**Follow up to the European Parliament non-legislative resolution** **on Protection of the European Union's financial interests - combating fraud - annual report 2018**

1. **Rapporteur:** Joachim KUHS (ID / DE)
2. **Reference numbers:** 2019/2128 (INI) / A9-0103/2020 / P9\_TA-PROV(2020)0192
3. **Date of adoption of the resolution:** 10 July 2020
4. **Competent Parliamentary Committee:** Committee on Budgetary Control (CONT)
5. **Brief analysis/assessment of the resolution and requests made in it:**

The Commission welcomes the Parliament’s resolution and notes the recognition for the Commission’s actions in the fight against fraud as well as the support for its initiatives in this field, in particular for the establishment of the European Public Prosecutor’s Office (EPPO) and the adoption of a new Commission Anti-Fraud Strategy. The Commission will be able to give a positive follow-up to many topics raised by the Parliament. The resolution addresses a host of issues related to the protection of the financial interests of the EU and is divided into **eleven sections**.

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

**I. Detection and reporting of irregularities (paragraphs 1 to 18)**

As regards the Parliament’s **call to establish a system able to identify undetected irregularities**, the Commission has already put in place a number of actions to ensure that Member States duly fulfil their reporting obligations[[1]](#footnote-1).

Concerning the Parliament’s request to **estimate the scale of fraud in the EU**, the Commission relies on data reported by the Member States for statistics on suspected and detected fraud and irregularities. In close cooperation with the Member States, it has considerably improved its irregularity reporting system over the past years, allowing for a better and more refined analysis. The Commission is committed to further improving the reporting of irregularities and fraud as well as the analysis of the nature of fraud based on tailored data collection and a better understanding of the overall anti-fraud framework in the different Member States. However, it is not possible to establish an estimate of the scale of the undetected level of fraud, which is reliable and defendable enough for evidence-based policy, also taking into account the constraint of the efficient use of the limited resources available to the Commission.

The Commission carries out *ad hoc* **checks on quality of data reported via the Irregularity Management System (IMS).** These checks are continuously refined and improved (for instance monitoring the reporting of irregularities detected during Commission’s audits or monitoring information published by the media on cases of suspected fraud). However, available resources do not allow the comprehensive and extensive level of data quality monitoring called by the Parliament.

The Commission agrees with the Parliament on the important role played by **exchange of information and coordinated action to fight fraud in the EU** and is committed to **increase quality and interoperability of data about beneficiaries in shared management for audit and control purposes**. A technical solution is currently being explored, possibly including the use of a single data-mining tool to enhance control mechanisms at Member States’ and Commission level. Nevertheless, the current legal basis does not allow the Commission to publish such aggregated information. The legal framework in force allows the Commission to use data received from the Member States only for the purpose of clearance of accounts, and (in aggregated form) for monitoring and making forecasts in the agricultural sector.

The Commission does not agree with the Parliament that it does not take sufficient action to **tackle land grabbing fraud and similar practices**. The Commission takes all possible actions to tackle this type of fraud and whenever it detects suspicions of fraud and serious irregularities, it reports them to the European Anti-Fraud Office (OLAF).

The Action Plan to take the Customs Union to the next level that the Commission adopted on 28 September 2020 announced actions to address the customs fraud issues identified in the Parliament’s report, including in the field of e-commerce. The Commission adopted in May 2018 an implementing decision laying down measures for the uniform application of customs controls by establishing common financial risk criteria and standards (FRC).

**II. Revenue – own resources fraud (paragraphs 19 to 38)**

The Commission welcomes the Parliament’s positive appreciation of Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive) and of measures to tackle Value Added Tax (VAT) fraud. It agrees on **OLAF’s added value in investigating cases of VAT fraud** and shares the Parliament’s views that its competence to investigate such cases is set out by Regulation 883/2013 and should in no way be limited.

The Commission reassures the Parliament that together with the Member States all necessary measures are taken to fully comply with the applicable data protection requirements when personal data of economic operators under investigation are processed with use of **the new Transaction Network Analysis software (TNA)**.

As regards the Parliament’s call on the Commission to **report annually on the amounts still to be recovered following OLAF’s recommendations**, the Commission is already setting-up a robust reporting system to monitor and report in a structured way the follow-up to financial recommendations issued by OLAF. This will enable it to identify gaps between the amounts recommended, the amounts established for recovery, and those recovered.

Concerning the Parliament's **call on the Commission to investigate why some Member States do not report fraud cases**, the Commission supervises the own resources' system and performs risk-based inspection programmes to ensure that the Member States properly collect traditional own-resources and in a timely manner transfer them to the EU budget.

**III. Expenditure (paragraph 39 to 47)**

Regarding the Parliament’s **concern that financial amounts involved by fraudulent irregularities in 2018 increased by 198%**, the considerable increase was due to the reporting of two multi-million Euro cases concerning Cohesion policy. Notably, in the two cases in question, the fraud was detected before payments and therefore there were no losses to the EU budget.

The Commission confirms that it **will continue supporting Member States in their irregularity reporting**.

**IV. The Commission Anti-Fraud Strategy – OLAF (paragraphs 48 to 59)**

The Commission agrees with the Parliament in **welcoming OLAF’s investigative activities aimed at protecting the EU budget**. It also acknowledges the role of Anti-Fraud Coordination Services (AFCOS) in the fight against fraud, although their role in fostering cooperation to tackle customs fraud is rather limited.

As regards the fact that the Commission did not include a **proposal for mutual administrative assistance on the expenditure side in its work programme**, its proposal to amend Regulation 883/2013 on OLAF’s investigations includes provisions to this effect. These aim to strengthen OLAF’s ability to coordinate action by the Member States in the fight against fraud and to reinforce the role of the Member States’ AFCOS. These provisions are reflected in the agreement in principle reached on 26 June 2020 and, if confirmed by the co-legislators, would apply in the expenditure and revenue side.

The Commission agrees with the Parliament on the **importance that all Member States fully transpose the PIF Directive** as soon as possible. The Commission is closely monitoring the process and supporting Member States to ensure complete and timely transposition. Infringement procedures have been launched where necessary.[[2]](#footnote-2)

Regarding the fact that not all Member States have adopted **National Anti-Fraud Strategies (NAFS)** and despite the fact that Member States have no legal obligation to do so, the Commission encourages them to develop such anti-fraud strategies and supports them in the drafting process. As the adoption of NAFS is not mandatory, their adoption cannot become a pre-condition to obtain EU funds as requested by the Parliament.

**V. EPPO establishment process (paragraphs 60 to 67)**

The Commission agrees with the Parliament on the importance of the EPPO in the fight against fraud and will **continue to encourage non-participating Member States to join it**. It also recalls that all Member States, including those who do not participate in the EPPO, are under the obligation to protect the financial interests of the Union in an effective and dissuasive manner.

As regards the Parliament’s call to **provide the EPPO with adequate resources to perform its mandate**, in June 2020 in its draft budget for 2021 the Commission proposed to considerably reinforce the budget of the EPPO by EUR 24,7 million (EUR 37,7 million in total for 2021). This will enable important staffing increases and notably increase the funding available for European delegated prosecutors. It will also cover crucial IT and security related expenditure.

The Commission agrees with the Parliament that **OLAF should remain a strong and fully functioning body after the establishment of the EPPO**. It shares the Parliament’s views that cooperation between the two bodies should be based on complementarity, efficient exchange of information and mutual support to avoid gaps in the protection of the EU’s financial interests. The Commission’s proposal to amend OLAF Regulation 883/2013 adapts OLAF’s legal framework to the establishment of the EPPO. An agreement in principle was reached at the trilogue of 26 June 2020, which remains to be confirmed by the co-legislators.

The Commission agrees with the Parliament that **OLAF should have adequate resources for fulfilling its mandate**.

**VI. Areas for improvement (paragraphs 68 to 88)**

The Commission agrees with the Parliament on the importance of **improving fraud risk assessment and management**. To this end, it adopted a new Commission Anti-Fraud Strategy in April 2019.

As regards the fight against corruption, the Commission does not deem it necessary to **resume the publication of annual anti-corruption reports and to develop an anti-corruption index to rank Member States**. The Commission has been monitoring anti-corruption efforts by Member States in the framework of the European Semester of economic governance. On this basis, the Council adopts every year a series of country-specific recommendations, including in this area. These prompt Member States to step up their efforts in case of identified deficiencies. Furthermore, as announced in the Commission Communication of 17 July 2019 and its Work Programme for 2020, the Commission will start issuing Rule of Law reports covering all Member States. The fight against corruption is one of the four pillars that will be covered by this reporting.

As regards the Parliament’s call to consider the **establishment of a network for preventing corruption** in the EU, the Commission considers that relevant networks on corruption prevention authorities already exist at the European level[[3]](#footnote-3). Notably, the Commission already works with Member States’ relevant authorities via a Network of Corruption Contact Points and a newly established Network of Rule of Law Contact Points.

As regards **preventing corruption within the EU institutions**, the Commission considers that the 2018 Financial Regulation and the Staff Regulations provide a solid framework to discourage outside entities from unduly influencing EU policy making through illicit means. As regards the avoidance of possible conflicts of interest, the Commission developed a systemic approach to address this matter by establishing rules and procedures to avoid possible conflicts of interest. In 2014, the Staff Regulations were further reinforced and in June 2018, the Commission adopted a new Decision on outside and occupational activities after leaving the service. Whenever needed, the Commission revises its implementing rules to integrate as far as possible the lessons learnt from experience, as well as suggestions and recommendations from other institutions.

Moreover, the Commission has been **providing Member States with guidance on the management of conflict of interests** and will continue to do so. In various *fora*, notably the Advisory Committee for the Coordination of Fraud Prevention, the Commission and the Member States have worked together to identify and promote good practices in this respect. Moreover, the 2018 revised Financial Regulation, including its Article 61, is directly applicable in the Member States. Consequently, their obligation to prevent and address conflict of interest, as set out in this Article, does not depend on the adoption of national implementing measures. The Commission has drafted a new guidance note based on Article 61 of the revised Financial Regulation on which the Member States were consulted. The Commission transmitted the new guidance note to the European Parliament’s Committee on Budgetary Control on 4 August 2020.

The Commission welcomes the Parliament’s call on the Member States and the Council to **provide the Commission with access to Eurofisc and to exchange information among them**. The Commission wishes to reassure the Parliament that it is working closely with Member States to enhance the collection of the VAT (value added tax) across all domains and make sure that it benefits national and EU budgets. In particular, the Commission would like to draw the attention of the Parliament to the recently published communication[[4]](#footnote-4) outlining an Action Plan for a fair and simple taxation supporting the recovery strategy and presenting a number of upcoming initiatives in the field of direct and indirect taxation.

As regards the Parliament’s call on the Commission to **provide EU citizens with full access to information on co-financed projects**, such information is already available at Member States’ managing authority level. The current legal basis does not allow the Commission to publish aggregated data on EU-financed projects in an EU wide platform. Data received from the Member States can be used by the Commission only for the purpose of clearance of accounts, and (in aggregated form) for monitoring and making forecasts in the agricultural sector.

The Commission agrees on the need to design a legal framework to provide ***ad hoc* protection to investigative journalists** across the EU.

**VII. Public procurement (paragraphs 89 to 94)**

In reply to the Parliament’s call **to elaborate a framework for the digitalisation of all processes of implementation of EU policies** and develop **incentives to create an electronic profile of contracting authorities** for those Member States where such profiles are not available, the Commission recalls that it has already established such framework, both for direct and indirect management.

The Commission agrees that the **EU participation in GRECO** (Group of States against Corruption) will bring added value to the cooperation between the European Union and the Council of Europe. It will facilitate our joint work on capacity-building and implementing standards intended to strengthen the rule of law and the fight against corruption. Discussions have started with the United Nations Office on Drugs and Crime (UNODC) on how the review of the EU implementation of the UN Convention Against Corruption (UNCAC) could be organised. As regards the EU institutions, given that the Convention is binding on all of them, the review will concern them all. Preparatory works between the Commission, the Parliament and the Council have already started.

**VIII. International cooperation (paragraphs 95 to 103)**

The Commission welcomes the Parliament’s acknowledgment of its **awareness-raising activities on the fight against fraud in neighbourhood countries**, as well as in candidate and potential candidate countries to the EU. Together with OLAF, it will continue engaging with Eastern Partnership countries, notably with authorities entrusted with the fight against fraud. Specific and regular mechanisms to prevent and combat fraud with EU funds in those states are already in place. These measures include the adoption of anti-fraud strategies, the launch of fraud and prevention awareness campaigns and capacity building of anti-fraud related structures in partner countries.

The Commission acknowledges that the fight against fraud requires constant commitment and therefore continues to implement measures to **enhance further its capacity to prevent and combat fraud in the area of international cooperation,** in particular through the negotiation and implementation of international agreements covering customs cooperation and mutual administrative assistance. Through its monitoring of the implementation of preferential rules of origin, the Commission also assists beneficiary countries to comply with those rules.

**IX. Transparency and cross cutting provisions (paragraphs 104 to 112)**

As regards the Parliament’s call to **closely monitor the transposition and implementation of the Directive on whistle-blower protection** in the Member States, the Commission is already doing so. To this aim, it has set-up an informal expert group on Directive 2019/1937 on the protection of persons who report breaches of Union law, composed of Member States’ representatives, to ensuring the correct, timely and consistent transposition of the directive and to collect information on its transposition and implementation. The group will also be a platform for sharing experiences and good practices with a view to maximising the effectiveness of the directive on the ground. The Commission will submit a report on the application and implementation of the Directive to the Parliament and the Council by 17 December 2023.

The Commission agrees on the importance of **investigative journalism** and on developing legal instruments to ensure its protection in the EU.

Concerning the Parliament’s call **to propose guidelines to avoid conflict of interests of high-level profile politicians**, the Commission wishes to highlight that it takes the issue of conflict of interests and the “revolving doors” phenomenon very seriously. Article 61 of the Financial Regulation applies to all persons involved in budget implementation at any level. The guidance note on avoidance of conflict of interests cited above provides guidance and practical examples in that respect. The Staff Regulations contain a comprehensive ethical framework, which was reinforced in the area of post-employment restrictions by the 2014 Staff Regulations Reform and the new Decision on outside activities, assignments and occupational activities after leaving the service adopted in 2018.

The Commission agrees with the Parliament on the **need for a clear legal basis for OLAF to access bank account information** through the assistance of national competent authorities. The agreement in principle for the revision of the OLAF Regulation 883/2013 reached by the co-legislators at the trilogue of 26 June 2020 contains such a provision, which is a crucial element of the overall package agreement.

The Commission also agrees with the Parliament’s call on the Member States to **intensify exchange of information and cooperation with OLAF**. In this regard, the agreement in principle reached by the co-legislators at the trilogue of 26 June 2020 on the revision of the OLAF Regulation 883/2013 introduces a new provision that strengthens OLAF's coordination activities in support of Member States, to assist them in organising close and regular cooperation. Furthermore, the Commission proposal includes provisions that facilitate OLAF's cooperation with AFCOS in the Member States as well as the mutual cooperation among AFCOS.

Regarding the fact that **many Member States do not have specific laws against organised crime**, the Framework Council Decision 2008/941/JHA on the fight against organised crime aims at approximating definitions and sanctions for offences relating to the participation in a criminal organisation in all Member States.

1. See for example action No 3 of the Commission Anti-Fraud Strategy (CAFS) [↑](#footnote-ref-1)
2. At this stage, 23 Member States have notified the Commission of the complete transposition of the PIF Directive, while three Member States (BE, IE, RO) have notified a partial transposition. The directive does not bind one Member State (Denmark) [↑](#footnote-ref-2)
3. Examples of these networks are the European contact-point network against corruption (EACN), the European Partners against Corruption (EPAC), and the Network of Corruption Prevention Agencies established in October 2018 [↑](#footnote-ref-3)
4. https://ec.europa.eu/taxation\_customs/sites/taxation/files/2020\_tax\_package\_tax\_action\_plan\_en.pdf [↑](#footnote-ref-4)