

Some Aspects Related to the Competent Bodies in the Matter of Budgetary Control

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Abstract

The fight against fraud needed regulation, and even more, to be the main object of the activity of specialized bodies. Thus, in 1988, the task force "Anti-Fraud Coordination Unit" was created, formalizing the fight against fraud and corruption and protecting the EU's financial interests. In 1995 (July 26), through Council Act 95/C 316/03², the "Convention on the protection of the financial interests of the European Communities" was introduced. In 1999, OLAF (the European Anti-Fraud Office) was established, so that in 2017 (12 October) to establish the European Anti-Corruption Prosecutor's Office - EPPO, through Council Regulation (EU) 2017/1939³. EPPO becomes operational from June 2020.

Keywords: European Court of Auditors, fraud, fight against fraud, European Anti-Fraud Office, financial instruments of the European Union, European Anti-Corruption Prosecutor's Office.

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1. Assistance, cooperation and control relations between the European Parliament, respectively the CONT Commission and the EU Court of Auditors⁴

Since its establishment, the Court of Auditors⁵ of the EU has assisted the European Parliament and the Council in exercising their function of controlling the budget execution. The annual parliamentary discharge exercise is based on the Annual Reports and Special Reports of the EU Court of Auditors. Within the European Parliament, **the CONT Commission and specialized commissions** are established, during whose meetings, the members of the EU Court of Auditors are invited to present their reports and answer the questions asked by the deputies.

Annually, the EU Court of Auditors and the CONT Committee of the EP organize meetings in which their members submit to debates, followed by proposals: their political priorities, the annual activity program of the Court of Auditors, cooperation modalities, etc. Also, the CONT Commission within the Parliament hears the designated members of the Court of Accounts. Once a year, the President of the Court presents the annual activity program of the Court of Accounts, at a meeting of the Conference of committee presidents within the Parliament, on which occasion he invites all the committees to present proposals for the next programming exercise. The cooperation between the European Parliament and the Court of Auditors is also highlighted by the fact that:

- Parliament also comes with annual resolutions regarding the discharge of the Court of Accounts;

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² Council Act of 26 July 1995 on the elaboration of the Convention on the protection of the financial interests of the European Communities (95/C 316/03).

³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing a form of enhanced cooperation with regard to the establishment of the European Public Prosecutor's Office (EPPO).

⁴ See Diána Haase, *Budget control*, <https://www.europarl.europa.eu/factsheets/ro/sheet/31/controlul-bugetar>, consulted on 15.10.2023 and Michaela Franke, *Court of Accounts*, <https://www.europarl.europa.eu/factsheets/ro/sheet/14/curtea-de-conturi>, consulted on 15.10.2023.

⁵ See Vâlcu E.N., *Drept comunitar institutional, Curs universitar*, 3rd edition revised and added, Ed. Sitech, Craiova, 2012, p. 214-221.

- the institution of the Court of Accounts provides support to deputies in the drafting of legislation in the financial field.

2. The competent bodies in the matter of budgetary control. European Anti-Fraud Office (OLAF). European Anti-Corruption Prosecutor's Office

In terms of budgetary control, the actions of the Union are based on two principles⁶:

a. ensuring that the Union's budget is properly spent,

b. protecting the financial interests of the Union and combating fraud. This second principle enjoys a regulation both in the Treaties of the Union and in secondary law, as follows:

- art. 310 paragraph (6) and art. 325 both of the TFEU⁷ regarding the fight against fraud;

- art. 287 TFEU regarding the European Court of Auditors;

- art. 83 para. 2 TFEU regarding the protection of the financial interests of the Union;

- art. 86 TFEU regarding the establishment of the European Public Prosecutor's Office;

- art. 310 paragraph (6) and art. 325 both of the TFEU regarding the fight against fraud;

- art. 287 TFEU regarding the European Court of Auditors;

- art. 83 para. 2 TFEU regarding the protection of the financial interests of the Union;

- art. 86 TFEU regarding the establishment of the European Public Prosecutor's Office.

- Regulation (EU, Euratom) 2018/1046⁸ 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. 966/2012, titles XIII and XIV;

- The Interinstitutional Agreement of 16 December 2020⁹ between the European Parliament, the Council and the Commission on budgetary discipline, cooperation in budgetary matters and sound financial management, as well as on new own resources, including a roadmap for the introduction of new own resources, part III;

- Rules of procedure of the European Parliament¹⁰, title II, chapter 6, articles 92, 93 and 94; title V chapter 1 article 129, chapter 2 article 134 and chapter 4 article 142; annex V.

As the EU Court of Auditors audits continuously, examining the legality and correctness of income and expenditure, it has the right to flag any irregularity. In the exercise of the audit (in terms of art. 287 par. 3 TFEU) the Court of Auditors of the EU notifies OLAF and the European Public Prosecutor's Office regarding cases that may constitute fraud or acts of corruption.

The powers of the EU Court of Auditors are highlighted by its Special Report no. 01/2019 entitled "Fighting fraud in EU spending: action is needed"¹¹ (from early 2019) stating that the EU needs to step up its fight against fraud and that the Commission should take a leading role in this regard and to re-examine the role and responsibility of its Anti-Fraud Office.

⁶ See Alexandra Cynthia Jana Pouwels, *Combating fraud and protecting the financial interests of the European Union*, <https://www.europarl.europa.eu/factsheets/ro/sheet/32/combatearea-fraudei-si-protejarea-intereselor-financiare-ale-uniunii-europene>, consulted on 15.10.2023.

⁷ Consolidated version of the Treaty on the Functioning of the European Union. This act has been amended. Current consolidated version: 01/03/2020, https://eur-lex.europa.eu/eli/treaty/tfeu_2016/oj, consulted on 15.10.2023.

⁸ 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. 966/2012; Document 32018R1046.

⁹ Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, cooperation in budgetary matters and sound financial management, as well as on new own resources, including a roadmap for the introduction of new own resources Interinstitutional Agreement of December 16, 2020 between the European Parliament, the Council of the European Union and the European Commission regarding budgetary discipline, cooperation in budgetary matters and sound financial management, as well as regarding new own resources, including a roadmap for the introduction of new own resources (Consolidated text).

¹⁰ Rules of Procedure of the European Parliament, 9th July 2019 legislature.

¹¹ See Special Report of the EU Court of Auditors https://www.eca.europa.eu/Lists/ECADocuments/SR19_01/SR_FRAUD_RIS_KS_RO.pdf.

We have a response to the Special Report of the EU Court of Auditors, the Commission presented (in April 2019) a new strategy¹². The strategy complements the Commission's "Governance Package"¹³ which was adopted in November 2018, and designates OLAF as the lead service in the design and development of a European anti-fraud policy.

A new anti-fraud program¹⁴ aimed at protecting the financial interests of the Union is represented by the introduction of the **Recovery Plan for Europe/NextGenerationEU**¹⁵ under the supervision of Europol. Fraud related to EU recovery funds following the COVID-19 pandemic is the subject of an operation called Sentinel¹⁶. It was launched in 2021, and involves cooperation between Europol, EPPO (European Anti-Corruption Prosecutor's Office), Eurojust, OLAF and 19 member states. Another program aimed at protecting the Union's budget was launched by the adoption of Regulation (EU, Euratom) 2020/2092, which entered into force on 1 January 2021, which was created to tackle ongoing violations of the rule of law¹⁷.

The member states are also recipients of a 2017 directive, called the PIF Directive, Directive (EU) 2017/1371 on combating fraud against the financial interests of the Union by means of criminal law¹⁸. Although the member states are obliged to transpose the directive by 2019 (July 6), they have notified the full transposition by 2021 (April)¹⁹. The directive provisions increase the level of protection of the EU budget in terms of definitions, sanctions and limitation periods for crimes affecting the EU's financial interests²⁰.

The institutions with competences in the matter of budgetary control are²¹:

- **The European Anti-Fraud Office (OLAF)**, which has the competence to investigate fraud against the EU budget, corruption and serious European misconduct and to develop anti-fraud policies;
- **The European Anti-Corruption Prosecutor's Office (EPPO)**, which has the authority to investigate, prosecute and prosecute the perpetrators of crimes affecting the Union budget.

2.1. European Anti-Fraud Office (OLAF)²²

The fight against fraud was designed to serve the citizen, after all, to guarantee that the money is used in his interest, rightly considering that the financial interests of the Union are the interests of the citizens of the Union. For this reason, the "Anti-fraud fight" needed regulation and, more than that, to be the main object of the activity of specialized bodies in this regard, as follows:

- in 1988, the "Anti-Fraud Coordination Unit" task force was created, formalizing the fight against fraud and corruption and the protection of the financial interests of the EU;

¹² 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, The Commission's anti-fraud strategy: stepped-up actions to protect the EU budget (COM/2019/196 final). The Commission's 2011 Anti-Fraud Strategy is hereby updated.

¹³ https://anti-fraud.ec.europa.eu/policy/policies-prevent-and-deter-fraud_ro, consulted on 15.10.2023.

¹⁴ For politics see Joan Miró, *Abolishing politics in the shadow of austerity? Assessing the (De)politicization of budgetary policy in crisis-ridden Spain (2008–2015)*, „Policy Studies”, 42:1, 2021, pp. 6-23, DOI: 10.1080/01442872.2019.1581162; Madalina Busuioc & Torbjørn Jevnaker, *EU agencies' stakeholder bodies: vehicles of enhanced control, legitimacy or bias?*, „Journal of European Public Policy”, 29:2, 2022, pp. 155-175, DOI: 10.1080/13501763.2020.1821750.

¹⁵ It is a temporary recovery tool worth more than €800 billion to help repair the immediate economic and social damage caused by the coronavirus pandemic. The funds will be directed mainly to the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the European Aid Fund for the Most Disadvantaged (FEAD); see https://ec.europa.eu/info/strategy/recovery-plan-europe_ro, consulted on 15.10.2023.

¹⁶ See, Alexandra Cynthia Jana Pouwels, *op. cit.*

¹⁷ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general cross-compliance regime for the protection of the Union budget.

¹⁸ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on combating fraud against the financial interests of the Union by means of criminal law.

¹⁹ Report from the Commission to the European Parliament and the Council on the implementation of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on combating fraud against the financial interests of the Union by means of criminal law.

²⁰ See, Alexandra Cynthia Jana Pouwels, *op. cit.*

²¹ *Ibid.*

²² See Ioana-Nely Militaru, *Dreptul Uniunii Europene, cronologie. Izvoare. Principii. Instituții. Piața internă a Uniunii Europene. Libertățile fundamentale*, 4th ed. revised and added, Ed. Universul Juridic, Bucharest, 2023, p. 359.

- in 1995 (July 26), through Council Act 95/C 316/03²³, the "Convention on the protection of the financial interests of the European Communities" was introduced;
- 1999 OLAF is established;
- 2017 (October 12) the European Anti-Corruption Prosecutor's Office - EPPO is established, by Regulation (EU) 2017/1939 of the Council²⁴. EPPO becomes operational from June 2020.

Although OLAF operates independently of the Commission, it develops anti-fraud policies for the Commission. OLAF has the competence to investigate:

- fraud directed against the EU budget;
- corruption;
- serious violations within the European institutions.

In order to ensure the smooth running of OLAF investigations, the Parliament, the Council and the Commission signed, in 1999, an inter-institutional agreement on internal investigations²⁵. Anti-fraud rules are included in the Statute of European Union officials, they require EU officials to cooperate with OLAF, also establishing a protection for them in the conditions that they divulge information about possible cases of fraud or corruption.

In 2016, the 2013 OLAF regulation was amended²⁶. The new regulation²⁷ defines more clearly the notions of "irregularities", "fraud, corruption and any other illegal activity affecting the financial interests of the Union" and the notion of "economic operator". The new regulation also refers to the Charter of Fundamental Rights, thus protecting the right to defense and procedural guarantees, the rights of witnesses and whistleblowers, and the right of access to files and any other relevant documents in OLAF investigations²⁸.

The most recent regulation in the matter is the one from 2020²⁹, it regulates OLAF investigations from the perspective of the establishment of the Anticorruption Prosecutor's Office - EPPO, thus ensuring maximum complementarity between the two bodies. It thus increased the effectiveness of OLAF's investigative functions concerning, inter alia, on-the-spot checks, inspections, assistance to national authorities, bank account information, admissibility of evidence collected by OLAF, anti-fraud coordination services and coordination activities³⁰.

In 2020, the Commission published the annual report on the protection of the EU's financial interests, called the PIF report³¹. The report presents the achievements of 2020 in combating fraud and protecting the EU's financial interests.

The fight against fraud is on the work agenda of the European Parliament under the conditions in which it is a co-legislator (together with the Council):

- for the EU anti-fraud program 2021-2027, which was adopted on 29 April 2021
- for the PIF Directive, which was adopted by the Parliament and the Council on 5 July 2017.

Also, the Parliament, annually, examines the PIF report and presents observations on it through a resolution, the most recent one being adopted on July 7, 2021³².

In this context of concerns, the Parliament hears:

²³ Council Act of 26 July 1995 on the elaboration of the Convention on the protection of the financial interests of the European Communities (95/C 316/03).

²⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing a form of enhanced cooperation with regard to the establishment of the European Public Prosecutor's Office (EPPO).

²⁵ Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities on internal investigations carried out by the European Anti-Fraud Office (OLAF).

²⁶ Draft regulation (EC, Euratom) of the Commission amending Regulation (EC, Euratom) no. 2343/2002 of the Commission regarding the framework financial regulation for the bodies referred to in article 185 of Regulation (EC, Euratom) no. 1605/2002 of the Council regarding the financial regulation applicable to the general budget of the European Communities.

²⁷ Idem.

²⁸ See Alexandra Cynthia Jana Pouwels, *op. cit.*

²⁹ Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) no. 883/2013 regarding the cooperation with the European Public Prosecutor's Office and the effectiveness of the investigations of the European Anti-Fraud Office.

³⁰ See Alexandra Cynthia Jana Pouwels, *op. cit.*

³¹ https://anti-fraud.ec.europa.eu/about-us/reports/annual-reports-protection-eus-financial-interests-pif-report_ro, consulted on 15.10.2023.

³² European Parliament resolution of 7 July 2021 on the protection of the financial interests of the European Union - combating fraud - annual report on 2019 (2020/2246(INI)). See, Alexandra Cynthia Jana Pouwels, *op. cit.*

- the appointed members of the Court of Auditors,
- the candidates selected for the post of Director General of OLAF.

The hearings conducted by the Parliament are mandatory in order to fill the mentioned positions.

The Commission appoints the Director-General of OLAF after consulting the Parliament and the Council, and the members of the OLAF Supervisory Committee are appointed jointly by the Parliament, the Council and the Commission. The Parliament and the Council jointly appoint the European Chief Prosecutor of the EPPO³³.

2.2. European Anti-Corruption Prosecutor's Office (EPPO)³⁴

The proposal for the establishment of the European Public Prosecutor's Office - EPPO was presented by the European Commission in 2013. It took more than 3 years of negotiations for the proposal to be adopted, i.e. to be subject to a unanimous agreement from the Council and the approval of the Parliament. The lack of unanimity was recorded by the Council in 2017 (February) and confirmed by the European Council.

According to the Union Treaties (art. 20 TEU and art. 326-334 TFEU) consolidated cooperation can be undertaken by a group of at least 9 member states. Enhanced cooperation under the EPPO was launched in April 2017, and in October the Council adopted the EPPO Regulation (which entered into force the following month).

The European Public Prosecutor's Office (EPPO) is an independent body of the European Union. The establishment of the EPPO is provided for in art. 86 TFEU, thus "To combat crimes that affect the financial interests of the Union, the Council, deciding through regulations in accordance with a special legislative procedure, may establish a European Prosecutor's Office, starting from Eurojust". However, the basis for the establishment of the EPPO is the regulation adopted on October 12, 2017 (within the consolidated cooperation procedure) and entered into force on November 20, 2017. The EPPO started its activity on June 1, 2021. To date, 22 member states have joined the EPPO: Austria, Belgium, Bulgaria, Cyprus, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovakia, Slovenia, Spain and the Netherlands. The 22 participating states use the "enhanced cooperation" procedure in their efforts to protect the EU budget against fraud. The EPPO has exclusive competence:

- to investigate,
- to prosecute,

the perpetrators of the crime affecting the budget of the European Union, including: fraud (involving sums of more than 10,000 EUR from EU funds), corruption, money laundering, cross-border fraud in terms of value added tax,

In exercising its EPPO powers, it collaborates with both national law enforcement authorities and EU bodies such as Eurojust and Europol. Thus, any criminal behavior affecting the EU budget must be reported to the EPPO by **the EU institutions and bodies**, as well as the competent national authorities of the 22 member states (which have joined the EPPO). Individuals can also report suspected cases of fraud and other crimes³⁵.

Regarding the EU bodies that preceded the EPPO in this field, such as the European Anti-Fraud Office (OLAF), the European Union Agency for Law Enforcement Cooperation (Europol) and the European Union Agency for Criminal Justice (Eurojust), it was found that they are not in a position to initiate criminal investigations or carry out criminal prosecutions in the Member States³⁶. These shortcomings were overcome by the establishment of the EPPO³⁷. The European Public Prosecutor's

³³ Position in which Laura Codruța Kövesi was appointed on October 14, 2019.

³⁴ See Ioana-Nely Militaru, *op. cit.*, p. 361; E. N. Vâlcu, *Dreptul Uniunii Europene, instrumente legislative unionale și de transpunere privind cooperarea judiciară unională în materie penală*, Ed. C.H. Beck, Bucharest, 2023, p. 255.

³⁵ Directive (EU) 2017/1371.

³⁶ <https://www.consilium.europa.eu/ro/policies/eppo/>, consulted on 15.10.2023.

³⁷ At a comparative level see Phuong Ngoc Nguyen-Hadi Khorsand and Tomáš Peráček, *Implementation of a Working Time Recording System as a Digital Management Tool in Public Administration*, „Administrative Sciences” 13, no. 12: 253; 2023, <https://doi.org/10.3390/admsci13120253>; Danaî Petropoulou Ionescu and Andreea Năstase, *Much Ado About Nothing? Reflections on the European*

Office is structured **on two levels**: the central level and the national level. The headquarters, which corresponds to the central level, is located in Luxembourg.

The central level consists of a European Chief Prosecutor and a College of Prosecutors.

The European Chief Prosecutor leads the EPPO, organizes its work and represents it in contacts with EU institutions, Member States and third countries³⁸.

The College of Prosecutors defines the strategy and internal rules of the EPPO and is responsible for ensuring consistency between and within cases. It is also tasked with overseeing criminal investigations and prosecutions carried out by European prosecutors delegated at national level. In July 2020, the Council appointed the 22 European Prosecutors. The College is made up of the European Chief Prosecutor and the prosecutors of the participating Member States.

The national level consists of the European Delegated Prosecutors and the Permanent Chambers. **European Delegated Prosecutors** come from the 22 participating EU countries and operate in full independence from their national authorities. They are responsible for conducting investigations and prosecutions. **Permanent chambers** monitor and direct investigations and make decisions on operational matters.

3. Conclusions

The Treaty of Lisbon strengthened the result-oriented control mechanisms of the Union's programmes, requiring the Commission to present to the Parliament and the Council, after taking into account their recommendations, a full evaluation report, within the annual discharge procedure³⁹. Main responsibility for the management of the budget falls to the European Commission under the annual discharge procedure, which is allowed to assess how the European Union budget has been spent.

Improving the management of the budget and protecting the financial interests of the Union is achieved, for example, by digitizing the audit and control related to European Union funds⁴⁰.

It was intended that the money from the Union could be traced to the final beneficiaries. The activity is supported, as I have shown, by the European Court of Auditors, and the scope of competence also extends to the European Public Prosecutor's Office and the European Anti-Fraud Office.

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³⁸ Idem.

³⁹ Diána Haase, *op. cit.*

⁴⁰ Monika Hohlmeier, CONT Committee Chair © European Union (2022) - European Parliament. <https://www.europarl.europa.eu/committees/ro/cont/about>, consulted on 15.10.2023.

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