



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 October 2011

15274/11

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FIN 726**

"I/A" ITEM NOTE

From: Working Party on Combating Fraud
To: Permanent Representatives Committee/Council
Subject: Special report No 2/2011: Follow-up of Special report No 1/2005 concerning the management of the European Anti-fraud Office
- Draft Council Conclusions

1. On 4 May 2011, the Council received Special report No. 2/2011 "Follow-up of Special report No 1/2005 concerning the management of the European Anti-fraud Office"¹.
2. The Permanent Representatives Committee instructed the Working Party on Combating Fraud to examine it and draw the relevant conclusions².

On 6 October 2011, the Working Party on Combating Fraud reached an agreement on the draft Council conclusions annexed hereto, on the basis of a proposal presented by the Presidency.

3. It is suggested that the Permanent Representatives Committee advise the Council to adopt the draft Council conclusions in the Annex as an "A" item on the agenda of a forthcoming meeting.

¹ Doc. 9843/11 FIN 299 GAF 7.

² Doc. 9844/11 FIN 300 GAF 8.

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COUNCIL CONCLUSIONS

**on Special report No 2/2011 - "Follow-up of Special report No 1/2005
concerning the management of the European Anti-fraud Office"**

The Council:

1. WELCOMES the Court's Special report No 2/2011, "Follow-up of Special report No 1/2005 concerning the management of the European Anti-fraud Office", together with the Commission's replies, and CONSIDERS that the Council Conclusions of 8 November 2005 on the Special report No 1/2005 remain highly relevant.
2. RECALLS that the European Anti-fraud Office (hereinafter "the Office") operates within a complex institutional framework and STRESSES the importance of the Office's independence in carrying out its administrative investigations, as well as of an effective coordination in the field of the protection of the financial interests of the European Union.

Improving the efficiency of investigations

3. WELCOMES the important measures implemented by the Office in order to improve the efficiency of its operations, such as the introduction of a new version of the Manual of Operational Procedures in 2009 and the further development of the Case Management System.
4. REGRETS, however, that progress aimed at improving the planning and the supervision of investigations has been limited and that, as a result, the average duration of investigations as well as of initial assessments remains too long.

5. SUPPORTS the Court's view, shared by the Commission, that the duration of investigative procedures is a key performance indicator of the Office's efficiency and TAKES NOTE of the Office's commitment to reduce it wherever possible.
6. CALLS, therefore, on the Office to step up efforts in order to improve its planning and optimise the use of its resources and tools. In this respect, WELCOMES the introduction of a *de minimis* approach for external investigations and SUPPORTS the application of a similar policy to internal investigations, allowing for a larger focus on more serious and complex cases, especially in areas where the risk of fraud is higher.
7. INSISTS on the need that the Office, taking into account the different types of inquiries and their specific nature, continues to set targets for their duration and that it closely monitors long and complex investigations, ensuring that timely and appropriate measures are further taken to prevent delays.

Refocusing on the investigative function

8. WELCOMES the Court's finding that the Office has increased its investigative activities, making considerable progress since the Court's audit of 2005.
9. SHARES, however, the Court's view that, in order to increase the number and speed of investigations, the Office should further enhance its investigative function, by allocating more of its existing resources to it.

Reporting on the effectiveness of investigations

10. While ACKNOWLEDGING that the Office's reports are intended for various audiences and purposes, AGREES with the Court on the importance of having relevant and reliable data on the Office's performance presented in a single document, which would facilitate comparisons over time and across different sectors and types of investigations.

11. EMPHASISES that this overview should inform on indicators based on real and quantifiable results. Furthermore, while RECALLING that it is for the competent Member States' authorities or for the institutions, bodies, offices or agencies, as the case may be, to decide what action should be taken on completed investigations, and that financial follow-up should not be part of OLAF's remit, CONSIDERS that information on recoveries is also very important and should be properly presented.

Clarifying the role of the Supervisory Committee

12. TAKING NOTE that the Supervisory Committee recently adapted its rules of procedure to formally take into account the July 2008 judgement of the Court of First Instance, INSISTS that the Supervisory Committee's role should not include operational activities, which would be incompatible with its status as an independent supervisory body that must not interfere with the conduct of investigations in progress nor with the follow-up given to individual cases.
13. EXPECTS, however, that the role of the Supervisory Committee will be further clarified in the context of the amendment of Regulation (EC) No 1073/1999.

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14. INVITES the Commission to report back in due time on the progress made following these conclusions.
15. DRAWS THE ATTENTION to the ongoing reform of the legal framework in which the Office operates, which is the most appropriate context to address several issues raised by the Court in its Special report, such as the procedural guarantees, the review procedure and the cooperation with Eurojust and Europol.

16. RECALLING the Council Conclusions on the Reform of the European Anti-Fraud Office of 6 December 2010¹ and the examination of the subsequent Commission amended proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 carried out by the Council preparatory bodies between April and June 2011, STRESSES that the Council is ready to work in the direction of a rapid agreement in the context of this ordinary legislative procedure.
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¹ Doc. 16833/10 GAF 16 FIN 645.