

Thursday 3 May 2018

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

P8\_TA(2018)0196

**Annual report 2016 on the protection of EU's financial interests – Fight against fraud**

**European Parliament resolution of 3 May 2018 on the Annual Report 2016 on the protection of the EU's financial interests – Fight against fraud (2017/2216(INI))**

(2020/C 41/01)

*The European Parliament,*

- having regard to Article 325(5) of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Protocol No 1 on the role of national parliaments in the European Union,
- having regard to Protocol No 2 on the application of the principles of subsidiarity and proportionality,
- having regard to its resolutions on previous annual reports of the Commission and of the European Anti-Fraud Office (OLAF),
- having regard to the Commission report of 20 July 2017 entitled 'Protection of the European Union's financial interests – Fight against fraud 2016 Annual Report' (COM(2017)0383) and the accompanying staff working documents (SWD(2017)0266, SWD(2017)0267, SWD(2017)0268, SWD(2017)0269 and SWD(2017)0270),
- having regard to the OLAF report 2016 and the 2016 Activity Report of the OLAF Supervisory Committee,
- having regard to the annual report of the Court of Auditors on the implementation of the budget concerning the financial year 2016, together with the institutions' replies <sup>(1)</sup>,
- 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) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 <sup>(2)</sup> and the Commission's mid-term review of 2 October 2017 of that regulation (COM(2017)0589 and SWD(2017)0332),
- 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 <sup>(3)</sup> (the 'PIF Directive')
- 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 1605/2002 <sup>(4)</sup>,

<sup>(1)</sup> OJ C 322, 28.9.2017, p. 1.

<sup>(2)</sup> OJ L 248, 18.9.2013, p. 1.

<sup>(3)</sup> OJ L 198, 28.7.2017, p. 29.

<sup>(4)</sup> OJ L 298, 26.10.2012, p. 1.

Thursday 3 May 2018

- having regard to Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests <sup>(5)</sup>,
  - having regard to the 2015 Report on the VAT Gap commissioned by the Commission and the Commission communication of 7 April 2016 on an action plan on VAT (COM(2016)0148),
  - having regard to the judgment of the Court of Justice of the European Union in Case C-105/14, *Taricco and Others* <sup>(6)</sup>,
  - having regard to its resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests <sup>(7)</sup>,
  - having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A8-0135/2018),
- A. whereas the Member States and the Commission have shared responsibility for implementing approximately 74 % of the Union's budget for 2016; whereas Member States are primarily responsible for the collection of own resources, particularly in the form of VAT and customs duties;
- B. whereas sound public spending and the protection of the EU's financial interests should be key elements of the EU's policy to increase the confidence of citizens by ensuring that their money is used properly and effectively;
- C. whereas achieving good performance with simplification processes involves regularly assessing inputs, outputs, outcomes and impacts through performance audits;
- D. whereas the diversity of legal and administrative systems in the Member States needs to be adequately addressed 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;
- E. 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';
- F. whereas the fluctuation in the number of irregularities can be linked to the progression of the multiannual programming cycles (with higher levels of detection at the end of cycles due to the closure of programmes) as well as to late reporting by certain Member States which tend to report most of the irregularities from previous multiannual programmes at once;
- G. whereas VAT is a major and growing source of revenue for Member States, yielding almost EUR 1035,3 billion in 2015, and contributing EUR 18,3 billion to EU own resources, or 13,9 % of the EU's total revenue in the same year;

<sup>(5)</sup> OJL 312, 23.12.1995, p. 1.

<sup>(6)</sup> Judgment of the Court (Grand Chamber) of 8 September 2015, *Taricco and Others*, C-105/14, ECLI:EU:C:2015:555.

<sup>(7)</sup> Texts adopted, P8\_TA(2017)0022.

**Thursday 3 May 2018**

- H. whereas VAT systems, in particular as applied to cross-border transactions, are vulnerable to fraud and tax-evasion strategies, in which Missing Trader Intra-Community (MTIC) fraud, commonly called carousel fraud, alone was responsible for VAT revenue losses of approximately EUR 50 billion in 2015;
- I. whereas corruption affects all Member States, particularly in the form of organised crime and not only burdens the EU economy, but undermines democracy and the rule of law all across Europe; whereas the exact figures are, however, unknown, as the Commission has decided not to publish the data in the report on the EU's anti-corruption policy;
- J. whereas fraud is an example of purposeful wrongdoing and is a criminal offence, while an irregularity is a failure to comply with the rules;
- K. whereas the VAT gap amounted to approximately EUR 151,5 billion in 2015 and varies from less than 3,5 % to over 37,2 % depending on the country in question;
- L. whereas until the creation of the European Public Prosecutor's Office (EPPO) and the reform of Eurojust, OLAF is the sole European body specialised in the protection of the Union's financial interest; whereas in several Member States, even after the setting up of the EPPO, OLAF will remain the only body to protect the EU's financial interests;

***Detection and reporting of irregularities***

1. Notes with satisfaction that the total number of fraudulent and non-fraudulent irregularities reported in 2016 (19 080 cases) was 15 % lower than in 2015 (22 349 cases) and their value had decreased by 8 % (from EUR 3,21 billion in 2015 to EUR 2,97 billion in 2016);
2. Notes the slight decrease of 3,5 % in the number of irregularities reported as fraudulent, which continued the downward trend seen since 2014; hopes that the decrease in the amounts at stake, from EUR 637,6 million in 2015 to EUR 391 million in 2016, reflects a genuine reduction in fraud and not deficiencies in terms of detection;
3. Points out that not all irregularities are fraudulent and that a clear distinction must be drawn between the errors committed;
4. Takes the view that the cooperation between the Commission and the Member States in the area of fraud detection is not effective enough; urges accordingly that a set of measures be taken to ensure closer, more effective and more efficient cooperation;
5. Deplores the fact that not all Member States have adopted national anti-fraud strategies; calls on the Commission to actively engage in helping Member States to create their national anti-fraud strategies, particularly as they manage approximately 74 % of the EU budget;
6. Calls again on the Commission to establish a uniform system for the collection of comparable data on irregularities and cases of fraud from the Member States in order to standardise the reporting process and ensure the quality and comparability of the data provided;
7. Expresses concern at the ongoing differences between Member States regarding the reporting process, which can give rise to a mistaken perception of the effectiveness of the controls; calls on the Commission to continue its efforts to help Member States step up the level and quality of inspections and share best practices in combating fraud;

Thursday 3 May 2018

**PIF Directive and EPPO Regulation** <sup>(8)</sup>

8. Welcomes the adoption of the PIF Directive, which establishes minimum rules relating to the definition of criminal offences and sanctions in the area of fraud affecting the Union's financial interests, which includes cross-border VAT fraud involving total damages of at least EUR 10 million; recalls, however, that this threshold will be subject to Commission assessment by 6 July 2022; welcomes the fact that the scope of the PIF Directive includes VAT fraud, which is particularly important for stepping up the fight against cross-border VAT fraud; sees the Directive as a first step to a harmonised European criminal law; notes that the Directive provides a definition of corruption and defines the types of fraudulent behaviour to be criminalised;

9. Welcomes the decision of 20 Member States to proceed with the establishment of the EPPO through enhanced cooperation; calls for effective cooperation between OLAF and the EPPO, based on complementarity, efficient exchange of information and the support of OLAF for the EPPO's activities, and the avoidance of double structures, conflicting competences and legal loopholes arising through lack of competences; regrets however that not all EU Member States have been willing to participate in this initiative and underlines the importance of maintaining equivalent fraud detection efficiency rates in all Member States; calls on the Commission to incentivise the so far reluctant Member States to join to the EPPO;

10. Calls on the participating Member States and the Commission to begin the preparatory work to launch the EPPO as soon as possible and to keep Parliament closely associated with the procedures, in particular the appointment of the Chief Prosecutor; calls on the Commission to designate the interim Administrative Director of the EPPO as soon as possible in line with Article 20 of the EPPO Regulation; insists that sufficient staff and resources should be allocated to the EPPO even before its official launch; reiterates that the EPPO must be independent;

11. Calls for effective cooperation among Member States, the EPPO, OLAF and Eurojust; recalls the pending negotiations on the Eurojust Regulation; stresses that the respective competences of Eurojust, OLAF and the EPPO need to be clearly defined; emphasises that in order for the fight against fraud to be truly effective at EU level, the EPPO, Eurojust and OLAF will need to work seamlessly with one another in both policy and operational terms in order to avoid any possible overlaps in tasks; reiterates, in that respect, that working arrangements between the three bodies should be drawn up and adopted as soon as possible in accordance with Articles 99 to 101 of the EPPO Regulation; insists that the EPPO should have the power to settle conflicts of competence in cases relevant to the performance of its tasks;

**Revenue – own resources**

12. Expresses its concern about losses due to the VAT gap and fraud relating to EU VAT, which amounted to EUR 159,5 billion in 2015;

13. Welcomes the adoption of short-term measures to tackle losses on VAT mentioned in the Commission's Action Plan entitled 'Towards a single EU VAT area' published on 7 April 2016; emphasises that the problems related to cross-border VAT fraud demand strong, coordinated and speedy measures; urges the Commission to speed up its procedures to present its proposals for a definitive VAT system as provided for in the action plan, in order to avoid the loss of tax revenue in the EU and the Member States;

14. Regrets that, although the total number of fraudulent and non-fraudulent cases linked to traditional own resources (TOR) fell from 5 514 in 2015 to 4 647 in 2016, the total amount involved increased from EUR 445 million to EUR 537 million and is 13 % higher than the average for the years 2012-2016;

15. Notes with great concern that tobacco smuggling to the EU has intensified in recent years and, according to estimates, represents an annual loss of EUR 10 billion in public revenue to the EU and Member States' budgets, while at the same time it is a major source of organised crime, including terrorism; considers it necessary for Member States to step up their efforts to combat these illegal activities, for example by improving procedures for cooperation and the exchange of information between Member States;

<sup>(8)</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO) (OJ L 283, 31.10.2017, p. 1).

**Thursday 3 May 2018**

16. Notes the results of the 12 joint customs operations carried out by OLAF and Member States in cooperation with various services of third countries and the WCO, which have notably resulted in the seizure of 11 million cigarettes, 2 87 000 cigars, 250 tonnes of other tobacco products, 8 tonnes of cannabis and 400 kg of cocaine;

17. Notes that customs checks carried out at the time of clearance of goods and inspections by anti-fraud services were the most successful methods of detecting fraud on the revenue side of the EU budget;

18. Expresses its concern with regard to customs inspections and the related collection of customs duties, which are an own resource for the EU budget; recalls that it is the responsibility of the customs authorities of the Member States to carry out checks to determine whether importers are complying with the rules on tariffs and imports;

19. Deplores the disparities in the customs checks carried out within the EU and the large amounts involved in fraud affecting the own resource collection system; calls on the Commission to strengthen the common policy on customs checks by providing for genuine harmonisation with a view to improving the collection of traditional own resources and to ensure the EU's security and economic interests, focusing in particular on efforts to combat trade in illicit and counterfeit products;

20. Deplores the fact that between 2013 and 2016 imports of clothing and footwear from China were undervalued upon their entry to several European countries, particularly the United Kingdom;

21. Underlines that OLAF recommended that the Commission recover from the United Kingdom Government a shortfall of EUR 1,987 billion, an amount that should normally have accrued to the Union budget;

22. Deplores the fact that the Commission is not capable of calculating the total amount of recoveries that arose from OLAF's recommendations for recovery; urges the Commission to report annually the amount of EU own resources recovered following the recommendations made by OLAF, to introduce a system allowing the calculation of the total sums, to communicate the amounts still to be recovered and to publish details of cooperation with the recommendation and the sums actually recovered in OLAF's annual reports;

23. Considers that the Commission should provide annual data on the difference between expected VAT and customs receipts and those actually collected;

***Expenditure***

24. Deplores the fact that non-fraudulent irregularities in direct expenditure increased by 16 % compared to the previous year, in contrast to all other budget sectors, which registered a decrease in this regard;

25. Regrets that this is the fourth year in which the irregularities reported as fraudulent in direct management increased in number (16 cases in 2015 and 49 cases in 2016) and value (EUR 0,78 million in 2015 and EUR 6,25 million in 2016); calls on the Commission to present by the end of 2018 a specific plan to reduce fraud in this area;

26. Notes that the number of reported fraudulent and non-fraudulent irregularities concerning the European Agricultural Fund for Rural Development (EAFRD), while decreasing from 3 250 cases in 2015 to 2 676 cases in 2016, is still twice as high as in 2012, but wishes to highlight that the amounts concerned in 2016 are only 8 % higher than in 2012; also notes that, even though between 2015 and 2016 the total number of fraudulent and non-fraudulent irregularities for this fund fell by 16 %, the number of fraudulent irregularities increased by 17 %, welcomes, however, the fact that the financial sums involved in fraudulent irregularities decreased by more than 50 %; also notes that fraudulent irregularities in the EAFRD over the last five years represent about 0,5 % of payments;

27. Notes that the 8 497 fraudulent and non-fraudulent irregularities linked to cohesion policy and fisheries in 2016 represented a 22 % decrease compared to 2015, but are still 25 % higher than the average for the last five years; notes also that the financial sums affected by irregularities were 5 % lower than in 2015; takes note of the fact that for the programming period 2007-2013 0,42 % of commitment appropriations were affected by fraud and 2,08 % by non-fraudulent irregularities;

Thursday 3 May 2018

28. Welcomes the fact that the sums relating to irregularities reported as fraudulent in the cohesion and fisheries policies fell by almost 50 %, from EUR 469 million in 2015 to EUR 235 million in 2016;
29. Notes with dismay that the sums relating to irregularities in the Cohesion Fund during the 2007-2013 programming period continue to increase (from EUR 277 million in 2015 to EUR 480 million in 2016), in contrast to other funds (ERDF, ESF and EFF), where there is a trend towards stabilisation and possibly downwards;
30. Expresses surprise that for almost one third of irregularities reported as fraudulent in cohesion policy in 2016, no information is provided on the priority area concerned, as this lack of information distorts the comparison with previous years; calls on the Commission and the Member States to remedy this situation;
31. Expresses concern regarding checks relating to financial instruments managed by intermediaries and the weaknesses revealed in verification of beneficiaries' registered offices; stresses the need to make the disbursement of direct and indirect loans conditional on the publication of country-by-country tax and accountancy data, and on the disclosure of information on actual ownership by the beneficiaries and financial intermediaries involved in the financing operations;
32. Expects that the simplification of administrative rules called for in the common provisions covering the period 2014-2020 will make it possible to reduce the number of non-fraudulent irregularities, identify fraudulent cases and improve access to EU funds for beneficiaries;
33. Takes note of the continued downward trend in the number of reported irregularities concerning Pre-Accession Assistance (PAA), which is due to the phasing-out of pre-accession programmes; notes, however, that Turkey continues to be the country with the highest number of irregularities (both fraudulent and non-fraudulent), representing more than 50 % of reported cases;
34. Awaits with interest the results secured by the Early Detection and Exclusion System (EDES) applied by the Commission since 1 January 2016;
35. Advocates closer cooperation between Member States in exchanging information; points out that many Member States do not have specific laws against organised crime, while its involvement in cross-border activities and sectors affecting the EU's financial interests, such as smuggling or counterfeiting of currency, is constantly growing; considers it essential for the Member States to use effective means to counter the growing internationalisation of fraud and calls on the Commission to introduce common standards for measures to help combat fraud;

#### **Public Procurement**

36. Recalls that public procurement was one of the major sources of error in the last programming period and notes that the level of irregularities due to non-compliance with public procurement rules remains high; repeats its call on the Commission to develop a database of irregularities, capable of providing a basis for meaningful analysis in a comprehensive way of the frequency, seriousness and causes of public procurement errors; calls on the relevant authorities in Member States to develop and analyse their own databases on irregularities, including those arising in public procurement, and to cooperate with the Commission to provide such data in a form and at a time that facilitates the Commission's work; calls on the Commission to monitor and evaluate the transposition of Directives 2014/24/EU and 2014/25/EU on public procurement into national law as soon as possible;
37. Calls once again on the Commission and the Member States to comply with the provisions setting out the ex-ante conditionalities in cohesion policy, in particular in the field of public procurement; calls on the Member States to step up their efforts in the areas highlighted by the Commission's annual report, in particular as regards public procurement, financial crime, conflicts of interest, corruption, whistle-blowing and the definition of fraud;

#### **Problems identified and measures required**

##### *Better inspections*

38. Urges the Commission and Member States to take firmer measures against fraudulent irregularities; believes that non-fraudulent irregularities should be eliminated using administrative measures, in particular by introducing more transparent and simpler requirements;

**Thursday 3 May 2018**

39. Emphasises that a system enabling the authorities to exchange information would facilitate the cross-checking of accounting records for transactions between two or more Member States in order to prevent cross-border fraud in respect of the structural and investment funds, hence ensuring a cross-cutting and comprehensive approach to the protection of Member States' financial interests; reiterates its request to the Commission to submit a legislative proposal on mutual administrative assistance in those areas of European funding where no provision is made for this;

40. Supports the Hercule III programme, which is a good example of the 'best use of every euro' approach; stresses the importance of this programme and its contribution to strengthening the capacities of customs authorities to combat cross-border organised crime and to prevent counterfeit and smuggled goods from reaching the Member States;

41. Welcomes the independent mid-term evaluation of the Hercule III programme, which was submitted to the European Parliament and the Council on 11 January 2018;

42. Is concerned about the increase in VAT-related fraud, in particular so-called carousel fraud; acknowledges the Commission's proposal for a Council Directive that would allow the application of a generalised reverse charge mechanism (GRCM) by Member States under certain strict conditions; notes the Commission proposal for a VAT simplification package and for the reduction of compliance costs for SMEs so as to create an environment that is conducive to SME growth and favourable to cross-border trade; calls on the Commission to provide a comprehensive, long-term and EU-wide solution to the problem of VAT fraud; calls on all Member States to participate in all of EUROFISC's fields of activity so as to facilitate the exchange of information and coordinate policies to help combat this kind of fraud, which is prejudicial to the EU and national budgets;

43. Calls on the Commission to publish an annual public report on the use of EU funds and on European Investment Bank (EIB) and European Bank for Reconstruction and Development (EBRD) money transfers to offshore structures, including the number and nature of the projects blocked, explanatory comments on the rationale for blocking projects and the follow-up actions taken to ensure that no EU funds contribute directly or indirectly to damaging the EU's financial interests;

44. Points out that complete transparency in accounting for expenditure is essential, especially as regards infrastructure works financed directly through EU funds or financial instruments; calls on the Commission to ensure that EU citizens have full access to information regarding co-funded projects;

**Prevention**

45. Considers that prevention activities are very important in diminishing the level of fraud in the spending of EU money;

46. Welcomes the prevention activities of the Commission and OLAF and calls for the strengthening of the implementation of the Early Detection and Exclusion System (EDES) and Anti-Fraud Information System (AFIS) and for the completion of the national anti-fraud strategies;

47. Calls on the Commission to continue the simplification of the financial regulation and all other administrative rules; asks the Commission to evaluate very carefully the clarity and the added value of the financing directions of the Member States' operational programmes;

48. Calls on the Commission to draw up a framework for the digitalisation of all processes in the implementation of EU policies (calls for proposals, application, evaluation, implementation, payments) to be applied by all Member States;

49. Considers transparency an important tool in the fight against fraud; calls on the Commission to elaborate a framework to be used by Member States for making public all steps of the implementation of projects financed with European funds, including payments;

Thursday 3 May 2018

*Whistleblowers*

50. Emphasises the important role of whistleblowers in fraud prevention, detection and reporting and the need to protect them; calls on the Commission and the Member States to ensure a minimum level of protection for whistleblowers within the EU;

51. Recalls its resolutions of 14 February 2017 and of 24 October 2017 <sup>(9)</sup> on the protection of whistleblowers, and urges the Member States and the Commission to rapidly apply the recommendations that they contain;

52. Reiterates its call on the Commission to submit as a matter of urgency a horizontal legislative proposal on the protection of whistleblowers in order to effectively prevent and combat fraud affecting the financial interests of the European Union;

53. Takes note of the open public consultation held by the Commission between March and May 2017 to gather views on the issue of whistleblower protection at national and EU level; awaits the planned Commission initiative to strengthen the protection of whistleblowers in the EU in the upcoming months; recalls its resolution of 14 February 2017 on the role of whistleblowers in the protection of the EU's financial interests;

54. Encourages the Commission and the Member States to adopt measures to protect the confidentiality of information sources in order to prevent any discriminatory actions or threats;

*Fighting corruption*

55. Deplores the fact that the Commission no longer feels the need to publish the anti-corruption report, which has impaired the assessment of the scale of corruption; recalls its recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion <sup>(10)</sup>, in which it noted that anti-corruption monitoring by the Commission will be pursued through the European Semester process; took the view that anti-corruption might be overshadowed by other economic and financial matters in this process; and called on the Commission to lead by example, resuming the publication of the report and committing to a much more credible and comprehensive anti-corruption strategy; points out that the fight against corruption is a matter of police and justice cooperation, a policy area where Parliament is co-legislator and has full scrutiny powers;

56. Stresses that corruption is an enormous challenge for the EU and the Member States, and that, without effective measures against it, corruption undermines economic performance, the rule of law and the credibility of democratic institutions and the trust in those institutions within the Union; recalls its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights <sup>(11)</sup>, specifically calling for the establishment of an annual report on democracy, the rule of law and fundamental rights (European DRF Report) with country-specific recommendations, including a specific focus on corruption;

57. Regrets that the new directive on public procurement has not so far led to any noticeable improvement in detection of the level of corruption in the EU and calls on the Commission to provide effective instruments for improving the transparency of contracting and subcontracting procedures;

58. Calls on the Member States to implement fully the EU Anti-Money Laundering Directive, with the introduction of a public register of beneficial ownership of companies and trusts;

59. Reiterates its call on the Commission to develop a system of strict indicators and easily applicable, uniform criteria based on the requirements set out in the Stockholm Programme, to measure the level of corruption in the Member States and to evaluate their anti-corruption policies; invites the Commission to develop a corruption index in order to rank the Member States; is of the opinion that a corruption index could provide a sound basis on which the Commission could establish its country-specific control mechanism when controlling the spending of EU resources;

<sup>(9)</sup> Texts adopted, P8\_TA(2017)0402.

<sup>(10)</sup> Texts adopted, P8\_TA(2017)0491.

<sup>(11)</sup> Texts adopted, P8\_TA(2016)0409.

Thursday 3 May 2018

60. Reiterates that prevention should involve constant training and support for the staff responsible for the management and control of funds within the competent authorities, as well as exchanges of information and best practices between Member States; points to the decisive role of local and regional authorities and stakeholders in combating fraud;

61. Recalls that the Commission does not have access to the information exchanged between Member States with a view to preventing and combating MTIC fraud, commonly called carousel fraud; is of the opinion that the Commission should have access to Eurofisc, in order to better control, assess and improve the exchange of data among Member States; calls on all Member States to participate in all of Eurofisc's fields of activity so as to facilitate and accelerate information exchange with judicial and law enforcement authorities such as Europol and OLAF, as recommended by the Court of Auditors; calls on the Member States and the Council to grant the Commission access to these data in order to foster cooperation, strengthen data reliability and fight cross-border crime;

#### *Investigative journalism*

62. Is of the opinion that investigative journalism plays a key role in fostering the necessary level of transparency in the EU and the Member States, and that it must be encouraged and supported by legal means both in the Member States and within the EU;

#### *Tobacco*

63. Recalls the Commission's decision not to renew the PMI agreement, which expired on 9 July 2016; recalls that it asked the Commission on 9 March 2016 <sup>(12)</sup> not to renew, extend or renegotiate the PMI agreement beyond its expiry date; believes that the three other agreements (BAT, JTI, ITL) should be terminated with effect as of 20 May 2019; calls on the Commission to present a report by the end of 2018 concerning the feasibility of stopping the three remaining agreements;

64. Urges the Commission to put in place, at EU level, all necessary measures to track and trace PMI tobacco products and to bring legal action in the event of any illegal seizures of this manufacturer's products until all provisions of the Tobacco Products Directive are fully enforceable, so that there is no regulatory gap between the expiry of the PMI agreement and the entry into force of the Tobacco Products Directive and the Protocol to the Framework Convention on Tobacco Control (FCTC);

65. Welcomes the Commission's support for the timely ratification of the WHO Protocol to Eliminate Illicit Trade in Tobacco Products, the Protocol being the first multilateral legal instrument which addresses the problem of cigarette smuggling comprehensively and on a global scale;

66. Recalls that, to date, 32 parties have ratified the WHO Protocol to Eliminate Illicit Trade in Tobacco Products, including only eight Member States and the Union as a whole; urges the 10 Member States (Germany, Belgium, Denmark, Finland, Greece, Ireland, the Netherlands, Slovenia, Sweden and the United Kingdom) and Norway, which have signed but not yet ratified the Protocol to Eliminate Illicit Trade in Tobacco Products, to do so;

67. Hopes to receive shortly the final progress report of the Commission following its 2013 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), announced for 2018;

68. Welcomes the fact that since the EU tobacco control laboratory at JRC Geel (Belgium) became operational in April 2016, it is able to determine the chemical profile and distinctive features of tobacco seized, thus enabling assessment of its authenticity;

#### ***Investigations and the role of OLAF***

69. Notes that, thus far, OLAF's judicial recommendations have seen only limited implementation in the Member States; takes the view that such a situation is intolerable and calls on the Commission to ensure full implementation of OLAF's recommendations in the Member States;

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<sup>(12)</sup> Resolution of 9 March 2016 on the tobacco agreement (PMI agreement) (OJ C 50, 9.2.2018, p. 35).

Thursday 3 May 2018

70. Deplores the fact that despite numerous OLAF recommendations and investigations, the prosecution rate is only 30 % in the Member States and the judicial authorities of some Member States do not regard OLAF's recommendations on the misspending of EU money as a priority, and even OLAF does not follow up its recommendations properly; calls on the Commission to establish rules on the follow-up of OLAF recommendations;

71. Deplores the fact that around 50 % of OLAF cases are dismissed by national judicial authorities; calls on the Member States, the Commission and OLAF to lay down conditions for the admissibility of evidence provided by OLAF; calls on OLAF to improve the quality of its final reports in order to increase their usefulness to national authorities;

72. Calls on OLAF to apply a more realistic approach to its recovery recommendations and also to report the amounts actually recovered;

73. Recalls that the OLAF regulation gives an important role to the Director General in complaints procedures regarding investigations; recalls that the direct participation of the Director General in OLAF investigations undermines his role and thus the regulation;

74. Calls on the Commission at the revision of Regulation (EU, Euratom) No 883/2013 to create a proper balance of competences between the EPPO and OLAF, to strengthen procedural guarantees, to clarify and strengthen the investigative powers of OLAF and establish a certain level of transparency of OLAF recommendations and reports, and to clarify the rules on cooperation and access to data between OLAF and its Supervisory Committee;

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75. Instructs its President to forward this resolution to the Council and the Commission, the Court of Justice of the European Union, the European Court of Auditors, the European Anti-Fraud Office and the OLAF Supervisory Committee.

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