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on the Annual Report 2011 on the protection of the EU's Financial Interests -
Fight against fraud
(2012/2285(INI))

Committee on Budgetary Control

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Annual Report 2011 on the protection of the EU's Financial Interests - Fight against fraud

(2012/2285(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 from the Commission to the Council and the European Parliament entitled ‘Protection of the European Union’s financial interests – Fight against fraud – Annual Report 2011’ (COM(2012)0408) and its accompanying documents (SWD(2012) 227 final, SWD(2012) 228 final, SWD(2012) 229 final and SWD(2012) 230 final)¹,
- having regard to OLAF’s 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 2011, 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)⁴,
- having regard to the Commission’s proposal for a directive of the European Parliament and of the Council on the fight against fraud to the Union’s financial interests by means of criminal law (COM(2012)0363),
- having regard to the proposal for a regulation of the European Parliament and of the Council on the Hercule III programme to promote activities in the field of the protection of the European Union’s financial interests (COM(2011)0914),
- having regard to Article 325(5) of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union⁵,

¹ http://ec.europa.eu/anti_fraud/documents/reports-commission/2011/report_en.pdf

² http://ec.europa.eu/anti_fraud/documents/reports-olaf/2011/olaf_report_2011_en.pdf

³ OJ C 344, 12.11.2012, p. 1.

⁴ OJ C 264, 8.9.2011, p. 15.

⁵ OJ L 298, 26.10.2012, 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 10 May 2012 on the protection of the European Union's financial interests – Fight against fraud – Annual Report 2010²,
 - having regard to its resolution of 15 September 2011 on the EU's efforts to combat corruption³, its declaration of 18 May 2010 on the Union's efforts in combating corruption⁴, and the communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee entitled "Fighting corruption in the EU" (COM(2011)0308),
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinions of the Committee on Foreign Affairs and the Committee on Agriculture and Rural Development (A7-0197/2013),
- A. whereas the EU and the Member States share responsibility for the protection of the Union'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 Union budget, as well as for the collection of own resources, inter alia in the form of VAT and customs duties;
- C. whereas the Commission has recently undertaken a number of important initiatives on anti-fraud policy measures;

General comments

1. Stresses that countering fraud and any other illegal activities affecting the financial interests of the Union is the obligation of the Commission and the Member States, enshrined in the Treaty on the Functioning of the European Union;
2. Recalls that it is equally important to ensure the protection of those financial interests both at the level of collection of the EU's resources and at the level of expenditure;
3. Welcomes the report from the Commission to the European Parliament and the Council on the Protection of the European Union's financial interests - Fight against fraud - Annual Report 2011 ('the Commission's annual report'); regrets, however, that the report is limited to the data reported by the Member States; points out that Member States use different definitions for similar types of offence and do not all collect similar and detailed statistical data following common criteria, which makes it difficult to collect reliable and comparable statistics at EU level; regrets, therefore, that it is not possible to evaluate the

¹ OJ L 312, 23.12.1995, p. 1.

² Texts adopted, P7_TA(2012)0196.

³ Texts adopted, P7_TA(2011)0388.

⁴ Texts adopted, P7_TA(2010)0176.

actual 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 has been repeatedly requested by Parliament; urges, therefore, that standard evaluation criteria for irregularities and fraud be laid down in all Member States and combined with appropriate penalties for those guilty of infringement;

4. 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 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 or irregularities;
5. Notes that, according to the Commission's annual report, in 2011 1 230 irregularities were reported as fraudulent and that their financial impact decreased by 37 % in comparison with 2010 and amounted to EUR 404 million; acknowledges that cohesion policy and agriculture remain the two main areas suffering from the highest level of fraud with a respective estimated financial impact of EUR 204 million and EUR 77 million; questions, however, whether this decrease reflects the actual state of affairs in terms of fraudulent activities or is, rather, a sign that the supervisory and control systems in the Member States are deficient;
6. Calls on the Commission to closely monitor the effectiveness of supervisory and control systems in the Member States and to ensure that the information provided on the level of irregularities in the Member States reflects the true situation;
7. Stresses that the situation of Member States not transmitting data in a timely manner or providing inaccurate data has been recurring for many years; emphasises that it is impossible to make comparisons and an objective assessment of the scale of fraud in the Member States of the European Union; points out that the European Parliament, the Commission and OLAF are unable to perform their functions properly regarding assessment of the situation and the submission of proposals and repeats that such a situation cannot be tolerated; calls on the Commission to assume full responsibility for recovering unduly paid funds for the EU budget; encourages the Commission to establish uniform reporting principles in all Member States and to ensure the collection of comparable, reliable and adequate data;
8. Stresses that the European Union needs to step up efforts to strengthen the principles of eGovernment which would set the conditions for greater transparency in public finances; draws attention to the fact that electronic transactions, unlike cash transactions, are referenced and it therefore becomes more difficult to commit fraud and easier to identify suspected cases of fraud; encourages Member States to lower their thresholds for mandatory payments other than cash;
9. Calls on the Commission to consider the link between Member State reporting on fraud and the lack of a harmonised criminal law setting out a common definition of fraudulent behaviour and offences in the field of protecting the Union's financial interests; points out that the criminal law systems of the Member States have been harmonised to only a limited extent;

10. Emphasises that 233 investigative reports have been published on cases of fraud related to the misuse of EU funds over a period of 5 years within the 27 Member States, with the UK, Slovakia, Germany, Bulgaria, Spain Romania and Estonia being the Member States with the most active reporting¹; is of the opinion that investigative journalism has played a major role in exposing fraud that affects the Union's financial interests and represents a valuable source of information to be considered by OLAF and law enforcement or other relevant authorities in Member States;
11. Recalls that in its resolution of 6 April 2011 on the protection of the Communities' financial interests – Fight against fraud – Annual report 2009², Parliament called for the introduction of mandatory national management declarations duly audited by the national audit office and consolidated by the Court of Auditors; regrets that no further steps have been taken in that direction;
12. Deems it of utmost importance that fraudulent behaviour is followed up properly on a European level; is astounded by the fact that the Director-General of OLAF has introduced sector-specific thresholds regarding the likely financial impact in the Investigation Policy Priorities for 2012 and 2013 so that cases in which the likely financial impact lies below the threshold are treated as subordinate and are unlikely to be opened at all; notes that the threshold in the customs sector is EUR 1 000 000, for SAPARD funds it is EUR 100 000, for agricultural funds it is EUR 250 000, for the structural funds it is EUR 500 000, for the ERDF it is EUR 1 000 000, for centralised expenditure and external aid it is EUR 50 000, and in the EU staff sector it is EUR 10 000; is of the opinion that this is unacceptable; urges the Director-General to change the current practice and abandon the threshold approach for prioritising the workload immediately;
13. Calls for corruption with an impact on the financial interests of the European Union to be considered as fraud as regards the application of Article 325(5) TFEU and to be included in the Commission's annual report on the protection of the European Union's financial interests - Fight against fraud;
14. Points out that the conviction rate in cases involving offences against the Union's budget varies considerably across the European Union from one Member State to another, ranging from 14 % to 80 %; underlines that harmonisation of the Member States' criminal law systems remains limited, while judicial cooperation needs reinforcement; calls for ambitious European legislation and improved cooperation and coordination between all Member States in order to ensure that severe sanctions are imposed on fraudsters and to deter fraudulent behaviour;
15. Acknowledges that the amount to be recovered following irregularities detected in 2011 reached EUR 321 million, of which EUR 166 million has already been recovered by the Member States; notes in this respect that in 2011 the recovery rate for Traditional Own Resources (TOR) improved to 52 % in comparison with 46 % in 2010;

¹ European Parliament, Study on "Deterrence of fraud with EU funds through investigative journalism in EU-27", 2012, p.71.

² OJ C 296 E, 2.10.2012, p. 40.

16. Takes into consideration the OLAF report 2011 and its overview of progress on judicial actions in actions created between 2006-2011, according to which more than half of actions are pending a judicial decision¹; is of the opinion that special attention should be paid to cases related to fraud in customs, which is among the areas with the highest rates of systemic corruption in Europe;
17. Notes with concern that, owing to the ongoing economic crisis, the Commission does not envisage an increase in EU funding for law enforcement authorities in Member States, with a view to better protection of EU financial interests, as part of its new comprehensive EU strategy; considers that this strategy should be a coherent and comprehensive response aimed at decreasing smuggling, increasing the revenue collected and thus ensuring that such investment pays off in the future;

Revenue – own resources

18. Recalls that the proper collection of VAT and customs duties directly influences both the economies of the Member States and the EU budget, and that improving the systems for collecting revenue and ensuring that all transactions are formally recorded and brought out of the shadow economy should be given the highest priority by all Member States;
19. Emphasises in this context that tax evasion and avoidance represent a major risk for the EU public finances; stresses that an estimated EUR 1 trillion in public money is lost due to tax fraud and tax avoidance every year in the EU, which represents a rough yearly cost of EUR 2 000 for every European citizen; points out that the average amount of tax lost in Europe today exceeds the total amount that Member States spend on healthcare, and it amounts to more than four times the amount spent on education in the EU;
20. Stresses that, owing to the mechanism of balancing the EU budget with GNI-based revenue, every euro lost to customs and VAT fraud has to be paid for by the EU's citizens; finds it unacceptable that those economic operators who engage in fraudulent activities are, in fact, subsidised by the EU taxpayer; emphasises that fighting tax evasion should be given the highest priority by both the Commission and the Member States; calls on the Member States to make their tax systems simpler and more transparent because tax fraud is too often facilitated by complex and opaque tax systems;
21. Calls on the Commission to strengthen its coordination with the Member States in order to collect reliable data on the customs and VAT gap in the respective countries and to report on a regular basis to Parliament in that regard;
22. Welcomes the fact that that 98 % under TOR is recovered without particular problems, but notes variations in Member States' performance in recovery of the remaining 2 %²;

Customs

¹ The OLAF report 2011, table 6, p. 22.

² Study commissioned by Parliament on 'Administrative performance differences between Member States recovering Traditional Own Resources of the European Union'.

23. Emphasises that, as far as TOR are concerned, proceeds from customs duties are an important source of income for Member State governments, which keep 25 % to cover the cost of collection; reiterates that the 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 enjoyed by economic operators who avoid duties over those who comply with their obligations in this respect; stresses that the heart of the problem lies in the undeclared imports or those that have escaped customs surveillance;
24. Is deeply concerned at the Court of Auditors' conclusion that there are serious deficiencies in national customs supervision¹;
25. Stresses that the Customs Union is an area of exclusive competence of the EU and that it is therefore the Commission's obligation to put in place all measures necessary to ensure that the customs authorities in the Member States act as if they were one, and to monitor their implementation;
26. Proposes to look into the possibility of setting up a team of European customs officials who specialise in combating fraud, which would work alongside national customs authorities;
27. Recalls that 70 % of customs procedures in the EU are simplified; is deeply worried by the findings of the Court of Auditors in its Special Report No 1/2010, which revealed serious deficiencies in that area, pointing to poor or poorly documented audits, little use of automated data-processing techniques, excessive use of simplification practices and ex post audits of poor quality;
28. Emphasises that modern IT solutions and direct access to data are crucial for the effective functioning of the Customs Union; finds the existing solutions unsatisfactory; is seriously concerned, in particular, by the finding in the First Eurofisc² Activity Report for 2011, published in May 2012, that in most Member States tax administrations have no direct access to customs data and that automated cross-checking with tax data is therefore not possible;
29. Deplores the fact that the Commission and the Member States have been unable to ensure timely implementation of the Modernised Customs Code (MCC); stresses that the financial benefits estimated to have been forgone owing to the delay in implementing the new customs code amount to some EUR 2.5 billion in annual operational savings in compliance costs at full regime, and to as much as EUR 50 billion in the expanded international trade market³; calls on the Commission to make an evaluation of the cost of postponing full application of the MCC, quantifying the budgetary consequences of such postponement;

¹ Annual Report of the Court of Auditors on the implementation of the budget concerning the financial year 2011, together with the institutions' replies, OJ C 344, 12.11.2012, p. 1.

² Network for the swift exchange of targeted information between Member States established on the basis of Regulation 904/2010.

³ European Parliament study: 'Roadmap to Digital Single Market', available at:

<http://www.europarl.europa.eu/document/activities/cont/201209/20120914ATT51402/20120914ATT51402EN.pdf>

30. Stresses the need further to intensify the fight against customs-related fraud and welcomes the creation of the Anti-Fraud Transit Information System (ATIS), a central repository designed to keep all the relevant authorities informed of movements of goods in transit within the EU;
31. Given the success of the joint customs operations carried out in 2011 between the EU and its Member States and some non-EU countries, encourages the regular conduct of such operations to target the smuggling of sensitive goods and fraud in certain high-risk sectors; points out that joint customs operations conducted in 2011 resulted in the seizure of 1.2 million cigarettes and the detection of tax and customs fraud worth over EUR 1.7 million;

VAT

32. Recalls that the correct operation of customs procedures has direct consequences for the calculation of VAT; deplores the deficiencies in this area which have been found by the Court of Auditors; is deeply worried, in particular, by the Court's finding in its Special Report No 13/2011 that the application of customs procedure 421 alone accounted in 2009 for extrapolated losses of approximately EUR 2 200 million² with regard to the seven Member States which were audited, representing 29 % of the VAT theoretically applicable on the taxable amount of all imports made under customs procedure 42 in 2009 in those seven Member States;
33. Is deeply concerned that VAT fraud is widespread; points out 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; stresses that initiatives in the field of direct taxation require a unanimous decision of the Council; deplores the fact that two important initiatives aimed at combating VAT fraud, i.e. the proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism against VAT fraud (COM(2012)0428) and the proposal for a Council Directive amending Directive 2006/112/EC as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud (COM(2009)0511), are currently blocked in Council³;
34. Points out the need for real-time connection of business transactions with the tax authorities in order to combat tax evasion;
35. Believes that the elimination of unrecorded transactions can contribute to reducing the amounts of VAT that go uncollected;

Cigarette smuggling

¹ Regime used by an importer in order to obtain a VAT exemption where the imported goods are to be transported to another Member State and where VAT is due in the Member State of destination.

² Of which EUR 1 800 million were incurred in the seven selected Member States and EUR 400 million in the 21 Member States of destination of the imported goods in the sample.

³ Answers from Commissioner Šemeta to the questionnaire submitted by the CONT committee - available at: <http://www.europarl.europa.eu/committees/en/cont/publications.html?id=CONT00004#menuzone>

36. Recognises that the smuggling of highly taxed goods causes significant losses of revenue to the budgets of the EU and its Member States, and that direct loss in customs revenue as a result of cigarette smuggling alone is estimated to amount to more than EUR 10 billion a year;
37. Emphasises that cigarette smuggling serves as an important source of financing for internationally structured criminal organisations, and highlights, therefore, the importance of strengthening the external dimension of the Commission's action plan to fight against the smuggling of cigarettes and alcohol along the EU Eastern border, which provides support for enforcement capacity in neighbouring countries, offering technical assistance and training, raising awareness, stepping up operational cooperation such as Joint Customs Operations, sharing intelligence and enhancing international cooperation; stresses, in particular, the importance of collaboration between the Member States, Russia and the Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) for the implementation of the targeted actions proposed in the action plan;
38. Recognises that the eastern border represents a particularly vulnerable geographical area in this context; welcomes the publication by the Commission of the action plan to fight against cigarette and alcohol smuggling along the EU's eastern border;
39. Welcomes OLAF's activities in the implementation of the above action plan; welcomes, in particular, the successful outcome of 'Operation Barrel', which involved the cooperation of 24 Member States, Norway, Switzerland, Croatia, and Turkey, as well as the active support of the Taxation and Customs Union DG, Europol, Frontex and the World Customs Organisation, and which resulted in the seizure of 1.2 million cigarettes;
40. Welcomes the adoption on 12 November 2012 of the Protocol on elimination of the illicit trade in tobacco products at the fifth session of the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control;

Expenditure

41. Recalls that 94 % of the EU budget is invested in the Member States, and that in these difficult economic times it is vitally important that all money is spent well; considers, therefore, that fighting fraud against the EU budget across all funding programmes in order to facilitate the recovery of lost funds must be a priority, so as to ensure that the EU budget is spent on its main objectives such as creating jobs and growth;
42. Deplores that most irregularities in EU spending are committed at national level;
43. Emphasises that greater transparency allowing for proper scrutiny is key in order to detect fraud; recalls that in previous years Parliament has urged the Commission to take action to ensure one-stop transparency as regards the beneficiaries of EU funds; regrets that this measure has not been implemented; therefore reiterates its call on the Commission to design measures to increase the transparency of legal arrangements and a system which lists all beneficiaries of EU funds on the same website, regardless of who administers the funds, and is based on standard categories of information to be provided by all Member States in at least one working language of the Union; calls on the Member States to cooperate with the Commission and provide it with full and reliable information regarding

the beneficiaries of the EU funds managed by Member States; invites the Commission to evaluate the system of 'shared management' and provide Parliament with a report as a matter of priority;

Agriculture

44. Welcomes the fact that the Netherlands, Poland and Finland have improved their compliance in terms of consistent reporting, and that the overall compliance rate for the EU-27 is around 93 %, representing an increase in comparison with the 2010 rate of 90 %;
45. Stresses, however, that since at least 20 million cases of petty corruption have been reported in the public sector in the EU, it is obvious that the phenomenon also has a spillover effect in the areas of public administration in the Member States (and with regard to the corresponding politicians) that have responsibility over the management of EU funds and other financial interests¹; points out that the number of irregularities reported as fraudulent in agriculture in 2011 – 139 in total – does not reflect the actual situation; points out that the Commission, addressing the Member States, expressed its concern that the fraud figures reported might not be entirely reliable – something the Commission itself acknowledges by emphasising the low number of fraud cases reported in some Member States; calls for further cooperation and best-practice-sharing in the Member States in order to respond to and report cases of fraud to the Commission;
46. Remains concerned by the suspiciously low fraud rates reported by France, Germany, Spain and the United Kingdom, especially considering their size and the amount of financial support received; regrets that in its annual report the Commission did not offer a definitive answer to the question of whether the low suspected fraud rates reported by France, Germany, Spain and the UK are the result of non-compliance with reporting principles or of the ability of the control systems put in place in these Member States to detect fraud; calls on the aforementioned Member States to provide detailed and thorough explanations of their low rates of reported suspected fraud as soon as possible;
47. Notes that the low number of fraud cases reported in some Member States could be explained by the fact that cases recognised as fraud in one Member State may not necessarily be considered unlawful in another, and therefore urges the Commission to identify and provide clarification in such circumstances, standardising the criteria for defining fraud and forwarding them to all the Member States;
48. Calls on the Commission to check the fraud reporting system and to harmonise the practices used in the Member States to respond to and report fraud to the Commission; takes the view that the aim is to make investigations more efficient, while at the same time helping to clarify the procedural rights of the persons concerned;
49. Points out that in order to prevent the fraudulent use of CAP funds in future, not only should there be a statistical approach to the problem, but also an analysis of the mechanisms behind fraud, particularly in serious cases; likewise, considers that the

¹ Special Committee on Organised Crime, Corruption and Money Laundering (CRIM) 2012-2013, Thematic Paper on Corruption, Areas of systemic corruption in the public administration of the Member States and measures in order to counter its negative effect for the EU, November 2012, p.2

Member States should report any irregularities they have detected to the Commission, and that irregularities reported as fraudulent should be the subject of stringent analysis;

50. Points out that, under an amended Article 43 of the updated horizontal regulation, the Commission should be empowered to reduce or suspend the monthly or interim payments to a Member State if one or more of the key components of the national control system in question do not exist or are not effective owing to the gravity or persistence of the deficiencies found, or if irregular payments are not being recovered with the necessary diligence, and if:
- (a) either the deficiencies referred to above are of a continuous nature and have been the reason for at least two implementing acts pursuant to Article 54 of that regulation, excluding from Union financing the relevant expenditure of the Member State concerned; or
 - (b) the Commission concludes that the Member State concerned is not in a position to implement the necessary remedial measures in the immediate future, in accordance with an action plan with clear progress indicators to be established in consultation with the Commission;
51. Expresses concern that the outstanding accumulated EAGF amount still to be recovered from beneficiaries by the end of the 2011 financial year stood at EUR 1.2 billion;
52. Calls on the Commission to take all necessary steps to put in place an effective system of recovery taking into account the developments under the current reform and, in next year's report on the protection of the EU's financial interests, to inform Parliament of the progress made;
53. Emphasises that the reintroduction of a 'petty offence' procedure should go ahead, and that recovery under Article 56(3) of the updated horizontal regulation need not be pursued where the costs already incurred combined with the likely costs of recovery exceed the amount to be recovered; calls on the Commission, in the interests of administrative simplification at local level, to deem this condition to have been met if the amount to be recovered from the beneficiary in the context of a single payment does not exceed EUR 300; points out that reducing the administrative burden by not pursuing the recovery of small and very small amounts enables the national and regional authorities to investigate more serious irregularities more efficiently and to take appropriate action against them;
54. Points out that, in response to audits performed on conformity clearance procedures in the area of agriculture, the Commission carried out financial corrections for a total of EUR 822 million; points out, furthermore, that the total value of corrections decided was EUR 1 068 million; notes with concern that in 2011 the recovery rate for Agriculture and Rural Development decreased to 77 % in comparison with 85 % in 2010;
55. Emphasises that attention must be paid to ways of optimising reimbursement procedures, which are still relatively lengthy;

Cohesion policy

56. Welcomes the fact that in 2011 the Commission completed financial corrections for EUR 624 million out of EUR 673 million and that the recovery rate for Cohesion Policy improved to 93 % in comparison with 69 % in 2010; emphasises, nevertheless, that the cumulative rate of implementation of financial corrections stands only at 72 % and that EUR 2.5 billion has still to be recovered;
57. Calls on the Commission and the Member States to simplify the relevant rules on public procurement and the procedural rules for management of the Structural Funds;
58. Notes that certain large Member States such as France have reported no irregularities as being fraudulent in the area of cohesion policy in 2011; calls on the Commission to investigate the reasons for this and to determine whether the supervisory and control systems in Member States reporting no fraud are functioning effectively;
59. Welcomes the fact that France has been able to finalise the implementation of the Irregularity Management System ('IMS');

External relations, aid and enlargement

60. Notes with concern that, in chapter 7 ('External relations, aid and enlargement') of the Annual Report of the European Court of Auditors on the implementation of the budget for the year 2011, the Court pointed to errors in final payments that had not been detected by Commission controls, and concluded that the controls applied by the Commission are not fully effective; calls on the Commission to follow the recommendations of the Court of Auditors and the discharge opinion with a view to improving its monitoring mechanisms in order to ensure the efficient and appropriate expenditure of funds;
61. Suggests that the findings and recommendations of the Court of Auditors pertaining to EU external actions, and in particular to EU missions, be taken into account when reviewing their progress against the objectives set or considering the extension of their mandate, in order to ensure the effective and appropriate use of the resources provided; notes the observation concerning certain weaknesses relating to procurement procedures and tendering in European External Action Service (EEAS) actions and calls on the EEAS to correct them in due time;
62. Welcomes anti-fraud policies at EU level that include a higher degree of cooperation with third countries, such as the Anti-Fraud Transit Information System (to which European Free Trade Association countries have access), Mutual Administrative Assistance (MAA) and related anti-fraud provisions involving third countries, and the Joint Customs Operations that took place in 2011, including Fireblade (with Croatia, Ukraine and Moldova) and Barrel (with Croatia, Turkey, Norway and Switzerland); welcomes the results of these actions and their financial impact;
63. Bearing in mind that, in a globalised world, fraud is increasingly being committed across international borders, stresses the importance of having a strong legal framework with clear commitments from the partner countries, and welcomes the inclusion of anti-fraud provisions in new or renegotiated bilateral agreements, including the draft agreements with Afghanistan, Kazakhstan, Armenia, Azerbaijan and Georgia and, in a more streamlined version, with Australia, and calls on the Commission and the EEAS to

develop a standard clause whereby these provisions are included in all new or renegotiated bilateral and multilateral agreements with third countries;

64. Takes note of the decrease in the number and the financial impact of irregularities detected with regard to the pre-accession funds examined in the 2011 report; welcomes the fact that the rate of recovery of EU resources unduly paid as part of pre-accession assistance has improved significantly, but notes that it still reaches only 60 %; acknowledges, at the same time, that significant differences exist among beneficiaries in terms of the irregularities reported, being mainly a measure of the stage of adoption and implementation of the Irregularity Management System (IMS); calls, therefore, on the Commission to continue to monitor closely the implementation of the IMS in all countries benefiting from the instrument; supports the Commission's call for Croatia, in particular, fully to implement the IMS system, a call that has yet to be acted upon even though training and support have been provided, and its call for the Former Yugoslav Republic of Macedonia to implement the system; Notes that EUR 26 million have been recovered from the cases reported in 2011;
65. Welcomes the Commission's objective of supporting Croatia and the Former Yugoslav Republic of Macedonia in their efforts to implement the IMS;

OLAF

66. Reiterates that it is necessary to continue to strengthen the independence, effectiveness and efficiency of OLAF, including the independence and functioning of the OLAF Supervisory Committee; is of the opinion that this is all the more reason to strengthen the independence of the Supervisory Committee, and that the Committee should be empowered with the necessary means to fulfil its role effectively;
67. Welcomes the progress made in the negotiations on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EURATOM) No 1074/1999 (COM(2011)135); considers that this regulation should be adopted as soon as possible; is, however, convinced that in the light of the latest developments surrounding OLAF and the way its investigations were conducted, the recommendations of the Supervisory Committee set out in Annex 3 to its 2012 Annual Activity Report should be taken into consideration;
68. Notes that the future reform mentioned above will, inter alia, enable OLAF to conclude administrative arrangements with the relevant authorities in third countries and with international organisations, thereby strengthening its capacity to tackle fraud in areas pertaining to the EU's external policy dimension; welcomes the anti-fraud strategy (COM(2011)0376), inter alia as regards the inclusion of improved anti-fraud provisions in spending programmes under the new multiannual financial framework for 2014-2020; notes with concern, however, the Commission's conclusion that there are insufficient deterrents against criminal misuse of the EU budget in Member States; welcomes the Commission proposals to address this problem and recommends that beneficiary third countries should also be involved as fully as possible;

69. Is deeply concerned about the reporting of the OLAF Supervisory Committee; finds it unacceptable that OLAF has undertaken investigative measures that go beyond those explicitly listed in Articles 3 and 4 of the OLAF Regulation ((EC) No 1073/1999) currently in force, and beyond those contained in the future text of the reform; notes that the aforementioned investigative measures include: preparing the content of a telephone conversation for a third party to have with a person subject to the investigation; being present during such a conversation and having it recorded; and requesting national administrative authorities to provide OLAF with information not directly held by those authorities and which could be considered to relate to the right to respect for private life and communications or to the subsequent use, collection and storage of such information by OLAF;
70. Is shocked by such actions, given that, according to the jurisprudence of the European Court of Human Rights, the use of such methods can be seen as ‘interference by a public authority’ with the exercise of the right to respect for ‘private life’, ‘correspondence’ and/or ‘communications’, which is required to be ‘in accordance with the law’ (Article 7 of the Charter of Fundamental Rights of the European Union, which corresponds to Article 8 of the European Convention of Human Rights);
71. Is deeply concerned about the findings of the Supervisory Committee that OLAF has not established a prior legality check for investigative measures other than those specifically listed in OLAF’s Instructions to Staff on Investigative Procedures (ISIP); notes that this endangers respect for the fundamental rights of, and procedural guarantees relating to, the people concerned;
72. Notes that breaches of essential procedural requirements during preparatory investigations could affect the legality of the final decision taken on the basis of investigations by OLAF; assesses this as potentially high-risk, since breaches would thus incur the legal liability of the Commission; calls on OLAF to tackle this shortcoming immediately by assigning appropriately qualified judicial experts to the task of carrying out prior verifications within an appropriate timeframe;
73. Deems the direct participation of OLAF’s Director-General in some investigative tasks, inter alia interviews of witnesses, as unacceptable; points out that the Director-General thereby enters a conflict of interest, since, under Article 90(a) of the Staff Regulations and Article 23(1) of the ISIP he is the authority who receives complaints against OLAF’s investigations and decides whether or not appropriate action is taken with regard to any failure to respect procedural guarantees; calls on OLAF’s Director-General to abstain from any direct involvement in investigative tasks in future;
74. Is worried that OLAF has not always conducted a thorough assessment of incoming information in relation to the notion of sufficiently serious suspicion; considers such an assessment essential in order to safeguard and consolidate OLAF’s independence vis-à-vis institutions, bodies, offices and agencies and governments where one of these is at the origin of the referral;
75. Is of the opinion that the Supervisory Committee should always be informed by OLAF when OLAF receives a complaint relating to fundamental rights and procedural guarantees;

76. Expects further information to be provided on the points mentioned in the annual report of the Supervisory Committee; urges full transparency in relation to all the points mentioned;
77. Regrets the fact that between 2006 and 2011 Member States took judicial action following OLAF investigations in only 46 % of cases; is of the opinion that this is insufficient and reiterates its call on the Commission and the Member States to ensure the effective and timely implementation of the recommendations made once cases have been investigated by OLAF;
78. Considers that Member States should be obliged to report on an annual basis on the follow-up to cases referred by OLAF to their judicial authorities, including on the criminal and financial sanctions imposed in such cases;
79. Is concerned about the remarks contained in the Supervisory Committee's annual report stating that there are no data on the implementation of OLAF's recommendations in the Member States; considers this situation to be unsatisfactory and calls on OLAF to ensure that Member States provide relevant and detailed data on the implementation of OLAF's recommendations and that the European Parliament is kept informed;
80. Acknowledges that, following OLAF's investigations, EUR 691.4 million was recovered in 2011, of which EUR 389 million relates to a single case in the Calabria region of Italy involving structural funds programmes for the financing of roadworks;
81. Calls for potential fraud or irregularities which have less financial impact – in areas such as customs (where the threshold below which OLAF does not take action is EUR 1 million) and the structural funds (where the threshold is EUR 500 000) – to be reported to the Member States and for the latter to be provided with information and given the opportunity to follow national anti-fraud procedures;

The Commission's initiatives in the area of anti-fraud activity

82. Welcomes the fact that, in response to Parliament's request, the Commission is currently developing a methodology to measure the costs of corruption in public procurement concerning EU funds;
83. Welcomes the initiative in the Commission's 2012 work programme to better protect the European Union's financial interests and the communication to that effect on the protection of the European Union's financial interests by criminal law and administrative investigations; stresses that this initiative aims to toughen sanctions against criminal activities, including corruption, and to strengthen the financial protection of the European Union;
84. Welcomes the Commission's new Anti-Fraud Strategy (COM(2011)0376 and the Internal Action Plan (SEC(2011)0787) for its implementation, adopted in June 2011, which aim at improving the prevention and detection of fraud at EU level; calls in this respect on the Commission to report on and evaluate the anti-fraud strategies established within each Directorate-General;

85. Welcomes the Commission's proposal for a directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law (COM(2012)0363) – the proposal for the PIF Directive), which is to replace the Convention on the Protection of the Financial Interests of the European Communities and its accompanying protocols;
86. Welcomes, in particular, the fact that the definition of the Union's financial interests in the proposal for the PIF Directive encompasses VAT, in accordance with the judgment of the European Court of Justice, which confirmed¹ that there is a direct link between, on the one hand, the collection of Value Added Tax revenue in compliance with the applicable Union law, and on the other, the availability to the Union budget of the corresponding Value Added Tax resources, since any lacuna in collection of the first potentially causes a reduction in the second;
87. Welcomes the proposal for a regulation of the European Parliament and of the Council on the Hercule III programme to promote activities in the field of the protection of the European Union's financial interests (COM(2011)0914), which will be the successor to the Hercule II programme, the mid-term evaluation of which proved its added value;
88. Notes that although the Commission is taking all these positive initiatives, most policies currently being pursued against corruption are passive; calls on the directorates-general of the Commission to strengthen fraud prevention in their respective areas of responsibility;
89. Looks forward to the submission by the Commission of the legislative proposal on the establishment of the European Public Prosecutor's Office, which will be responsible for investigating, prosecuting and bringing to justice those who damage assets managed by or on behalf of the EU, as announced by the Commission for June 2013;

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90. 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.

¹ Judgment of 15 November 2011 in C-539/09, Commission v Germany (OJ C 25, 28.1.2012, p. 5).

8.5.2013

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Budgetary Control

on the Annual report 2011 on the Protection of EU's financial interests – Fight against fraud
(2012/2285(INI))

Rapporteur: Renate Weber

SUGGESTIONS

The Committee on Foreign Affairs calls on the Committee on Budgetary Control, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Takes note of the decrease in the number and the financial impact of irregularities detected with regard to the pre-accession funds examined in the 2011 report; welcomes the fact that the rate of recovery of EU resources unduly paid as part of pre-accession assistance has improved significantly, but notes that it still reaches only 60 %; acknowledges, at the same time, that significant differences exist among beneficiaries in terms of the irregularities reported, being mainly a measure of the stage of adoption and implementation of the Irregularity Management System (IMS); calls, therefore, on the Commission to continue to monitor closely the implementation of the IMS in all countries benefiting from the instrument; supports the Commission's call for Croatia, in particular, fully to implement the IMS system, a call that has yet to be acted upon even though training and support have been provided, and its call for the Former Yugoslav Republic of Macedonia to implement the system;
2. Notes with concern that, in chapter 7 ('External relations, aid and enlargement') of the Annual Report of the European Court of Auditors on the implementation of the budget for the year 2011, the Court pointed to errors in final payments that had not been detected by Commission controls, and concluded that the controls applied by the Commission are not fully effective; calls on the Commission to follow the recommendations of the Court of Auditors and the discharge opinion with a view to improving its monitoring mechanisms in order to ensure the efficient and appropriate expenditure of funds;

3. Welcomes the initiative to reform the European Anti-Fraud Office (OLAF), one of the main objectives of which is to strengthen cooperation with third countries; notes that this reform will, inter alia, enable OLAF to conclude administrative arrangements with third countries' competent authorities and with international organisations, thereby strengthening its capacity to tackle fraud in areas pertaining to the EU's external policy dimension, and looks forward to the rapid conclusion of the current legislative procedure aimed at revising the 1999 regulation and giving the office the framework it now needs to operate with maximum effectiveness; welcomes the anti-fraud strategy (COM(2011)0376), inter alia as regards the inclusion of improved anti-fraud provisions in spending programmes under the new multiannual financial framework for 2014-2020; notes with concern, however, the Commission's conclusion that there are insufficient deterrents against criminal misuse of the EU budget in Member States, welcomes the Commission proposals to address this problem and recommends that beneficiary third countries should also be involved as fully as possible;
4. Stresses the need further to intensify the fight against customs-related fraud and welcomes the creation of the Anti-Fraud Transit Information System (ATIS), a central repository designed to keep all the relevant authorities informed of movements of goods in transit within the EU;
5. Welcomes the action plan aimed at fighting the smuggling of cigarettes and alcohol along the EU's eastern border, and notes that this illegal activity is leading to significant financial losses for the EU budget and for the budgets of the Member States (estimated at EUR 10 billion per year); emphasises that this activity serves as an important source of financing for internationally structured criminal organisations, and highlights, therefore, the importance of strengthening the external dimension of the aforementioned action plan, which provides for supporting enforcement capacity in neighbouring countries, offering technical assistance and training, raising awareness, stepping up operational cooperation, such as Joint Customs Operations (JCO), sharing intelligence and enhancing international cooperation; stresses, in particular, the importance of collaboration between the Member States, Russia and the Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) for the implementation of the targeted actions proposed in the action plan;
6. Notes with concern that, owing to the ongoing economic crisis, the Commission does not envisage an increase in EU funding for law enforcement authorities in Member States, with a view to better protection of EU financial interests, as part of its new comprehensive EU strategy; considers that this strategy should be a coherent and comprehensive response aimed at decreasing smuggling, increasing the revenue collected and thus ensuring that such investment pays off in the future;
7. Welcomes anti-fraud policies at EU level that include a higher degree of cooperation with third countries, such as the Anti-Fraud Transit Information System (to which European Free Trade Association countries have access), Mutual Administrative Assistance (MAA) and related anti-fraud provisions involving third countries, and the Joint Customs Operations (JCO) that took place in 2011, including Fireblade (with Croatia, Ukraine and Moldova) and Barrel (with Croatia, Turkey, Norway and Switzerland); welcomes the results of these actions and their financial impact;

8. Stresses – bearing in mind that, in a globalised world, fraud is increasingly being committed across international borders – the importance of having a strong legal framework with clear commitments from the partner countries and welcomes the inclusion of anti-fraud provisions in new or renegotiated bilateral agreements, including the draft agreements with Afghanistan, Kazakhstan, Armenia, Azerbaijan and Georgia and, in a more streamlined version, with Australia, and calls on the Commission and the European External Action Service (EEAS) to develop a standard clause whereby these provisions are included in all new or renegotiated bi- and multilateral agreements with third countries;
9. Suggests that the findings and recommendations of the Court of Auditors pertaining to EU external actions, and in particular to EU missions, be taken into account when reviewing their progress against the objectives set or considering the extension of their mandate, in order to ensure the effective and appropriate use of the resources provided; notes the observation concerning certain weaknesses relating to procurement procedures and tendering in EEAS actions and calls on the EEAS to correct them in due time.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	7.5.2013
Result of final vote	+: 48 -: 0 0: 1
Members present for the final vote	Pino Arlacchi, Elmar Brok, Mark Demesmaeker, Marietta Giannakou, Andrzej Grzyb, Richard Howitt, Anna Ibrisagic, Liisa Jaakonsaari, Nicole Kiil-Nielsen, Evgeni Kirilov, Andrey Kovatchev, Eduard Kukan, Krzysztof Lisek, Sabine Lösing, Willy Meyer, Francisco José Millán Mon, María Muñoz De Urquiza, Annemie Neyts-Uyttebroeck, Kristiina Ojuland, Ria Oomen-Ruijten, Pier Antonio Panzeri, Alojz Peterle, Bernd Posselt, Cristian Dan Preda, Fiorello Provera, Libor Rouček, Tokia Saïfi, José Ignacio Salafranca Sánchez-Neyra, György Schöpflin, Marek Siwiec, Sophocles Sophocleous, Laurence J.A.J. Stassen, Charles Tannock, Eleni Theocharous, Inese Vaidere, Geoffrey Van Orden, Boris Zala
Substitute(s) present for the final vote	Charalampos Angourakis, Elena Băsescu, Emine Bozkurt, Knut Fleckenstein, Elisabeth Jeggle, Emilio Menéndez del Valle, Marietje Schaake, Indrek Tarand, Traian Ungureanu, Ivo Vajgl
Substitute(s) under Rule 187(2) present for the final vote	José Manuel Fernandes, Teresa Jiménez-Becerril Barrio

26.3.2013

OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT

for the Committee on Budgetary Control

on the Annual Report 2011 on the Protection of EU's Financial Interests – Fight against fraud (2012/2285(INI))

Rapporteur: Janusz Wojciechowski

SUGGESTIONS

The Committee on Agriculture and Rural Development calls on the Committee on Budgetary Control, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Notes that in 2011 Member States reported 139 irregularities as fraudulent out of a total of 2 395 (5.8 %); points out that the number of irregularities reported as fraudulent decreased in comparison with the 2010 reporting year, although the financial impact increased from EUR 69 million in 2010 to EUR 77 million in 2011; notes that this increase can be explained by two major individual cases that were reported, one worth EUR 39 million and the other EUR 26 million;
2. Notes that, in relation to the European Agricultural Guarantee Fund (EAGF), Member States recovered EUR 173 million from beneficiaries during the 2011 financial year; points out that, as a result, by the end of the 2011 financial year, 44 % of debts from the EAGF dating from 2007 onwards had already been recovered by the Member States;
3. Points out that under an amended Article 43 of the updated horizontal regulation the Commission should be empowered to reduce or suspend the monthly or interim payments to a Member State if one or more of the key components of the national control system in question do not exist or are not effective owing to the gravity or persistence of the deficiencies found or if irregular payments are not being recovered with the necessary diligence, and if:
 - (a) either the deficiencies referred to above are of a continuous nature and have been the reason for at least two implementing acts pursuant to Article 54, excluding from Union financing the relevant expenditure of the Member State concerned; or

- (b) the Commission concludes that the Member State concerned is not in a position to implement the necessary remedial measures in the immediate future, in accordance with an action plan with clear progress indicators, to be established in consultation with the Commission;
4. Points out that the Commission, addressing the Member States, expressed its concern that the fraud figures reported might not be entirely reliable – something the Commission itself acknowledges by emphasising the low number of fraud cases reported in some Member States; calls for further cooperation and best practice sharing in the Member States in order to respond to and report cases of fraud to the Commission;
 5. Notes that the low number of fraud cases reported in some Member States could be explained by the fact that cases recognised as fraud in one Member State may not necessarily be considered unlawful in another, and therefore urges the Commission to identify and provide clarification in such circumstances, standardising the criteria for defining fraud and forwarding them to all the Member States;
 6. Calls on the Commission to check the fraud reporting system and to harmonise the practices used in the Member States to respond to and report fraud to the Commission; takes the view that the aim is to make investigations more efficient, while at the same time helping to clarify the procedural rights of the persons concerned;
 7. Points out that in order to prevent the fraudulent use of CAP funds in future, not only should there be a statistical approach to the problem, but also an analysis of the mechanisms behind fraud, particularly in serious cases; likewise, considers that the Member States should report any irregularities they have detected to the Commission, and that irregularities reported as fraudulent should be the subject of stringent analysis;
 8. Expresses concern that the outstanding accumulated EAGF amount still to be recovered from beneficiaries by the end of the 2011 financial year stood at EUR 1.2 billion;
 9. Points out that, in response to audits performed on conformity clearance procedures in the area of agriculture, the Commission carried out financial corrections for a total of EUR 822 million; points out, furthermore, that the total value of corrections decided was EUR 1 068 million, meaning that the implementation rate stood at 77 %; notes that in 2010 the recovery rate was higher, at 85 %;
 10. Emphasises that attention must be paid to ways of optimising reimbursement procedures, which are still relatively lengthy;
 11. Calls on the Commission to take all necessary steps to put in place an effective system of recovery taking into account the developments under the current reform and, in next year's report on the protection of the EU's financial interests, to inform Parliament of the progress made;
 12. Emphasises that the reintroduction of a 'petty offence' procedure should go ahead, and that recovery under Article 56(3) of the updated horizontal regulation need not be pursued where the costs already incurred combined with the likely costs of recovery exceed the amount to be recovered; calls on the Commission, in the interests of

administrative simplification at local level, to deem this condition to have been met if the amount to be recovered from the beneficiary in the context of a single payment does not exceed EUR 300; reducing the administrative burden by not pursuing the recovery of small and very small amounts enables the national and regional authorities to investigate more serious irregularities more efficiently and to take appropriate action against them.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	25.3.2013
Result of final vote	+: 32 -: 0 0: 2
Members present for the final vote	Eric Andrieu, José Bové, Luis Manuel Capoulas Santos, Michel Dantin, Paolo De Castro, Albert Deß, Herbert Dorfmann, Hynek Fajmon, Mariya Gabriel, Iratxe García Pérez, Julie Girling, Martin Häusling, Peter Jahr, Elisabeth Jeggle, Jarosław Kalinowski, Elisabeth Köstinger, George Lyon, Mairead McGuinness, Rareş-Lucian Niculescu, Wojciech Michał Olejniczak, Marit Paulsen, Britta Reimers, Ulrike Rodust, Alfreds Rubiks, Giancarlo Scottà, Czesław Adam Siekierski, Sergio Paolo Francesco Silvestris, Csaba Sándor Tabajdi, Marc Tarabella, Janusz Wojciechowski
Substitute(s) present for the final vote	María Auxiliadora Correa Zamora, Spyros Danellis, Jean-Paul Gauzès, Christa Kläß, Astrid Lulling, Jacek Włosowicz, Milan Zver

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	28.5.2013
Result of final vote	+: 24 -: 0 0: 0
Members present for the final vote	Inés Ayala Sender, Zigmantas Balčytis, Zuzana Brzobohatá, Andrea Češková, Ryszard Czarnecki, Martin Ehrenhauser, Jens Geier, Ingeborg Gräßle, Bogusław Liberadzki, Monica Luisa Macovei, Jan Mulder, Eva Ortiz Vilella, Monika Panayotova, Crescenzo Rivellini, Paul Rübig, Petri Sarvamaa, Bart Staes, Georgios Stavrakakis, Michael Theurer
Substitute(s) present for the final vote	Philip Bradbourn, Monika Hohlmeier, Karin Kadenbach, Véronique Mathieu Houillon, Markus Pieper, Barbara Weiler