


# Procedure file

| Basic information   |                                |                     |
|---|--------------------------------|---------------------|
| COS - Procedure on a strategy paper (historic)                            | <a href="#">2002/2066(COS)</a> | Procedure completed |
| Fraud-proofing: legislation and contract management                       |                                |                     |
| Subject<br>8.70.04 Protecting financial interests of the EU against fraud |                                |                     |

| Key players                   |   |   |            |
|-------------------------------|---|---|------------|
| European Parliament           | Committee responsible   | Rapporteur                                    | Appointed  |
|                               | <b>CONT</b> Budgetary Control                                       |   | 11/04/2002 |
|                               |   | PSE <a href="#">BÖSCH Herbert</a>             |            |
|                               | Committee for opinion   | Rapporteur for opinion                        | Appointed  |
|                               | <b>BUDG</b> Budgets   | The committee decided not to give an opinion. |            |
| Council of the European Union | <b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs | The committee decided not to give an opinion. |            |
|                               | <b>JURI</b> Legal Affairs and Internal Market                       | The committee decided not to give an opinion. |            |
|                               |   |   |            |
| European Commission           | Commission DG<br><a href="#">European Anti-Fraud Office (OLAF)</a>  | Commissioner                                  |            |

| Key events |  |   |         |
|------------|--|---|---------|
| 07/11/2001 | Non-legislative basic document published   | SEC(2001)2029   | Summary |
| 11/04/2002 | Committee referral announced in Parliament |   |         |
| 10/09/2002 | Vote in committee                          |   | Summary |
| 10/09/2002 | Committee report tabled for plenary        | <a href="#">A5-0283/2002</a>  |         |
| 09/10/2002 | Debate in Parliament                       |  |         |
| 10/10/2002 | Decision by Parliament                     | <a href="#">T5-0468/2002</a>  | Summary |
| 10/10/2002 | End of procedure in Parliament             |   |         |
| 20/11/2003 | Final act published in Official Journal    |   |         |

| Technical information |                |
|-----------------------|----------------|
| Procedure reference   | 2002/2066(COS) |

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|----------------------------|--|
| Procedure type             | COS - Procedure on a strategy paper (historic) |
| Procedure subtype          | Commission strategy paper                      |
| Legal basis                | Rules of Procedure EP 142                      |
| Stage reached in procedure | Procedure completed                            |
| Committee dossier          | CONT/5/16372                                   |

### Documentation gateway

|   |  |   |            |    |         |
|---|--|---|------------|----|---------|
| Non-legislative basic document                      |  | <a href="#">SEC(2001)2029</a>   | 07/11/2001 | EC | Summary |
| Committee report tabled for plenary, single reading |  | <a href="#">A5-0283/2002</a>  | 10/09/2002 | EP |         |
| Text adopted by Parliament, single reading          |  | <a href="#">T5-0468/2002</a><br><a href="#">OJ C 279 20.11.2003, p. 0022-0134 E</a> | 10/10/2002 | EP | Summary |
| Follow-up document                                  |  | <a href="#">SEC(2007)1676</a>   | 17/12/2007 | EC | Summary |

## Fraud-proofing: legislation and contract management

**PURPOSE:** to strengthen basic EU legal instruments against fraud or other illegal activity. **CONTENT:** the purpose of this Communication is to establish rules for the prevention of fraud in the EU. It is based on the findings in the "White Paper on internal administrative reform of the Commission". The main thrust of the Communication is to enshrine the principle of prevention to protect the Community's financial interest. Under the current system fraud is primarily the responsibility of each Commission department with OLAF offering its expertise as and when deemed necessary. The new proposals aim to offer a system of cooperation which targets draft legislation most prone to fraud right from the outset. At the same time DG Budget will make prevention a greater priority in terms of contract management together with OLAF. Currently, officials preparing legislation with potential financial implications, are expected to prepare a "financial statement" and an anti-fraud section the purpose of which is to outline specific anti-fraud provisions foreseen in the proposed text. OLAF, although consulted on sensitive issues, is not always in a position to react at the right time in the course of consultations. Frequently, their suggestions are seen as slowing down the decision-making process. Thus, their use in inter-service consultations has not always been viewed satisfactorily. In line with the conclusions of the White Paper on administrative reform the proposal seeks to increase the overall Commission's knowledge of prevention matters whilst at the same time making it possible for departments to act pro-actively to potential cases of fraud. OLAF will actively assist DG Budget in examining contract management systems. The overall strategic approach will focus on two fronts - legislation and contracts. The proposed prevention mechanism (fraud-proofing) will be limited to the most sensitive items of legislation with an emphasis on avoiding overburdening the inter-service consultations. In terms of legislation, a specific "co-operation" procedure is being proposed which provides for consultation with OLAF further upstream of the inter-service consultation. The co-operation process would proceed in the following manner: - Phase one: The definition of criteria to help with preliminary identification of high-risk areas. - Phase two: The identification of high-risk sectors of Community legislation. - Phase three: The identification of legislative drafts covering high-risk sectors that need a fraud-proofing option. - Phase four: Upstream consultation of OLAF. These phases would be followed up by inter-service consultation. In terms of contracts, the Communication proposes the provision of a central database of contracts and contractors as well as the establishment of standard contracts. Lastly, in addition to the aforementioned procedures and mechanisms the Communication proposes additional tools in the effort to promote a climate of prevention. This would include measures such as awareness and training campaigns, the drafting of guidelines and the preparation of a manual during the first half of 2002 by OLAF to be circulated to all associated departments.?

## Fraud-proofing: legislation and contract management

The committee adopted the report by Herbert BÖSCH (PES, A) on the Commission communication. While welcoming preventive efforts aimed at reducing the scope for fraud, MEPs stressed that fraud-proofing measures must not distract from OLAF's actual task of fighting fraud and that its investigative duties should have absolute priority. The report called for an overall approach to protecting the Community's financial interests, of which fraud-proofing and contract management formed only one part. It reiterated the committee's call for a European public prosecutor for financial matters as a key element of such an approach. Decisive action to deal with suspected cases of fraud and corruption was, in the end, the best deterrent. The report stressed that OLAF should be involved from the start in the drafting of European legislation in the 'high risk' areas, although it was important to ensure that fraud-proofing did not unduly prolong the process of drafting legislation. It insisted that all legislative proposals presented to Parliament should indicate clearly whether they had been subjected to fraud-proofing by OLAF. Moreover, fraud-proofing should not be limited to new legislation, and the 'high risk' areas to be identified by OLAF should be subjected to retroactive fraud assessment, with changes being made to the relevant legislation where necessary. The committee wanted particular attention to be paid to policy areas such as agricultural and fishery policy, structural funds, trade policy, pre-accession aid, research policy and customs. Other recommendations made by the committee included: - ensuring that public tendering should be the normal procedure when awarding contracts; - developing an anti-fraud handbook and specific vocational training for the Commission departments involved; - including a clause in standard contracts stipulating that parties found guilty of fraud should be excluded from the award of future contracts; and - as from 2003, including a chapter on fraud-proofing and contract management in the Commission's annual report on the protection of the Community's financial interests and the fight against fraud. ?

## Fraud-proofing: legislation and contract management

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The European Parliament adopted a resolution based on the report by Herbert BOSCH. (Please refer to the document dated 10/09/02.) Parliament insisted that existing EU legislation should be used to minimise fraud and irregularities; this is not always the case. The Commission is reminded of Council Directive 92/50/EEC on the award of public service contracts, which may be used to exclude a service provider from participation in a contract if the service provider supplies false information or is guilty of tax fraud. Parliament regretted that Eurostat has not used this directive to exclude certain service providers. Finally, an ex-ante assessment of all contracts and budget authorisations is essential if a high level of fraud proofing is to be achieved. It must be made by officials who are different from those responsible for initiating the operation and who are not subordinated to them.?

## Fraud-proofing: legislation and contract management

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The purpose of this Communication is to set out achievements of the 'fraud proofing legislation and contract management' procedure. It covers the period 2001-2006. Although this process is being replaced by a new fraud prevention method, based on OLAF's investigative activities, the procedure being discussed in this report will remain available for two specific reasons. These are, firstly, to allow for the assessment of fraud risks in legislative proposals, and, secondly, to allow for the drafting of standard procurement contracts and grant agreements.

### Fraud proofing achievements:

Since the adoption of the procedure in 2001, OLAF has short listed the most vulnerable legislative proposal (approximately 15-20 legislative acts per year). OLAF was closely consulted during the revision of the Financial Regulations governing the execution of the EU's budget, which acts as the cornerstone of the Community's financial rules. Standard clauses to protect the EU's financial interests were included in basic acts when the current financial perspectives (2007-2013) were adopted. The legal bases for European operational policies offer improved preventative protection by:

- ensuring the adoption of preventative measures and effective controls. When irregularities are detected, for example, there is due provision for recovering unduly paid funds and applying effective, proportionate and dissuasive penalties;
- ensuring, on the one hand, that the Commission and the European Court of Auditors are entitled to perform audits of the projects and that OLAF, on the other hand, is entitled to conduct investigations in accordance with the applicable legislative framework.
- clarifying the notion of irregularity with regard to the Community's expenditure under centralised or shared government.

### Procurement contracts and grant agreements:

The Directorate General for the Budget operates a standard contracts policy ? for both public and grant procedures. In 2003 and 2004 the Commission adopted contract models for:

- Procurement: direct service contract, framework service contract, direct supply contract, framework supply contract, order form, purchase order for low-value contracts and general terms and conditions for low-value contracts.
- Grants: grant agreement for an action, operating grant agreement, framework partnership agreements, specific grant agreement of an action and specific operating grant agreements.

The Commission has created a database in the framework of the Early Warning System, which contains warnings concerning entities in exclusion situations and entities presenting potential financial risks. In addition, the Commission has adopted new rules based upon the International Public Sector Accounting Standards (IPSAS) and the International Financial Reporting Standards (IFRS) in 2005. The main objective of these rules is to increase financial transparency and accountability towards users, audit and control bodies. They also seek to offer greater completeness and accuracy of the balance sheet by offering a precise overview on assets and liabilities.

### Conclusion:

The report finds that the objectives set out in the fraud proofing procedure have been met, with the most relevant and sensitive legislative acts having been subject to this procedure. A set of model contracts and agreements have been adopted and the fraud-proofing process has contributed considerably towards preventing fraud, corruption, irregularities and other illegal activities in legislation as well as in contracts.