC has identified four basic conditions to ensure 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;

P. whereas Parliament has considered OLAF's responses to the SC reports and opinions that were delivered to Parliament;

1. Strongly emphasises OLAF's responsibility to comply with the legal requirements for opening an investigation; recalls that, as regards the 423 cases opened on the same day, only 8.4 % of those that were closed resulted in recommendations; calls on the SC to follow up compliance with the legal requirements on a regular basis;

2. Refers to its aforementioned resolution of 29 April 2015 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2013, and urges OLAF, without undue delay, to provide justification for the cases in which it has not implemented the SC's recommendations;

3. Considers it regrettable that the SC found it impossible to conclude whether the IPPs had been identified correctly and whether their application had positive or negative consequences for the fight against fraud and corruption;

4. Deplores the fact that the SC is not able to implement its mandate fully; refers to its aforementioned resolutions on the Annual Reports 2011 and 2013 on the protection of the EU's financial interests – Fight against fraud, and asks the Commission to take measures to improve the SC's ability to supervise OLAF's independence, its investigative function, the application of procedural guarantees and the duration of investigations, without, however, putting OLAF's independence at risk;

5. Urges the Commission to facilitate the negotiations between OLAF and the SC by drawing up an action plan by 31 December 2015 with a view to amending the Working Arrangements to create a working environment in which the SC can fulfil its mandate; takes the view that the amended Working Arrangements should clarify the SC's role to all the parties concerned; notes that the secretariat of the supervisory body is under the (administrative) control of the supervised body;

6. Calls for the fulfilment of the OLAF DG's commitment to provide the SC with the number of complaints received, the timeliness of their processing and their classification as either justified or not;

7. Urges OLAF to comply with the legal requirements to enable the SC to fulfil one of its core functions with regard to supervising the duration of OLAF's investigations;

8. Welcomes, however, the fact that OLAF and the SC have started to work together to improve the information OLAF provides to the SC and to enrich the content of the reports on investigations lasting

more than 12 months;

9. Notes that out of 134 investigators at the end of 2014, 13 (10 %) were assigned to the tobacco and counterfeit unit, and 44 (33 %) to the units for agricultural and structural funds, which accounted for 86 % of the financial interests at stake (EUR 1.9 billion); recommends, therefore, that OLAF reconsider the allocation of its resources;

10. Expresses concerns about the transparency of OLAF's participation in the Commission 'Clearing House' meetings;

11. Instructs its President to forward this resolution to the Council and the Commission

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Responsible MEPs



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