

## **Follow-up to the European Parliament non-legislative resolution on the Annual Report 2017 on the protection of the European Union's financial interests – fight against fraud**

- 1. Rapporteur:** Marian Jean MARINESCU (EPP / RO)
- 2. Reference numbers:** 2018/2152 (INI) / A8-0003/2019 / P8\_TA-PROV(2019)0054
- 3. Date of adoption of the resolution:** 31 January 2019
- 4. Competent Parliamentary Committee:** Committee on Budgetary Control (CONT)
- 5. Brief analysis/ assessment of the resolution and requests made in it:**

The Commission welcomes the European Parliament's resolution and notes the Parliament's recognition of the Commission's actions in the fight against fraud as well as the support for its initiatives in this field, in particular the establishment of the European Public Prosecutor Office (EPPO) and the Commission proposal to amend Regulation No 883/2013 on investigations conducted by the European Anti-Fraud Office (OLAF). The resolution addresses a host of issues related to the protection of the financial interests of the EU and is divided into **fourteen sections**.

- 6. Response to requests and overview of action taken, or intended to be taken, by the Commission:**

### **I. Detection and reporting of irregularities (paragraphs 1 to 8)**

In reply to the Parliament's call on the Member States to cooperate more closely with regard of exchange of information, the Commission proposal for the amendment of Regulation No 883/2013, although focused on OLAF investigations, contains some provisions to enhance the Member State cooperation, such as strengthened provisions on OLAF's coordination function and on the cooperation of the anti-fraud coordination services (AFCOS) in the Member States among themselves.

As to the fact that not all the Member States have adopted national anti-fraud strategies, the Commission encourages them to develop such anti-fraud strategies and supports them in the drafting process regardless of the absence of a legal obligation for the Member States to do so.

In reply to the Parliament's call on the Commission to establish a uniform system for the collection of comparable data on irregularities, the Commission notes that it has put in place every action to ensure unified and consistent reporting of irregularities at legislative and operational level. In 2017, the Commission prepared the "Handbook on irregularities reporting"; moreover, the Irregularity Management System (IMS) is a performing IT application for the reporting of irregularities. The PIF directive<sup>1</sup>, adopted on 5 July 2017, provides for a uniform legal framework and will thus further contribute to the comparability of data. The Commission is currently working, together with the co-legislators to ensure that

---

<sup>1</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

appropriate provisions are also contained in the legislative acts for the spending programmes of the Multiannual Financial Framework post 2020.

Regarding the fact that many Member States do not have specific laws against organised crime, the Framework Council Decision 2008/941/JHA on the fight against organised crime aims at approximating definitions and sanctions for offences relating to the participation in a criminal organisation in all the Member States.

## **II. Revenue – own resources (paragraphs 9 to 22)**

As regards the Parliament's concern that the newly adopted amendments to Regulation (EU) No 904/2010 on measures to strengthen administrative cooperation in the field of VAT might not be sufficient to thwart CP42 fraud, the Commission would like to clarify that the amendment to Council Regulation (EU) No 904/2010 adopted on 2 October 2018 has introduced new tools for the Member States to tackle specific schemes of serious VAT fraud including CP42 fraud. Therefore, the effectiveness of these measures in thwarting CP42 fraud will rely entirely on how the Member States will implement and use them. At the same time, the Commission would like to draw the attention of the Parliament to the new measures of automated exchange of information on CP42 as well as customs authorities' access to the VIES database to validate the authenticity of VAT data at importation. With these measures alone, the detection of CP42 fraud could be improved significantly and even automated. Other measures such as the reinforcement of Eurofisc and its cooperation with Europol and OLAF are also relevant in the fight against CP42 fraud, allowing the Member States to open new front lines against VAT fraud that were not possible before.

The Commission welcomes the Parliament's call on the Member States to endorse its proposal to amend Regulation No 883/2013 as to provide OLAF with new instruments to investigate VAT fraud.

The Commission agrees with the Parliament that tobacco smuggling to the EU remains at preoccupying levels, as set out in the report on progress in implementing the Commission Communication "Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – a comprehensive EU strategy".<sup>2</sup> The new action plan<sup>3</sup> to fight the illicit tobacco trade adopted by the Commission in December 2018 includes measures to enhance cooperation and coordination between the Member States' authorities involved in the fight against cigarettes smuggling.

Concerning the Parliament's call on the Commission to investigate why some Member States do not report fraud cases, it should be noted that the Commission supervises the own resources' system and performs risk-based inspection programmes to ensure that the Member States properly collect traditional own-resources and timely transfer them to the EU budget.

Regarding the Parliament's call on the Commission to report annually the amount of EU own resources recovered following the recommendations made by OLAF, the Commission notes that it is not in a position to calculate the total amount that arises from OLAF's recommendations for recovery and therefore does not intend to publish a report. In the future, OLAF intends to report in its annual report on the total amount established for recovery as accepted by the recipient of the financial recommendation.

---

<sup>2</sup> COM(2013) 324 final of 6 June 2013, COM(2017) 235 final of 12 May 2017

<sup>3</sup> COM(2018) 846 final of 7 December 2018

### **III. EU Anti-Fraud Programme (paragraph 23)**

Regarding the Parliament's call for the **EU Anti-Fraud Programme grants to be managed electronically**, the Commission recalls that the use of the eGrant management system is in use in the Hercule programme since 2017.

### **IV. EPPO and its future relationship to OLAF (paragraphs 24 to 27)**

The Commission will continue incentivising the Member States that have not yet joined the EPPO to do so, as requested by the Parliament. As regards the Parliament's concern that the only 37 posts planned for the EPPO are not realistic and its call for a staff increase in order to help the EPPO to be fully operational by 2020, the Commission recalls that in November 2018 it has designated a senior official with wide-ranging experience in budgetary and human resources matters, as well as in the establishment of new bodies, to serve as interim Administrative Director of the EPPO. To ensure enough resources for the EPPO in the coming months, the Commission's draft budget for 2019 proposes to reinforce EPPO's resources for 2019 by frontloading three additional posts as from 2021. Moreover, following the decision of the Netherlands and Malta to participate in the EPPO the Commission proposed two additional posts by amending letter to the general budget 2019.

### **V. Fight against corruption (paragraphs 28 to 34)**

In reply to the Parliament's call to resume the publication of the anti-corruption report instead of including anti-corruption monitoring within the European Semester, the Commission is convinced that taking up anti-corruption matters in the context of the European Semester process of economic governance is in line with the general approach of this Commission to streamline processes and focus on key issues in the relevant fora. In its assessments under the European Semester, the Commission uses the full range of qualitative and quantitative evidence, including internationally recognised indicators, such as those developed by the World Bank, World Economic Forum or Transparency International. The Commission disagrees with the Parliament's call to develop an anti-corruption index, as it would not be sufficiently robust or suitable to rank the level of corruption in the Member States.

The Commission agrees with the Parliament that OLAF should remain a strong and fully functioning body after the establishment of the EPPO and to this end has proposed a revision of Regulation No 883/2013.

Regarding the Parliament's call to develop a systematic and proportional approach against the "revolving door" effect, the Commission, as well as the other institutions, have already taken important steps. In 2013, the Council and the Parliament adopted amendments to the Staff Regulations which strengthen the ethical obligations of staff and which reinforce the prevention of risks of conflict of interest in the EU civil service. Within this framework and based on its experience gained in the handling of such issues, the Commission has just adopted a new decision on outside activities, assignments and occupational activities applicable to its staff after leaving service. Moreover, on 31 January 2018 the Commission adopted a new Code of Conduct for its Members.

As regards the Parliament's call to restart negotiations to foster the EU's participation in the Council of Europe Group of States Against Corruption (GRECO) and assess its compliance with the United Nations Convention against Corruption (UNCAC), the Commission reiterates its commitment to continue the excellent cooperation it has established with GRECO; the Commission is in the process of finalising an overview of the modifications of the Union's competence after the Lisbon Treaty with regard to all matters governed by UNCAC. It is to be

recalled that the European Union is a unique Regional Economic Integration Organisation, and, as such, this raises specific and complex legal and institutional questions.

## **VI. Public Procurement (paragraphs 35 to 43)**

### *Digitalisation (paragraphs 35 to 39)*

The Commission has already elaborated a framework for the **digitalisation of all processes of implementation of EU policies**, is committed to strengthen such framework further and encourages Member States to establish and use unique identifiers for all contracting authorities and economic operators.

### *Prevention and early stages of the tender procedure (paragraphs 40 to 43)*

The Commission agrees with the Parliament on the importance of **preventive activities and of e-procurement** for diminishing the level of fraud.

## **VII. Import procedures (paragraphs 44 to 49)**

The Commission shares the Parliament's concerns regarding customs inspections and collection and is fully committed in fighting trade in illegal and counterfeit goods.

In reply to the Parliament's call to **make the indication of the consignor compulsory in customs import declarations**, the Commission is already in the process of preparing a proposal for a regulation that will make the indication of the exporter in third countries compulsory in all import declarations to the EU.

## **VIII. Expenditure (paragraphs 50 to 56)**

The Commission will continue its efforts at **standardising the nomenclature of irregularities linked to expenditure**.

## **IX. Problems identified and measures required – Better inspections (paragraphs 57 to 58)**

The Commission agrees with the Parliament's position and is grateful for its acknowledgement of the success of the Hercule III programme.

## **X. Transnational fraud (paragraphs 59 and 60)**

While acknowledging the importance of exchange of information between the Member States, at this stage the Commission does not plan to adopt a specific initiative on a legal instrument for mutual administrative assistance in those areas of European funding where no provision is made for this. The Commission proposal to amend Regulation 883/2013 introduces a new provision that strengthens OLAF's coordination activities in support of the Member States in relation to the collection, analysis and exchange of information, and to assist the Member States in organising close and regular cooperation. Furthermore, the Commission proposal includes provisions that facilitate OLAF's cooperation with AFCOS in the Member States and AFCOS cooperation among themselves.

The Commission agrees with the Parliament's position on the importance of including anti-fraud clauses in international agreements between the EU and non-EU countries and expresses its intention to continue this practice, both concerning EU revenue and EU expenditure.

## **XI. Whistle-blowers (paragraphs 61 and 62)**

The Commission fully supports the objective of protecting whistle-blowers to reinforce the detection and fight against fraud. The Commission presented on 23 April 2018 a package of initiatives to reinforce whistle-blowers protection. The package includes a directive on the protection of persons reporting breaches of Union law across a range of EU policies, including breaches harming the financial interests of the EU, and a Communication setting the policy framework for strong whistle-blowers protection at EU level. The Commission welcomes the political agreement reached in trilogues and will work to ensure appropriate transposition and implementation of the directive, once it becomes law.

## **XII. Investigative journalism (paragraph 63)**

The Commission agrees with the Parliament on the importance of investigative journalism.

## **XIII. Tobacco (paragraph 64 to 70)**

The Commission shares the Parliament's call on the Member States which have not yet ratified or acceded to the World Health Organization (WHO) Protocol to **Eliminate Illicit Tobacco Products**, to do so; the Commission agrees on playing an active role in producing a report setting out the good practices regarding tracking and tracing systems in the States which are parties in the Protocol.

Concerning the Parliament's call on the Commission to **present a report on the feasibility of stopping the three remaining agreements with tobacco companies**, it should be noted that the Member States are co-parties and the Commission has therefore launched a consultation procedure to seek their views. The Commission has now received replies from more than a half of the Member States; they all expressed their preference to continue the existing agreements until their expiry date. The Commission has informed the Parliament in this regard.

In December 2018, the Commission adopted the new **action plan on fighting illicit tobacco trade**. Parliament can be reassured that the EU traceability system for tobacco products established under Article 15 of the Tobacco Products Directive as well as the implementing and delegated acts on tobacco traceability adopted in 2017 are fully compliant with the FCTC Protocol (World Health Organization Framework Convention on Tobacco Control). As regards security measures, no provisions are provided for in the FCTC Protocol.

To **anticipate the hidden cloning risks of individual markings by the tobacco industry**, the legislation on EU tobacco traceability provides for strict requirements to ensure uniqueness and overall protection of the integrity of every traceability mark (unique identifier). Public authorities will be able to verify the validity of unique identifiers. In this regard, the system was also constructed in a way to provide, among others, for the detection of reported non-registered and duplicated unique identifiers.

The Commission agrees with the Parliament's that the **judicial follow-up to OLAF recommendations could be substantially improved** and encourages the Member States to do so. Based on the information published in the Annual Report 2017, the implementation ratio of OLAF's judicial recommendations at national level is in the range of 42 %, a trend in line with the previous years. According to the existing legal framework, it is the competence of Member States' authorities to decide – independently and according to their respective margin of discretion and prosecution policies – what action (if any) to take following the transmission of OLAF's judicial recommendations. Furthermore, the Commission has already taken several initiatives with a view to further enhancing the number of prosecutions and

indictments of crimes affecting the EU's financial interests, including the establishment of the EPPO, the PIF Directive and the proposed amendment of Regulation 883/2013. The latter, in particular, by proposing various amendments to increase the effectiveness of OLAF's investigations should facilitate the follow-up in national proceedings.

#### **XIV. Investigations and the role of OLAF (paragraphs 71 to 74)**

The Commission already announced in its evaluation of Regulation 883/2013 that the current proposal to amend the regulation in view of the establishment of the EPPO should be followed by a more **thorough and comprehensive modernisation of OLAF's legal framework** once some experience in the cooperation with EPPO is gained. Concerning the call to establish a certain degree of **transparency of OLAF's final reports** and recommendations following the closure of all proceedings at the EU and national level, the Commission stresses the need to respect the confidentiality of OLAF's investigations with a view to ensuring the rights of the persons concerned by OLAF's investigations, notably presumption of innocence and protection of personal data.

While stressing that no cases were lost in the Content Management Database (OCM), the Commission confirms that **solving OCM's issues** is a top priority for OLAF and that the Parliament will be kept informed.

Finally, the Commission agrees with the Parliament's call to ensure that **investigations by OLAF and the Member States complement each other and that OLAF enjoys equal investigative powers in all the Member States**. To this aim, the Commission proposal to amend Regulation No 883/2013 includes provisions, which would increase the coherent application of OLAF powers across the Member States, and ensure access by OLAF to bank account information and increase the admissibility of evidence gathered by OLAF. It should be however noted that OLAF will continue to operate as administrative authority both as regards its powers and the applicable safeguards. The Commission proposal therefore maintains the principle that evidence collected by OLAF shall be admissible in criminal proceedings in accordance with the rules applicable to national administrative authorities.