

International Conference

Together we are stronger?

Harmonising the fight against fraud and corruption in Europe

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The joint fight against fraud and corruption in the European Union

Fraud and corruption are no longer taboo subjects. But they are a complex problem, that cannot be addressed from the criminal point of view alone and they cannot be addressed by any one authority alone.

A sound system of financial management needs to focus on quality of spending, an integrated system for controlling and fighting irregularities - especially those committed with fraudulent intentions in mind- all this in an environment with high ethical standards. Such a system needs to involve actors at all levels. This is what my boss, Commission VP Siim Kallas has set-off to do in order to increase accountability of the EU and public trust in its institutions

The Com is following a broad approach to good governance, but it relies on cooperation, enforcement and jurisdiction in the individual states. This is why we need to fight jointly. I would like to look at the different actors and how they contribute.

1. The role of the Commission

Let me be clear about the role of the Commission when we speak about the joint fight against fraud and corruption in the EU.

The Commission manages the EU's annual budget of around EUR 120 billion a year. The money is spent in Europe and across the world. It is an administration of around 25.000 permanent staff.

- **By setting the right rules for itself the Commission can set an example.**

The Commission's staff and financial management have undergone a thorough reform in the years 2000-2004 and reflect international best practice.

The Commission has introduced a new accounting system, which gives a better and modern picture of our financial activities.

In 1999 OLAF was set-up. We have an independent internal audit service, a disciplinary office, tough rules on awarding of contracts and subsidies. We have whistleblower rules and a system of rotation for sensitive posts. All Commissioners publish their economic interests upon appointment.

It is fair to say that the effects of the Commission's reform in the financial area go far beyond the institution and have improved the financial management across the EU.

- **The Commission is more than an executive: In the EU setting it is the institution making legislative initiatives. Just a few examples of actions relevant to this area:**

Over the years, common rules on **public procurement** have been implemented; European rules guaranteeing EU wide tendering and transparent procedures now exist to the great benefit of business and have brought down costs for the public sector. The Commission has also initiated the legislative measures that contribute to reducing the risk of fraud corruption in business activities, such as for **statutory audit of annual accounts** i.

The Com has promoted legislation **criminalizing active and passive corruption** of officialsⁱⁱ and has supported EU legal instruments that oblige Member States to ensure that **corruption in the private sector constitutes a criminal offence**.

The actions the Com can set extend beyond Europe:

The existence of effective structures against fraud and corruption has been a key criterion for the latest **accession** of 12 new countries to the EU. The Commission still monitors and supports the significant improvements made by those countries in their preparations for accession. OLAF continues to assist EU and national authorities in their fight against fraud.

The Commission has made the fight against corruption a key point in its European Neighbourhood Policy and foreign policy as it takes into account the extent to which common values are effectively shared.

The European Commission was actively involved in the negotiations and the EC is the only non-state party signatory of the 2003 **UN Convention against Corruption**. The European Commission earlier also participated actively in the negotiations for the UN Convention on Transnational Organised Crime (2000).

Having described the powers of the Commission, let's turn to what the Commission can NOT do.

2. Role of Member States authorities at various levels

The Commission has no law enforcement power, and OLAF is only an administrative investigation body. Even in areas where the Com has the competence to act, its resources are limited. Within the EU, the fight against fraud affecting the EU budget is a joint responsibility between the Commission and the Member States and is anchored in the EU Treaty itself (Article 280). This article imposes on Member States the obligation to protect the EU budget with the same diligence as their own taxpayers' money.

Only around 20% of the EU budget is managed directly by the Commission, the majority is managed by Member States. Revenue comes from taxpayers across Europe. It should be equally well protected against fraud across the EU.

With limited control resources, international cooperation in the fight against fraud is a key element to safeguard the objectives of protecting financial interests against fraud. The EU's financial management system is complex, because responsibility is shared with the Member States. Since control resources are limited everywhere, we are within the EU working towards an integrated control framework.

The crucial role remains with the public authorities, especially the supreme audit offices and investigative bodies. One cannot underestimate the importance of their wide powers, independence, necessary resources, and public support.

The Com has for the first time ever received on 15th February **national declarations on how Member States have spent money received from the EU budget**. Only DE and AT refuse.

The increased focus put by the national declarations on Member States responsibility in spending should go hand in hand with increased cooperation in tackling irregularities and fighting fraud.

Even though the budget is central to its executive role, the Commission depends essentially on Member States' authorities for sanctions other than those of an administrative or financial nature. For criminal offences against EU financial interests, both penal law investigations and prosecution are in their competence.

Common norms and standards will not only facilitate cooperation but also improve the efficiency of the overall control. This has triggered some **convergence of practices** and legislation.

The protection of the financial interests has acted as an engine for developing EU penal law. The convention on the protection of the financial interests of the Community and its protocols described by Mr Brüner earlier have contributed to guarantee a comparable level of sanctions across the EU.

Let me now turn to our most recent efforts:

3- recent efforts: an ethical space and transparency

Laws alone are never enough because they cannot cope with all the nuances of life. To do so they would have to be either too detailed, causing more problems than assistance; or less detailed but then open to different interpretations.

A good instrument to close the gap is **codes of conduct and rules on ethics and integrity**, which express the values pursued and give guidance. They are widespread practice in international companies in the private sector. The underlying principles of professional ethics definitely deserve a awareness and wide public debate.

Ethics and integrity are crucial for maintaining and improving trust. Civil servants' actions determine the reputation and performance of the institutions. The Commission is currently reviewing its own **ethic system for public officials** and Mr Kallas plan to bring this to the college of Commissioners on the 5th of March. It looks at questions of conflicts of interest, such as gifts and hospitality, outside activities, during, before or after employment. Concerning the political level the Com has ordered a

study on rules applicable to holders of the top political functions such as Commissioners and MPs, judges etc.ⁱⁱⁱ The result of this study comparing the EU member states institutions with the US, Canada and the European institutions show that the Com is quite state of the art.

This new look at ethics is part of a wider policy initiative that Mr Kallas initiated in 2005 with the aim of improving transparency.

Transparency in public decision-making processes and in the allocation of funds is an effective way of preventing corruption and fraud. The public should get the widest possible access to all information, including the information on who gets what among the final beneficiaries of EU money. By 1/1/2009 Member States shall publish data on all end beneficiaries of EU funds. The Commission already has a website up and running for the funds it spends directly.

From spring 2008 the Com will ask lobbyists wanting to contact its officials to adhere to a code of conduct, and register in a publicly accessible list and disclose for whom they are acting.

I believe that this approach will be a big contribution to dispel mistrust and safeguard public funds because, in the end, the public is a good watchdog and public opinion a measure of success.

4- what more needs to be done

- **Compliance with existing commitments and obligations**

We need more serious cooperation and exchange of information with Member States. The EP is looking at this closely this year.

For instance, in its proposal to reform the OLAF legal basis (Regulation 1073/99) tabled in May 2006, the Commission has added a provision which would oblige Member States to inform OLAF on the actions they have taken following receipt of an investigation report (art 9.3)

There is in our annual reports a wealth of figures on irregularities with EU spending and their financial impact which member states are obliged to notify. It is obvious that some Member States perform better than others. I would like stress that a high number of irregularities does not necessarily mean a high number of frauds, but can be a good indicator of effective controls. The need for Member States to ensure a **correct, complete and timely communication of data on irregularities** is

essential for effective recovery and action against fraudsters. Many of them are doing so, but for some there is still room for improvement. The Commission with the support of EP does not shy away to remind them of their responsibility.

There are other levels too where Member States have to step up the efforts and comply with their obligations or commitments. For instance on the criminal law **approximation Italy since 1996 has not ratified the protocol to the convention of the financial irregularities**, which effectively blocks its application across the EU for other countries who have complied.

- **Acknowledge value added of community and supra-national coordination**

One example is the fights against **VAT and customs fraud**, especially the missing trader fraud. This is where fraudsters are making the big money. Sadly, it is an area where cooperation with Member States is often difficult. Legal proposals are blocked and cooperation, even exchange of data involves the EU level only reluctantly.

It is evident that **international and organised crime** can no longer be tackled at national level and we need global standards. The trend of organised crime towards defrauding EU must lead us to develop robust structures at the European level to effectively counter this criminal conduct and how they can best cooperate. For the moment, the repartition of tasks between **OLAF, Eurojust and Europol** is still in the making.

- **Effective sanctions**

Last but not least, an effective system of sanctions needs to be in place. The judiciary is key. Sadly, our experience with cases shows that different Member States have given the same case widely differing treatment. It is in fact a typical EU dilemma: the Commission has a great interest in the effective fight against fraud, but lacks the required competences. The Member States have the competences, but often do not give it the same priority. In circumstances of increasingly complex work, it is sometimes difficult for them to take on the protection of the Community's financial interests as a top priority.

This is why the Commission has, and will continue to support the idea of **European Public prosecutor**. The Lisbon Treaty opens a new and real possibility to proceed in this respect in the medium term.

However, in our experience, it is not sufficient to rely only on the judiciary. The Commission therefore is currently focusing on the improvement of its already existing **administrative correction and sanction systems**. These include suspension of payments, disallowance and recoveries for simple irregularities that can be imposed quickly. For the worst cases, they include financial sanctions as well as exclusion from further contracts (**blacklisting/debarment**)^{iv}.

In the area of sanctions as well, we need to **share information**. We must ensure that non-reliable economic operators, who are excluded from contracts financed from the EU budget do not continue to receive funds from other donors or national authorities. Unfortunately, this is an area with plenty of room for improvement: rules on exchange of information are cumbersome or non-existent. Many professional fraudsters and organised crime groups take advantage of the lack of cooperation.

Conclusion

Optimising the use of public funds, protecting the EU budget, fighting fraud and corruption are not easy tasks. They are even more difficult across national borders and with complex legislation, as is the case with EU rules. Finding the right balance between the levels competences and national concerns, as well as costs of control and use of existing resources requires an integrated system in which cooperation is smooth and efficient.

- In Europe as a whole and in the European Commission's administration in particular we have a strong set of rules. Now the challenge is to make a joint effort to **implement existing rules and laws** and to **increase cooperation and coordination**.
- Member States and European citizens must develop more sense of ownership for EU money. Fraud with EU funds is **not only a problem for the Commission**. It is taxpayer's money. We encourage the Member States and Courts of Auditors to gain assurance for the management of EU funds at all levels, law enforcement and the judiciary to give it the same diligence as national funds.
- **Rules alone are not enough**. Debates on ethics, integrity and more transparency shall contribute to raising awareness among citizens

and create a climate where fraud and corruption are no longer tolerated, no longer seen as a necessary evil as is the case sometimes with corruption or a gentleman's crime when it comes to abuse of public subsidies.

Thank you for your attention, I am looking forward to discussing with you.

Olaf reform proposal

the revision of the OLAF regulation. The Commission has tabled a proposal back in May 2006. I remain convinced that it raises the main important issues relating to the effective functioning of the antifraud office, namely the flow of information, procedural rights and a complaints mechanism, the role of the supervisory committee and more generally governance and accountability. I very much hope that we can enter into inter-institutional discussions on finding solutions in the very near future and make progress to address these important points.

Aligning with standards of international organizations

- The Commission emphasizes standards of good governance when acting as an **international donor**, e.g. by its Governance Initiative for ACP countries.
- The Commission aims to ensure accountability in its **humanitarian action** worldwide, e.g. through the Good Humanitarian Donorship initiative¹.
- The Commission makes the fight against corruption a **key criterion in its European Neighbourhood policy**² as it takes into account the extent to which common values are effectively shared.

The **United Nations Convention against Corruption** is a landmark. It is in various ways intertwined with past and future European efforts as regards preventing and combating corruption and other criminal activities in a public administration. Amongst those instruments that the negotiators at the United Nations took into account is the EU Convention on the protection of the European Communities' financial interests and its protocols as well as the EU Convention on the fight against corruption. Due to this influence, some of the obligations imposed on Member States in the penal law sphere derive from both, the UN and the EU standard. The European Community is the only regional economic integration organisation that is a signatory of the 2003 UN Convention against Corruption³. It had earlier also participated actively in the negotiations for the UN Convention on Transnational Organised Crime, 2000, which includes certain articles addressing corruption⁴. The United Nations Convention against Corruption is a landmark. It is in various ways intertwined with past and future

¹ <http://www.goodhumanitariandonorship.org/>; and http://ec.europa.eu/echo/pdf_files/strategy/2007/questionnaire_en.pdf

² European Neighbourhood Policy : Strategy Paper, http://ec.europa.eu/world/enp/pdf/strategy/strategy_paper_en.pdf

³ Following the Council Decision of 10 May 2005, it was signed on behalf of the European Community on 15.09.2005. Preparations for its conclusion are currently underway: the proposal for a Council Decision on the conclusion of the Convention, on behalf of the European Community, was adopted by the Commission on 02.03.2006. The proposal was subsequently adopted by the European Parliament on 14.11.2006 and is currently before the Council.

⁴ UNTOC was concluded on behalf of the European Community on 21.05.2004.

European efforts as regards preventing and combating corruption and other criminal activities in public administration. Amongst the instruments that the negotiators at the United Nations took into account is the EU Convention on the protection of the European Communities' financial interests and its protocols, as well as the EU Convention on the fight against corruption. Due to this influence, some of the obligations imposed on Member States in the penal law sphere derive from both, the UN standard and the EU standard. The Commission has proposed the signature and subsequent conclusion, on behalf of the European Community, of the UN Convention, which would make it a party.

ⁱ Directive 2006/43/EC of the European Parliament and of the Council

ⁱⁱ Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, OJ C 195, 25.6.1997

ⁱⁱⁱ The BEPA study was presented to the College in an information note on 11 December 2007. The study was carried out by the European Institute for Public Administration (EIPA) and concluded that the European Commission system is sound and that the necessary rules and procedures are in place. A continued effort is needed in the years to come to foster the ethics culture that has developed and ensure that the rules are effectively applied. The Commission will broaden the mandate of the ad hoc Ethical Committee to request it to advise whether there is any need to revise the Code of Conduct of Commissioners.

^{iv} Needless to say, our operation and cooperation when fighting fraud and corruption must respect the highest procedural standards. It is also critical to protect fundamental human rights, namely rights of defence against any accusation and the privacy of individuals. Due process must be guaranteed. Sanctioning bodies must respect basic principles of the rights of defence and an independent court review should be always available. It is not always an easy task to balance these competing interests.