COMBATING FRAUD AND PROTECTING THE EU’S FINANCIAL INTERESTS

The European Union’s action in the field of budgetary control is based on two principles: ensuring that the EU’s budget is properly spent, and protecting the Union’s financial interests and combating fraud.

LEGAL BASIS

— Articles 287 and 325 of the Treaty on the Functioning of the European Union (TFEU);
— Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, Part III;
— Rules of Procedure of the European Parliament, Title II, Chapter 6, Rules 92a, 93 and 94; Title V, Chapter 1, Rule 121, Chapter 2, Rule 125 and Chapter 4, Rule 132; Annex IV;
— Article 83(2) of the Treaty on the Functioning of the European Union on the protection of the European Union’s financial interests;
— EPPO: Article 86 of the Treaty on the Functioning of the European Union on the establishment of a European Public Prosecutor’s Office.

OBJECTIVES

For citizens to be confident that their money is being used properly, the European Union needs to protect its financial interests. It is also important to monitor and supervise the work of the European Anti-Fraud Office (OLAF) and to support its action to combat fraud and irregularities in the implementation of the EU budget.

BACKGROUND

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

In recent years the number of legislative texts and recommendations on the protection of the Union’s financial interests has grown. These texts essentially seek to achieve the following objectives:

— Improving OLAF’s governance and strengthening procedural safeguards in investigations — by gradually establishing a European Public Prosecutor’s Office (EPPO);

— Reforming Eurojust[1] and improving the protection of the Union’s financial interests;

— Guaranteeing the protection of these interests by means of criminal law and administrative investigations, through an integrated policy to safeguard taxpayers’ money and through the Commission’s anti-fraud strategy[2].

Important communications were also published in 2012 and 2013:

— An Action Plan to strengthen the fight against tax fraud and tax evasion[3] in December 2012;


— ‘Application of net financial corrections on Member States for agriculture and cohesion policy’ in December 2013[5].

Two directives were also adopted in 2013:

— On the common system of VAT concerning an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud; and

— On a quick reaction mechanism against VAT fraud[6].

— Other important texts included:

— A proposal for a directive on the fight against fraud to the Union’s financial interests by means of criminal law[7];

— The Commission’s EU Anti-Corruption Report[8];

— The Commission communication of 7 April 2016 on an action plan on VAT[9].

More recently, in spring 2018, with a view to the new multiannual financial framework (2021-2027), the Commission adopted a proposal for a new EU anti-fraud programme, which is essentially designed to replicate and improve the Hercule III programme.

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(2014-2020), and combine it with the Anti-Fraud Information System (AFIS) and the Irregularity Management System (IMS), which are both already managed by OLAF.

A. Anti-fraud measures by OLAF

The European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations independently of the Commission. To follow up on the regulations on OLAF investigations Parliament, the Council and the Commission signed an interinstitutional agreement on internal investigations on 25 May 1999. This agreement stipulated that each institution should establish common internal rules to ensure that OLAF’s investigations run smoothly. Some of those rules, now incorporated into the Staff Regulations of Officials of the European Union, require staff to cooperate with OLAF, and provide a degree of protection for officials who disclose possible fraud or corruption. Reform of OLAF was first mooted in 2003. Finally, after about 10 years of discussions and negotiations, the trilogue stakeholders (Parliament, the Council and the Commission) agreed a compromise with significant improvements which makes OLAF effective, efficient and accountable, while safeguarding its investigative independence.

In November 2008, Parliament adopted the Gräßle report by an overwhelming majority. This report substantially amended the Commission’s original proposal, leading subsequently to the adoption of the current regulation[10] in 2013, which was amended in July 2016.

The new text makes substantial improvements, in particular by providing a clearer definition of the legal framework for anti-fraud investigations. It also includes definitions of ‘irregularity’, ‘fraud, corruption and any other illegal activity affecting the financial interests of the Union’, and the concept of ‘economic operator’. The Regulation also contains clear references to specific investigative measures under other EU regulations (thus improving coordination between legal instruments in the area concerned), as well as references to the Charter of Fundamental Rights. During OLAF investigations the following rights are also safeguarded under the Regulation: the right to defence and procedural guarantees of persons concerned by a matter under investigation by OLAF, the rights of witnesses and whistleblowers, and the right of access to records and other relevant documentation.

Furthermore, there are provisions on specific requirements for Member States, such as the requirement to share relevant information with OLAF on cases of fraud involving EU funds.

Lastly, a new interinstitutional procedure was established which allows all the institutions to hold transparent discussions on best practices, outcomes, and outstanding issues which undermine the effectiveness of anti-fraud operations. This means that for the first time Parliament can discuss combating fraud in Member States with the Council.

Parliament has also called for improvements to OLAF’s governance through the continual revision and consolidation of its core investigative processes.

Note that Article 325 TFEU requires close and regular cooperation between Member States and the Commission, and also allows for specific Council measures to afford equivalent and effective protection of the EU’s financial interests in the Member States.

B. Strengthening anti-fraud mechanisms

At Parliament’s request, the Commission adopted major initiatives on strategic anti-fraud measures. However, in view of the scale of fraud, tax avoidance and corruption in the EU, Parliament has called for an integrated approach, including strategies for fighting fraud and corruption by means of effective legal measures throughout the Union, particularly at a time of budgetary constraints.

Parliament has also supported the Commission’s Action Plan to step up the fight against tax fraud[11] and tax evasion, while taking the view that the Commission and the Member States should continue to give absolute priority to this fight. This would entail the development of a strategy for improved and multidimensional cooperation and coordination among the Member States themselves, as well as between the Member States and the Commission. Particular attention should also be paid to the development of mechanisms for prevention, early detection and customs transit monitoring – the latter being an area still affected by the highest rates of systemic corruption in Europe. Finally, Parliament has taken the view that the major European stakeholders should be more active internationally and work to establish standards of cooperation based chiefly on the principles of transparency, good governance and exchange of information.

Parliament has also underlined that greater transparency allows proper scrutiny, and is thus key to detecting fraud. In previous years it urged the Commission to take action to ensure complete transparency for all beneficiaries of EU funds in the Member States by publishing a list of all beneficiaries on the Commission’s website. It has also called on the Member States to cooperate with the Commission and provide full and reliable information on the beneficiaries of the EU funds they manage.

C. New European anti-fraud policy and programmes

Parliament’s view is that as corruption has an impact on the financial interests of the EU, it should be deemed fraud under Article 325(5) TFEU, and included in the Commission’s annual report on the protection of the European Union’s financial interests and the fight against fraud.

Parliament welcomed the Commission’s first report on anti-corruption policy in the EU published in February 2014, which noted that corruption affected all Member States but to differing degrees, and was costing the EU economy EUR 120 billion per year. Parliament supported all the Commission’s suggestions for enabling enhanced exchanges of existing good practice, and identifying new and relevant measures to be taken at EU level. Equally Parliament has endorsed the principle that European citizens require guarantees of total integrity and transparency in public spending, especially given the current challenges arising from the economic and financial crisis.

[11]Fraud is a deliberate unlawful act, which may constitute a criminal offence, while an irregularity is a failure to comply with a rule.
D. Directive on the fight against fraud and the protection of the EU’s financial interests

Member States were required to implement Directive (EU) 2017/1371 on the fight against fraud to the Union’s financial interests by means of criminal law transposed into their national laws (‘PIF Directive’) by 6 July 2019. The new rules increase the level of protection of the EU budget by harmonising the definitions, sanctions and limitation periods of criminal offences affecting the Union’s financial interests.

Not only is the Directive an essential instrument for the harmonisation of Member States’ criminal law on crimes against the Union budget, it also lays the foundations for the future European Public Prosecutor’s Office, which will investigate, prosecute and enforce the offences in practice.

E. The establishment of the European Public Prosecutor’s Office

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

The Regulation establishing the European Public Prosecutor’s Office was adopted under the enhanced cooperation procedure on 12 October 2017, and entered into force on 20 November 2017. Currently, there are 22 participating countries. Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Spain and Slovenia.

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

The European Public Prosecutor’s Office is currently being set up, and currently the aim is for it to become operational at the end of 2020. The European Public Prosecutor’s Office seat will be in Luxembourg.

APPOINTMENT OF THE FIRST EUROPEAN CHIEF PROSECUTOR

In September 2019, the European Parliament and the Council agreed to appoint Ms Laura Codruta Kövesi as the first European Chief Prosecutor. She will sit for a non-renewable term of seven years.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament’s Budgetary Control Committee holds hearings for Members-designate of the Court of Auditors as well as the shortlisted candidates for the post of Director-General of OLAF. These posts cannot be filled without these parliamentary hearings.
The Director-General of OLAF is appointed by the Commission, after consultation of Parliament and the Council, while the members of the OLAF Supervisory Committee are appointed by agreement between Parliament, the Council and the Commission.

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