

Annual report 2011 on the protection of EU's financial interests - Fight against fraud

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The European Parliament adopted a resolution on the Annual Report 2011 on the protection of the EU's Financial Interests - Fight against fraud.

- **General comments:** while stressing that countering fraud and any other illegal activities affecting the financial interests of the Union is the obligation of the Commission and the Member States, enshrined in the Treaty on the Functioning of the European Union, the resolution recalls that it is equally important to ensure the protection of those financial interests both at the level of collection of the EU's resources and at the level of expenditure.

Parliament calls on the Commission to consider the **link between Member State reporting on fraud and the lack of a harmonised criminal law** setting out a common definition of fraudulent behaviour and offences in the field of protecting the Union's financial interests. It points out that the criminal law systems of the Member States have been harmonised to only a limited extent.

Members call for **ambitious European legislation and improved cooperation and coordination** between all Member States in order to ensure that severe sanctions are imposed on fraudsters and to deter fraudulent behaviour.

- **Definitions and standard evaluation criteria:** Parliament regrets that the Commission's report is limited to the data reported by the Member States and points out that **Member States use different definitions for similar types of offence and do not all collect similar and detailed statistical data following common criteria**. This makes it difficult to collect reliable and comparable statistics at EU level and it is thus impossible to evaluate the actual overall scale of irregularities and fraud in individual Member States or to identify and discipline those Member States with the highest level of irregularities and fraud. The resolution urges, therefore, that **standard evaluation criteria for irregularities and fraud be laid down in all Member States and combined with appropriate penalties for those guilty of infringement**. It also calls for a **distinction** to be made between fraud and errors or irregularities.

- **Irregularities:** Parliament notes that, according to the Commission's annual report, in 2011, 1 230 irregularities were reported as fraudulent and that their financial impact decreased by 37% in comparison with 2010 and amounted to EUR 404 million. It acknowledges that cohesion policy and agriculture remain the two main areas suffering from the highest level of fraud and calls on the Commission to **closely monitor the effectiveness of supervisory and control systems in the Member States** and to ensure that the information provided on the level of irregularities in the Member States **reflects the true situation**.

- **e-Government:** Parliament stresses that the European Union needs to step up efforts to strengthen the principles of eGovernment which would set the conditions for greater transparency in public finances and draws attention to the fact that electronic transactions, unlike cash transactions, are referenced, making it more difficult to commit fraud and easier to identify suspected cases of fraud.

- **Investigative journalism:** Parliament considers that investigative journalism has played a major role in exposing fraud and represents a valuable source of information to be considered by OLAF and law enforcement or other relevant authorities in Member States.

- **Mandatory national declarations:** Parliament recalls that in its [resolution of 6 April 2011](#) on the protection of the Communities' financial interests – Fight against fraud – Annual report 2009, it called for the introduction of mandatory national management declarations duly audited by the national audit office and consolidated by the Court of Auditors; **it regrets that no further steps have been taken in that direction.**

- **Recovery of funds:** Parliament acknowledges that the amount to be recovered following irregularities detected in 2011 reached EUR 321 million, of which EUR 166 million has already been recovered by the Member States: this represents a recovery rate for traditional own resources of 52% in 2011 compared to 46% in 2010. It notes OLAF's overview of progress on judicial actions in actions created between 2006-2011, according to which **more than half of actions are pending a judicial decision.** It is of the opinion that special attention should be paid to cases related to **fraud in customs**, which is among the areas with the **highest rates of systemic corruption in Europe.**

- **Revenue – own resources:** Parliament emphasises that tax evasion and avoidance represent a major risk for the EU public finances. It stresses that an estimated EUR 1 trillion in public money is lost due to tax fraud and tax avoidance every year in the EU, i.e. **a rough yearly cost of EUR 2 000 for every European citizen.** Fighting tax evasion should be given the **highest priority** by both the Commission and the Member States.

The resolution calls on the Commission to strengthen its coordination with the Member States in order to **collect reliable data on the customs and VAT gap** in the respective countries and to report on a regular basis to Parliament in that regard.

- **Customs:** Parliament is deeply concerned at the Court of Auditors' conclusion that there are serious deficiencies in national customs supervision. It stresses that the Customs Union is an area of exclusive competence of the EU and that it is therefore the **Commission's obligation to put in place all measures necessary to ensure that the customs authorities in the Member States act as if they were one, and to monitor their implementation.** It is concerned that **in most Member States tax administrations have no direct access to customs data and that automated cross-checking with tax data is therefore not possible.**

- **Modernised Customs Code (MCC):** Parliament deplores the fact that the Commission and the Member States have been unable to ensure the timely implementation of the Modernised Customs Code (MCC). It calls on the Commission to **make an evaluation of the cost of postponing full application of the MCC, quantifying the budgetary consequences of such postponement.**

- **VAT:** the resolution recalls that **the correct operation of customs procedures has direct consequences for the calculation of VAT.** It stresses that the **model of VAT collection is outdated**, given the many changes to the technological and economic environment that have taken place and points to the **need for real-time connection of business transactions with the tax authorities** in order to combat tax evasion.

- **Cigarette smuggling:** the resolution emphasises that cigarette smuggling serves as an **important source of financing for internationally structured criminal organisations**, and highlights, therefore, the importance of **strengthening the external dimension of the Commission's action plan** to fight against the smuggling of cigarettes and alcohol along the EU Eastern border.

- **Expenditure:** Parliament recalls that 94% of the EU budget is invested in the Member States, and that it is vitally important that all money is spent well. It deplores that **most irregularities in EU spending are committed at national level.** It emphasises that greater transparency allowing for proper scrutiny is key

in order to detect fraud and recalls that, in previous years, Parliament has urged the Commission to take action to ensure **one-stop transparency as regards the beneficiaries of EU funds**. It, once more, reiterates its call on the Commission to **design measures to increase the transparency of legal arrangements and a system which lists all beneficiaries of EU funds** on the same website.

- **Agriculture:** Parliament points out that the number of irregularities reported as fraudulent in agriculture in 2011 **does not reflect the actual situation** and that the Commission expressed its concern that the fraud figures reported might not be entirely reliable. It calls for further cooperation and best-practice-sharing in the Member States in order to respond to and report cases of fraud to the Commission.

It remains concerned by the **suspiciously low fraud rates** reported by France, Germany, Spain and the United Kingdom, especially given their size and the amount of financial support received. It regrets that, in its annual report, the Commission **did not offer a definitive answer to the question of whether the low suspected fraud rates reported by these countries are the result of non-compliance with reporting principles or of the ability of the control systems put in place in these Member States to detect fraud**. It therefore calls on the aforementioned Member States to provide detailed and thorough explanations of their low rates of reported suspected fraud as soon as possible.

- **Cohesion policy:** Parliament welcomes the fact that, in 2011, the recovery rate for Cohesion Policy improved to 93% in comparison with 69% in 2010. It calls on the Commission and the Member States to **simplify the relevant rules on public procurement and the procedural rules for management of the Structural Funds**.

- **External relations, aid and enlargement:** Parliament notes with concern that the Court of Auditors pointed to errors in final payments that had not been detected by Commission controls, and concluded that the **controls applied by the Commission are not fully effective**. It therefore calls on the Commission improve its monitoring mechanisms in order to ensure the efficient and appropriate expenditure of funds.

- **OLAF:** Parliament reiterates that it is necessary to continue to strengthen the independence, effectiveness and efficiency of OLAF, including the independence and functioning of the OLAF Supervisory Committee. It considers that this is all the more reason to strengthen the **independence of the Supervisory Committee**, and that the Committee should be empowered with the necessary means to fulfil its role effectively. It welcomes the [anti-fraud strategy](#), *inter alia* as regards the inclusion of improved anti-fraud provisions in spending programmes under the new multiannual financial framework for 2014-2020. It notes with concern, however, the Commission's conclusion that there are **insufficient deterrents against criminal misuse of the EU budget in Member States** and welcomes the Commission proposals to address this problem and recommends that beneficiary third countries should also be involved as fully as possible.

Parliament takes note of the concerns raised by the OLAF Supervisory Committee in its 2012 Activity Report, especially with regard to the case transmitted in October 2012 to the national judicial authorities and leading to the **resignation of a member of the European Commission**. It is of the opinion that these concerns should be the subject of a **thorough examination** by the responsible judicial authorities.

Furthermore, Parliament is concerned about the **reporting of the OLAF Supervisory Committee**. It notes that breaches of essential procedural requirements during preparatory investigations could affect the legality of the final decision taken on the basis of investigations by OLAF. **Breaches** may incur the legal liability of the Commission. These shortcomings should be tackled immediately.

The resolution calls for **potential fraud or irregularities which have less financial impact** – in areas such as customs (where the threshold below which OLAF does not take action is EUR 1 million) and the structural funds (where the threshold is EUR 500 000) – to be reported to the Member States.

- **OLAF's investigative measures:** Parliament reiterates that no violation of fundamental rights by OLAF or any other Commission services can be accepted, referring in this respect to the OLAF Supervisory Committee's view that OLAF **may have gone beyond the investigative measures that it is entitled to take** as regards the preparation of the content of a telephone conversation for a third party with a person subject to the investigation and being present during that conversation, which was recorded. It expects OLAF to provide a satisfactory explanation of the legal basis for its investigative measures such as the recording of telephone conversations.

- **Annulments of OLAF decisions:** Parliament welcomes the statement made in the Supervisory Committee's 2012 Activity Report that **all actions for annulment of OLAF's decisions were rejected as inadmissible** by the Court of Justice, while the Ombudsman did not find any instance of maladministration. It further points out that the European Data Protection Supervisor (EDPS) found that OLAF generally complied with the data protection rules, with the exception of one case where the EDPS considered that OLAF violated the right to protection of personal data by unnecessarily disclosing the identity of a whistleblower to his institution.

- **Recording of telephone conversations:** the resolution calls on OLAF to inform Parliament's competent committee of the **legal basis that authorises it to assist in and prepare the recording of telephone conversations of private persons without their prior consent and to use the contents for purposes of administrative investigations.** Parliament reiterates its call on OLAF to provide Parliament - in line with a similar request by the Council - with a legal analysis of the legality of those records in the Member States.

Parliament is deeply concerned about the **effectiveness and internal functioning of OLAF**, while considering that a strong and well-managed OLAF is essential in the fight against fraud and corruption where European taxpayers' money is involved. It urges the Commission, therefore, in cooperation with Parliament's competent committee and when answering its questions, to analyse the legality of OLAF's operations, to take all necessary measures to improve the management of OLAF, and to formulate practical solutions to remedy shortcomings before the end of 2013. It calls on the Commission and the Council, in the meantime, to **stall all discussions and decisions on the introduction of the European Public Prosecutor's Office (EPPO).**

- **The Commission's initiatives in the area of anti-fraud activity:** Parliament welcomes the fact that, in response to its request, the Commission is currently developing a methodology to measure the costs of corruption in public procurement concerning EU funds. In particular, it calls in this respect on the Commission to report on and evaluate the anti-fraud strategies established within each Directorate-General.

Lastly, it looks forward to the submission by the Commission of the legislative proposal on the establishment of the European Public Prosecutor's Office, which will be responsible for investigating, prosecuting and bringing to justice those who damage assets managed by or on behalf of the EU, as announced by the Commission for June 2013.