

P7_TA(2012)0196

Protection of the EU financial interests - fight against fraud - Annual report 2010

European Parliament resolution of 10 May 2012 on the protection of the European Union's financial interests - Fight against fraud - Annual Report 2010 (2011/2154(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 29 September 2011 from the Commission to the European Parliament and to the Council entitled ‘Protection of the European Union’s financial interests – Fight against fraud – Annual Report 2010’ (COM(2011)0595) and its accompanying documents (SEC(2011)1107, SEC(2011)1108 and SEC(2011)1109)¹,
- having regard to OLAF’s Eleventh Operational Report – Annual Report 2011²,
- having regard to the Annual Report of the Court of Auditors on the implementation of the budget concerning the financial year 2010, together with the institutions’ replies³,
- having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the Court of Auditors on the Commission Anti-Fraud Strategy (COM(2011)0376),
- having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the protection of the financial interest of the European Union by criminal law and administrative investigations - An integrated policy to safeguards taxpayers’ money (COM(2011)0293),
- having regard to its resolution of 15 September 2011 on the EU’s efforts to combat corruption⁴, its Declaration of 18 May 2010 on the Union’s efforts in combating corruption⁵, and the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: Fighting corruption in the EU (COM(2011)0308),
- having regard to Article 325(5) of the Treaty on the Functioning of the European Union,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁶,

¹ http://ec.europa.eu/anti_fraud/documents/reports-commission/2010_en.pdf

² http://ec.europa.eu/anti_fraud/documents/reports-olaf/rep_olaf_2010_en.pdf

³ OJ C 326, 10.11.2011, p. 1.

⁴ Texts adopted, P7_TA(2011)0388.

⁵ OJ C 161 E, 31.5.2011, p. 62.

⁶ OJ L 248, 16.9.2002, p. 1.

- having regard to Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests¹,
 - having regard to its resolution of 6 April 2011 on the protection of the Communities' financial interests – Fight against fraud – Annual Report 2009²,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A7-0121/2012),
- A. whereas the EU and the Member States share responsibility for the protection of the EU's financial interests and the fight against fraud, and whereas close cooperation between the Commission and the Member States is essential,
 - B. whereas the Member States have the primary responsibility for implementing some 80 % of the European Union budget as well as for the collection of own resources, inter alia in the form of VAT and customs duties,
 - C. whereas in 2010 the overall financial impact of irregularities detected by control systems amounts to EUR 2 193 million, as compared to EUR 1 757 million in 2009,
 - D. whereas according to the European Court of Auditors (ECA) the payments underlying the accounts were affected by material error, with an estimated error rate of 3.7 % for the EU budget as a whole; whereas the control systems were found to be only partially effective in ensuring the regularity of payments, and whereas the main sources of errors relate to eligibility and public procurement errors,
 - E. whereas in the majority of cases, the ECA considers that the Member States' authorities had sufficient information available to have detected and corrected at least some of the errors before payments were made, and whereas the ECA considers there is still room for improving Member States' correction mechanisms and audit activities,

Overall considerations

1. Stresses that the global financial crisis, and in particular the euro area crisis, which the EU is now facing, call for special measures to be put in place in order to ensure adequate protection of EU financial interests in terms of revenue, which are directly linked to the financial interests of the Member States; is of the opinion that a more rigorous implementation of fiscal policy has the potential of leading Europe out of the crisis, in particular by decreasing the size of the EU's shadow economy, estimated to be at around one fifth of the official GDP³;
2. Emphasises the potential for e-government to increase transparency and combat fraud and corruption, thereby safeguarding public funds; underlines that Europe is lagging behind its

¹ OJ L 312, 23.12.1995, p. 1.

² Texts adopted, P7_TA(2011)0142.

³ Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2011 by Friedrich Schneider, at <http://www.econ.jku.at/members/Schneider/files/publications/2011/ShadEcon31.pdf>;

industrial partners, inter alia due to a lack of interoperability of systems¹; stresses that, especially in a time of crisis, Europe must step up its efforts to achieve a new generation of e-government which would provide more transparency in public finances;

3. Draws attention to the fact that electronic, non-cash transactions are documented and therefore make participating in the shadow economy more difficult, and that a strong correlation appears to exist between the proportion of electronic payments in a country and its shadow economy²; encourages the Member States to lower their thresholds for compulsory non-cash payments;
4. Stresses the need for reliable statistical data on the extent of fraud and corruption, and in particular on the extent of tax and customs duty evasion and misuse of EU funds by organised crime; deplors the fact that the Commission has not been in a position to provide such data, despite repeated calls from the Parliament;

General comments

5. Stresses that fraud is an example of purposeful wrongdoing and is a criminal offence, and that an irregularity is a failure to comply with a rule, and regrets that the European Commission's report fails to consider fraud in detail and deals with irregularities very broadly; points out that Article 325 of the Treaty on the Functioning of the European Union (TFEU) relates to fraud, not irregularities, and calls for a distinction to be made between fraud and errors; calls for corruption to be tackled at the same time as fraud;
6. Notes that in 2010 the financial impact of irregularities in the area of expenditure rose and amounted to EUR 1,8 billion (or 1,27 % of allocations), as compared to EUR 1,4 billion (or 1,13 %) in 2009; the financial impact in the area of revenue is also higher: EUR 393 million (or 1,88 % of total collected traditional own resources, gross) as compared to EUR 357 million (or 1,84 %) in 2009.
7. Deplores the fact that large amounts of EU funds are still wrongly spent and calls on the Commission to take decisive action in order to recover more erroneous payments, to hold Member States more accountable for the amount in irregularities that have yet to be recovered, to improve the prevention and detection of irregularities and cases of fraud, and immediately to suspend payments and apply effective sanctions in cases of misuse of EU funds;
8. Notes that for 2010 the number of irregularities reported has increased for all sectors except pre-accession funds and traditional own resources and that the increase is related to the closure of the 2000-2006 implementing period of the cohesion funds and to the improvements made to the Irregularities Management System (IMS);
9. Stresses that, although the Irregularities Management System (IMS) has been modernised and improved, and there has been an increase in the volume of reporting by the majority of Member States, which has led to an improvement in the quality and reliability of reports,

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Digital Agenda for Europe (COM(2010)0245).

² The Shadow Economy in Europe, 2010: Using Electronic Payment Systems to Combat the Shadow Economy / Friedrich Schneider, A.T. Kearney, 2010.

there are still differences in the Member States' approaches to reporting irregularities and, consequently, there are doubts about the adequacy of national reporting systems; calls on all the Member States to fully implement the IMS and to further improve their reporting compliance, and to improve the speed with which irregularities are reported;

10. Is further concerned that some Member States are not yet using the electronic reporting system fully; calls on these Member States to remedy the situation as a matter of urgency;
11. Reiterates its regret, given the serious doubts about the quality of the information provided by the Member States, and notes that some Member States continue to report a very low number of detected irregularities and cases of fraud, and calls on the Commission to inform the European Parliament whether the national control systems in those Member States are effective;
12. Recalls that Union legislation requires the Member States to report all irregularities no later than two months after the end of the quarter in which an irregularity has been subject to a primary administrative or judicial finding and/or new information about a reported irregularity becomes known; calls on the Member States to make all the necessary efforts, including the streamlining of national administrative procedures, to meet the required deadlines and reduce the time gap between the moment a irregularity is identified and that when it is reported; calls on the Member States to act primarily as a protector of taxpayers' money in their efforts to combat fraud;
13. Stresses the need for reliable statistical data about the scale of fraud and corruption, particularly related to tax and customs evasion and the organised activities of criminals misusing EU funds; regrets that, despite repeated requests from the European Parliament, the Commission has been unable to provide such data;
14. Is disappointed that the Commission is unable to assess the actual scale of irregularities and fraud and that consequently it is not possible to evaluate the overall scale of irregularities and fraud in individual Member States or to identify and discipline those Member States with the highest level of irregularities and fraud, as called for by the European Parliament back in 2009;
15. Points out that over the past few years new techniques have been developed for measuring corruption and fraud and urges the Commission, without any further delay, to initiate efforts to apply these new measurement tools and provide an assessment of the extent of corruption and fraud in the use of EU funds and in the embezzlement of EU revenues; this will permit an evaluation of the effectiveness of the protection of EU funds from misuse and the protection of EU revenues from embezzlement;
16. Calls for the responsibility for the development of the measurement tools of fraud and corruption related to the EU funds to be taken by the Commission in close cooperation with the European Parliament, the European Court of Auditors and other EU auditing and control bodies;

17. Notes that the so-called 50/50 rule¹ applicable in the agricultural sector is an effective incentive for Member States to speed up and complete recovery procedures; calls on the Commission to assess whether this claw-back mechanism could also be applied in other (cohesion and pre-accession) sectors, and also whether pursuant to this rule it would be appropriate to reduce by half the time limit for recovery actions, i.e. to two and four years respectively;
18. Notes that the 2010 Annual Report of the European Court of Auditors (ECA report) states that payments indicated in financial statements for 2010 affected by a large amount of errors amounted to 3.7 % of all EU budgetary spending, i.e. approximately EUR 4.5 billion;
19. Notes that the ECA report further states that, prior to approving payments, the authorities of the Member States had sufficient information to detect some of the errors, and remedy or prevent them;

Revenue. Own resources

20. Recalls that proper collection of VAT and customs duties influences directly both the economies of the Member States and the EU budget; underlines that improving the systems for collecting revenue should be the utmost priority for all Member States, in particular those facing the biggest difficulties in the current economic climate;
21. Stresses that the emphasis should move to more efficient revenue collection; stresses that tax fraud leads to exorbitant losses for the EU budget and the economies of the Member States, thus worsening the debt crisis; recalls that the cost of the existing shadow economy is borne by those citizens whose income is easily documented and traceable;
22. Notes that data provided by the Member States on irregularities in the area of traditional own resources (TOR) varies greatly, and therefore believes that the classification of irregularities and cases of fraud in the own resources database OWNRES is not entirely reliable; calls on the Commission to investigate how this database might be improved to ensure the reliability and comparability of reported data;
23. Calls on the Commission to continue to focus on the implementation of the Member States' customs control strategies, particularly in the area of imports associated with high risk, and to improve activities concerning the detection of irregularities and cases of alleged fraud in the area of TOR;
24. Is concerned that smuggling, particularly cigarette smuggling, remains a major problem for the EU and results in the loss of significant resources from national and EU budgets; welcomes the Action Plan drawn up by the Commission to combat the smuggling of cigarettes and alcohol along the EU's Eastern border, as well as the renewal of customs cooperation with China and Russia at the end of 2010 and the Strategic Framework for Customs Cooperation endorsed with both countries;
25. Welcomes the results of the Member States' joint customs operation 'Sirocco' carried out in

¹ On the basis of this rule, the Commission may recover 50 % of irregular payments from Member States' budgets which were not recovered within a four-year period or, in the event of legal proceedings regarding the recovery of payments, within an eight-year period. This rule is applied to ensure the accelerated recovery of unduly-paid funds.

June 2010, which was coordinated by the European Anti-Fraud Office (OLAF) and during which around 40 million cigarettes, 1.2 tonnes of hand-rolled tobacco, 7 000 litres of alcohol and 8 million other counterfeit items were seized;

26. Notes that a large proportion of revenue comes from value-added tax (VAT), and the Commission and Member States therefore need to monitor and effectively respond to both existing and new trends in fraud; welcomes the Commission's Green Paper on the future of VAT and calls for concrete proposals to be made on VAT reform;

VAT losses

27. Recalls that, according to a study carried out on behalf of the European Commission¹, the estimated average EU VAT gap² has been found to be at the level of 12 %; draws special attention to the fact that this VAT gap has been put at an alarming level of, respectively, 30 % and 22 %, in Greece and Italy – the countries which are going through the most difficult debt crisis and whose situation threatens economic stability across the EU-27;
28. Stresses that, besides tax avoidance and losses due to insolvencies, the VAT gap is attributable also to fraud, and that VAT losses, translating into billions of EUR, are largely compensated for via austerity measures affecting those EU citizens whose income is easily traceable;
29. Points to the fact that since its introduction, the VAT collection model has remained unchanged; stresses that it is outdated, given the many changes to the technological and economic environment that have taken place;

Customs duties losses

30. Underlines that proceeds from customs duties are an important part of the EU's traditional own resources (TOR) and a source of income for the Member States' governments, who keep 25 % to cover the cost of collection; reiterates that efficient prevention of irregularities and fraud in this field protects the Union's financial interests and has important consequences for the Internal Market, eliminating the unfair advantage of economic operators who avoid duties over those who comply with their obligations in this respect;
31. Stresses that the correct operation of customs has a direct impact on the calculation of value-added tax;
32. In this context recalls that in its Special Report No 13/2011³, the ECA found that the application of customs procedure 42⁴ alone accounted in 2009 for extrapolated losses of approximately EUR 2 200 million⁵ in the seven Member States audited by the Court,

¹ Study to quantify and analyse the VAT gap in the EU-25, carried out by Reckon LLP on behalf of the Commission.

² The difference between actual VAT receipts and what the Member States should theoretically receive based on their economies.

³ ECA Special Report No 13/2011 entitled 'Does the control of customs procedure 42 prevent and detect VAT evasion?'

⁴ Regime used by an importer in order to obtain a VAT exemption when the imported goods will be transported to another Member State and where the VAT is due in the Member State of destination.

⁵ Of which EUR 1 800 million were incurred in the seven selected member States and 400 million in the 21 member States of destination of the imported goods in the sample.

representing 29 % of the VAT theoretically applicable on the taxable amount of all the imports made under customs procedure 42 in 2009 in those countries;

33. Recalls that the ECA found serious deficiencies in the control of simplified customs procedures, which account for 70 % of all customs procedures; points out that they have led to unjustified losses to the Union budget and breaches in the EU's trade policy; stresses that the deficiencies identified consisted, inter alia, in poor-quality or poorly-documented audits and little use of automated data processing techniques for carrying out checks during the processing of simplified procedures;

Expenditure

Agriculture

34. Notes that in 2010 there was an increase in reports of irregularities and cases of suspected fraud, while the financial impact of these increased from EUR 13 million in 2009 to EUR 69 million in 2010;
35. Regrets that the situation as regards overall funds recovered remains unsatisfactory: the Member States recovered EUR 175 million during the financial year 2010, which accounts for 42 % of the European Agricultural Guarantee Fund (EAGF) debts from 2007 and thereafter, whereas the total amount remaining to be recovered at the end of the financial year 2010 was EUR 1.2 billion, while under the 50/50 rule Member States have only transferred EUR 300 million from their national budgets to the EU Budget; regrets that the Commission failed to take into account the European Parliament's request and did not supply the European Parliament with information about the progress made in this area in the Protection of the European Union's financial interests Report 2010; repeats its call for the Commission to take all the necessary steps to put into practice an effective system for the recovery of funds, and to keep the European Parliament informed;
36. Regrets that in 2010 some Member States failed to meet the deadlines for reporting irregularities; agrees with the Commission that all Member States must improve the reports submitted; recalls that Finland, Austria and the Netherlands have committed themselves to complying with reporting requirements, and calls on the Commission to provide information in the Protection of the European Union's financial interests - Fight against fraud - Annual Report about the progress made by these Member States in 2011;
37. Is concerned that, in 2010, Italy and EU-12 Member States have qualified more than 90 % of the reported cases of irregularities as 'suspected fraud'; calls on the Member States to take all necessary measures, including close cooperation with European institutions, to address all causes leading to fraud relating to EU funds;
38. Is concerned by the suspiciously low suspected fraud rates reported by France, Germany, Spain and the United Kingdom, especially considering their size and financial support received, as described by the Commission's Report on the Protection of the Union's financial interests; is of the opinion that this raises reasonable doubts as to whether reporting principles are being respected; urges the Commission to include detailed information on the applied reported methodology and the fraud detection capability in these Member States; once again calls on the Commission to monitor closely the effectiveness of supervisory and control systems in the Member States and to ensure that information about the level of irregularities in the Member States reflects the true situation; calls on the

Commission to provide information in the Protection of the EU's Financial Interests Report about actions taken in this area in 2011;

Cohesion policy

39. On the basis of data provided in the Protection of the European Union's financial interests Annual Report 2010, around 70 % of all cases of reports about irregularities were related to cohesion policy, and in 2010 the area of cohesion policy had the highest expenditure recovery rate (over 60 %); stresses that according to the data provided it is impossible to objectively evaluate the actual number of irregularities and cases of fraud in this area because the high number of irregularities and (or) cases of fraud reported may be related to the introduction of the IMS in 2009;
40. Welcomes the progress made in 2010 in relation to amounts recovered for the programming period 2000-2006, which accounted for 70 % or EUR 2.9 billion of funds paid in error, as compared to the 2009 rate of 50 %;
41. Notes that in 2010, Denmark, France, Malta, the Netherlands, Sweden and Slovenia did not report any cases of irregularities in this area, this raising doubts as to whether the IMS is being applied properly; is concerned by the low rate of recovery in Hungary, the Czech Republic and Slovenia (around and below 20 %); calls on the Commission to take action, investigate the reasons and inform the European Parliament of the progress made in next year's Protection of the EU's Financial Interests Report;
42. Stresses that, as evidenced by data provided in the Protection of the European Union's financial interests Report 2010, analysis of those categories of irregularity which are the most reported shows that irregularities are most frequently identified in the implementation phase of the project cycle and that the greatest financial impact occurs in the selection and procurement phases; stresses that a transparent, clear and flexible public procurement system, using the Electronic Public Procurement System more actively, and the laying down of general procurement principles at EU level would make it possible to ensure more efficient use of Member State and EU funds; expects the Commission effectively to implement public procurement system reform;

Pre-accession funds

43. Is concerned that the pre-accession funds show the lowest recovery rates for expenditure: in 2010 this rate barely reached 10 %, as compared to 27 %; notes with concern that the recovery rate for the period 2002-2006 remains low (around 30 %), particularly in Bulgaria, Turkey, Lithuania and Latvia, and calls on the Commission to take action to ensure that beneficiary countries explain the reasons for low recovery rates, improve their performance and update the missing information on completed recovery procedures;
44. Notes that, as in 2009, the highest number of irregularities and cases of fraud are related to the use of SAPARD fund resources in Romania and Bulgaria; welcomes the fact that Bulgaria has made great progress in strengthening national control systems, demonstrated by the fact that in 2010 a large proportion of cases of irregularities and suspected fraud were detected not by external but by domestic or national controllers and inspectors; regrets that in Romania the majority of irregularities and cases of suspected fraud are still being detected following inspections by EU services or inspections undertaken at their request; calls on the Commission to cooperate closely with the Romanian authorities to improve the

situation;

45. Welcomes the Commission's objective of supporting the new beneficiary countries (Turkey, Croatia, the Former Yugoslav Republic of Macedonia and Montenegro) in their efforts to implement the IMS;

OLAF

46. Reiterates that it is necessary to continue to strengthen the independence, effectiveness and efficiency of OLAF;
47. Calls on the Commission and the Member States to ensure the effective and timely implementation of recommendations made once cases have been investigated by OLAF;
48. Considers that Member States should be obliged to report, on an annual basis, on the follow up of cases sent to their judicial authorities by OLAF, including on penal and financial sanctions imposed in such cases;

Public Procurement, increased transparency and the fight against corruption

49. Calls on the Commission, the relevant Union agencies and the Member States to take measures and provide resources to ensure that EU funds are not subject to corruption, to adopt dissuasive sanctions where corruption and fraud are found, and to step up the confiscation of criminal assets involved in fraud, tax evasion and money laundering-related crimes;
50. Underlines that the 2011 Communication from the Commission entitled 'Fighting corruption in the EU' estimates that EUR 120 billion per year is lost to corruption in the EU, inflicting financial damages, reducing public finances and undermining trust in democratic institutions; emphasises moreover that Parliament's 2011 resolution on the EU's efforts to combat corruption states that corruption leads to the misuse of public money in general and of EU funds provided by the tax payer and distorts the market, and calls – along with its above mentioned Declaration – on the Commission and the relevant Union bodies to ensure that EU funds are not subject to corruption;
51. Welcomes the European Parliament's decision to set up a special committee on organised crime, corruption and money laundering;
52. Welcomes the fact that Malta ratified the Convention on the protection of the EU's financial interests on 20 January 2011; regrets that the Convention has not yet been ratified by the Czech Republic and invites that Member State to remedy the situation as soon as possible; also invites Estonia to ratify the Protocol of 29 November 1996 on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention;
53. Recalls that the Hercule II programme is the financial instrument managed by the Commission (OLAF) in the field of the protection of the EU's financial interests and the prevention of related criminal activities, including cigarette smuggling; notes that the mid-term evaluation of the Hercule II programme confirmed its added value; is of the opinion that the successor to this instrument – the Hercule III programme – should continue to improve technical equipment in the Member States, finance access to databases essential for

investigations by Member State authorities and OLAF, and combat cigarette smuggling and counterfeiting in line with the legally-binding agreements with tobacco manufacturers;

54. Reiterates its call on the Commission and the Member States to design, implement and periodically evaluate uniform systems of procurement to prevent fraud and corruption, to define and implement clear conditions for participation in public procurement and criteria on which public procurement decisions are made, and to adopt and implement systems to review public procurement decisions at national level, to ensure transparency and accountability in public finances, and to adopt and implement risk management and internal control systems;
55. Welcomes the launch in January 2011 of the Commission's Green Paper on the modernisation of EU public procurement policy entitled 'Towards a more efficient European Procurement Market'; notes that the evaluation report on this consultation was adopted at the end of June 2011 and that in December 2011 the Commission adopted its proposals to reform the basic EU public procurement rules (Directives 2004/17/EC and 2004/18/EC);

Follow-up

56. Asks the Commission to inform Parliament which other indicators, sources or methods, apart from the information provided by whistleblowers or informants, it can use in order to determine in which areas of EU funding or EU revenues there are increased levels of fraud;
57. Calls on the Commission to protect and promote investigative- and independent journalism which is an essential element in fighting crime, fraud and corruption with European funds;
58. Calls on the Commission to assess whether the investigated cases of fraud resulting from whistleblowers or informants correspond to the areas where it is estimated that there is a possibility of a high level of fraud based on independent criteria or indicators; if not, to assess other methods of initiating investigations in areas where suspected fraud is concealed under the 'laws of criminal silence', which prevent information leaking through whistleblowers or informants;
59. Given the situation that has been recurring for many years, i.e. the fact that Member States are failing to provide data in a timely manner or the data they provide is not accurate and does not stand up to comparison, thus making it impossible to evaluate objectively the true scale of fraud in the Member States, and given that the European Parliament, the Commission and OLAF are unable to perform their functions regarding assessment of the situation and the submission of further proposals, stresses that such a situation must not be tolerated and calls on the Commission to take full responsibility for recovering unduly paid funds from the Member States, and to gather the homogeneous comparable data required and establish the reporting principles throughout the Member States;

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

