**Follow-up to the European Parliament non-legislative resolution on the protection of the European Union’s financial interests – combating fraud – annual report 2021**

1. **Rapporteur:** Sabrina PIGNEDOLI (NI / IT)
2. **Reference number:** 2022/2152 (INI) / A9-0299/2022 / P9\_TA(2023)0018
3. **Date of adoption of the resolution:** 19 January 2023
4. **Competent Parliamentary Committee:** Committee on Budgetary Control (CONT)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The resolution welcomes the Commission's efforts in the protection of the EU’s financial interests and recommends further action in a variety of fields related to the fight against fraud. The resolution notes that the Parliament should have a strong role in the Recovery and Resilience Facility (RRF)’s governance and calls for enhanced digitalisation, interoperability of data systems and harmonisation of monitoring and reporting in the EU. The Parliament highlights the major threats to the EU budget, such as organised crime and corruption, in particular perpetrated via cross-border modalities. It also asks the Commission to present a proposal to set up an interinstitutional ethics body, strengthen its internal control mechanisms and introduce a “cooling-off period” to tackle the “revolving door” phenomenon. The Parliament emphasises the role of the European Anti-Fraud Office (OLAF), the European Public Prosecutor’s Office (EPPO), Eurojust and Europol in the fight against fraud and corruption and reiterates its call to ensure that they are provided with adequate resources. The Parliament asks the Commission to take the necessary steps to ensure effective transposition of Directive (EU) 2017/1371 (“PIF Directive”), Directive (EU) 2018/843 (“5th anti-money laundering Directive”) and Directive (EU) 2019/1937 (“Whistleblowers Directive”). The Parliament stresses that funds spent in non-EU countries should be better controlled.

1. **Response to the requests and overview of the actions taken, or intended to be taken, by the Commission:**

The proposed **recast of the Financial Regulation[[1]](#footnote-1)** aims at enhancing the protection of the EU budget by, *inter alia*, ensuring standardised electronic recording and storing of data on the recipients of EU funding and their beneficial owners and by making the use of a single integrated IT system for data mining and risk-scoring compulsory in all budget management modes for all programmes adopted under and financed as from the post-2027 Multiannual Financial Framework (MFF). These modifications will facilitate risk assessment and contribute to effective prevention, detection, correction and follow-up of fraud, corruption, and other irregularities **(paragraph 9)**.

The Commission had already put forward, in 2004 and 2014, legislative proposals for **mutual administrative assistance**, but these proposals did not receive support in the Council. The revised OLAF Regulation, in particular, Articles 12a and 12b, strengthens OLAF’s mandate to coordinate actions and mutual assistance by Member States in the fight against fraud, also with respect to expenditure (**paragraph 10)**.

The Commission is constantly trying to **improve the PIF report** and will do its best to adopt it earlier. However, the **information submitted by the Member States**, in particular via the Irregularity Management System (IMS), follow a "calendar" which is expressly provided for in the applicable legislation. Furthermore, in line with Article 325(5) of the Treaty on the Functioning of the European Union (TFEU), the PIF report is prepared "*in cooperation with Member States*", which requires adequate time for consultation **(paragraphs 11 and 12)**.

***Fraudulent and non-fraudulent irregularities detected***

The Commission provides guidance to the Member States on how to carry out **public procurement procedures**, with a focus on the more serious and cross cutting aspects. When the Commission services have suspicions of fraud/ corruption or identify such cases, they submit them to OLAF **(paragraph 17)**.

***Major threats***

As announced by President von der Leyen in her State of the Union Address on 14 September 2022, the Commission will adopt a legislative proposal **updating the forms of corruption** to be **criminalised** in all Member States. For corruption resulting in an actual or potential damage to the Union’s financial interests, the relevant criminal definitions and sanctions have already been harmonised by the “PIF Directive” **(paragraph 20)**.

The Commission has recently published a study that concludes that the Framework Decision 2008/841/JHA has not achieved its objective of harmonising the definition and common understanding of organised criminal groups, and that significant differences in Member States remain, hampering cross border cooperation. As part of the implementation of the EU Strategy to tackle Organised Crime, the Commission facilitates exchanges of experiences and best practices with the Member States, including on the establishment and implementation of national strategies and specialised entities, as well as the mapping of organised criminal groups and their modus operandi **(paragraph 21)**.

In her Political Guidelines for the European Commission of July 2019, President von der Leyen expressed her support to create an **independent ethics body** common to all EU institutions. The Commission will table a proposal for a joint agreement between the institutions to establish an interinstitutional Ethics Body. This body should be common to all institutions and advisory bodies mentioned in Article 13 of the Treaty on the European Union (TEU). It is important to establish a clear and distinct mandate for the Ethics Body **(paragraph 24)**.

Although the Whistleblower Directive does not apply directly to the Commission staff, the Commission notes that the Staff Regulations and the Commission implementing rules offer an equivalent level of protection to the directive **(paragraph 25)**.

The monitoring of **Member States’ efforts to prevent and fight corruption** is made in the context of the Commission’s Rule of Law Report, which includes a specific section of each country chapter dedicated to the national anti-corruption framework **(paragraph 26)**.

**OLAF** has a unique mandate to carry out administrative investigations into serious misconduct by EU staff and members of the EU institutions, bodies, offices, agencies (IBOAs), irrespective of any suspected impact on the EU’s financial interests. In principle, the OLAF’s mandate includes serious matters relating to the discharge of professional duties. Moreover, the mandate of the **EPPO** includes investigation and prosecution of possible corruption and misappropriation cases, which may lead to an actual or potential damage to the Union’s financial interests. To allow for cooperation and exchange of information in their respective areas of competences, the EPPO and OLAF have signed working arrangements. In cases not covered by the mandate of the EPPO, the national prosecution services are competent.

The main **rules for tackling corruption** and fraud, which are common to all EU staff, are laid down in the Staff Regulations (see notably Articles 22a to 22c, which oblige each institution to adopt internal implementing rules).

The Staff Regulations also provide for a **cooling-off period** of two years during which all former EU staff members need prior authorisation of new occupational activities. This authorisation can be subject to any conditions, notably as regards lobbying, or be refused. The Commission has in place a cooling-off period of two years for its former Members, and three years for its former President, during which they need to notify any envisaged professional post-mandate activities and must not lobby the Commission on behalf of their private businesses, on matters for which they were responsible within their previous portfolio. The Commission would welcome any initiative by the European Parliament to introduce equivalent periods and rules also for its former Members. In addition, the 2018 Financial Regulation provides a strict framework for avoiding and addressing conflicts of interest covering any financial actor involved in implementing, monitoring, controlling, or auditing the EU budget **(paragraphs 27 and 28)**.

***Revenue***

Most measures imposed by the European Union in the area of trade defence instruments address **unfair trade practices by Chinese exporters**. The Commission is committed to making the best use of existing legislation and continues to improve its capacity to detect such practices as early as possible **(paragraph 34)**.

It should be noted that the value added tax (VAT) own resource is calculated as a uniform rate of 0.30 % on the harmonised VAT base of each Member State. Therefore, the VAT base is obtained by dividing the corrected net receipts by the weighted average rate (WAR). Therefore, with a WAR of about 15%, the VAT base corresponding to the estimated losses of EUR 50 billion would be approx. 333 billion (= 50 billion / 15%). Applying the call rate of 0.3% results in a revenue to the budget of approximately 1 billion or 0.6% of the EU annual budget, not to 27% as per the Parliament resolution. The Commission proposed the modernisation of reporting of cross-border transactions in the “VAT in the Digital Age” package in December 2022, that will help in the **fight against missing trader intra-Community fraud**, amongst others, by providing tax authorities with granular information to tackle it. It is also exploring the possibility to extend the legal framework to allow cooperation between Eurofisc and the EPPO. Finally, the Commission supports Member States by providing means of analysing data such as Transaction Network Analysis (TNA), that has contributed to identify thousands of fraudsters since 2019 and to uncover EUR 8.1 billion in fraudulent or suspicious transactions in 2021, and the Central Electronic System of Payment information (CESOP) that will become operational in 2024 **(paragraph 35)**.

***Expenditure***

In line with the audit professional standards, the Commission does not publish its audit reports and findings that concern the Member States. Nevertheless, in their respective Annual Activity Reports, Commission Directorates-General transparently report on the results of their controls. The Commission also shares audit findings with the audit community to develop a coherent level of protection and improve their administrative capacity **(paragraph 39)**.

The Commission will continue its efforts to prevent, detect and address **conflicts of interest** in the implementation of the EU budget and to support Member States. The 2018 Financial Regulation enhanced the framework for avoiding conflicts of interest. The Commission issued relevant guidance[[2]](#footnote-2) setting out practical examples, suggestions and recommendations. In addition, national authorities remain competent for adopting supplementary and possibly even stricter national rules. In the proposed recast of the Financial Regulation, the Commission aimed to strengthen the rules on conflict of interests with the introduction of a new ground of exclusion dedicated to conflicts of interest within the notion of grave professional misconduct under the Early Detection and Exclusion System **(**EDES) **(paragraphs 43 and 44)**.

With the proposed recast **of the Financial Regulation**, the Commission has proposed to require Member States, persons and other entities implementing the EU budget under all management modes to transmit to the Commission information on their recipients and amounts of Union funding, including unique identifiers if recipients are legal persons, at least once a year. Due account needs be taken of personal data protection and reduction of the administrative burden. There must be a clear distinction between the information that is to be made publicly available for transparency purposes and information available to national and EU bodies for control, audit and anti-fraud purposes **(paragraphs 49, 53 and 54)**.

In September 2021, the Commission adopted a Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, which among other things calls Member States to provide personal protection measures to investigative journalists and journalists working on corruption, organised crime or terrorism who have reported threats to police. In April 2022, the Commission adopted a proposal for a Directive and a recommendation, to **protect journalists**, human rights defenders and others from strategic lawsuits against public participation (Anti-SLAPP initiative). In September 2022 the Commission adopted a European Media Freedom Act, a set of rules to protect **media pluralism** and independence in the EU. Moreover, the Commission monitors the regulatory framework of Member States and the general situation related to the safety of journalists under the annual Rule of Law Report **(paragraph 50)**.

The Commission encourages Member States to continue implementing **Integrity Pacts** in targeted projects financed by EU funds, and provides support, for instance with the recently published [toolbox](https://ec.europa.eu/regional_policy/policy/how/improving-investment/integrity-pacts_en) as well as training for managing authorities **(paragraph 51)**.

OLAF has in recent years enhanced its cooperation with the national judicial authorities on the **follow-up to its recommendations**. OLAF annually monitors the action taken by Member States’ judicial authorities following a judicial recommendation. To that effect, OLAF now asks for copies of the decisions taken at the national level to obtain more comprehensive information on reasons for dismissal. Where appropriate, OLAF may continue to monitor national judicial proceedings beyond the indictment stage and ask for copies of final decisions of national courts **(paragraph 52)**.

***IT Support***

The Commission’s proposal to **use a single IT system for data mining and risk scoring** by all bodies implementing the EU budget is ambitious and requires adequate time for the adaptation of existing national or regional electronic data systems as well as for the provision of guidance and training to a vast number of users. The proposed recast of the Financial Regulation also aims at promoting the **digitalisation** and use of technologies such as machine learning, robotic process automation and artificial intelligence for controls and audits to increase their efficiency and quality **(paragraphs 57 and 60)**.

***The EU anti-fraud architecture: the internal components (OLAF, EPPO, Europol, Eurojust, Commission, ECA and EIB)***

The **EPPO** is an independent entity, responsible for its own budget implementation, and is accountable to the European Parliament, to the Council and to the Commission for its general activities. The Commission is committed to support the EPPO in this respect and monitors the implementation of the EPPO Regulation in the Member States. The Commission already launched an in-depth external study, which is expected to be completed in July 2023, to provide a comprehensive assessment of the measures adopted by the Member States to adapt their national judicial systems to the EPPO Regulation. The Commission is engaging with the EPPO and is further considering its requests **(paragraphs 64 and 65)**.

In the 2022 budget, the EPPO received a large staff increase of 118 additional staff members and a further budget increase in 2023. The EPPO staff has more than tripled between 2020 and 2022, including an EU Contribution which has increased fivefold during the same time. For Eurojust, the Commission proposed a reinforcement to support Ukraine with the collection, preservation and analysis of evidence relating to war crimes with additional temporary agents and a corresponding increase of the EU contribution. For Europol, a reinforcement has likewise been made following the expanded mandate. Provision had been made for seven external staff for OLAF in 2022 to help it address the increase in its workload. In addition, the 2023 budget provides for a reallocation of six additional posts to OLAF from other parts of the Commission for additional workload related to the NextGenerationEU (NGEU) **(paragraphs 77, 79 and 80)**.

OLAF and the Directorate-General for Budget (DG BUDG) conducted an examination on the **follow-up to OLAF’s financial recommendations** issued between 2012 and 2020, collecting data on actual recovery. OLAF continues to monitor the follow-up of its financial recommendations through annual monitoring exercises, covering the entire process until final recovery. A guidance document has been addressed by the Commission’s Accounting Officer to Commission departments on 10 February 2022, aiming at swifter recovery action and tighter monitoring in direct and indirect management **(paragraph 78)**.

There are established **mechanisms to complain to the Commission**, such as in relation to the implementation of EU legislation or reporting crimes and irregularities against the Union’s financial interests. Moreover, anyone can submit a complaint form[[3]](#footnote-3) to notify the Commission of breaches of the principles of the rule of law in a Member State that affect or seriously risk affecting the protection of the Union’s financial interests **(paragraph 81)**.

In its judgment of 1 September 2021 in case T-517/19, *Andrea Homoki* v *European* *Commission*, the General Court ruled that OLAF cannot rely on the general presumption which allows non-disclosure of OLAF investigation documents, once all follow-up procedures are over. All the information collected by OLAF as part of its investigation is subject to strict rules of confidentiality, professional secrecy, and protection of personal data, in accordance with Article 10 of the OLAF Regulation. Setting up “a **mechanism to publish [the] reports and recommendations**” of OLAF proactively is not in line with the legal framework applicable to OLAF’s investigations **(paragraphs 82 and 83)**.

The Commission is revising the action plan to its **Anti-Fraud Strategy** and will take into account the proposals put forward by the Parliament on PIF matters (**paragraph 84)**.

***The EU anti-fraud architecture: the external components (Member States, AFCOS, NAFS, UAFP, the rule of law)***

The Commission endeavours to simplify the legislation and the ways of working continuously, which also were reflected in the legislation with the current MFF. The Commission is likewise in regular contact with the Member States to identify areas for improvement. Some Commission services have Single audit Strategies which focus on cost-efficiency. During the MFF 2021-2027, the Commission continues promoting the increased use of simplified cost options and funding not linked to costs, which are less burdensome for managing authorities. Moreover, the Commission strived for simplification in terms of indicators, by providing Member states with comprehensive lists of common output and result indicators for the European Regional Development Fund (EDRF), Cohesion Fund (CF), European Social Fund Plus (ESF+) and Just Transition Fund (JTF) **(paragraph 89)**.

The Commission is always willing to meet with the respective committee on RRF-related issues and has participated in **Recovery and Resilience Dialogues**, more than 20 Recovery and Resilience Working Group meetings, and in other settings, including in meetings of the European Parliament’s budgetary control committee in the context of the discharge procedure 2021 for the RRF. The Commission provides the European Parliament and the public with information as required and going beyond Article 25 of the RRF Regulation, including through its [RRF website](https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en#the-recovery-and-resilience-task-force) and the Recovery and Resilience Scoreboard **(paragraph 93)**.

All Member States have declared complete transposition of the **5th Anti Money Laundry Directive**. However, six infringement cases remain open for incomplete or incorrect transposition. The Commission has taken decisive action to ensure the effective transposition of the **Whistleblowers Directive.** In 2022, the Commission sent reasoned opinions to nineteen Member States for failing to communicate measures fully transposing the directive. As eight Member States' replies were unsatisfactory, on 15 February 2023 the Commission decided to refer these Member States to the Court of Justice of the European Union (**paragraph 95 and 96)**.

OLAF will carry out a mapping exercise of the **Anti-Fraud Coordination Services (AFCOS)** in 2023. Based on this exercise, OLAF will evaluate what and if further actions are needed to improve functioning of the services in the Member States or in relation to the AFCOS’ cooperation with OLAF **(paragraph 103)**.

The Commission reports each year on the implementation of the recommendations made in the previous year’s PIF report, by Member State. While these recommendations are not binding on the Member States, the Commission regularly follows up on its recommendations in its contacts with Member States’ authorities in cases where the non-implementation of recommendations results in serious weaknesses in the control systems of Member States **(paragraph 104)**.

The Regulation on a general regime of conditionality for the protection of the Union budget (the ‘Conditionality Regulation’) aims at **protecting the Union budget**. Measures under it can only be proposed if the Commission finds that breaches of the rule of law principles directly affect or seriously risk affecting the sound financial management of the Union budget or of the financial interests of the Union in a sufficiently direct way. Effective and timely cooperation with OLAF and, subject to the participation of the Member State concerned, with EPPO in their investigations or prosecutions is one of the situations or conducts of authorities that must be concerned by the breaches of the principles of the rule of law for the Conditionality Regulation to be applicable. The Commission considers reports from OLAF and the EPPO. An agreement governs specific modalities of cooperation between the Commission and the EPPO for reporting issues that may be relevant for the application of the Conditionality Regulation. Moreover, OLAF has put in place internal procedures, including a new module in its case management system, to record and monitor potential breaches as specified in the rule of law conditionality regulation. According to Article 6 of the Conditionality Regulation, the Member State concerned by a procedure may propose remedial measures to the Commission to address the latter’s findings. In line with that provision, under the procedure regarding Hungary, the Hungarian Government proposed remedial measures to address the Commission’s findings in its written notification. The Commission considered that the proposed remedial measures, taken together, would in principle be capable of addressing these issues, provided that all the measures are correctly and effectively implemented. Nevertheless, in its assessment of 30 November 2022, the Commission found that important weaknesses, risks and shortcomings remain in a number of remedial measures. On 15 December 2022, the Council confirmed this assessment and adopted measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary **(paragraphs 106, 109, 110 and 111)**.

The interinstitutional rules on the **Transparency Register** already provide the framework to further strengthen transparency standards on interest representation. According to the applicable Interinstitutional Agreement, the European Parliament, the Council and the Commission can each adopt conditionality or complementary transparency measures by means of individual decisions taken on the basis of their powers of internal organisation. Moreover, Members and former Members of the Commission are bound by the Code of Conduct which includes transparency requirements **(paragraph 113)**.

***External dimension of the protection of the EU’s financial interests***

**Control of funds for assistance in non-EU countries** under the Neighbourhood, Development and International Cooperation Instrument (NDICI – GE) are already carefully designed and implemented (see recitals 79 and 80 of the NDICI-GE Regulation) **(paragraph 114)**.

**Financing agreements implemented in non-EU countries** already require the reporting of irregularities. The Commission will put IMS at the disposal of Management Authorities in non-EU countries to report irregularities related to the EU support to cross-border cooperation with neighbouring countries, as recommended in the ECA SR 27/2022. IMS is also already in use by candidate countries in the enlargement area. The extension of IMS to all the others non-EU countries is not currently supported by the legal and operational framework **(paragraph 115)**.

The Commission notes that in 2021, the expenditure of the Chapter 'Neighbourhood and the world' was assessed as “medium risk” for direct management grants only. Other segments are assessed at lower levels of risk. The errors found by the ECA audits are not sufficient for the expenditure of this Chapter to be designated as “high risk” **(paragraph 116)**.

The Commission makes sure that **anti-corruption measures are mainstreamed into EU external action instruments**. The Commission has the tools to take precautionary measures for its cooperation with non-EU countries, like putting on hold budget support payments, until corrective measures are undertaken. Programmes can be suspended and funds de-committed when deemed necessary. The CAFS includes, among others, a specific action that aims at evaluating fraud risks (including corruption) and vulnerabilities about spending in emergency situations. The fight against corruption is a major priority in the pre-accession negotiations, with an embedded conditionality framework and a focus on capacity building **(paragraph 117)**.

1. Proposal for a Regulation of the European Parliament and the Council on the financial rules applicable to the general budget of the Union (recast), COM/2022/223 [↑](#footnote-ref-1)
2. Commission Notice Guidance on the avoidance and management of conflicts of interest under the Financial Regulation 2021/C 121/01, C/2021/2119, OJ C 121, 9.4.2021, p 1-43 [↑](#footnote-ref-2)
3. Available at <https://commission.europa.eu/system/files/2021-09/complaint-form_editable-template_0.pdf> [↑](#footnote-ref-3)