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BACKGROUND BRIEFING DOCUMENT

on combating fraud and corruption in the European Union

Committee on Budgetary Control

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Background briefing document on combating fraud and corruption in the European Union

On 26 March 2002 the Committee on Budgetary Control (CONT) considered whether Paul van Buitenen should be invited for a discussion. This matter came up because the second report (van Buitenen II), including an assessment of the relevant irregularities by the Anti-Fraud Office (OLAF), had been leaked to the press. As a result, Members of the European Parliament, as the body responsible for scrutiny, suddenly found themselves in the position of having to comment on alleged or actual irregularities in the European institutions that they themselves had first heard about from the press.

This situation, and the Commission's forthcoming comprehensive progress report on OLAF under Article 15 of Regulation 1073/99, raise three issues:

- What is going on with the internal control mechanisms in the EU institutions and in the Commission in particular?
- How independently, effectively and efficiently does OLAF work?
- How are the European Parliament and its Committee on Budgetary Control kept up-to-date on current and completed investigations?

Legal framework

Article 280(1) of the EC Treaty clearly states that 'the Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States.'

On the basis of that article, Articles 1 to 4 of Regulation 1073/99 give OLAF the task of protecting the Community's financial interests by conducting external and internal investigations.

The Commission and OLAF, as an integral but independent office of the Commission (Commission Decision, L 136, 31 May 1999, p. 20 et seq.), are accountable to the European Parliament.

This accountability derives from Article 280 of the EC Treaty, under which the Commission, in cooperation with Member States, is required to submit each year to the European Parliament and to the Council a report on the measures taken to protect the Community's financial interests.

Furthermore, OLAF reports to the European Parliament, the Council, the Commission and the European Court of Auditors on the findings of its investigations.

The Commission, and hence also OLAF, have a specific accountability vis-à-vis Parliament under Article 197 (duty to reply to parliamentary questions) and Article 276 (provision of information as part of the discharge procedure) of the EC Treaty. OLAF is required to comply fully with the obligations laid down in these articles. However, the rules need to be clarified as the division of responsibility between the Commission and OLAF is unclear.

It should be pointed out in this context that under Article 287 Members of Parliament may not be denied access to information of a kind covered by the obligation of professional secrecy.

Although the financial implications of fraud in the Member States vastly exceed the financial losses arising from internal irregularities, the European Parliament attaches great importance to internal investigations because the responsibility of Community bodies is at issue and cases of fraud can do serious damage to the institutions' image among the general public.

EUROSTAT

Several investigations are currently underway concerning the staff and contractual partners of the Statistical Office of the European Union in Luxembourg. The findings of the investigations into cases have already been forwarded by OLAF to the judicial authorities in Luxembourg.

From the point of view of the Committee on Budgetary Control, the award of a contract for the implementation of the PRODCOM project to the firm EUROGRAMME raises serious questions. The internal audit of the Statistical Office came to the following conclusions in December 2000:

- In its tender, EUROGRAMME gave false information about its financial and operational resources. These particulars were not adequately checked.
- Procedures laid down in the EU Financial Regulation were not complied with.
- Contractual requirements concerning the deadlines to be met and the quality of work were not satisfied.
- The documentation for the project is incomplete.

This gives rise to the following questions:

- What measures were taken by the Commission on the basis of the audit report?
- Why was the firm EUROGRAMME, which provided inaccurate information, not excluded from the award of the contract as required by Council Regulation 92/50? Are there plans to award further contracts to the firm?
- Is EUROSTAT continuing to employ 'U-boat' staff (employees of private firms with permanent jobs on Commission premises)? If not, when did this practice come to an end?
- What internal administrative measures has the Commission taken to improve project management in EUROSTAT?
- What disciplinary measures have been taken against the staff responsible?
- How will the Committee on Budgetary Control be informed of the further steps taken by the Luxembourg judicial authorities?

Commission's accounting system

Reports by the European Court of Auditors and the opinions of internal Commission auditors criticise the Commission's accounting system (SINCOM 2) as unreliable: international accounting standards are not complied with, the flow of information between services is not guaranteed, changes in the accounting system cannot be traced back, there is a lack of trained accountants, the separation between financial control and accounting is inadequate, accounting cooperation with the Member States is problematic and there is a risk of excessively high amounts being paid and subsequently being extremely difficult to recover.

Furthermore, in July the Commission had to take on board statements made by its directors-general and heads of unit. According to press reports, a number of directors-general refused to

issue a statement of assurance and, in addition, the annual reports contained 135 reservations and comments.

- How does the Commission explain the fact greater progress has not been made since 1999?
- Have the operational shortcomings pointed out by the European Court of Auditors in its annual report for the financial year 2000 since been rectified?
- What shortcomings still exist that undermine the reliability of the system?
- Is it possible and sensible to reform SINCOM 2 or should a new accounting system be introduced?
- What advantages and changes does a shift from a 'cash based accounting system' to an 'integrated accrual accounting system' entail?
- How much money has been budgeted for the introduction of SINCOM 2?
- How much would the introduction of another accounting system cost?

'Watt' case: alleged irregularities at the European Court of Auditors

In a letter to the European Ombudsman in April 2002, Robert Watts, an auditor at the European Court of Auditors, made a series of allegations against his institution. These include corruption, favouritism, abuses relating to the allowances system and sexual harassment of subordinates. Watt claims that these abuses are of a structural nature and specific to the Court of Auditors as its Members are not accountable.

Immediately after the European Court of Auditors was informed of the complaints it forwarded them to OLAF.

- Can OLAF already say whether it considers that these allegations are well-founded?
- Has OLAF had an opportunity to speak to the complainant? If not, why not?

Irregularities in Commission representations

From February 1997 to 1998 the Commission representation in Vienna knowingly used a person employed on a work contract for a specific task to provide services in the office; that person subsequently took the Commission to the Vienna Industrial Tribunal claiming higher pay and the claim was upheld.

- Since when did the Commission know about these practices in the Vienna office?
- What disciplinary measures has the Commission taken against the head and deputy head of the office?
- Why was the chairman of the staff council of the Commission's Vienna office initially suspended in May 2001 and later dismissed in February 2002? How high does the Commission put the chances of winning the proceedings for wrongful dismissal brought by the former employees' representative in the Vienna Industrial Tribunal? What financial loss will the European Community incur if it loses the case?

In May 2000 OLAF forwarded a report on its investigation into irregularities in the Commission representation in Stockholm to the Commission and to the Swedish judicial authorities. One month later the Commission started disciplinary proceedings against three officials.

- What was the outcome of these disciplinary proceedings and where are the people concerned now employed?
- What conclusion was reached by the Swedish judicial authorities?

Toth case: conflicts of interest and control systems in the applicant countries

In 2000 there were press reports of alleged cases of fraud in connection with PHARE resources in Slovakia. The official accused, Roland Toth, head of the foreign aid unit was dismissed on 15 March 2001 and the deputy prime minister responsible, Pavol Hamzik, was forced to resign on 5 May 2001.

The Committee on Budgetary Control looked into this case during its visit to Slovakia in June 2001. On that occasion it reached the following conclusions:

- Conflicts of interest in the case of those holding public office are not criminal offences unless they involve members of the government. In other cases they are treated merely as administrative irregularities. This is an incentive to widespread favouritism making it virtually impossible to bring those responsible to justice, not only in the Toth case.
- The prosecution of cases of fraud or corruption is also made more difficult by the fact that the public prosecution service cannot rely directly on the findings of police investigations, but there is a further intermediary level (the so-called investigating officer), between the police and prosecution services. This increases the risk of the suppression of evidence and weakens the protection of those concerned if the prosecution service is brought in only at a very late stage.
- A modern law on the public administration has still not been adopted and this is further delaying the necessary reform of the administrative machine.

In April 2002 the regional investigative authorities at the police department in Bratislava submitted their final report, which shows that the investigations in the Toth case were suspended as the suspicions of fraud and a breach of the relevant criminal law could not be substantiated.

In this connection, it should be pointed out that a similar case was uncovered in Poland last year (ARMA), which reveals similar shortcomings in administrative and control systems.

- What is the Commission's view of the report by the regional investigative authorities of the police department in Bratislava?
- What steps have been taken to investigate the allegations made against Commission staff and the consulting firms paid by the Commission in connection with the case? Has OLAF opened a formal internal investigation, as recommended by the delegation from the Committee on Budgetary Control?
- Can OLAF forward its final investigation reports?
- What measures has the Commission taken to step up financial controls in applicant countries?
- To what extent are different administrative cultures responsible for errors and how can such errors be avoided?
- Can the Commission confirm that the Polish government has reimbursed the misdirected amount of €2.8 million?

- What view should be taken of the further allegations made recently in connection with the implementation of the SAPARD programme in Poland?

Suspicion of fraud and favouritism in the Commission

The suspicion of fraud and favouritism in the previous Commission was one of the reasons why the European Parliament withdrew its confidence in the European Commission in 1999 within the framework of the discharge procedure for the financial year 1996. Allegations included the use of official cars for private purposes and favouritism in the awarding of contracts and the renting of an apartment.

In the resolution on the fight against fraud of 29 November 2001 (A5-0393/2001) the European Parliament took a stance on the outstanding issues, saying that:

'20. (The European Parliament) Notes with incomprehension that the Commission, in spite of an announcement by Vice-President Kinnock on this matter in March 2001, has still not complied with the call Parliament made (in paragraph 14 of its resolution of 4 April 2001 on implementation of the 1998 general budget) for the Commission to appear as joint plaintiff in the PerryLux affair so that it would be able to gain access to the files;

21. Recalls that a former Member of the Commission has been accused:

(a) of irregular conduct as regards the award of several contracts to a firm with which she had connections, shortly before taking up office as a Commissioner;

(b) of having an expensive apartment in Brussels made available free of charge to one of her advisers;

(c) of having contracts for inconsequential studies and research awarded to a German lawyer as cover so that he could visit her office and possibly gain access to and influence sensitive cases (LEUNA affair) with which the Commission was dealing at that time;

22. Points out to the Commission that whilst it might not be possible to take action in respect of such conduct under Belgian criminal law, it can and must be punished as a breach of obligations within the meaning of Article 213 of the EC Treaty; reaffirms therefore the call it made for the European Court of Justice to be invoked where appropriate if it were to be confirmed that Members of the previous Commission had breached the obligations of their office; calls explicitly on the Commission to abandon its wait-and-see approach and to initiate the relevant investigations;'

- What conclusions has OLAF reached in its investigations into the official cars affair? What follow-up measures has OLAF recommended? How has the Commission responded?
- OLAF has passed on the findings of its investigation into the award of contracts and the renting of an apartment to the Belgian judicial authorities. When will OLAF be able to report to the European Parliament's Committee on Budgetary Control on the measures taken by the Belgian judicial authorities?
- When did OLAF hear evidence from the former Commissioner and the former head of her private office concerning the allegations made and what was the outcome?
- Has OLAF established whether the German lawyer was given unauthorised access to Commission files?
- Is the Commission now appearing as a joint plaintiff in the PerryLux-case not only in Luxembourg but also, finally, in judicial proceedings in Belgium? Is it correct that not a single suspect has so far been questioned in the PerryLux case?

- What steps have the Belgian judicial authorities taken since OLAF's investigation report was passed on to them?
- Does the Commission intend to initiate proceedings for neglect of duty within the meaning of Article 213 of the EC Treaty?

Whistle blowing in the European Union institutions

The legal basis for whistle blowing is to be found in the Staff Regulations for officials and other servants of the Union and the decisions of the institutions, in particular of Commission decisions relating to the procedure.

Articles 11, 12, 17, 21, 24 and 90 establish the Community interest as the yardstick for staff conduct and require staff to behave with discretion, loyalty and to observe confidentiality. In return, the institution has a duty to support and ensure the welfare of officials and other staff.

In 1999 the European Parliament, the Council of Ministers and the European Commission approved a model decision (L 136, 31 May 1999, p. 15) covering the duty of officials and other staff to report irregularities, the duty to cooperate with OLAF, informing interested parties, information on the closing of internal investigations with no further action taken and the waiver of immunity. This model decision has now been implemented by all the institutions, with the exception of the European Central Bank and the European Investment Bank.

The Commission has adopted two decisions concerning the terms and conditions for internal investigations (L 149, 16 June 1999, p. 57) and the reporting of serious fraud (C (2002) 845, adopted on 4 April 2002). The provisions require any official or servant to report to their head of service or the Anti-Fraud Office (OLAF) without delay possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Community and require services to cooperate with OLAF investigations. The decisions go on to say that officials or servants must in no way suffer inequitable or discriminatory treatment on the part of the Commission as a result of having communicated information, provided that they acted in good faith.

Officials and other servants who provide information to bodies outside the Commission and OLAF should similarly not suffer any disadvantage provided that they have fulfilled the following conditions: (a) they considered the information to be substantially true, (b) they had previously disclosed the same information to the European Anti-Fraud Office or to their own institution and had allowed a reasonable period of time for the Office or that institution to take appropriate action, and (c) they had notified the President of the Court of Auditors, the Council of the European Union or the European Parliament or the European Ombudsman.

In a proposal for a regulation COM (2002) 213 final, the Commission proposes that this decision should be incorporated into the Staff Regulations. Under the proposal, information could be disclosed only to the Presidents of the EP, the Council, the Court of Auditors, the Commission or the Ombudsman if conditions (a) and (b) above were met.

This decision and more recent cases in which information was disclosed to third parties raise a number of questions:

- From whom and under what procedure will whistle blowers receive protection and help (possible conflicts of interest between the institution as the accused party and its responsibility for staff welfare)?

- Should whistle blowers be guaranteed anonymity on principle?
- Should OLAF take on a more far-reaching role? Can OLAF do so without being independent?
- Should an outside confidential unit (lawyer?) be set up so that alleged irregularities can be investigated objectively and whistle blowers protected?
- How can it be ascertained whether the information has been obtained in a lawful manner?
- What is understood by a reasonable period of time to take appropriate action?
- What is to be understood by disclosure and what is the purpose of this condition?
- How are control bodies to be informed about reports of irregularities and the measures taken?
- What attitude should the Committee on Budgetary Control take towards whistle blowers?

Your rapporteur would like to raise a number of issues that arise from the latest OLAF report on internal investigations:

- What is happening with the closed cases from UCLAF's IRENE-Archive? On what basis were these cases closed and why is it not necessary to follow-up the findings?
- Why does it frequently take longer than one year to make an initial evaluation of any suspicions and why is it that many investigations cannot be closed even after more than two years?
- What prospect is there of these investigations being concluded successfully?
- How will OLAF proceed in cases where it has not been possible to close the investigations because too much time has elapsed between the start of the investigations and their conclusion?
- What does OLAF mean by follow-up in the context of this report?
- How is OLAF notified of further developments in a case when the findings of its investigations have been passed on to the relevant judicial, law enforcement or disciplinary authorities?
- Have the suggestions made by the Monitoring Committee and OLAF been taken into account in the changes to the Financial Regulation?
- What is the explanation for the fact that in recent years there has been a sharp fall in the number of cases in which OLAF investigations are conducted in cooperation with national authorities?
- Is it true that OLAF's methods of investigation were recently criticised by the European Ombudsman?