



EUROPEAN COMMISSION

Brussels, 3.5.2012
C/2012/3003 final

Ms. Roberta Alma ANASTASE
President
Chamber of Deputies
Palace of the Parliament
Str. Izvor nr. 2-4, sector 5
RO – BUCHAREST

Dear President,

The European Commission would like to thank the Chamber of Deputies of Romania for its Opinion on the Communication on the protection of the financial interests of the European Union by criminal law and by administrative investigations¹, especially concerning the European Commission's ongoing reflections on harmonised definitions of criminal offences affecting the EU financial interests and of potential perpetrators thereof (section A of your Opinion).

The European Commission would like to make the following remarks regarding the Chamber of Deputies' suggestions concerning the objectives and lines of action expressed in section B of your Opinion:

- ad B.1) of your Opinion: The European Commission addresses as a matter of priority the preventive efforts for the protection of EU financial interests in parallel with its dissuasive criminal law policies. These were the focus of the new Anti-Fraud Strategy adopted by the European Commission on 24 June 2011. This Strategy covers various anti-fraud measures and tools, which the Commission and the other authorities implementing the EU budget use or should develop within their anti-fraud policies, mainly for prevention and detection of fraud.²

- ad B.2) of your Opinion: The European Commission believes that the European public service should abide by the highest ethical and legal standards and aspire to be exemplary among the public services in Europe. The European Commission therefore has put in place a series of measures which help to prevent, track and sanction any inappropriate or illegal conduct of servants of the EU in the service. Concerning the empirical aspects you are mentioning, I would like to point you also to the findings of the OLAF 2011 Annual Operational Report, in particular the figures and case studies on internal investigations

¹ COM(2011)293 final of 26 May 2011.

² COM(2011)376 final of 24 June 2011, see also http://ec.europa.eu/anti_fraud/documents/EC-Antifraud-Strategy.pdf.

contained therein.³ The findings show that the largest number of cases concern conduct of persons outside the EU institutions and bodies.

It is the consistent policy of the European Commission and OLAF to refer suspected cases of fraud involving its officials to the judicial authorities of the Member State concerned, and to waive the immunity of any official involved at the request of these authorities. As such, these cases are covered by the Communication. It should be noted that any criminal conviction of an official for fraud does not preclude disciplinary action, and the European Commission follows a policy of 'zero tolerance' in this respect.

-ad B.3) of your Opinion: The Impact Assessment underpinning the Communication on the protection of the financial interests of the European Union provides data which shows that different Member States' judiciaries appear to react differently to similar cases on the basis of information transmitted to them by OLAF.⁴ This merely gives a first indication on possible remaining deficiencies of the equivalent protection of EU financial interests across the Area of Freedom, Security and Justice, which the European Commission currently further analyses in a comparative study. This preliminary finding does not carry any assessment of varying quality of the judicial systems as such.

-ad B.4) of your Opinion: The European Commission shares the view that judicial authorities are the only ones competent to decide on the opening of criminal proceedings. The Commission is respectful of Member States' competences and is also committed to Fundamental Rights. The finding that you are quoting is one element of an empirical record which refers to the forwarding of information obtained in the course of the investigations conducted by OLAF in accordance with EU law. This finding does not convey criticism of Member State authorities, nor any pressure to open cases where this is not appropriate or possible on the basis of the degree of suspicion and available evidence.

Moreover, as regards possible further steps to be taken, I would like to highlight that the Commission will conduct a thorough analysis in accordance with the relevant Treaty requirements. In the light of the new institutional set up under the Lisbon Treaty, as well as the binding character of the EU Charter of Fundamental Rights, the European Commission will also carefully analyse all aspects of protection of the suspect, in the run up to any legislative proposal.⁵

³ http://ec.europa.eu/anti_fraud/reports/olaf/2010/OLAF-REPORT.pdf.

⁴ SEC(2011)621 of 26 May 2011.

⁵ See Commission Staff Working Paper, *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments*, SEC(2011)567 final of 6.5.2011.

As regards, finally, the general comment of the Chamber of Deputies on the possible causes for a lack of action in some cases, the Commission would like to clarify that it identified these causes on the basis of the information submitted by the national authorities (cf. table 2.2.b of the Impact Assessment). The European Commission is further analysing all possible causes of continued illegal activities affecting EU financial interests. Substantive law can only offer one part of the answer to these phenomena. Simplification of judicial cooperation mechanisms as well as institutional elements must also contribute to solving the matter. Among possible institutional elements, the European Commission continues its reflection on the establishment of the European Public Prosecutor's Office as a specialised authority at European level.

I hope that these clarifications address the issues raised in the opinion of the Chamber of Deputies, and look forward to continuing our political dialogue.

Yours faithfully,

*Maroš Šefčovič
Vice-President*