



## COMBATING FRAUD AND PROTECTING THE EU'S FINANCIAL INTERESTS

The European Union's action in the field of budgetary control is centred on two principles: the first is budgetary control itself, the second involves protecting the Union's financial interests and combating fraud.

### LEGAL BASIS

- Articles 287 and 325 of the Treaty on the Functioning of the European Union (TFEU);
- 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 of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, Title IX, chapters 1 and 2, and Title X;
- Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, Part III;
- Rules of Procedure of the European Parliament, Title II, Chapter 6, Rules 92a, 93 and 94; Title V, Chapter 1, Rule 121, Chapter 2, Rule 125 and Chapter 4, Rule 132; Annex IV;
- Article 83(2) of the Treaty on the Functioning of the European Union on the protection of the European Union's financial interests;
- EPPO: Article 86 of the Treaty on the Functioning of the European Union on the establishment of a European Public Prosecutor's Office.

### OBJECTIVES

Protection of the financial interests of the European Union is a key element of the EU policy agenda to strengthen and increase the confidence of citizens and ensure that their money is used properly. There is also a need to monitor and supervise the work of the European Anti-Fraud Office (OLAF) and to support its action to combat fraud and irregularities in the implementation of the EU budget.

### BACKGROUND

In December 1995, Parliament exercised for the first time its right under the Treaty to set up a committee of inquiry, subsequently reporting on allegations of fraud and maladministration in the Community transit system. The committee's recommendations received wide support at the time.

In recent years, there has been an increase in the number of legislative texts and recommendations dealing with the protection of the Union's financial interests. These texts

seek essentially to improve OLAF's governance and strengthen procedural safeguards in investigations by means of a step-by-step approach to accompany the establishment of the European Public Prosecutor's Office (EPPO), and to reform Eurojust<sup>[1]</sup>, to improve the protection of the Union's financial interests, but also to guarantee the protection of those interests by means of criminal law and administrative investigations through an integrated policy to safeguard taxpayers' money, and through the Commission's anti-fraud strategy<sup>[2]</sup>. Four other important communications were also published in 2012 and 2013 concerning an Action Plan to strengthen the fight against tax fraud and tax evasion<sup>[3]</sup>, the protection of the European Union budget to end 2012, and the application of net financial corrections on Member States for agriculture and cohesion policy<sup>[4]</sup>.

Two directives were also adopted in 2013; one on the common system of VAT concerning an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud, the other concerning a quick reaction mechanism against VAT fraud<sup>[5]</sup>. A regulation was also adopted in 2014 to establish a programme to promote activities in the field of the protection of the European Union's financial interests ('Hercule III' programme)<sup>[6]</sup>. In addition to this, there was the proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law<sup>[7]</sup>, the report from the Commission to the Council and the European Parliament entitled 'EU Anti-Corruption Report'<sup>[8]</sup> and, lastly, the Commission communication of 7 April 2016 on an action plan on VAT<sup>[9]</sup>.

#### A. Anti-fraud measures by OLAF

The European Anti-Fraud Office (OLAF) is empowered to carry out administrative investigations independently of the Commission. On 25 May 1999, in connection with the regulations on OLAF investigations, Parliament, the Council and the Commission signed an interinstitutional agreement regarding internal investigations. That agreement stipulated that each institution should establish common internal rules to ensure that OLAF's investigations ran smoothly. Some of those rules, now incorporated into the Staff Regulations of Officials of the European Union, require staff to cooperate with OLAF and provide a degree of protection for staff members who reveal possible fraud or corruption. Reform of OLAF was first mooted in 2003. Finally, after some 10 years of discussions and negotiations, the trilogue stakeholders (Parliament, the Council and the Commission) agreed on a compromise representing significant progress and ensuring that OLAF is effective and efficient and retains its responsibilities while safeguarding its investigative independence.

In November 2008, Parliament adopted the Gräßle report, drawn up in collaboration with the working group of the Committee on Budgetary Control, by an overwhelming majority. The Commission's original proposal was heavily amended, and the current regulation<sup>[10]</sup> was introduced some years later and itself amended in July 2016.

The new text provides substantial improvements, i.e. a clearer definition of the legal framework for anti-fraud investigations: definitions of 'irregularity' and 'fraud, corruption and any other illegal activity affecting the financial interests of the Union' and the notion of 'economic operator' have been incorporated into the regulation. The regulation also contains clear

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[1][COM\(2013\) 0532](#) and [COM\(2013\) 0533](#) of 17 July 2013.

[2][COM\(2011\) 0293](#) of 26 May 2011 and [COM\(2011\) 0376](#) of 24 June 2011.

[3][COM\(2012\) 0722](#) of 6 December 2012.

[4][COM\(2013\) 0682](#) of 30 September 2013 and [COM\(2013\) 0934](#) of 13 December 2013.

[5]Directives 2013/43 and 2013/42 of 22 July 2013 (OJ L 201, 26.7.2013, p. 4; OJ L 201, 26.7.2013, p. 1).

[6]OJ L 84, 20.3.2014, p. 6.

[7][COM\(2012\) 0363](#) of 11 July 2012.

[8][COM\(2014\) 0038](#) of 3 February 2014.

[9][COM\(2016\) 0148](#) of 7 April 2016.

[10]Regulation (EU) No 883/2013 of the European Parliament and of the Council of 11 September 2013.

references to particular investigative measures under other EU regulations (thus improving coordination between the relevant legal instruments in the area concerned), plus references to the Charter of Fundamental Rights: the rights of defence and procedural guarantees of persons concerned by a matter under investigation by OLAF, the rights of witnesses and of whistleblowers, and the right of access to records, etc. will be ensured at all times in connection with OLAF investigations.

In addition, there are provisions introducing specific requirements to be met by Member States, such as the requirement to share relevant information with OLAF on cases of fraud involving EU funds.

Lastly, a new interinstitutional procedure has been set up so that all institutions can hold transparent discussions on best practices, outcomes and outstanding issues which undermine the effectiveness of anti-fraud operations. That will make it possible, for the first time, for Parliament to discuss combating fraud in Member States with the Council.

Parliament is also calling for an improvement in OLAF's governance through the continual revision and consolidation of its core investigative processes.

It should also be pointed out that Article 325 TFEU requires there to be close and regular cooperation between Member States and the Commission, and allows for specific Council measures to afford equivalent and effective protection in the Member States for the EU's financial interests.

## **B. Strengthening anti-fraud mechanisms**

At Parliament's request, the Commission has recently taken major initiatives concerning strategic anti-fraud measures; however, in view of the scale of fraud and tax avoidance and of corruption in the EU, Parliament is calling for an integrated approach, including strategies for fighting fraud and corruption by means of legal and effective measures throughout the Union, particularly at a time of budgetary constraint.

The European Parliament also supports the Action Plan devised by the Commission to step up the fight against tax fraud<sup>[11]</sup> and tax evasion, while taking the view that the Commission and the Member States should continue to give absolute priority to combating these two scourges, for which it is necessary to develop a strategy for strengthened and multidimensional cooperation and coordination between Member States themselves and with the Commission. Particular attention should also be paid to the development of mechanisms for prevention, early detection and customs transit monitoring, this being one of the areas still affected by the highest rates of systemic corruption in Europe. Finally, Parliament takes the view that the major European stakeholders should be more active at international level so as to establish standards of cooperation based chiefly on the principles of transparency, good governance and exchange of information.

Parliament also underlines the fact that greater transparency allowing for proper scrutiny is key to detecting fraud schemes; in previous years it has urged the Commission to take action to ensure one-stop transparency for all beneficiaries of EU funds from all Member States by publishing a list of all beneficiaries on the Commission's website. It also calls on the Member States to cooperate with and provide full and reliable information to the Commission regarding the beneficiaries of the EU funds managed by them.

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[11] Fraud is a deliberate unlawful act, which may constitute a criminal offence, while an irregularity is a failure to comply with a rule.

### **C. New-look European anti-fraud policy and programmes**

In its policy aimed at combating corruption, Parliament considers that, as corruption has an impact on the financial interests of the EU, it should be considered as fraud for the purposes of Article 325(5) TFEU and should be included in the Commission's annual report on the protection of the European Union's financial interests — fight against fraud.

The Commission's first EU anti-corruption report, published in February 2014, which was welcomed by Parliament, noted that corruption affected all Member States differently, and was costing the EU economy EUR 120 billion per year. Parliament also welcomes all suggestions for intensifying exchanges of current good practice and identifying relevant new measures to be taken at EU level; European citizens require guarantees of total integrity and transparency in public spending, especially given the current challenges arising from the underlying economic and financial crisis.

### **D. Directive on the fight against fraud and the protection of the EU's financial interests**

The European Parliament and Council Directive on the fight against fraud and the protection of the European Union's financial interests by means of criminal law<sup>[12]</sup> (known as the PIF Directive) lays down the legal basis for the powers of the European Prosecutor by defining its competences.

The definition of the Union's financial interests covers infringements of the common VAT systems where they are linked to the territory of two or more Member States and involve losses totalling at least EUR 10 million. The definition of criminal offences covers active and passive fraud, as well as the misuse of funds. Minimum penalties are laid down for natural persons, and limitation periods are established that make it possible for the law to apply over a sufficient time to ensure that infringements can be addressed in an effective way. The directive also introduces an obligation for the Member States, the Commission, the agencies and the Court of Auditors to cooperate.

### **E. The establishment of the European Public Prosecutor's Office**

The rules governing the creation of the European Public Prosecutor's Office are contained in Article 86 TFEU, which lays down that: 'In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust.'

The European Public Prosecutor's Office will be a decentralised European Union prosecution office with exclusive competence for investigating, prosecuting and bringing to judgment crimes against the EU budget. It will have uniform investigative powers throughout the Union based on and integrated into the national law systems of the Member States.

Council Regulation (EU) 2017/1939 of 12 October 2017<sup>[13]</sup> established the EPPO through the enhanced cooperation of 20 Member States – Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Spain, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia and Slovakia.

The EPPO will be in charge of investigating, prosecuting and bringing to justice the perpetrators of offences against the Union's financial interests. It will bring together European and national law enforcement efforts to counter EU fraud.

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[12] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

[13] OJ L 283, 31.10.2017, p. 1.

The EPPO central office will be based in Luxembourg. The date on which the EPPO will assume its investigative and prosecutorial tasks will be set by the Commission on the basis of a proposal from the European Chief Prosecutor once the EPPO has been set up. This date will not be earlier than three years after the entry into force of this regulation on 22 November 2017.

Preparatory actions for setting up the EPPO are being put in place by the Commission and the state of play of its implementation is being monitored by Parliament's civil liberties, justice and home affairs (LIBE) and budgetary control (CONT) committees.

## **ROLE OF THE EUROPEAN PARLIAMENT**

Parliament's Committee on Budgetary Control holds hearings for Members-designate of the Court of Auditors as well as the shortlisted candidates for the post of Director-General of OLAF. Those posts cannot be filled without those hearings being held. It should be noted, lastly, that the Director-General of OLAF is appointed by the Commission, after consultation of Parliament and the Council, and that the members of the OLAF Supervisory Committee are appointed by common accord by Parliament, the Council and the Commission.

Jean-Jacques Gay  
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