



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 24 June 2013**

**11530/13**

**PE 307  
BUDGET 32  
INST 344  
JAI 532**

**NOTE**

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from: General Secretariat of the Council  
to: Delegations

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Subject: Summary record of the meeting of the European Parliament **Committee on Budgetary Control (CONT)**, held in Brussels on 17-18 June 2013

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The meeting was chaired by Mr THEURER (ALDE,DE).

***Items 1 and 2 on the agenda***

The agenda was adopted

***Item 3 on the agenda***

**The following minutes were adopted:**

- 22-23 April 2013 PV – PE510.548v01-00
- 27-28 May 2013 PV – PE513.068v01-00
- 29 May 2013 PV – PE513.087v01-00

***Item 4 on the agenda***

**Special Report No 14/2012 (2012 discharge) - Implementation of EU hygiene legislation in slaughterhouses of countries that joined the EU since 2004**

CONT/7/11131

Rapporteur: Mr de LANGE (PPE)

- Exchange of views and consideration of a working document, in the presence of the Member of the European Court of Auditors responsible, ***Kevin Cardiff***

This item was not covered.

***Item 5 on the agenda***

**Special Report No 8/2012 (2012 discharge) - Targeting of aid for the modernisation of agricultural holdings**

CONT/7/09703

Rapporteur: Ms AYALA SENDER (S&D, ES)

- Exchange of views and consideration of a working document, in the presence of the Member of the European Court of Auditors responsible, *Rasa Budbergytė*

This item was not covered.

***Item 6 on the agenda***

**Special Report No 15/2012 (2012 discharge) - Management of conflict of interest in selected EU Agencies**

CONT/7/11193

Rapporteur: Ms AYALA SENDER (S&D, ES)

- Exchange of views and consideration of a working document

The rapporteur, taking into account the conclusions of the Court of Auditors' report, the EP 2012 discharge resolution and the results of the workshop on the subject, presented her recommendations to CONT Members. In her view the Commission had to develop, as swiftly as possible and in accordance with its Roadmap, a common approach and concrete legislative proposals that would comprehensively cover all potentially risky situations and apply to a wide range of staff, including external experts and staff of the Institutions.

Mr STAES (Greens/EFA, BE) suggested that this issue should be part of the annual discharge procedure from now on.

CION reported that work on the guidelines was ongoing; each agency had been requested to present a risk assessment and specific guidelines would be presented to EP by the end of this year.

***Item 7 on the agenda***

**Delegation of the Budgetary Control Committee to Kaliningrad (7, 8 and 9 July 2013)**

CONT/7/11817

Rapporteur: Mr MULDER (ALDE, NL)

- Exchange of views on the preparation of the delegation

The CONT delegation to Kaliningrad aims to evaluate the functioning of the custom controls system and the implementation of control procedures at the external EU border. Particular attention will be paid to combating fraud and cigarette smuggling.

The Head of the delegation, Mr MULDER, asked CION and OLAF to provide all necessary documents and data on the subject so that preparations for the mission go smoothly.

OLAF representatives reported on the current state of play in fighting the smuggling of cigarettes at the eastern border of the EU, highlighting the particular sensitivity of the case and the difficult relationships with the Russian customs authorities.

***In camera***

***Item 8 on the agenda***  
**Coordinators' meeting**

This item was not covered

\*\*\* *Electronic vote* \*\*\*

***Item 9 on the agenda***

**Amendment of Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti Fraud Office (OLAF)**

CONT/7/11553

Rapporteur: Ms GRÄBLE (PPE, DE)

- Adoption of draft recommendation for second reading

The item was adopted by unanimity with 16 votes in favour.

Ms GRÄBLE (EPP, DE) pointed out that amendments to strengthen scrutiny by OLAF could be tabled at the plenary and therefore they would not be voted on now so that a compromise could be sought with the Council.

***Item 10 on the agenda***

**2014 Budget - Mandate for the Trilogue**

CONT/7/11867

Rapporteur: Mr GEIER (S&D)

Rapporteur for the responsible committee (ALDE): Ms JENSEN

- Adoption of draft opinion

The draft opinion was adopted as amended, with 16 votes in favour, 1 against and 1 abstention.

***Item 11 on the agenda***

**Towards more efficient and cost-effective interpretation in the European Parliament**

CONT/7/07716

Rapporteur: Ms de LANGE (PPE)

- Adoption of draft report

The draft report was adopted as amended, by unanimity, with 20 votes in favour.

\*\* *End of electronic vote* \*\*\*

***Item 12 on the agenda***

**2012 Annual report of OLAF Supervisory Committee**

**- OLAF Enquiries - Questions to the European Anti-Fraud Office (OLAF)**

CONT/7/12886

- Exchange of views with ***Giovanni Kessler***, Director-General (DG) of the European Anti-Fraud Office (OLAF)

Mr THEURER (ALDE, DE), chair, explained that the exchange of views would follow a question and answer format. A proposal by the Chair to allow Mr Kessler five minutes to frame the debate was rejected (8 against and 8 in favour).

The exchange of views lasted two hours and started with a short question from the representatives of the political groups, followed by a reply from Mr Kessler. A supplementary question could then be put by the same MEP. The debate mainly concentrated on the questionnaire on the OLAF enquiries sent by CONT to the Commission, the OLAF and the OLAF SC on 21 May 2013 and concerned in particular on the Dalli case.

Mr Kessler told Ms GRÄßLE, who inquired about the legality of telephone tapping in the Dalli case, that two telephone calls had been recorded by a private individual. The first had been recorded before the start of the investigation and was the only one that was used for the investigation, while the second, although it had been recorded in the presence of OLAF by a private individual, was not used for the investigation. Mr KALFIN (S&D, BG) considered that CONT was not in a position to state what had been legal or illegal as regards OLAF activity and asked Mr Kessler to frame the investigation. Mr Kessler explained that the investigation had started when OLAF had received serious allegations from the Commission that the reputation of the Commission in the legislative procedure concerning tobacco could be at stake. Mr Kessler underlined that confidentiality was respected throughout the investigation, which was fully independent. A report was handed over to the Commission for its considerations and conclusions. The DG told Mr SKYLAKAKIS (ALDE, EL) that a press conference by OLAF had been organised only after the resignation of Mr Dalli had gone public, for reasons of transparency and practicality (journalists kept telephoning OLAF). All information had complied with the constraints imposed by the protection of confidentiality. Mr Kessler gave details about the specific circumstances and role of Ms SCHEMBRI during the investigation and underlined the fact that Ms SCHEMBRI, in her capacity as head of the Maltese counterpart to OLAF, had hosted the investigations carried out in Malta. Mr Kessler also explained to Mr STAES (Greens, BE) that it had been possible for interviews to be carried out in parallel in order to assess whether answers given by witnesses were genuine, with an investigator going from one room to the other to ensure the alignment and consistency of the evidence being collected.

This explained why investigators might have appeared to carry out different interviews at the same time.

Ms ANDREASEN (ECR, UK) expressed doubts about the current hearing on OLAF activity at CONT, but asked whether Mr Dalli had complained about any breach of his fundamental rights before a Court. Mr Kessler replied that to his knowledge Mr Dalli had filed a suit before the ECJ, complaining in particular that OLAF had bypassed the SC in the procedure. Mr Kessler agreed that it was for the ECJ alone to clarify the issue.

As regards the issue of OLAF independence, raised by Mr De JONG (GUE, NL), Mr Kessler underlined that allegations that OLAF was financed by tobacco manufacturers were totally false. He also pointed out that OLAF could defend its independence before a Court, as well as against the Commission, and recalled that the main role of the SC of OLAF was to protect its independence.

Mr THEURER considered that the OLAF report had resulted in Mr Dalli's resignation, despite the fact that the report - as Mr Kessler had always declared - did not contain conducive evidence of criminal involvement on the part of Mr Dalli. He therefore asked Mr Kessler whether he felt dissatisfied by the use that Mr Barroso had made of the OLAF report, since it might have been used as a political weapon. Mr Kessler pointed out that he did not consider that he could have withheld the report simply because there was such a risk, as it was an issue of institutional responsibility. Mr Kessler also pointed out that the report contained not only circumstantial evidence but also undisputed facts which had been admitted by the Commissioner, and stressed that the decision taken by the President of the European Commission was based on political grounds and considerations.

He also stressed that he had been put under no pressure by anybody to hand in the report quickly and that the investigation had lasted five months. When questioned about further details regarding travel costs and handling of witnesses, Mr Kessler underlined the fact that this might lead to interference with ongoing proceedings. He pointed out to Mr BALCYTIS (S&D, LT) that OLAF did not report to Commissioner SEMETA on investigative activities, and to Mr STAES that he had had no contacts with Mr BARROSO before, during or after the investigation, since he had only signed a cover note to send the report to Ms DAY, SG of the Commission. As Mr MULDER (ALDE, NL) asked for further details about the relationship with the SC, Mr Kessler acknowledged that they were still not ideal, although they had improved after the signing of an agreement on access to data between the DG and the SC in September 2012.

The SC had asked for a revision, but did not specify what it wanted to change. Commissioner SEMETA had made an attempt to convene a three-way meeting to discuss the issue, that so far had been declined by the SC. Concerning the timeframe in which the SC was informed, Mr Kessler told Mr STAES and Mr MULDER that the SC had been given the report three days before it was forwarded to the National Judicial Authorities (NJA). Mr KESSLER said that the practice was that the SC should receive the report five days before transferral of the investigation to the NJA, unless there were urgent reasons for a shorter time limit. He stated that since the investigation had been made public, OLAF had to forward it to the NJA three days after submission to the SC. Mr KESSLER made it clear that there was no legal obligation for OLAF to wait for the SC's opinion on the investigation before it was sent to the NJA. Moreover, the SC had never delivered such an opinion.

Mr AUDY (EPP, FR) asked whether the Director General would step down if he was asked to do so in an EP resolution. Mr KESSLER, claiming independence from any pressures, responded in the negative.

Mr Kessler told Ms AYALA SENDER (S&D, ES) that there was no conflict of interest with tobacco manufacturers, since the agreements with them had been signed by MS and the Commission, not by OLAF.

Ms GRÄSSLE asked for hearings with Ms DAY, the Secretary General of the Commission and Ms TESTORI COGGI, Director General of DG SANCO; this request was supported by Mr MULDER and Mr THEURER.

### ***Item 13 on the agenda***

#### **Special Report number 11/2012 (Discharge 2012) "Suckler cow and ewe and goat direct aids under partial implementation of SPS Arrangements"**

CONT/7/10665

Rapporteur: Mr GERBRANDY (ALDE, DE)

- Exchange of views and consideration of a working document, in the presence of the Member of the European Court of Auditors responsible, *Michel Cretin*

In the absence of the rapporteur, Mr CRETIN made a short presentation of the report and outlined three main points: lack of concentration of such aids, which diluted their effectiveness; diverging responses in MS to coupling or uncoupling of aids; and lack of monitoring schemes in MS. The representative of the Commission agreed that MS should be given the possibility of opting for coupled aids in this sector and that criteria were needed in order for MS to justify coupled support.

Since he explained that such criteria would be laid down through delegated acts, Mr AUDY considered that the EP should be provided with appropriate resources to cope with a multiplication of DA.

***Item 14 on the agenda***

**Budgetary management of European Union pre-accession funds in the areas of judicial systems and the fight against corruption in the candidate and potential candidate countries**  
CONT/7/05332

Rapporteur: Ms MACOVEI (PPE)

- Consideration of draft report
- Deadline for tabling amendments: **26 June 2013, 12.00**

This item was postponed to 10 July 2013.

**Joint Meeting of LIBE and CONT (Rule 51) of Tuesday, 18 June, from 15.00 to 16.00**

The meeting was chaired by Mr THEURER and Mr LOPEZ AGUILAR (S&D, ES)

***Item 15 on the agenda***

**Fight against fraud to the Union's financial interests by means of criminal law**  
CONT/7/12888

- Exchange of views

Mr SEMETA made the introductory remarks in the ANNEX.

Mr SEMETA agreed with Ms GRÄBLE, rapporteur, who stressed the milestone nature of the Commission proposal. He underlined the strong position taken by the Council Legal Service to have Article 83(2) as the legal basis, but agreed with Ms GRÄBLE that this would lead to an uneven application of the scheme amongst MS. He also told Mr LOPEZ AGUILAR that many issues had been addressed in the impact assessment and underlined the large discrepancies amongst MS in following up on OLAF investigations (ranging from 19% in Greece to 91% in Finland). He agreed that VAT should be kept in the scheme. Mr LOPEZ AGUILAR reminded Ms GRÄBLE of the fact that JURI had concluded that Article 83(2) was the appropriate legal basis. Mr THEURER considered that it was for the plenary to decide, since different Committees may have different views on the appropriate legal basis, and added that the issue might be submitted to JURI again if good arguments were to be found. The Commissioner told Mr AUDY that national parliaments had been consulted and considered that minimum requirements for harmonisation for the statute of limitation represented a good starting point.

***Item 16 on the agenda***

**2012 Annual report of OLAF Supervisory Committee  
- OLAF Enquiries - Questions to the European Commission  
CONT/7/12887**

- Exchange of views with the Member of the European Commission responsible for Taxation, Customs, Statistics, Audit and Anti-Fraud, *Algirdas Šemeta*

Mr SEMETA provided some additional explanations to supplement the replies in written given by the Commission to the Committee's questions. Before replying to the questions, he gave an update on the developments concerning the cooperation between OLAF and its Supervisory Committee, which had already been discussed at the CONT meeting of on 28 May<sup>1</sup>, and expressed his confidence that smooth cooperation could be achieved through dialogue between the two parties. To this end, he had taken the initiative to bring together the members of the OLAF Supervisory Committee and the OLAF Director-General in order to discuss a roadmap for following up on the points raised by the Supervisory Committee, particularly in its latest Annual Activity Report. However, the Chairman of the Supervisory Committee had informed the Commissioner that the Committee believed it would be premature to have such a meeting at this time and would propose an alternative date for a meeting in due course. He hoped he would convince the Committee to agree to hold such a meeting before the summer break.

As Ms GRÄBLE inquired about progress made in finding a reconciliation between the DG of OLAF and the SC, Mr SEMETA explained that a draft roadmap had been submitted both to the DG and the SC, but that it had not yet been possible to set a date for a three-way meeting because the SC had not agreed to one.

He stressed that a working agreement had been reached between the DG and the SC last September. As for the thresholds for starting investigations, he explained that the *de minimis* approach had been replaced by a system whereby investigations were selected based on four criteria, namely the principles of proportionality, subsidiarity, efficient use of OLAF's resources, and financial impact. Moreover, the Commissioner underlined the fact that 46% of the investigations into customs and structural-fund fraud that had been opened since February 2012 were below the *de minimis* thresholds or were of an unknown amount, and that 185 cases had been opened in this area in 2012, compared to 82 in 2011 and 25 in 2009.

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<sup>1</sup> 10354/13



As for the issue of informing the SC before sending the investigation to the national judicial authorities in the Dalli case, Mr SEMETA stated that this had been done in compliance with *Franchet and Byk* case law and the September agreement between the DG and the SC. Mr SEMETA strongly disagreed with Ms GRÄBLE that statistics had been cosmetically altered and added that the average duration of an investigation, which stood at 29 months in 2011, had been reduced to 22.6 months in 2012, although he acknowledged that there was still room for improvement.

Mr SEMETA told Ms AYALA SENDER that there was no conflict of interest between OLAF and tobacco manufacturers, since the tobacco agreement had been signed by MS and the Commission. Moreover, financing went to the general budget of the EU and not specifically to OLAF. Mr SEMETA underlined the importance that the revised Regulation be approved soon by the co-legislators, since it contained clear rules for adopting implementing provisions to enhance the protection of fundamental rights (to Mr SKYLAKAKIS and Ms GRÄBLE). Mr SEMETA provided Mr de JONG with statistical data on the 71 requests for access by the SC and recalled that access had been granted in conformity with the agreement between the DG and SC. He told Mr BALCYTIS that regular exchanges were in place between the Commission and OLAF and its SC. He also warned against linking the Dalli case and the SC. Mr SEMETA told Mr THEURER that the Commission had to abide by the rule of law and could not disclose information to CONT on ongoing proceedings, despite the fact that CONT had taken up the task of conducting an inquiry on the Dalli case, the results of which it intended to present to the Conference of Committee Chairs.

***Item 17 on the agenda***

**Special Report No 13/2012 (2012 discharge): ‘European Union Development Assistance for Drinking-Water Supply and Basic Sanitation in Sub-Saharan Countries’**

CONT/7/10843

Rapporteur: Mr STAES (Verts/ALE)

- Exchange of views and consideration of a working document, in the presence of the Member of the European Court of Auditors responsible, ***David Bostock***

Mr BOSTOCK expressed his support for the report of Mr STAES, except on two points, in particular concerning the role of the quality support groups. The representative of the Commission drew attention to the difficult context in certain regions, and mentioned in particular the GHANA Northern region and considered that efficiency results for dug wells had to be looked at as part of the larger aim of sanitation, and recalled in this context that the Ghana worm disease could be defeated. Mr STAES acknowledged that the language in the report should take into account some of the remarks by the Commission.

***Item 18 on the agenda***

**Special report No 17/2012 (2012 discharge) - the European Development Fund (EDF) contribution to a sustainable road network in sub-Saharan Africa**

CONT/7/11736

Rapporteur: Mr STAES (Verts/ALE)

- Exchange of views and consideration of a working document, in the presence of the Member of the European Court of Auditors responsible, ***David Bostock***

Mr BOSTOCK endorsed the report, except for two points: in paragraph 7, he considered that the report went beyond the findings of the CoA; and road maintenance, which in his view was already in the hands of local firms.

The representative of the Commission stressed the distinction to be made between routine and periodic road maintenance, which involved different skills and organisational capacities.

Mr STAES agreed that these points would require further analysis.

***Item 19 on the agenda***

**Special Report No 21/2012 (2012 discharge) - Cost-effectiveness of cohesion policy investments in energy efficiency**

CONT/7/11738

Rapporteur: Mr BALČYTIS (S&D)

- Presentation by the Member of the European Court of Auditors responsible, ***Harald Wögerbauer***

Mr BALČYTIS, rapporteur, pointed out that the special report audit had been carried out in the Czech Republic, Italy and Lithuania — the countries that had received the largest contributions from the EU funds for the 2007–13 programming period and had also allocated the highest amounts to projects by 2009. The rapporteur underlined the main findings of the CoA and stressed the need for proper assessments to identify the specific sectors where energy savings could be achieved using the cost-effectiveness concept, i.e. the best relationship between resources employed and results achieved, and the need for appropriate performance indicators for energy efficiency measures in order to monitor the programmes.

Mr WÖGERBAUER thanked the rapporteur for reflecting the CoA conclusions and recalled that in order to meet the EU target of saving 20 % of its projected primary energy consumption by 2020, stronger political commitment through ‘a clear definition of the objective’ to be achieved and ‘strong compliance monitoring’ of the EU legislation as enacted in national law were needed.

The representative of the Commission considered that a three-tier approach was to be set out for a) finances, in order to earmark money for energy efficiency, b) legal aspects, in order to streamline energy audit conditionality in programmes, and c) result oriented policy, through the provision of performance indicators for energy efficiency, cost benefit and financial engineering.

Mr AUDY considered that the audit should not be limited to public buildings. Mr BALCYTIS acknowledged that meeting the 20% energy saving target by 2020 would not be an easy task.

***Item 20 on the agenda***

**Any other business**

No other business was discussed.

***Item 21 on the agenda***

**Next meeting(s)**

10 July 2013, 9.00 – 12.30 and 15.00 – 18.30 (Brussels)

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Dear Mr Chairman, honourable members, ladies and gentlemen,

Two weeks ago, the Council adopted a general approach on the Commission proposal of July 2012. My colleague, Vice-President Reding, and I last autumn set out to your two committees the reasons behind our proposal. We also stressed the three elements that we considered essential.

Let me very briefly recall these three elements:

Our first objective was to better define offences affecting the EU's financial interests. This was to ensure that we cover a sufficiently broad range of criminal behaviour with this Directive.

Secondly, we considered it necessary to establish minimum sanctions for these offences, in order to provide for equivalent, proportionate, but also sufficiently deterrent sanctions throughout the EU.

And thirdly, we wanted to extend the statutory limitation, in order to make sure that investigators and prosecutors have enough time to carry out complex cross-border investigations.

Unfortunately, the general approach adopted by the Council two weeks ago hardly meets any of these objectives. In fact, in some instances it even stays below the level of harmonisation we currently have under the PIF Convention and its Protocols.

Our main concerns with the general approach are three:

Firstly, the Council wants to exclude Value Added Tax from the scope of the Directive. However, several judgments of the Court of Justice confirm that VAT is part of the EU's financial interests. If we want to protect these financial interests effectively, the scope of the Directive needs to include all the financial interests of the European Union. As a very minimum, it has to include any major financial revenues and interests of the EU. This implies the inclusion of all revenues covered by the Own Resources Decision, including VAT, but also of all expenditure irrespective of the specific spending instruments.

Just to be clear: VAT is not excluded from the PIF Convention. Therefore, the Council on this point is going back behind what is already the EU acquis today.

Secondly, the Council does not want to introduce any minimum sanctions for fraud against the EU budget. They only could agree on having a minimum upper ceiling of four years for what they call "serious offences". However, what such serious offences are is not harmonised in the general approach. This will be left to the Member States to define.

In practice, this will mean that little is likely to change. In those countries where fraudsters currently do not face the threat of imprisonment they will continue to walk free.

And finally, Member States could not agree on a sufficient level of harmonisation concerning the statutory limitation. Their position that such statutory limitation should be "sufficient", again, is likely to change very little in practice.

To conclude, let me say a few sentences on the legal basis. As already explained last autumn, the Commission has chosen Article 325, paragraph 4, of the Treaty. According to the Court of Justice, this article is the specific Treaty provision for the protection of the Union's financial interests by means of effective, equivalent and deterrent measures, including relevant procedures and sanctions under criminal law.

As you know, the Council has rejected this legal basis and favours Article 83, paragraph 1. The difference is not only an academic one: it means that, in future, the same EU budget would be protected to different extents in the different Member States. The reason is the special position of the UK, Ireland and Denmark in the area of judicial cooperation. I do not think that this is acceptable. We need to protect the Union's financial interests in criminal law throughout the whole EU territory if we want this protection to be effective and deterrent.

The Commission has made its disappointment very clear at the Council meeting. It is now important that also the European Parliament takes a firm stand on this file. Under the Lisbon Treaty, the EP for the first time, participates fully in the legislative procedure on this subject. It should use its powers to finally achieve a sufficient level of harmonisation in this area.

Thank you for your attention.