

**Protection of the Communities' financial interests and the fight against fraud – Annual Report 2008**

**European Parliament resolution of 6 May 2010 on the protection of the Communities' financial interests and the fight against fraud – Annual Report 2008 (2009/2167(INI))**

*The European Parliament,*

- having regard to its resolutions on previous annual reports of the Commission and the European Anti-Fraud Office (OLAF),
- having regard to the report of 15 July 2009 from the Commission to the European Parliament and the Council entitled ‘Protection of the Communities' financial interests – Fight against fraud – Annual report 2008’ (COM(2009)0372), including annexes (SEC(2009)1002 and SEC(2009)1003) thereto,
- having regard to the OLAF Activity Report for 2008<sup>1</sup>, and to OLAF's second report of 19 June 2008 on the application of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, as well as to the guidelines replacing the OLAF Vademecum,
- having regard to the Activity Report of the OLAF Supervisory Committee for the period June 2008 to May 2009<sup>2</sup>,
- having regard to the Activity Report of the OLAF Supervisory Committee for the period June 2007 to May 2008<sup>3</sup>,
- having regard to the Annual Report of the Court of Auditors on the implementation of the budget concerning the financial year 2008, together with the institutions' replies<sup>4</sup>,
- having regard to its resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm Programme<sup>5</sup>, particularly the chapter on economic crime and corruption,
- having regard to Articles 319(3) and 325(5) of the Treaty on the Functioning of the European Union,
- having regard to Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable

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<sup>1</sup> [http://ec.europa.eu/anti\\_fraud/reports/olaf/2008/EN.pdf](http://ec.europa.eu/anti_fraud/reports/olaf/2008/EN.pdf).

<sup>2</sup> [http://ec.europa.eu/anti\\_fraud/reports/sup\\_comm/2008-2009/Activity-report\\_en.pdf](http://ec.europa.eu/anti_fraud/reports/sup_comm/2008-2009/Activity-report_en.pdf).

<sup>3</sup> OJ C 295, 18.11.2008, p. 1.

<sup>4</sup> OJ C 269, 10.11.2009, p. 1.

<sup>5</sup> Texts adopted, P7\_TA(2009)0090.

to the general budget of the European Communities<sup>1</sup>,

- having regard to Rules 48 and 119(2) of its Rules of Procedure,
- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Regional Development (A7-0100/2010),

***General considerations: amount of irregularities notified***

1. Notes that the financial impact of irregularities, as far as they have been identified, fell from EUR 1 024 million in 2007 to EUR 783.2 million in 2008, with reductions being recorded in all spending areas except direct expenditure and pre-accession funds and the overall amount breaking down as follows:
  - Own resources: EUR 351 million (12.5% down on 2007),
  - Agricultural expenditure: EUR 102.3 million (34 % down on 2007),
  - Structural actions: EUR 585.2 million (27% down on 2007),
  - Pre-accession funds: EUR 61 million (90.6% up on 2007),
  - Direct expenditure: EUR 34.7 million (5.15% up on 2007);
2. Stresses the need to include information on irregularities that will clarify the proportion of the total resources brought to bear in the various spending areas and in the various Member States that are affected by errors and suspected cases of fraud;
3. Stresses that combating fraud and corruption is an important duty of the European institutions and all Member States, which must provide all necessary resources to combat these scourges effectively so as to protect the financial interests of the Union and its taxpayers and to fight organised crime, which, according to national indicators, is increasing its capacity for collusion within institutions, particularly by means of fraud against the Community budget;
4. Regrets the fact that a large amount of EU funds is still wrongly paid, and calls on the Commission to take appropriate action with a view to recovering those funds;

***Own resources***

5. Welcomes the fact that the estimated amount affected by irregularities was 12.5% lower than in 2007; notes, nonetheless, that as in previous years the highest number of irregularities was recorded for television sets and monitors and accordingly calls on the Commission to keep a particularly close eye on those products and take the necessary steps to recover any own resources or interest due; calls, furthermore, on the Commission to foster an appropriate balance between physical checks at import and post-clearance audits of operators; calls on the Member States to supply better statistics in this area;
6. Considers it essential to enact effective legislation to improve administrative cooperation in tackling harmful tax practices and ensure the smooth functioning of the internal market; welcomes, in this connection, the proposal for a Council directive on administrative

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<sup>1</sup> OJ L 390, 30.12.2006, p. 1.

cooperation in the field of taxation (COM(2009)0029) submitted by the Commission; stresses the need for cases in which Member States refuse to forward specific information or to conduct an administrative enquiry to be closely monitored and for Parliament to be provided with clear and comprehensive information on all such cases;

7. Welcomes the Commission proposal recasting the Council regulation on administrative cooperation and combating fraud in the field of value added tax (COM(2009)0427); stresses the importance of making Member States more accountable in this connection, starting with the quality of the information entered into the databases; calls on the Commission to verify the accuracy of that information and to ensure that all VAT amounts payable are collected;
8. Calls furthermore on the Commission to provide comprehensive information enabling a comparison to be made between the costs incurred by Member States in collecting traditional own resources and the amount withheld to cover those collection costs;

### ***Agricultural expenditure***

9. Welcomes the fact that the estimated amount affected by irregularities was 34% lower than in 2007; stresses that the relatively small number of irregularities would appear to stem mainly from the higher threshold for compulsory notification (EUR 10 000) introduced under Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field<sup>1</sup>;
10. Emphasises the importance of fulfilling irregularity reporting requirements and deplores the failings recorded in respect of Austria, Sweden, Slovakia and Hungary;
11. Calls on the Commission to take further steps to ensure effective and efficient implementation of Regulation (EC) No 1975/2006<sup>2</sup> which lays down new control rules for rural development support measures with a view to ensuring that beneficiaries meet their obligations;
12. Endorses the Court of Auditors' view (point 5.20 of its above-mentioned annual report) that the Integrated Administration and Control System (IACS) is effective in limiting the risk of error or irregular expenditure only if it is properly used and accurate and reliable data are entered into it; deplores the major failings identified in the systems used by the United Kingdom (Scotland), Bulgaria and Romania; urges the Commission to take firm action should such problems persist;

### ***Structural actions***

13. Welcomes the fact that the financial impact of irregularities, as estimated by the Commission, was 27% lower than in 2007; notes, with regard to the legality and regularity of underlying transactions, that the error rate quoted for the cohesion policy area in the

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<sup>1</sup> OJ L 355, 15.12.2006, p. 56.

<sup>2</sup> Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ L 368, 23.12.2006, p. 74).

Court of Auditors' 2008 Statement of Assurance (DAS) remains above 5%; is concerned that Italy, Poland, the United Kingdom and Spain reported the largest amount of irregularities; welcomes, at the same time, the good collaboration initiated by some of these Member States with the Commission to resolve these problems and trusts that the other Member States will do likewise; points out that, as highlighted by the Court of Auditors, structural actions are the spending area with the most stringent rules and most complex management procedures in the EU budget and that, as noted by the Commission, finding a high number of financial irregularities in one Member State does not necessarily imply a higher number of errors and instances of fraud than in other Member States but may be the result of more thorough and stringent controls; points out, also, that the Court of Auditors' report on implementation of the 2008 Budget does not take into account the 2007-2013 programming period, for which new administration and control systems for spending have been introduced; notes the high incidence of errors linked to ineligible spending and breaches of the rules on public procurement and considers it advisable, therefore, for the Commission to introduce precautionary guidelines for the Member States and local authorities to clarify how these rules are to be applied and to avoid the managing authority replacing expenditure refused by the Commission as ineligible with new expenditure that is also ineligible;

14. Stresses that delays in the approval of management and control systems for the 2007-2013 programmes may have made it more difficult to detect errors and possible fraud in expenditure on advances; considers furthermore that the resulting delays in spending on interim payments could give rise to a rush to spend just before the decommitment deadline is reached; urges the Commission to consider revising the decommitment rules with a view to improving the quality of spending and ensuring that quantitative targets are met;
15. Welcomes the improvements made by some Member States in harmonising their systems for reporting irregularities by making wider use of the AFIS; urges those Member States that have yet to introduce electronic reporting systems to do so at the earliest opportunity, given the positive impact such systems have had so far on data quality and compliance with reporting deadlines;
16. Calls on the Member States to supply the Commission with fuller and more reliable information on financial corrections for the period 2000-2006; calls in turn on the Commission to be firm in requiring Member States to provide comprehensive information and meticulously to apply the financial correction rules in connection with operational programmes;
17. Welcomes the Commission's introduction of a joint fraud prevention strategy for structural measures, which was drafted in cooperation with OLAF, and stresses the importance of more effective cooperation with the regional authorities and the competent national judicial authorities;

### ***Pre-accession funds***

18. Deplores the fact that the estimated amount affected by irregularities reported by the EU-10 grew by 8%, while that for the EU-2 increased by 152%, and the amounts recovered were 15.6% down on 2007; calls in particular on Bulgaria and Romania to build up their administrative capacity to manage EU funding, remove existing or potential conflicts of interest in fund management, improve the supervision and transparency of public

procurement procedures at central, regional and local levels and swiftly introduce and notify to the Commission the necessary precautionary, corrective and/or disciplinary measures; acknowledges and supports the steps taken by Bulgaria and Romania to improve shared management and financial control standards in response to the Commission's recommendations;

19. Calls on the Commission to take appropriate steps to lessen the risks generated by the highly changeable environment in which DG ELARG operates, with a view to ensuring effective multiannual planning of internal audit operations; calls furthermore on the Commission swiftly to adopt a specific policy for ex-post controls under the centralised management arrangements, drawing on the experience gained in 2008 and taking due account of the need to ensure value for money;
20. Emphasises that the strategic objectives for pre-accession funds must be defined further as referred in the ECA special report on pre-accession funds for Turkey, to facilitate easier evaluation of conducted projects in relation to the overall goals; considers that the objectives and results must be communicated in a transparent manner;
21. Emphasises that the Commission should continue with initiatives to improve project design and implementation; emphasises that it is necessary to improve the mechanism for reporting on the implementation of projects and the delivery of their activities and outputs; considers that it should be ensured that project outcomes (results and impacts) are reported at the end of each project and at appropriate intervals thereafter in order to provide performance information to help shape future planning;

#### ***Direct expenditure***

22. Points out that external aid is a sector which is increasingly affected by irregularities and fraud;
23. Requests the Commission to pay attention to the problem of double financing of projects;
24. Underlines the fact that the EU has been contributing more than EUR 1 billion annually to the United Nations during the last five years; reiterates therefore the necessity of reinforcing OLAF's mandate in an international context and the need to provide OLAF with all the necessary legal means to carry out its duties of controlling these increasing direct expenditures; calls on the Commission to provide the European Parliament with an update on this issue;

#### ***An integrated internal control framework***

25. Welcomes the fact that the Commission's communication on tolerable risk (COM(2008)0866) provided a basis for a debate on this issue, and calls on the Commission to keep it abreast of developments in this area; shares the view that different tolerable error thresholds may be set for each sector, taking their respective characteristics and rules into account; urges the Commission to take due account of the other steps that need to be taken to improve the management of EU funds (e.g. by making control systems more effective and gearing them to spending quality, or by simplifying the relevant legislation);
26. Takes the view that the annual summaries submitted to the Commission by the Member States should have a firmer legal basis than that currently in place (Article 53b(3) of

Council Regulation (EC, Euratom) No 1605/2002 (Financial Regulation)); calls, accordingly, in connection with the review of the Financial Regulation, for those summaries to provide an exhaustive qualitative analysis of the findings of the audits carried out by each Member State; considers, furthermore, that it is essential for the Commission to continue to promote Structural Funds' 'contracts of confidence' with Member States and, at the same time, secure additional guarantees in connection with national control systems by forging closer links with the independent Supreme Audit Institutions;

***Increased transparency and the fight against fraud, corruption and financial crime***

27. Notes that the public procurement sector is the one most open to risks of mismanagement, fraud and corruption and that such unlawful activities distort the market, increase the prices and fees paid by consumers for goods and services and spread mistrust toward the European Union; calls, therefore, on the Commission and the Member States to consider the current rules on public procurement carefully and make proposals for their improvement; acknowledges too that progress has been made towards greater transparency concerning the beneficiaries of EU funds and calls on the Commission to develop a system whereby lists of beneficiaries are published on the same website, irrespective of the managing authority concerned, giving clear, comparable information from all the Member States in at least one of the EU's working languages; asks the Commission moreover to intervene to ensure that all Member States furnish reliable, uniform information on beneficiaries of EU funds which must be included in the Early Warning System and the Central Exclusion Database;
28. Calls on the Commission to begin early discussions and consultations with interested stakeholders, including civil society, on all aspects related to the creation of the European Prosecutor's Office for combating crimes affecting the financial interests of the Union, as provided for in Article 86 of the TFEU, and to step up the adoption of all necessary measures for establishing this office;
29. Urges the Council Presidency to give the Commission a mandate to negotiate and complete in the shortest possible time anti-fraud agreements with Andorra, Monaco and San Marino and to negotiate a new, further-going agreement with Switzerland;
30. Emphasises that the active protection of the EU's financial interests requires a reinforced fight against financial and economic crime; calls on the Member States to fully implement the relevant Union instruments, including the 2000 Mutual Legal Assistance Convention and its Protocol on banking transactions, the Framework Decision on confiscation orders (2006/783/JHA)<sup>1</sup> and the Framework Decision on Financial Penalties (2005/214/JHA)<sup>2</sup>;
31. Calls on the Commission to develop a proposal on the mutual recognition of disqualifications, in particular for professions in the financial area, such as the exclusion of fraudulent offenders from acting as chief executives;
32. Calls on the Commission to develop an impact assessment and a proposal to extend the EU acquis on common definitions of offences in the area of financial and economic crime;
33. Considers that stopping tax evasion and illicit activities that go through offshore havens is necessary in order to protect the financial interests of the Union; calls on the Commission to

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<sup>1</sup> OJ L 328, 24.11.2006, p. 59.

<sup>2</sup> OJ L 76, 22.3.2005, p. 16.

consider banning companies which operate through offshore havens from making business agreements with companies residing in the European Union if their offshore location will unilaterally delay the adoption of cooperation agreements with the Union;

34. Notes that according to the 2009 Eurobarometer 78% of EU citizens agree that corruption is a major concern in their country; calls on the Commission and the Member States to commit themselves to guaranteeing the resources necessary to prevent spending from EU funds being corrupt, to speed up the confiscation of criminal assets implicated in the perpetration of fraud, tax evasion, money laundering and related crimes, and to apply clear and transparent rules in respect of politically exposed persons, in accordance with the Third Money Laundering Directive (Directive 2005/60/EC)<sup>1</sup>; calls on the Commission to produce indicators as swiftly as possible that quantify efforts to fight corruption, paying particular attention to public procurement, in accordance with the provisions of the Stockholm Programme; calls for greater cooperation between the Asset Recovery Offices so that the confiscation of assets becomes efficient; calls on the Commission to take steps immediately to promote good governance in tax matters, in accordance with Parliament's resolution of 10 February 2010<sup>2</sup> on the subject, and particularly as regards the problem of tax havens;

### *OLAF's work*

35. Acknowledges and voices its support for OLAF's work and the need to guarantee its full operational independence in the performance of its tasks, which it sees as playing an essential role in protecting the financial interests of the European Union and, thereby, EU citizens, as well as a major role in upholding the reputation of the European institutions; considers, therefore, that a human resources strategy which ensures that the current high staff quality standards are maintained should be drawn up;
36. Takes the view that OLAF should draw more extensively on the work carried out by the Commission's internal audit services when initiating investigations, rather than relying mainly on information provided by officials or Member States; considers it equally important to monitor whether and how the Commission's internal audit service takes account of OLAF's recommendations; calls, accordingly, on OLAF to provide relevant statistics in its future annual reports;
37. Considers that OLAF's work can be made still more effective by ensuring careful and detailed planning of investigations, through the adoption of an ad hoc procedural regulation as a binding guide, promoting the use of SMART objectives and RACER indicators for the investigations themselves, improving cooperation and data exchange between OLAF and national judicial authorities from the start of the investigative process and rapidly applying a 'core tasks' policy, as well as follow-up procedures during the initial stage of investigations by OLAF, under which small-scale fraud would be handled by other bodies while recurring small-scale fraud which results in large sums from irregularities due to structural problems may be of interest for OLAF investigations; calls on OLAF therefore to outline in its next report the progress that has been made in this respect and to say to what extent account has been taken thereof in the OLAF operational manual that is to be published in the near future;
38. Calls on the Commission to actively include OLAF in the negotiation of all cooperation

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<sup>1</sup> OJ L 309, 25.11.2005, p. 15.

<sup>2</sup> Texts adopted, P7\_TA(2010)0020.

agreements that deal with the combating of fraud and with the exchange of information on tax matters;

### ***OLAF's relationship with Europol and Eurojust***

39. Welcomes the practical arrangements for still closer coordination and cooperation in the fight against financial fraud that have been agreed between OLAF and Eurojust;
40. Welcomes the cooperation between OLAF and Europol; notes that, by combining Europol's analytical resources and OLAF's operational experience, an efficient service can be provided to Member States and duplication can be avoided; calls on OLAF to outline, in its next annual report, the practical implications of Europol's change of status on 1 January 2010;

### ***OLAF's cooperation with Member States***

41. Deplores the shortcomings apparent in Annex I to the 2008 annual report (Implementation of Article 280 of the Treaty by the Member States in 2008 – SEC(2009)1002) as regards both the way in which the Member States reply to the Commission's questionnaire and the types of question asked by the Commission, which fail to elicit quantifiable answers or which Member States easily avoid; calls accordingly on the Commission to consider the changes that might be made to the questionnaire in cooperation with the Member State authorities in order to make this exercise both efficient and effective;
42. Calls on OLAF to present in its next report a detailed analysis of the strategies and measures put in place by each Member State to fight fraud and to prevent and identify irregularities in the spending of EU funds, including irregularities caused by corruption; considers that specific attention should be paid to the implementation of agricultural and structural funds; considers that the report, complete with 27 country profiles, should analyse the approach followed by national judicial and investigating authorities and the quality and number of controls performed, as well as statistics and reasons in cases where the national authorities have not followed up on OLAF's reports; considers, furthermore, that the report should furnish a knowledge base to be used in better defining OLAF's strategy and the priorities to be followed in special investigations, launching bespoke initiatives, and improving cooperation with Member States and the efficiency of both OLAF and the local supervisory authorities;
43. Stresses the fact that under EU legislation Member States are required to report all irregularities no later than two months after the end of the quarter in which the irregularity was the subject of an administrative or judicial preliminary investigation and/or in which new information on a previously reported irregularity was made known; calls, therefore, on the Member States to make every effort to reduce the time gap between the detection and reporting of an irregularity, including streamlining national administrative procedures;
44. Calls on the Commission to restart the procedure for the adoption of the Directive on criminal-law protection of the Communities' financial interests (2001/0115(COD)), blocked by the Council since 2002, and of the Regulation on mutual administrative assistance for the protection of the Communities' financial interests (2004/0172 (COD)), blocked by the Council since 2005;



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45. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice, the European Court of Auditors, the OLAF Supervisory Committee and OLAF.