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DRAFT REPORT

on the 2015 Annual Report 2015 on the protection of the EU's financial interests – Fight against fraud
(2016/2097(INI))

Committee on Budgetary Control

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CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	3

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Annual Report 2015 on the Protection of the EU's Financial Interests - Fight against fraud (2016/2097(INI))

The European Parliament,

- having regard to Article 325(5) of the Treaty on the Functioning of the European Union (TFEU),
- having regard to its resolutions on previous annual reports of the Commission and of the European Anti-Fraud Office (OLAF),
- having regard to the Commission report of 14 July 2016 entitled ‘Protection of the EU’s financial interests - Fight against fraud - 2015 Annual Report - COM(2016)472 and the accompanying staff working documents SWD(2016)234, SWD(2016)235, SWD(2016)236, SWD(2016)237, SWD(2016)238, SWD(2016)239,
- having regard to the OLAF annual report 2015 and the 2015 Activity Report of the OLAF Supervisory Committee,
- having regard to the annual report of the Court of Auditors on the implementation of the budget concerning the financial year 2015, together with the institutions’ replies,
- having regard to the Commission communication of 18 July 2016 entitled ‘Protection of the EU budget to end 2015’ (COM(2016) 486),
- having regard to Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC¹,
- having regard to the Commission proposal of 17 July 2013 for a Council regulation on the establishment of the European Public Prosecutor’s Office (COM(2013)0534),
- having regard to Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and replacing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999²,
- having regard to the Commission proposal of 11 July 2012 for a directive of the European Parliament and of the Council on the fight against fraud to the Union’s financial interests by means of criminal law (COM(2012)0363),
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget

¹ OJ L 84, 20.3.2014, p. 6.

² OJ L 248, 18.9.2013, p. 1.

of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹,

- having regard to its resolution of 25 October 2016 on the fight against corruption and follow-up of the CRIM resolution (2015/2110(INI))
 - having regard to Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests²,
 - having regard to the 2015 Report on the VAT Gap commissioned by the European Commission and on the 7 April 2016 Communication from the Commission on action plan on VAT (COM(2016) 148),
 - having regard to the judgment of the European Court of Justice in Case C-105/14, *Taricco and Others*,
 - having regard to the European Court of Auditors special report No 24/2015 of 3 March 2016 entitled 'Tackling intra-Community VAT fraud: More action needed', – having regard to Rule 52 of its Rules of Procedure,
 - having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC,
- A. whereas the Member States and the Commission have shared responsibility for implementing approximately 80 % of the Union's budget;
- B. whereas the protection of the EU's financial interests should be a key element of the EU's policy to increase the confidence of citizens by ensuring that their money is used properly and according to the 'best use of every euro' approach;
- C. whereas article 325 (2) of the Treaty on the Functioning of the European Union, states that Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests;
- D. whereas article 325 (3) of the Treaty on the Functioning of the European Union, states that Member States shall organise, together with the Commission, close and regular cooperation between the competent authorities;
- E. whereas the diversity of legal and administrative systems in the Member States presents a challenging environment in which to overcome irregularities and combat fraud;
- F. whereas VAT is a major and growing source of revenue for Member States which yielded almost EUR 1 trillion in 2014, contributes to EU own resources, totalling EUR 17,667 million or 12.27% of the EU's total revenue in 2014;
- G. whereas the current VAT system, in particular as applied to cross-border transactions, is vulnerable to fraud and tax avoidance strategies, in which MTIC fraud (Missing Trader Intra-Community fraud, commonly called carousel fraud) alone was responsible for VAT

¹ OJ L 298, 26.10.2012, p. 1.

² OJ L 312, 23.12.1995, p. 1.

revenue losses of approximately 50 billion EUR in 2014;

H. Whereas the VAT gap amounts to approximately 159.5 billion EUR in 2014 and varies from less than 5% to over 40% depending on the country considered;

Detection and reporting of irregularities

1. Is alarmed that the number of all fraudulent and non-fraudulent irregularities reported (22 349 cases) increased significantly for a second consecutive year – first by 48 % in 2014 and then by another 36% in 2015, leading to doubling the amount of registered irregularities within just two years; notes that even though the number of irregularities doubled the sum involved in them (EUR 3.21 billion) remains on the same level as in 2014; calls on the Commission to analyse this development;
2. Is concerned that despite the positive drop of 11% of fraudulent irregularities from 1,649 in 2014 to 1,461 in 2015, the sums involved increased 18% from 538 million EUR in 2014 to 637.6 million EUR in 2015;
3. Does not share the opinion of the Commission that an increase of resources available in the EU budget by 14% year-to-year could justify the increase of number of irregularities by 36%;
4. Notes that under article 27 (3) of the Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, the Commission shall report every 5 years to the European Parliament and to the Council on the operation of the arrangements established by this Directive; deplores that the evaluation foreseen for at latest 1st of January 2017 is still unpublished;
5. Encourages the European Commission to continue its efforts to develop programmes such as REFIT in order to simplify EU legislation; stresses that the simplification of rules and procedures helps to lower irregularities which are often linked to complex rules and requirements; notes that a reduction of administrative burden is a cost saving for public administrations and EU citizens and also encourages beneficiaries to undertake new EU programs; stresses that simplification of rules should go in line with the principle of an EU budget focused on results;

Revenue – own resources

6. Notes with some satisfaction that the spike of the amount of Traditional Own Resources (TOR) affected by fraud in 2014 was a one-year issue and that the 2015 levels (EUR 427 million) have returned to the average of the 2011-2015 years; is displeased however that some of the Member States do not communicate any cases of irregularities linked to TOR;
7. Urges the Member States to recover the amounts of TOR due more quickly, especially those Member States which need to recover the largest amounts; urges Greece, Romania, Latvia, Malta and the Netherlands to improve their collection of TOR, as their rate of TOR due remains significantly above the EU average of 1.71% and is 8.95%, 5.07%, 5.04%, 3.84% and 3.81% respectively;
8. Takes good note of the fact that 75% of all cases reported as fraudulent concern goods as

tobacco, electrical machinery, footwear, textiles, iron and steel and that China, the UAE, the US, Belarus, Russia and Ukraine are most frequently reported as countries of origin of such goods;

9. Takes note of the 241 cases of reported smuggled cigarettes involving an estimated TOR loss of EUR 31 million; puts into question the vigilance of the customs services of those Member States (the Czech Republic, Malta, Cyprus, Luxembourg, the Netherlands, Portugal and Sweden) which have not reported any single case of cigarette smuggling in 2015;
10. Is concerned about the losses due to VAT gap and intra-community VAT fraud, which is responsible consecutively for 159,5 billion EUR and 50 billion EUR revenue loss in 2014; notes that only two Member States, the UK and Belgium, collect and disseminate statistics on the issue of revenue losses caused cross-border VAT fraud;
11. Points out that the Commission does not have access to the information exchanged between Member States with a view to preventing and combating Missing Trader Intra-Community fraud, commonly called carousel fraud;; calls on all the Member States to participate in all of Eurofisc's fields of activity so as to facilitate the exchange of information with the aim of helping to combat fraud;
12. Calls on Member States to facilitate the exchange of information with judicial and law enforcement authorities such as Europol and OLAF, as recommended by the Court of Auditors;
13. Notes that the VAT Information Exchange System (VIES) has proven to be a helpful tool in fighting fraud by enabling tax authorities to reconcile data on traders across countries; calls on the Member States to improve response times for providing information, replying to queries and reacting to errors signalled, as recommended by the European Court of Auditors;
14. Welcomes the Commission action plan on "VAT-Towards a single EU VAT area" published on 7 April 2016; deeply regrets that the publication of the "Measures to improve cooperation between tax administrations and with customs and law enforcement bodies and to strengthen tax administrations' capacity" foreseen in the action plan for 2016 will be delayed by one year;
15. Stresses that the implementation of short-term measures to tackle losses on VAT should not delay Commission's proposal for a definitive VAT system as foreseen in the action plan;
16. Takes positive note of the successful outcomes of numerous joint customs operations (JCOs) involving the cooperation of OLAF and Member States with various third-country services, which have resulted in the seizure of, inter alia, 16 million sticks of cigarettes and 2 tonnes of cannabis;

Expenditure

17. Notes that the number of irregularities related to expenditure reported as fraudulent in 2015 dropped by 10%;

18. Deplores that the amount of irregularities reported in the European Agricultural Guarantee Fund (EAGF) and in the European Agricultural Fund for Rural Development (EAFRD) is growing annually for at least 5 consecutive years with the amount of reported cases growing up from 1970 in 2011 to 4612 cases in 2015 with the sums involved growing from EUR 119 million in 2012 to EUR 394 million in 2015 with the level of reported irregularities of the EAFRD coming close to 2% of the entire fund; urges the Member States with the highest amount of irregularities reported – Romania, Italy, Spain, Poland, Hungary, Portugal and Lithuania – to do their utmost in order to regulate the situation;
19. Is deeply worried that the irregularities linked to the Common Fisheries Policy in 2015 have doubled compared to 2014 and are the highest reported ever with 202 cases involving the sum of EUR 22.7 million;
20. Deeply deplores that the Cohesion policy reported a sharp increase in the number of reported irregularities, which have gone up between 2014 and 2015 by 81% for the 2000-06 programming period and by 109% for the 2007-13 programming period;
21. Regrets that more than two-thirds of the estimated level of errors in 2015 EDF expenditure were caused by the absence of supporting documents to justify the expenditure and non-compliance with public procurement rules; calls on the Commission and Member States to address these shortcomings;
22. Asks for further explanations from the Commission regarding the reasons behind the high level of fraudulent cases in research and technological development (R&TD), innovation and entrepreneurship which has grown from 6 to 91 reported cases annually in the 2007-13 programming period, representing a sum of EUR 263 million, which constitutes over 20% of all reported fraud cases in the cohesion policy;
23. Welcomes the overall drop in reported irregularities in the Pre-Accession Assistance (PAA); notes however that the number of irregularities in the Instrument for Pre-Accession (IPA I) is steadily growing with Turkey being the contributor of 46% of cases representing 83% of the sums of reported irregularities; invites the Commission to consider applying the “more for more” principle in its negative aspect (“less for less”), given the current political situation in Turkey which poses direct threat to the absorption capacities of the country;
24. Acknowledges the low rate of reported irregularities (both fraudulent and non-fraudulent) of the funds directly managed by the Commission which are below 0.7%; asks the Commission for more detailed information on recoveries from legal residents of non-EU countries of mismanaged EU funds under direct management of the EC;

Problems identified and measures required

Better reporting

25. Notes with concern that, despite the numerous calls from Parliament for the establishment of uniform reporting principles in all Member States, the situation remains highly unsatisfactory and there are still significant differences in the number of fraudulent and non-fraudulent irregularities reported by each Member State; reiterates its call to the Commission to make serious efforts to resolve the problem of differing approaches by

Member States to detecting irregularities, and non-homogeneous interpretations when applying the EU legal framework;

26. Urges the Commission to maintain its strict policy on interruption and suspension of payments in accordance with the relevant legal basis;
27. Supports the Commission in its approach to recommend strengthening the work of the Member States, which continue to report a very low number of fraudulent irregularities, in relation to detecting and/or reporting fraud, in particular, those which have not reported any case over the last five years: Slovakia and Finland in the area of agriculture and Denmark and Luxembourg in the area of cohesion policy;
28. Takes positive note of the increase of the amount of data published by the Commission on fraudulent and non-fraudulent irregularities and on the quality of statistical evaluation of irregularities reported;

Better controls

29. Welcomes the fact that the ex-ante and ex-post 'Community Controls' are detecting more and more cases of irregularities; considers however, that prevention is easier than recovery of losses; urges therefore on Member States to better carry out the ex-ante controls with the assistance of the Commission;
30. Encourages the Commission to further enhance its supervisory role through audit, control and inspection activities, remedial action plans and early warning letters;
31. Supports the Hercule III programme, which is a good example of "best use of every euro" approach;
32. Looks forward to the Commission's mid-term assessment in 2018 in order to establish whether the new regulatory architecture for cohesion policy further prevents and reduces the risk of irregularities including fraud, and looks forward to receiving detailed information on the impact of the new rules on management and control systems, both as regards the risk of irregularities and fraud and as regards the general implementation of the policy;

Whistle-blowers

33. Emphasizes the role of whistle-blowers in fraud detection; welcomes the fact that in 2015 the European Commission has launched the "Experience Sharing Programme" to coordinate and exchange best practices to prevent corruption in cooperation with Member States;
34. Welcomes the fact that the European Parliament, the European Commission, the Council of the European Union, the Court of Justice of the European Union, the European Court of Auditors, the European External Action Service, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman and the European Data Protection Supervisor implemented internal rules protecting whistle-blowers, in accordance with Articles 22a, 22b and 22c of the Staff Regulations;

Corruption

35. Notes that in 2015 the fight against corruption remained a priority in the framework of the European Semester and the related process of economic governance; welcomes measures taken in this fight such as organizing meeting with the national contact points of the Member States, launching the "Experience Sharing Programme" for Member States, the participation of OLAF on behalf of the Commission in European and international anti-corruption fora;
36. Deplores that the Commission did not keep its word to publish an EU Anti-Corruption reports biannually, as there has been no report published in 2016;

PIF directive and EPPO regulation

37. Welcomes breaking the deadlock in the Council regarding the proposal on the Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive) with a VAT fraud included in its scope; expresses hope for a swift conclusion of the PIF directive negotiations and looks forward to obtaining an agreement that will be beneficial for the financial interests of the Union;
38. Recalls Parliament's resolution on EPPO adopted on 5th of October 2016; believes that an efficient EPPO will strengthen the fight against fraud in the EU provided that it is given the necessary legal provisions and is able to work efficiently with other existing EU bodies and Member State authorities;

Investigations and the role of OLAF

39. Regrets to note that despite the assurances of OLAF that it is doing its utmost to shorten the length of its investigations the duration of its investigative phase is growing continuously since 2012 from 22.5 to 25.1 months in closed cases and from 17.3 to 18.7 months in all cases;
40. Reminds that in the light of the principle of mutual sincere cooperation between the institutions, of the principle of good administration and of the requirement of legal certainty, OLAF should organise its collaboration with its Supervisory Committee in a jointly agreed framework, fully respecting the applicable legal provisions;
41. Calls for the Commission to clarify the main reasons that Member States are not following up alleged cases of fraud affecting the EU's financial interests, as submitted to them by OLAF;

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42. Instructs its President to forward this resolution to the Council and the Commission, the Court of Justice of the European Union, the European Court of Auditors, the European Anti-Fraud Office (OLAF) and the OLAF Supervisory Committee.