

## OPINION

on the Communication from the European Commission on the protection of the financial interests of the European Union by criminal law and by administrative investigations. An integrated policy to safeguard taxpayers' money – COM(2011) 293

Having regard to the Treaty of Lisbon, in particular Articles 5 and 12 TEU and Protocols 1 and 2 annexed to the Treaty,

Having regard to the Constitution of Romania, as republished, in particular Article 148 thereof,

Having regard to Decision No 11/2011 of the Chamber of Deputies,

Taking into account the view of the Romanian Government, presented in the note of the Department for European Affairs,

Taking into account the draft opinion of the Committee for Legal Affairs, Disciplinary Matters and Immunities at its meeting of 14 September 2011,

Taking into account the final draft opinion of the Committee for European Affairs at its meeting of 20 September 2011,

Having regard to the approval given by the Permanent Office of the Chamber of Deputies on 21 September 2011,

On the basis of Article 40 of Decision No 11/2011 of the Chamber of Deputies, given on 27 April 2011, the Chamber of Deputies hereby adopts this opinion:

A. The Communication sets out EU-wide strategic and regulatory lines of action intended to eliminate the shortcomings identified in the handling of fraud cases relating to EU money.

In our opinion, the statistics and examples presented in the Communication and in the documents annexed to it show that there are a significant number of cases where the justice systems of the Member States have not fulfilled their mission to safeguard the financial interests of the European Union.

We therefore consider the need for an EU-wide strategic approach to these shortcomings to be both justified and appropriate, so as to discourage this kind of conduct, reduce its financial impact and increase European taxpayers' confidence in how EU funds are managed.

We particularly appreciate the following strategic directions set out in the Communication:

- the need for Member States' systems of criminal law to provide a uniform definition of the relevant offences in cases of fraud involving EU funds;
- the need for increased cooperation between the judicial authorities of Member States and for mutual legal assistance;
- the need for a uniform definition of 'public official' (either elected or appointed to public office) as a standard for qualifying typical offences relating the protection of financial interests, such as corruption.

B. At the same time, we consider that some of the **objectives and lines of action** of the proposed strategy **could be made more efficient**:

1) Although the Communication quite rightly recalls the need to counter all kinds of illegal activities that affect the financial interests of the European Union, there is no direct reference to the strategic objectives regarding prevention. Although it is possible and acceptable for prevention to be dealt with in a separate document and/or a later stage, efforts could be coordinated more efficiently if **the prevention strategy and accompanying objectives were at least explicitly mentioned in the Communication**.

2) The Communication recalls the internal efforts by the European Commission to combat fraud relating to European funds involving Commission officials, but omits to present or indicate any statistics pertaining to the results of these efforts or an analysis of the causes and specific nature of fraud in such cases.

Given the complexity of the legal regime applicable to such officials, the high level of vulnerability and the need to avoid differentiated treatment, we recommend that an analysis of this kind be carried out as soon as possible and made available to the general public. Such an analysis would not only provide disclosure of cases brought to date, but would also present the principle risk factors, including the capacity of the European

Commission's human resources to manage the funds that are allocated to them, especially in the management of public procurement procedures.

In our opinion, an analysis of this kind is all the more necessary in the light of the fact that the Communication 'Revision of the Internal Control Standards and Underlying Framework - Strengthening Control Effectiveness' - SEC(2007) 1341 acknowledged that 'more needs to be done to ensure [internal] controls are working effectively in practice'. As regards the risks, these are also regarded as 'critical' in the case of relations between the Commission administration and the Member State administrations (as indicated in the Communication 'Towards an effective and coherent risk management in the Commission services' – SEC (2005) 1327). However, in the Commission's official document there is very little information available about the results of risk analyses performed in this respect.

3) The Communication highlights the differences between the legal and justice systems of the Member States as a source of the differing levels of effectiveness in the protection of the European Union's financial interests. In our opinion, the differences between justice systems do not pose a greater risk *per se* of fraud involving EU funds; justice systems differ as a whole from one Member State to the next without this leading to differences in the rigour with which the law is generally applied. Therefore, we believe that the argument relating to the difference between legal systems cannot be cited in this case and suggest that in future analyses of this kind are limited to what it is possible to prove.

4) The Communication also states that 'national judicial authorities do not open criminal investigations systematically upon OLAF recommendations'. In our opinion, this is justified by the fact that it is only the judicial authorities that have the competence to decide whether the acts and evidence presented to them are sufficient for the launching of criminal proceedings. The text of the Communication suggests that it would have been desirable for national judicial authorities to **always** take action of this kind at the request of OLAF. In our opinion, this would contradict the principles of democracy and the supremacy of the law, as we have shown above. Consequently, we recommend that the European Commission be more careful in using this type of argument.

**As a general comment**, the Communication cites the lack of interest for cases involving EU funds as one of the main reasons for the lack of action in some cases by judicial authorities in Member States. In our view, although strengthening criminal law in

Member States and making it more uniform on the basis of Articles 83, 31(6) and 325(4) of the Treaty on the functioning of the European Union represent efficient means of reducing the scale of criminality and an important factor in discouraging attempts to commit fraud involving EU funds, strengthening controls and criminal law does not result *per se* in the Member States' authorities and criminal law bodies showing more interest in such cases. We therefore suggest that in its future initiatives, the Commission considers scaling back **the causes mentioned for the lack of interest**.

As regards the feasibility of the proposals presented in the Communication, Romania would find it difficult to set criminal sentences for legal persons in the case of fraud involving EU funds, given the lack of tradition and experience in this respect (Romania laid down rules for the criminal liability of legal persons in 2006, through Law No 278/2006 on the criminal liability of legal persons).

On the grounds presented above, the Chamber of Deputies regards the European Commission Communication as being in accordance with the principles of subsidiarity and proportionality. These principles were verified outside the early warning mechanism.

This opinion is addressed to the Presidents of the European Parliament, the Council and the European Commission.

Roberta Alma Anastase, President