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## **WORKING DOCUMENT**

on ECA Special Report 1/2019 (Discharge 2018): Fighting fraud in EU  
spending: action needed

Committee on Budgetary Control

Rapporteur: Caterina Chinnici

## Introduction

Article 325 of the Treaty on the Functioning of the European Union (TFEU) provides a legal basis for protecting the EU's financial interests against fraud, corruption and other illegal activities. The European Commission must take the necessary measures to provide reasonable assurance that irregularities (including fraud) in the use of the EU budget are prevented, detected and corrected. It shares this responsibility with Member States in the domain of shared management, e.g. in the Cohesion and Agriculture spending areas.

OLAF – as the EU's key anti-fraud body – is responsible for collecting and compiling statistics and information on fraud in EU spending on behalf of the Commission. Member States and candidate countries are legally obliged to report to OLAF, as part of the Commission, all major cases of irregularities that they have detected in EU revenue (Traditional Own Resources) and expenditure (Cohesion, Agriculture and Pre-accession funds). They are also obliged to report whether these irregularities could give rise to administrative or judicial proceedings initiated at national level to establish whether behaviour was intentional (suspected fraud) or whether fraud has been established by a definitive court decision (established fraud). Thus, Member States and candidate countries must first register an irregularity and then indicate whether that irregularity was fraudulent (suspected or established fraud) or non-fraudulent. This reporting in respect of expenditure is done through an IT system called the 'Irregularity Management System' (IMS). OLAF is in charge of this system. Reporting in respect of revenue is done via the OWNRES system, which is managed by DG BUDG.

As for the criminal law protection of the EU budget, the EU recently adopted two crucial pieces of legislation: the 'Directive on the fight against fraud to the Union's financial interests by means of criminal law' (the 'PIF Directive') and the Regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'). The PIF Directive provides for a harmonised definition of the offences affecting the EU's financial interests as well as penalties and statute of limitations for such cases. Member States will have to implement the PIF Directive by 6 July 2019. The Regulation on the establishment of the EPPO, on the other hand, was adopted on 5 July 2017 under the enhanced cooperation procedure and so far, 22 Member States have signed up. The EPPO shall be operational by the end of 2020 and it will represent the first Union body in charge of investigating and prosecuting PIF offences across the territory of the participating Member States.

## The findings of the Court

The Court concluded:

- )] The Commission does not have comprehensive and comparable information on the detected fraud level in EU spending.
- )] The Commission has not yet established a way of gaining insight into undetected fraud in order to complement the official statistics, even though there are several accepted ways to obtain insight into the scale of fraud.
- )] The Commission has insufficient qualitative information on the nature and causes of fraud.

- )] There are weaknesses in anti-fraud strategies of the Commission and reporting on their effectiveness.
- )] Under the Commission's governance model, there is no central body in charge of ensuring appropriate corporate oversight of anti-fraud activities.
- )] Assessing the risk of fraud before adopting spending schemes and putting in place anti-fraud controls could potentially be an effective way to reduce fraud losses. For the 2014-2020 spending programmes, however, the Commission required such an assessment of the draft rules only late in the process.
- )] Using data for fraud prevention (i. e. "black listing") and deterrence (i.e. exclusion of economic operators) could be an effective way either to identify risky economic operators before allocation of funds or to improve future compliance by debarring economic operators and individuals who have been detected committing fraud.
- )] DGs EMPL and REGIO have their own internally developed fraud prevention tool, ARACHNE. Such a tool has the potential to be effective, but currently it still does not contain sufficient data, anyway provided by Member States.
- )] OLAF judicial recommendations resulted in the prosecution of fraudsters in around 45 % of the cases. The current system, whereby OLAF launches investigations after receiving information from other sources and whereby OLAF's administrative investigation of suspected fraud is often followed by a criminal investigation at national level, takes up much time in a considerable number of cases and thus it decreases the chances to achieve its ultimate goal – prosecution.
- )] In a number of cases (concerning fraud or irregularities), DGs did not consider that OLAF's reports provide sufficient information to serve as a basis for initiating the recovery of unduly disbursed funds.

#### The Commission's position

The Commission commented extensively on the Court's findings. The Commission highlighted in particular:

- )] The specific issues raised by the ECA regarding the Commission's anti-fraud policy cannot be seen in isolation from the important recent legislative initiatives and other developments in the area of the fight against fraud (i. e. revision of the Staff Regulations for officials, updated integrated control framework and peer review of fraud risk in 2017, directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law, regulation 2017/1939 setting up the European Public Prosecutors Office (EPPO), Commission Proposal of 2018 to amend the OLAF Regulation 883/2013)
- )] The legal constraints of the current irregularity reporting system and the complexity of the task.
- )] There is no cost-effective method to estimate undetected fraud reliable and defensible enough for evidence-based policy.

- )] The Commission intends to enhance the analysis of the risks of fraud and corruption against the EU budget, including the analysis of the nature and causes of fraud. In this context, risk indicators could be identified.
- )] OLAF could assume a stronger and more strategic role as a coordinator with regard to the anti-fraud policies of the Commission services and executive agencies.
- )] The 2021–2027 Multiannual Financial Framework proposal of the Commission on the Common Provisions Regulation contains a provision requiring the authority responsible for managing the programme to "(...) put in place effective and proportionate anti-fraud measures and procedures, taking account of the risks identified".
- )] Under shared management, it is up to Member States to take all necessary measures to protect the EU financial interests, in particular those preventing, detecting and correcting irregularities and fraud, as appropriate and on their own responsibility.
- )] The Commission had initially proposed (COM (2014)358) a clear obligation for the Member States to use Irregularity Management System (IMS) data as a ground for exclusion. However, Member States opposed any obligation to exclude based on the information they provide in IMS.
- )] The Commission has provided information on the ARACHNE system<sup>1</sup> in all Member States.
- )] The difficulties regarding the follow-up given by national authorities to OLAF's judicial recommendations are a long-standing challenge, well known to OLAF, the Commission and the Member States. The latest Commission proposal to amend Regulation 883/2013 aims to improve the follow-up to OLAF's judicial recommendations.

### The Court's recommendations

1. *Gain better insight into the scale, nature and causes of fraud in EU spending (to be implemented end of 2022)*

With a view to a properly designed approach to countering fraud against the EU's financial interests, the Commission should put in place a robust fraud reporting system, providing information to assess the scale, nature and root causes of fraud. In particular, it should:

- a. enhance the Irregularity Management System (IMS) so that information on criminal investigations related to fraud affecting the EU's financial interests are reported in a timely manner by all competent authorities.

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<sup>1</sup> ARACHNE is an integrated IT tool for data mining and data enrichment developed by the European Commission. Its objective is to support managing authorities in their administrative controls and management checks in the area of Structural Funds. ARACHNE establishes a comprehensive database of projects, implemented under the Structural Funds in the EU and provided by the ESF and ERDF managing authorities. ARACHNE furthermore enriches the data with publicly available information in order to identify, based on a set of risk indicators, the projects, beneficiaries, contracts and contractors, which might be susceptible to risks of fraud, conflict of interest and irregularities.

- b. build its capacity to collect information from different sources on the risk of fraud and corruption against the EU budget; measure this risk on a recurring basis using different methods (encounter surveys and indexes based on administrative data); and consider establishing risk indicators by spending area, country and sector.
- 2. *Ensure leadership of the Commission's anti-fraud actions(to be implemented end of 2022)*
  - a. To achieve better coordination in tackling fraud, within the context of collegial responsibility for fraud prevention and detection, the Commission should ensure that strategic fraud risk management and fraud prevention would be clearly referred to in the portfolio of one Commissioner.
  - b. The Commission should ensure that, its new anti-fraud strategy:
    - is preceded by a comprehensive analysis of fraud risks, using a wide range of data from different sources to establish the scale, nature and causes of fraud in EU spending;
    - contains meaningful objectives and measurable indicators; and
    - includes reporting based on the achievement of objectives.
- 3. *Increase the use of fraud-prevention tools (to be implemented in 2020 and at the end of 2019 respectively)*
  - a. In relation to the rules for implementing the spending programmes in the post-2020 period, the Commission should perform a fraud risk assessment and ask Member States to carry out a detailed fraud risk assessment before adopting programmes.
  - b. Regarding the Commission's exclusion system, the Commission should
    - a. ensure that DGs use the early detection and exclusion system in direct and indirect management;
    - b. call on Member States to identify and flag fraudulent economic operators and the private individuals linked to them.
  - c. The Commission should urge all Member States to participate actively in the ARACHNE database by submitting timely data and to exploit the opportunities big data offers to prevent fraudulent and irregular use of EU funds.
- 4. *Reconsider OLAF's role and responsibilities in combatting fraud in EU spending in light of the establishment of the EPPO (to be implemented by the end of 2022)*

In particular, the Commission should propose to the European Parliament and the Council measures to give OLAF a strategic and oversight role in EU anti-fraud action.

This could include OLAF acting as an oversight body responsible for:

- a. leading the design, and monitoring and supervising the implementation, of the Commission's anti-fraud policy, with a specific focus on providing real time detailed analysis of fraud patterns (modus operandi) and the causes of fraud;
- b. co-ordinating and monitoring anti-fraud activities in Member States.

### The Rapporteur's Recommendations

The European Parliament,

- )] Welcomes the Court's special report 1/2019 on fighting fraud in EU spending and acknowledges the need to address certain shortcomings of the current EU antifraud enforcement system, in particular, with regard to the collection of accurate data on fraudulent and non-fraudulent irregularities;
- )] Highlights that, in the recent years, the EU legislator has adopted legal instruments and reforms which will contribute to a better protection of the EU's financial interest and, namely, the new PIF Directive, the Regulation on the establishment of the European Public Prosecutor and Reform of the Financial Regulation; furthermore, an important revision of the OLAF Regulation is currently underway;
- )] Welcomes the European Commission's readiness to accept many of the Court's recommendations;
- )] Welcomes the announcement of the forthcoming adoption of a new and updated Commission Antifraud Strategy;
- )] Highlights the connection between corruption and fraud in the EU spending and regrets that the Commission no longer deems it necessary to publish the Anticorruption report; invites the Commission to resume publishing its anti-corruption reports as well as to elaborate an updated, comprehensive and coherent EU anticorruption Strategy;
- )] Calls on the Commission to ensure the effectiveness of the IMS so that information on criminal investigations related to fraud affecting the EU's financial interests are reported in a timely manner by all competent authorities;
- )] Reminds Member States that it is in their proper interest to cooperate fully with the Commission;
- )] Calls on the Commission to continue refining its fraud risk analyses;
- )] Takes note that, in the area of shared management, the Commission does not have the power to initiate the exclusion of unreliable economic operators when Member State authorities do not do so; calls on the Member States to promptly report fraudulent irregularities in the IMS and to make the best use of the Early Detection and Exclusion System;

- )] Insists that Member States make effective use of ARACHNE;
- )] Considers that OLAF's complementary administrative investigations will represent an important asset for the future operation of the European Public Prosecutor's Office. In this perspective, it will be particularly important to ensure the admissibility of OLAF collected evidence by ensuring that OLAF applies adequate procedural safeguards in all of its investigations;
- )] Calls on the Member States to inform OLAF of all criminal, financial or administrative follow-up given to recommendations addressed to the national authorities in order to render OLAF case files more effective;
- )] Calls on the Commission and the Member States to ensure complementarity and maximum synergies between the EPPO and the OLAF;
- )] Recall the importance of having the EPPO fully operational by the end of 2020, without any further delay.