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DRAFT REPORT

on protection of the European Union's financial interests - combating fraud -
annual report 2018
(2019/2128(INI))

Committee on Budgetary Control

Rapporteur: Joachim Kuhs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on protection of the European Union's financial interests - combating fraud - annual report 2018 (2019/2128(INI))

The European Parliament,

- having regard to Articles 310(6) and 325(5) of the Treaty on the Functioning of the European Union (TFEU),
- having regard to its resolutions on previous annual reports of the Commission and of the European Anti-Fraud Office (OLAF),
- having regard to the report from the Commission to the European Parliament and the Council of 11 October 2019 entitled ‘30th Annual Report on the Protection of the European Union’s financial interests – Fight against fraud – 2018’ (COM(2019)0444) and the accompanying staff working documents (SWD(2019)0361, SWD(2019)0362, SWD(2019)0363, SWD(2019)0364 and SWD(2019)0365),
- having regard to the OLAF Report 2018¹ and the 2018 Activity Report of the OLAF Supervisory Committee,
- 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 entitled ‘Commission Anti-Fraud Strategy: enhanced action to protect the EU budget’ (COM(2019)0196),
- having regard to the ‘action plan’ (SWD (2019)0170) and the ‘fraud risk assessment’ (SWD (2019)171) accompanying the communication entitled ‘Commission Anti-Fraud Strategy: enhanced action to protect the EU budget’ (COM(2019)0196),
- having regard to the annual report of the European Court of Auditors on the implementation of the budget concerning the financial year 2018, together with the institutions’ replies²,
- having regard to the Commission proposal of 5 May 2018 for a regulation on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018)0324),
- having regard to the introduction of standard provisions on protecting the EU’s financial interests within all the Commission’s MFF proposals,
- having regard to Opinion No 8/2018 of the European Court of Auditors of 22 November 2018 on the Commission’s proposal of 23 May 2018 amending OLAF Regulation 883/2013 as regards cooperation with the European Public Prosecutor’s Office and the effectiveness of OLAF investigations (COM (2018)0338),

¹ OLAF, ‘Nineteenth report of the European Anti-Fraud Office, 1 January to 31 December 2018’, 2019.

² OJ C 340, 8.10.2019, p.1.

- having regard to Opinion No 9/2018 of the European Court of Auditors concerning the proposal for a regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme,
- having regard to special report No 26/2018 of the European Court of Auditors of 10 October 2018 entitled ‘A series of delays in customs IT systems: what went wrong?’,
- having regard to special report No 01/2019 of the European Court of Auditors entitled ‘Fighting fraud in EU spending: action needed’,
- having regard to special report No 06/2019 of the European Court of Auditors entitled ‘Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination’,
- having regard to special report No 12/2019 of the European Court of Auditors entitled ‘E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved’,
- having regard to Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)³ and to the mid-term review thereof, published by the Commission on 2 October 2017 (COM(2017)0589),
- having regard to 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 (PIF Directive),⁴
- having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (EPPO)⁵,
- 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 Union and repealing Council Regulation (EC, Euratom) No 1605/2002⁶,
- having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012⁷,
- having regard to the report of 4 September 2019 commissioned by the Commission entitled ‘Study and Reports on the VAT Gap in the EU-28 Member States: Final

³ OJ L 248, 18.9.2013, p. 1.

⁴ OJ L 198, 28.7.2017, p. 29.

⁵ OJ L 283, 31.10.2017, p.1.

⁶ OJ L 298, 26.10.2012, p.1.

⁷ OJ L 193, 30.7.2018, p. 1.

Report’,

- having regard to the report of May 2015 commissioned by the Commission entitled ‘Study to quantify and analyse the VAT Gap in the EU Member States: 2015 report’ and to the Commission communication of 7 April 2016 on an action plan on VAT entitled ‘Towards a single EU VAT area – Time to decide’ (COM(2016)0148),
- having regard to the Commission’s EU Anti-corruption Report of 3 February 2014 (COM(2014)0038),
- having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC⁸,
- having regard to the Commission communication of 6 June 2011 entitled ‘Fighting Corruption in the EU’ (COM(2011)0308),
- having regard to its resolution of 14 February 2017 on the role of whistle-blowers in the protection of EU’s financial interests⁹,
- having regard to the progress report of 12 May 2017 on the implementation of the Commission communication entitled ‘Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – A comprehensive EU strategy (COM(2013)0324 of 6 June 2013)’ (COM(2017)0235),
- having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (EPPO),¹⁰
- having regard to the report coordinated by OLAF entitled ‘Fraud in Public Procurement – A collection of red flags and best practices’, published on 20 December 2017, and the OLAF handbook of 2017 on ‘Reporting of irregularities in shared management’,
- having regard to special report No 19/2017 of the European Court of Auditors entitled ‘Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU’,
- having regard to the judgement of the Court of Justice of the European Union in Case C-105/14: criminal proceedings against Taricco and others¹¹,
- having regard to the judgement of the Court of Justice of the European Union in Case C-42/17: criminal proceedings against M.A.S. and M.B.¹²,
- having regard to the judgment of the General Court in Case T-48/16: Sigma Orionis SA

⁸ OJ L 94, 28.3.2014, p. 65.

⁹ OJ C 252, 18.7.2018, p. 56.

¹⁰ OJ L 283, 31.10.2017, p. 1.

¹¹ Judgement of the Court of Justice (Grand Chamber) of 8 September 2015 in Case C-105/14, Criminal proceedings against Ivo Taricco and others, 105/14, ECLI:EU:C:2015:555.

¹² Judgement of the Court of Justice (Grand Chamber) of 5 December 2017 in Case C-42/17, Criminal proceedings against M.A.S. and M.B., 42/17, ECLI:EU:C:2017:936.

v European Commission¹³,

- having regard to the adoption of Council Regulation (EU) 2018/541 on administrative cooperation and the fight against fraud in the field of VAT to increase the capacity of the Member States to address the most damaging VAT fraud schemes and diminish the VAT gap,
 - having regard to its resolution of 25 October 2018 on ‘Protection of EU’s financial interests – recovery of money and assets from third countries in fraud cases’¹⁴,
 - having regard to the communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘A Modern Budget for a Union that Protects, Empowers and Defends. The multiannual financial framework for 2021-2027’ (COM(2018)0321),
 - having regard to its resolution of 4 October 2018 on fighting customs fraud and protecting EU own resources¹⁵,
 - having regard to the continuing implementation of the Hercule III programme¹⁶,
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A9-0000/2020),
- A. whereas de jure the Member States and the Commission have shared responsibility for implementing 74 % of the Union’s budget for 2018; whereas de facto, however, Member States spend those resources and the Commission is responsible for their supervision through its control mechanisms;
- B. whereas sound public spending and the protection of the EU’s financial interests should be key elements of EU policy in order to increase the confidence of citizens by ensuring that their money is used properly and effectively;
- C. whereas Article 310(6) of the TFEU states that ‘the Union and the Member States, in accordance with Article 325, shall counter fraud and any other illegal activities affecting the financial interests of the Union’; whereas Article 325(2) of the TFEU states that ‘Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests’; whereas Article 325(3) of the TFEU states that ‘the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud’ and that ‘they shall organise, together with the Commission, close and regular cooperation between the competent authorities’; whereas under Article 325(4) of the TFEU the European Court of Auditors must be consulted on any measures to be adopted

¹³ Judgment of the General Court of 3 May 2018 in Case T-48/16, Sigma Orionis SA v European Commission.

¹⁴ Texts adopted, P8_TA(2018)0419.

¹⁵ Texts adopted, P8_TA(2018)0384.

¹⁶ Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme), OJ L 84, 20.3.2014, p. 6.

by the legislator in the fields of the prevention of and fight against fraud affecting the EU's financial interests;

- D. whereas achieving good performance with simplification processes involves regularly assessing inputs, outputs, outcomes and impacts through performance audits;
- E. whereas according to Article 83 of the TFEU corruption is one of the particularly serious crimes with a cross-border dimension;
- F. whereas the diversity of legal and administrative systems in the Member States needs to be adequately addressed in order to overcome irregularities and combat fraud; whereas the Commission should therefore step up its efforts to ensure that the fight against fraud is implemented effectively and produces more tangible and more satisfactory results;
- G. whereas VAT is an important revenue source for national budgets and whereas VAT-based own resources constituted 11.9 % of the total EU budget in 2018;
- H. whereas systematic and institutionalised cases of corruption in certain Member States seriously harm the EU's financial interests while also representing a threat to the rule of law; whereas the Special Eurobarometer Report 470 on corruption, published in December 2017, stated that overall perceptions and attitudes towards corruption remained stable compared to 2013, which indicates that no concrete results have been demonstrated in terms of improving the trust of EU citizens in their institutions;

Irregularities detected and reported as fraudulent and detrimental to the EU budget

1. Observes the permanent modification of fraud methods and new patterns of fraud, with a strong transnational dimension and with cross-border fraud schemes (i.e. fraud in the promotion of agricultural products; shell companies; evasion of custom duties through the undervaluation of textiles and footwear entering the Union and going through customs clearance in several Member States; e-commerce; and counterfeiting);
2. Notes that the total number of fraudulent and non-fraudulent irregularities reported in 2018 (11 638 cases) was 25 % lower than in 2017 (15 213 cases) and that the value involved remained stable in comparison with the previous year (EUR 2.5 billion in 2018, as against EUR 2.58 billion in 2017);
3. Points out that not all irregularities are fraudulent and that a clear distinction must be drawn among the errors committed;
4. Recalls that the number of fraudulent irregularities and the associated amounts are not a direct indicator of the level of fraud affecting the EU budget;
5. Notes that the number of fraudulent irregularities reported in 2018 (1 152 cases) remained stable as compared with 2017; regrets that the financial amounts involved increased by a significant 183 %, mostly related to cohesion policy expenditure;
6. Takes into consideration the fact that the number of non-fraudulent irregularities registered in 2018 showed a fall of 27 % (10 487 cases), while the financial amounts involved decreased by 37 % to EUR 1.3 billion;

7. Considers it advisable for Member States to cooperate more closely as regards exchanges of information, in order both to improve their data collection and enhance the effectiveness of their controls;
8. Finds worrisome weaknesses revealed in the verification of beneficiaries' registered offices; regrets that to reduce the administrative burden on Member State authorities, EU law obliges them only to report fraudulent or non-fraudulent irregularities involving more than EUR 10 000 in EU money; recalls that for agriculture and the European Social Fund there are a large number of payments below the EUR 10 000 threshold and, as a consequence, potentially fraudulent payments below the reporting threshold which are not reported;

Revenue – own resources fraud

9. Regrets the rise of 1 % in the number of fraudulent registered cases (to 473 in 2018), as well as the rise of 116 % in the financial amounts involved;
10. Expresses its concern that according to the Commission's 'fast estimates' statistics, the VAT gap in 2018 amounted to approximately EUR 130 billion, which represents approximately 10 % of total expected VAT revenue, and that the Commission estimates that intra-Community VAT fraud cases cost around EUR 50 billion annually; regrets the loss of 5 billion EUR yearly coming from supplies of low-value goods from third countries;
11. Takes into consideration the modification of Council Regulation 904/2010 on administrative cooperation and the fight against fraud in the field of value added tax¹⁷, resulting in strengthened capacity of national tax administrations to check cross-border supplies;
12. Calls for measures to fully ensure the data protection of economic operators under investigation listed in the new Transaction Network Analysis (TNA) software;
13. Welcomes the sharing of customs procedure 42/63 data between national tax authorities, allowing cross-checking of VAT numbers, value of the imported goods, type of commodities, etc. by the Member State of import and the customer's Member State;
14. Stresses the dominant importance of prioritising the development of National Anti-Fraud Strategies (NAFSs) by the Member States over the supranational approach imposed at EU level;
15. Stresses the seriousness of the current situation concerning fraud involving failure to pay VAT, in particular so-called 'carousel fraud' which results in the non-payment of VAT to the relevant tax authorities by the missing trader, even if it has been deducted from the customer;
16. Takes into consideration that solar panels were the goods most affected by fraud and irregularities in monetary terms in 2018, as was also the case in 2017 and 2016;
17. Finds it worrisome that the undervaluation of textiles and shoes imported from China

¹⁷ OJ L268, 12.10.2010, p. 1.

occurs as a major instance of fraud; recognises the cross-border e-commerce trade of goods as a considerable source of tax fraud in the EU, especially in the case of smaller goods;

18. Notes that in December 2018 the Commission presented a new action plan to fight the illegal tobacco trade, based mainly on operational law enforcement measures;
19. Recalls once again that a combination of different detecting methods (release controls, post-release controls, inspections by anti-fraud services and others) is most efficient for detecting fraud, and that the efficiency of each method depends on the Member State concerned, the efficient coordination of its administration, and the ability of the relevant Member States services to communicate with each other;
20. Notes with dismay that the average recovery rate for cases reported as fraudulent over the years 1989-2018 was around 37 %;
21. Repeats its call on the Commission to report annually the amount of EU own resources recovered, following the recommendations made by OLAF, and to communicate the amounts still to be recovered;

Expenditure fraud

22. Welcomes the decrease of 3 % in the number of cases (679 fraudulent irregularities in 2018) reported as fraudulent expenditure; regrets, however, the opposite trend occurring in the financial amounts involved (EUR 1.032 million), resulting in an increase of 198 %;
23. Notes the decrease of 4 % in registered non-fraudulent irregularities, as well as that of 48 % in the financial amounts involved (EUR 844.9 million);
24. Stresses the importance of respective management and close surveillance of the grants distributed under the programmes of the ESIFs (the European Structural and Investment Funds, i.e. the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, the European Maritime and Fisheries Fund, the AMIF (Asylum, Migration and Integration Fund), the FEAD (Fund for European Aid to the Most Deprived), and the EGF (European Globalisation Adjustment Fund)), in the interests of efficient non-inflationary budgeting of the Funds and fraud avoidance;
25. Notes that, with regard to two of the policies most affected by fraud, 249 fraudulent irregularities were registered in 2018 (-6 %) for the common agricultural policy, involving a total of EUR 63.3 million (+10 %), and 363, again in 2018 (+5 %), for cohesion policy, the total amount involved being EUR 959.6 million (+199 %);
26. Regrets that for the CAP the ‘fraud frequency level’ (FFL) stands at 10 %, while the ‘fraud amounts level’ is about 23 %; notes with dismay that the ‘fraud detection rate’ (FDR) is only 0.11 %, while the ‘irregularity detection rate’ is 0.37 %;
27. Similarly regrets that the ‘fraud detection rate’ for cohesion policy is 0.86 % while the ‘irregularity detection rate’ is about 0.34 %;

The Commission Anti-Fraud Strategy

28. Notes the implementation of the 2019 Commission Anti-Fraud Strategy (CAFS), adjusted to two significant additions to EU anti-fraud legislation adopted in 2017, i.e. the PIF Directive, which sets stricter common standards for Member States' criminal legislation to protect the EU's financial interests, and the regulation establishing the European Public Prosecutor's Office (EPPO);
29. Notes that only twelve Member States have implemented the new PIF directive for the time being, another eight having implemented it partially and the others not at all yet;
30. Recalls once again that the new CAFS covers: (i) fraud (including VAT fraud), corruption and misappropriation affecting the EU's financial interests, as defined in Articles 3 and 4 of the PIF Directive; (ii) other criminal offences affecting the Union's financial interests, e.g. offences linked to an abuse of procurement procedures where they affect the EU budget; (iii) irregularities as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/9523 (insofar as they are intentional but not already captured by the criminal offences referred to above); and (iv) serious breaches of professional obligations by staff or members of the Union's institutions and bodies, as referred to in Article 1(4) of the OLAF regulation and in the second subparagraph of Article 2(1) of Commission Decision (EC, ECSC, Euratom) No 352/1999 establishing the European Anti-Fraud Office¹⁸;
31. Welcomes the new priorities of the new CAFS, such as improving the understanding of fraud patterns, fraudsters' profiles and systemic vulnerabilities relating to fraud affecting the EU budget, as well as the optimisation of coordination, cooperation and workflows for the fight against fraud, in particular among Commission services and executive agencies;
32. Notes that only eleven Member States have adopted a national anti-fraud strategy;
33. Calls for the faster closure of investigations, especially if an investigation cannot be closed within twelve months after it has been opened;

EPPO establishment progress

34. Notes the appointment of an interim Administrative Director in 2018;
35. Recalls that by the end of October 2019 five Member States had not joined the EPPO; recalls, however, that under recital 9 of Regulation 2017/1939 they can join at any time this cross-border cooperation;
36. Stresses that the selection procedure of the European Chief Public Prosecutor, initiated in 2018, registered delays, in view of a disagreement between the European Parliament and the Council on the preferred candidate;
37. Notes with appreciation the slowing down of the competences granting process of the European Public Prosecutor's Office to cross-border terrorist crimes; notes the

¹⁸ OJ L 136, 31.5.1999, p. 20.

Areas for improvement

38. Points out two areas for improvement: firstly, to improve fraud risk assessment and fraud risk management, the Commission needs a more comprehensive analytical capability so that it can scan data on fraud patterns, fraudsters' profiles and vulnerabilities in EU internal control systems; secondly, to ensure consistency and to optimise efficiency and effectiveness, decentralised assessment and management of fraud risks need to be coordinated and monitored by a strong review system;
39. Highlights the connection between corruption and fraud in EU spending; regrets that the Commission no longer deems it necessary to publish the anti-corruption report;
40. Calls on the newly elected Commission to devise a Europe-wide strategy for the proactive avoidance of conflict of interests for all financial actors implementing the EU budget, as one of its overarching priorities;
41. Considers that further initiatives are needed for measuring the customs gap and developing an effective methodology for such measuring, at least for its main elements;
42. Considers also that customs controls should be adapted to new fraud risks and to the rapid expansion in cross-border trade facilitated by e-commerce as well as by paperless business;
43. Observes that the expansion of e-commerce is a serious challenge for tax authorities, e.g. the absence of a seller's taxable identification in the EU and the registration of VAT declarations well below the real value of the declared transactions;
44. Is concerned about the risk of undervaluation of supplies of e-commerce goods from third countries; welcomes the steps taken to solve the problem of e-commerce VAT fraud;
45. Invites OLAF to inform Parliament on the outcome of its investigations related to e-commerce imports of low-value garments; calls on the Commission and the Member States to monitor e-commerce transactions involving sellers based outside the EU who declare no VAT (for example by undue use of the 'sample' statute), or deliberately underestimate the goods' value in order to avoid VAT altogether or reduce the amount due;
46. Acknowledges the need to address certain shortcomings of the current EU anti-fraud enforcement system, in particular with regard to the collection of accurate data on fraudulent and non-fraudulent irregularities;
47. Finds it astonishing that the Commission does not have comprehensive and comparable information on the detected fraud level in EU spending;
48. Calls on the Commission to ensure the effectiveness of the IT system known as 'Irregularity Management System' (IMS) managed by OLAF, so that information on criminal investigations related to fraud affecting the EU's financial interests is reported in a timely manner by all competent authorities;

49. Reminds the Member States that it is in their own interest to cooperate fully with the Commission;
50. Notes that, in the area of shared management, the Commission does not have the power to initiate the exclusion of unreliable economic operators when Member State authorities do not do so; calls on the Member States to promptly report fraudulent irregularities in the IMS and to make the best use of the Early Detection and Exclusion System;
51. Insists that Member States make effective use of the fraud prevention tool offered by the ARACHNE database, by submitting timely data and exploiting the opportunities that big data offers to prevent the fraudulent and irregular use of EU funds;
52. Highlights the role of the Member States in the implementation of administrative cooperation agreements, the effectiveness of controls, the enforcement of data collection, and the monitoring of traders' compliance with the regulatory framework;

International cooperation

53. Takes into account the entry in force on 1 September 2018 of the EU-Norway agreement on administrative cooperation and recovery assistance in the area of VAT;
54. Welcomes the organisation of the annual seminar (held in Bosnia and Herzegovina in June 2018) for partner authorities in candidate and potential candidate countries on best practices in successful fraud investigations, as well as the workshop held in Ukraine in July 2018 with the participation of all relevant anti-fraud services, in the framework of the EU-Ukraine Association Agreement;
55. Welcomes the signing by OLAF of two administrative cooperation arrangements. with the African Development Bank and with the Office of the Inspector General of the United States Agency for International Development (USAID) respectively;
56. Points out the problems surrounding third-country enforcement as regards implementation of the Framework Convention on Tobacco Control ('FCTC Protocol');
57. Takes note of the expansion of the role of the anti-fraud coordination services (AFCOS) in fostering the effectiveness of the various channels for cross-border cooperation between national authorities, in particular for tackling customs fraud;
58. Invites the Member States to increase their exchange of information about possible fraudulent companies and transactions through the Eurofisc network;

Transparency rules and cross-cutting provisions

59. Anticipates that the adoption of the 'omnibus regulation' will drastically reduce the fraud rates for the agriculture and cohesion policies;
60. Recognises the importance of Article 61 of the Financial Regulation and its redefinition of conflict of interests for all financial actors implementing the EU budget in the various management modes, including at national level;
61. Welcomes the clear legal basis enabling OLAF to access bank account information

through the assistance of national competent authorities, following the revision of Regulation No 883/2013;

62. 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 European Anti-Fraud Office (OLAF) and the OLAF Supervisory Committee.