

## **Tougher rules against EU funding fraud**

In times of budgetary austerity and financial crisis it is important that the European Commission sets out new rules in order to protect the EU's financial interests and tax payers' money from fraud. In 2009, €280 million has been suspended in fraud cases because of the misuse of EU funding. The protection of the EU's financial interests under criminal law and by administrative investigations incorporates the participation of the Police, prosecutors and judges in EU Member States who are the major bodies to intervene for the protection of EU finances. Nevertheless, the levels of protection among EU Member States vary as well as the procedures followed in order to protect EU funding being implemented in national cross-border or transnational European projects.

The Vice President of the European Commission responsible for justice, Viviane Reding, has highlighted the necessity for strict supervision of the EU public purse and for effective protection of EU money against crime. In cooperation with the Commissioner, Algirdas Šemeta, responsible for the European Anti Fraud Office (OLAF), they focus on the establishment of faster procedures, common definitions of EU crimes and common minimum sanctions for fraud against EU funding programmes.

There is a wide variety of legal systems in the European Union protecting its financial interests as fraud and corruption involving EU funding can take many forms at national level. At European level, prosecutors and judges, as well as national investigators, work together with OLAF and Eurojust to fight criminals who obtain EU funding for projects in the agricultural, fisheries, education, infrastructure or even the transport sectors.

Moreover, cross-border EU fraud cases are known for their complexity and certain national authorities of the Member States only prosecute cases when the crime takes place exclusively in their territory because they do not have, in some cases, the power to proceed with investigations of fraud involving crimes that fall beyond their domestic parameters.

To date, the EU does not receive the necessary cooperation from the Member States and continues to face serious deficiencies in the way national authorities work together. This is due to lengthy procedures, the refusal by certain administrative authorities to use the results or evidence of foreign jurisdictions, and also the lack of trust between judicial and administrative authorities.

Furthermore, there has been no evolution in the field of criminal law to confront this issue. Among the problems encountered it is worth noting that there is a wide variety, across the Union, of definitions of relevant criminal offences, such as abuse of power, conflict of interest, or even embezzlement. Moreover, in many Member States it is not illegal for the beneficiary of a public procurement contract to participate in the design of a public tender. On the other hand, it must be noted that in some Member States public officials benefit from immunity from anticorruption rules whereas in others there are provisions for sanctions. Last but not least, legislations of EU Member States can be

used as forum shopping as penalties for the same crimes vary from small fines to long prison sentences.

EU treaties have already determined the tools to protect the EU's financial interests under specific legislation to fight against fraud affecting the financial interests of the EU (articles 310(6) and 325(4) TFEU), directives setting minimum criminal law rules for cross-border cases (article 83 TFEU), measures on procedural judicial cooperation in criminal matters (article 82 TFEU) and strengthening of the institutional framework by transferring investigative powers to Eurojust and the possibility of establishing a European public prosecutors' office in cases of crime at the expense of EU public money (articles 85 and 86 TFEU).

The sectors of criminal law to be improved in order to protect the EU's financial interests according to the Commission's communication can be summarised in four actions. First, there will be provision for better procedures concerning easier exchange of information in order to facilitate prosecutors and judges in fighting EU funding fraud. Secondly, the Commission envisages strengthening the substantive criminal law rules which are relevant to criminal offences related to EU funding and which vary widely across the European Union, as well as the rules on jurisdiction and time limitation to improve criminal investigation results. Furthermore, the European bodies of OLAF and Eurojust will be strengthened in order to carry out their investigations more effectively. Lastly, a specialised European public prosecutors' office on fraud and other offences against the EU's financial interests shall be considered.

The European Commission's vision for 2020 is to take all the necessary measures in order to minimise criminal activities at the expense of the EU budget. The protection of its financial interests through speedy criminal procedures and sanctions across the EU will effectively protect tax payers' contributions, not only at national level but also cross-border and transnational activities throughout the Union.

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