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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**29th Annual Report on the Protection of the European Union's financial interests —
Fight against fraud - 2017**

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EXECUTIVE SUMMARY

The 2017 annual report on the Protection of the European Union's financial interests (PIF Report) is presented by the Commission in cooperation with the Member States under Article 325 of the Treaty on the Functioning of the European Union (TFEU).

Two major legislative achievements

In 2017, two major legislative acts were adopted, which will enhance convergence towards an effective and equivalent level of protection of the EU budget, in particular against cross-border fraud:

- the Directive on the fight against fraud to the EU's financial interests by means of criminal law (so called "PIF Directive")
- the Regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO).

The adoption of these two acts follows several years of negotiations and is testimony to the European institutions' and the Member States' commitment to the fight against fraud detrimental to the Union's financial interests.

Legislative and policy initiatives

These acts will require the adaptation of the current anti-fraud set-up in order to ensure effective coordination between competent bodies and authorities.

This work will continue for the next few years, in particular in relation to the preparation of the legal framework governing the 2021-2027 multiannual financial framework.

The first step was the evaluation of Regulation (EU, Euratom) No 883/2013 (OLAF mandate and powers), which highlighted the results it had achieved but also its shortcomings in view of the establishment of EPPO.

In 2017, the Commission also:

- continued its regular exercise of assessing developments and addressing country specific recommendations to Member States in relation to the fight against corruption in the framework of the European Semester process;
- made available a budget of EUR 14.95 million via the Hercule III programme to boost Member States' operational and administrative capacity;

- successfully negotiated anti-fraud provisions in the EU's international agreements; and
- launched an evaluation of the Commission Anti-Fraud Strategy with a view to updating it.

CJEU jurisprudence

In 2017, three rulings by the Court of Justice of the European Union (CJEU) added to the jurisprudence concerning the protection of the EU's financial interests. Two of them (in the *Alytaus* and *Glencore* cases) dealt with issues relating to periods of limitation, while the third (*M.A.S. and M.B.*) related to VAT, in particular clarifying some aspects of the *Taricco* judgment.

Highlights in the revenue areas

The Commission adopted a legislative proposal to make the EU VAT system simpler, more fraud-proof and close loopholes in cross-border trade by strengthening administrative cooperation instruments between tax authorities and with other law enforcement authorities.

Mutual assistance agreements were concluded with Mercosur and Azerbaijan. The anti-fraud clause was successfully incorporated in the free trade agreement with Japan.

OLAF coordinated or supported 11 joint customs operations that successfully targeted various threats, such as cigarette smuggling, revenue fraud, counterfeit products, illicit cash movements and narcotics.

In financial terms, imported solar panels were the goods most affected by fraud and irregularities. In many instances, irregularities involving solar panels were detected following a Mutual Assistance notice issued by OLAF.

An infringement procedure was launched in relation to undervaluation affecting traditional and VAT own resources revenue that had been detected in the United Kingdom.

Highlights in the expenditure areas

The Omnibus Regulation promotes the simplification and clarification of financial rules. In 2017, the provisions relating to agriculture were adopted, while the draft changes to the remaining expenditure sectors should be adopted in 2018.

The Advisory Committee for Coordination of Fraud Prevention (COCOLAF) prepared guidance

on red flags and best practices in public procurement and irregularity reporting.

Analysis of fraudulent and non-fraudulent irregularities detected and reported by national authorities confirmed the 2016 findings as regards the main sectors at risk.

It also highlighted detection methods that have helped in the identification and targeting of fraudulent and non-fraudulent cases of significant financial value. These involve risk analysis, tips from informants, whistleblowing and information from the media.

The same analysis also points to the positive results achieved through closer coordination between judicial and administrative authorities.

On the basis of these findings, specific recommendations are addressed to national authorities to structure and make systematic use of inputs from the above sources.

Member States' anti-fraud measures

Member States reported the adoption of 73 major measures to protect the EU's financial interests and fight fraud. These cover the entire anti-fraud cycle, but focus in particular on detection and prevention. They relate mainly to the control of funds under shared management.

The majority of Member States reported on the number and nature of measures taken as follow-up to the 2016 recommendations; this can be considered positive, but there is still room for improvement.

Detection and reporting of fraudulent and non-fraudulent irregularities that affect the EU budget

In 2017, a total of 15 213 fraudulent and non-fraudulent irregularities were reported to the Commission, 20.8 % fewer than in 2016. They involved approximately EUR 2.58 billion, 8.6 % down from the previous year.

The 1 146 irregularities reported as fraudulent involved about EUR 467 million of expenditure or revenue.

The detection of an irregularity implies that corrective measures have been taken in order to recover the irregular financial amounts involved and that criminal proceedings have been launched if fraud is suspected.

Annex 1 shows the number of irregularities reported as fraudulent detected by Member

State. This number reflects the results of Member States' work to counter fraud and other illegal activities affecting the EU's financial interests. The figures should not be interpreted as indicating the level of fraud in the Member States' territories.

1. INTRODUCTION

Each year, under Article 325(5) TFEU, the Commission, in cooperation with the Member States, submits a report to the European Parliament and the Council on measures taken to counter fraud and other illegal activities affecting the EU's financial interests.

The EU and the Member States share responsibility for protecting the EU's financial interests and fighting fraud. Member State authorities manage approximately 74 % of EU expenditure and collect traditional own resources (TOR). The Commission oversees both these areas, sets standards and verifies compliance. To protect the EU's financial interests effectively, the Commission and the Member States have to work closely together.

This report assesses this cooperation with a view to improving it; to this end, it:

- provides a summary of measures taken at EU and Member State level to counter fraud;
- includes an analysis of national and European bodies' main achievements in detecting fraud and irregularities relating to EU expenditure and revenue. This is based in particular on detected irregularities and fraud reported by the Member States in compliance with sectoral regulations.

The report is accompanied by six Commission Staff Working Documents (SWD), listed in Annex 3.¹

2. HARMONISING AND REINFORCING THE FIGHT AGAINST FRAUD ACROSS THE EU: CROSS-CUTTING ANTI-FRAUD POLICIES, MEASURES AND RESULTS

2.1. A new legal landscape: legislative acts adopted by the EU institutions

In recent years, the Commission has underlined the differences in national authorities'

approaches to fighting fraud and irregularities affecting the EU's financial interests. Investigations by the European Anti-Fraud Office (OLAF) have shown the increasing occurrence of transnational fraud cases.

Two major legislative acts adopted in 2017 will ensure convergence towards an effective and equivalent level of protection of the EU budget, in particular against cross-border fraud:

1. the Directive on the fight against fraud to the EU's financial interests by means of criminal law (the PIF Directive);² and
2. the Regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO).³

The adoption of these two acts follows several years of negotiations and is testimony to the European institutions' and the Member States' commitment to the fight against fraud detrimental to the Union's financial interests.

2.1.1. *Directive on the fight against fraud to the EU's financial interests by means of criminal law*

The Directive replaces the 1995 Convention on the protection of the European Communities' financial interests and its protocols (the PIF Convention)⁴ for the 26 Member States bound by it. The PIF Convention remains applicable to Denmark and the UK.

¹ (i) Implementation of Article 325 by the Member States in 2017;
(ii) Statistical evaluation of irregularities reported for own resources, natural resources, cohesion policy and pre-accession assistance and direct expenditure;
(iii) Follow-up of recommendations to the Commission report on the protection of the EU's financial interests — fight against fraud, 2016;
(iv) Early Detection and Exclusion System (EDES) — Panel referred to in Article 108 of the Financial Regulation;

(v) Annual overview with information on the results of the Hercule III Programme in 2017; and
(vi) Assessment of the implementation of Article 43b of Regulation (EC) No 515/97.

² Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29–41.

³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

⁴ Council Act of 26 July (OJ C 316, 27.11.1995, p. 48).

Figure 1: Legislative highlights – 2017



The PIF Directive:

- harmonises the definitions, sanctions and applicable time limitations of criminal offences affecting the Union's financial interests, including fraud, corruption, money laundering and misappropriation;
- applies to cross-border VAT fraud cases involving total damage of at least EUR 10 million;
- sets two years for transposition (by 6 July 2019).

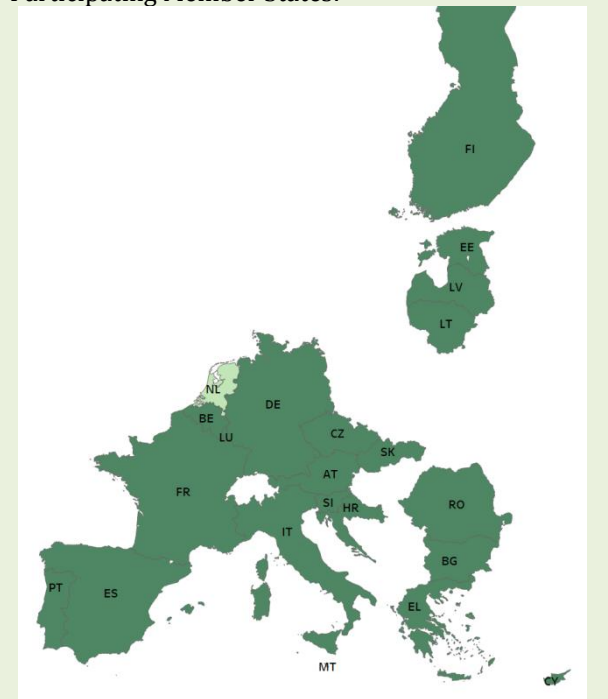


The European Public Prosecutor's Office (EPPO)

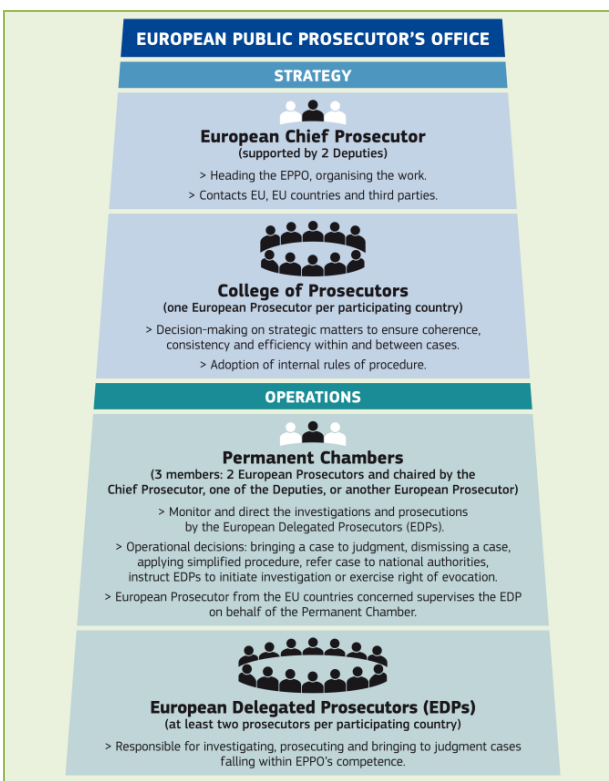
- set up through enhanced cooperation (initially 20 Member States);
- its establishment was one of the Commission's key priorities in the area of criminal justice and part of the overall strategy to combat fraud against the EU budget;
- competent for investigating, prosecuting and bringing to justice criminal offences affecting the financial interests of the Union, as provided by the "PIF Directive";
- expected to bring a more consistent and effective prosecution policy for crimes affecting the EU budget: higher number of prosecutions, convictions and a greater level of recoveries.

2.1.2. Regulation implementing enhanced cooperation on the establishment of EPPO

Participating Member States:



Other Member States may join in the future.⁵



⁵ http://europa.eu/rapid/press-release_IP-17-1550_en.htm
The Netherlands (14 May 2018) and Malta (14 June 2018) have formally notified the Commission of their intention to

join the EPPO and, in accordance with article 331 TFEU, the Commission is currently preparing the Decisions confirming the participation of these Member States.

2.2. Shaping the future: European institutions' legislative and policy initiatives

The new acts will require the adaptation of the current anti-fraud set-up to the latest developments in order to ensure the necessary coordination between the competent bodies and authorities. This work will continue over the next few years, in particular in relation to the preparation of the legal framework governing the 2021-2027 Multiannual Financial Framework.

The next section provides an overview of major developments as regards Commission policy and legislative initiatives in 2017.

2.2.1. Evaluation of Regulation (EU, Euratom) No 883/2013

Regulation (EU, Euratom) No 883/2013⁶ is the centrepiece of the legal framework governing OLAF's mandate to conduct administrative investigations into fraud, corruption and other illegal activity affecting the EU's financial interests.

On 2 October 2017, pursuant to Article 19 of the Regulation, the Commission adopted a report on the evaluation of its application.⁷

The evaluation concludes that the Regulation has allowed OLAF to fulfil its mandate with concrete results, bringing clear improvements as regards the conduct of investigations, cooperation with partners and the rights of persons concerned. At the same time, it highlights some shortcomings that impact on the effectiveness and efficiency of OLAF's investigations. These relate, *inter alia*, to:

- OLAF's investigative tools;
- the enforcement of OLAF's powers;

- uniform conditions in the conduct of internal investigations in EU institutions, bodies, offices and agencies;
- divergences in the follow-up to OLAF recommendations;
- Member States' and EU institutions', bodies', offices' and agencies' duties of cooperation;
- the overall coherence of the legal framework applicable to OLAF investigations;
- the possibility of accessing bank account information; and
- the clarity of OLAF's mandate in the area of VAT.

In relation to the establishment of EPPO (see section 2.1) and its impact on OLAF's work, the evaluation clearly acknowledges the need to further regulate the relationship between the two bodies and calls for swift adaptations to OLAF's operation to ensure that the legal framework is fit for purpose.

The Commission adopted on 23 May 2018 a targeted proposal to amend the Regulation, primarily driven by the establishment of the EPPO, while also addressing the most unambiguous findings of the evaluation to ensure that OLAF remains a strong and fully-functioning partner to the EPPO.

The EPPO Regulation already contains provisions to regulate the relationship between EPPO and OLAF. These are based on the principles of close cooperation, exchange of information, complementarity and avoidance of duplication. The rules need to be mirrored and complemented by amendments to Regulation (EU, Euratom) No 883/2013, with the overall objective of strengthening the fight against fraud affecting the Union budget through an integrated policy under which a strong and fully functioning OLAF carries out administrative investigations to complement EPPO's criminal law approach.

The focus is on areas in which the Regulation currently gives rise to significant divergences in the way OLAF operates across Member States, such as on-the-spot checks and inspections, access to bank account information and assistance from national authorities.

2.2.2. Fighting corruption in the EU

In 2017 the fight against corruption was a priority in the European Semester process of economic

⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁷ Report from the Commission to the European Parliament and the Council on *Evaluation of the application of Regulation (EU, Euratom) No 883/2013* (COM(2017) 589); <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:589:FIN> and the accompanying SWD(2017) 332; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=SWD:2017:332:FIN&from=EN>.

The report was supported by an independent study (*Evaluation of the application of Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office*) and based on a wide-ranging stakeholder consultation, including a conference involving about 250 participants from a broad range of stakeholder groups. It was also accompanied by OLAF's Supervisory Committee Opinion 2/2017; http://europa.eu/supervisory-committee-olaf/sites/default/files/opinion_2_2017.pdf.

governance. Several Country Reports⁸ included an assessment of the anti-corruption legal, policy and institutional landscape, including progress and remaining challenges.

Several Member States also received recommendations⁹ that they take action to improve transparency, enhance prevention of conflicts of interests, fight informal payments in healthcare or step up anti-corruption efforts in public administration, the judiciary and public procurement.

In the framework of the EU anti-corruption experience-sharing programme, the Commission organised three experience-sharing workshops in 2017, gathering around 100 anti-corruption practitioners and experts from Member States national administrations, international organisations, civil society, academia and other stakeholders. These workshops facilitated the exchange of best-practices in the following thematic areas: anti-corruption indicators (Brussels, March 2017), conflicts of interests and revolving doors (Barcelona, June 2017), and the economic impact of corruption, (Brussels, December 2017).

A call for proposals¹⁰ for projects designed to prevent and combat corruption in the Member States was launched in December 2017, with a total value of MEUR 2.2.

The Commission and OLAF participated actively in several European and international anti-corruption fora, such as the United Nations Convention against Corruption, the Organisation for Economic Co-operation and Development, the Anti-Corruption Working Group of the G20 and the European Partners Against Corruption (EPAC) / the European Contact-Point Network Against Corruption (EACN). EACN adopted the Lisbon Declaration of November 2017¹¹ calling on European decision-makers to strengthen the fight against corruption.

2.2.3. Proposal to revise the Financial Regulation and certain sectoral financial rules (Omnibus)

In 2017, the European Parliament and the Council deliberated on the Commission's September 2016

proposal¹² for a comprehensive and ambitious revision of the Financial Regulation¹³ and corresponding changes to the sectoral financial rules for a variety of multiannual programmes.

The proposal is aimed at modernising and simplifying the Union's financial rules and strengthening the systems in place to protect the EU budget against fraud and financial irregularities. *Inter alia*, it tightens rules on tax avoidance for EU implementing partners and clarifies that the duty to avoid conflicts of interest applies to all modes of implementation of EU funds (including at Member State level). Simplification itself should cut the number of errors, but also increase the impact of the policies and their results on the ground.

In the legislative negotiations, at the Parliament's request, the grounds for the exclusion of unreliable recipients of EU funding were strengthened further, notably with regard to 'shell companies'. Some of the proposed changes, relating to agricultural policies, were enacted separately as Regulation (EU) 2017/2393,¹⁴ while it is expected that the new Financial Regulation and the amendments to the remaining sectoral rules will be adopted in the third quarter of 2018.

2.2.4. International cooperation

To combat fraud against the EU budget beyond the EU borders more effectively, the Commission

⁸ https://ec.europa.eu/info/publications/2017-european-semester-country-reports_en

⁹ https://ec.europa.eu/info/publications/2017-european-semester-country-specific-recommendations-commission-recommendations_en

¹⁰ ISFP-2017-AG-CORRUPT.

¹¹ http://www.epac-eacn.org/downloads/declarations/doc_view/167-lisbon-declaration-2017

¹² Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council (COM(2016) 605).

¹³ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p.1), as last amended by Regulation (EU, Euratom) No 2015/1929 of the European Parliament and of the Council of 28 October 2015 (OJ L 286, 30.10.2015, p. 1).

¹⁴ Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ L 350, 29.12.2017, p. 15).

continued to include anti-fraud provisions in agreements with non-EU countries and in templates for grant and delegation agreements with international financial institutions and other international organisations.

In 2017, OLAF organised two events to support non-EU countries:

- its annual seminar (held in Montenegro), for partner authorities in candidate and potential candidate countries, on best practices in the detection and reporting of fraud; and
- an anti-fraud workshop with the participation of all relevant anti-fraud and anti-corruption services in Georgia, to assist them implement the anti-fraud provisions in the EU-Georgia Association Agreement.

OLAF also signed administrative cooperation arrangements with partner authorities in Tunisia and Kosovo.¹⁵

2.2.5. Commission Anti-Fraud Strategy (CAFS)

The Commission is considering updating the CAFS that was adopted on 24 June 2011,¹⁶ the objective of which is to improve prevention, detection and investigation of fraud and ensure that appropriate sanctioning, recovery and deterrence are high on the Commission's agenda.

Most CAFS's actions have now been finalised or are ongoing. All 49 Commission departments have introduced sectoral Anti-Fraud Strategies (AFS) for their respective policy areas.

In 2017, the Commission carried out an evaluation of the overall implementation of the CAFS. The evaluation measures the progress achieved since the adoption of the CAFS in 2011 against the stated objectives, taking account of developments in terms of EU policies in the anti-fraud landscape, corresponding fraud risks and emerging fraud patterns. The results are to serve as a basis for decision making to which extent the CAFS needs to be updated. The evaluation will cover the period since the adoption of the CAFS and assess its relevance, effectiveness, efficiency and coherence.

2.2.6. Implementation of the Hercule programme

The 2014-2020 Hercule III programme¹⁷ promotes activities to counter fraud, corruption and any

other illegal activities affecting the EU's financial interests. In 2017, the fourth year of its implementation, a budget of EUR 14.95 million was made available¹⁸ for:

- funding actions to strengthen the operational and technical capacity of customs and police forces in the Member States, and IT support (75 % of the programme's budget); and
- training activities and conferences, including digital forensic training for staff employed by law enforcement agencies in the Member States and partner countries (25 % of the budget).

Beneficiaries of Hercule III grants reported substantial successes achieved with the help of equipment and training funded under the programme,¹⁹ such as:

- seizures of smuggled and counterfeit cigarettes and tobacco;
- detection of new fraud schemes and networks of organised crime groups; and
- operations and investigations into irregularities and corruption perpetrated against the financial interests of the Union.

2.3. CJEU jurisprudence

In 2017, three rulings by the Court of Justice of the European Union (CJEU) added to the jurisprudence on the protection of the EU's financial interests. Two (in the *Alytaus*²⁰ and *Glencore* cases)²¹ dealt with issues relating to periods of limitation, while the third (*M.A.S. and M.B.*)²² related to VAT, in

programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC (OJ L 84, 20.3.2014, p. 6).

¹⁸ Commission Decision C(2017) 1120 final of 22 February 2017.

¹⁹ For details, see the SWD referred to in footnote 1, point (v).

²⁰ Case C-436/15, Request for a preliminary ruling under Article 267 TFEU from the *Lietuvos vyriausios administracinės teismas* (Supreme Administrative Court of Lithuania), made by decision of 10 July 2015, received at the Court on 10 August 2015, in the proceedings *Lietuvos Respublikos aplinkos ministerijos Aplinkos projektų valdymo agentūra v 'Alytaus regiono atliekų tvarkymo centras' UAB*, judgment of the Court (Third Chamber), 15 June 2017.;

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=191811&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=120020>

²¹ Case C-584/15 *Glencore Céréales France v Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)*, judgment of the Court (Fourth Chamber), 2 March 2017;

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130de433267059163433db6acf2f7ed8ab2e8.e34KaxiLc3eQc40LaxqMbN4Pb38Me0?text=&docid=188526&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=119378>

²² Case C-42/17, Request for a preliminary ruling under Article 267 TFEU from the *Corte costituzionale*

¹⁵ With Tunisia's General Finance Inspectorate and the Kosovo* police, respectively.

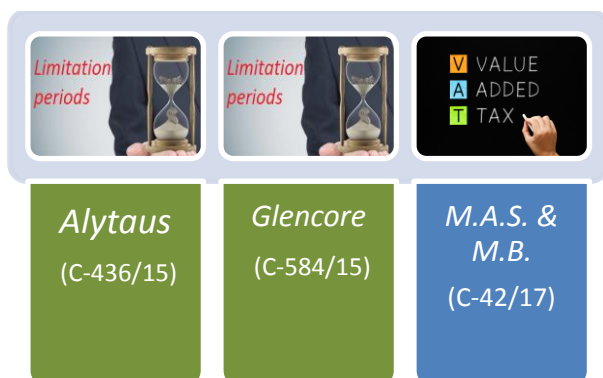
* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

¹⁶ COM(2011) 376 final.

¹⁷ Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a

particular clarifying some aspects of the *Taricco* judgment.

Figure 2: CJEU jurisprudence on PIF-related matters (2017)



2.3.1. Limitation periods: the *Alytaus* and *Glencore* cases

In *Alytaus*, the Court clarified the meaning of the limitation period²³ for an irregularity committed in the context of a multiannual programme and in the case of ‘continuous or repeated’ irregularity. It also clarified when a multiannual programme can be regarded as ‘definitively terminated’.

In *Glencore*, the Court provided further clarifications as regards the interpretation of the provisions referred to in Article 3(1) and (4) of Council Regulation (EC, Euratom) No 2988/95 with reference to the recovery of claims.

2.3.2. VAT: the *M.A.S.* case

As a result of the *M.A.S.* judgement, in order not to disregard their obligations under Article 325(1) and (2) TFEU, the Member States must ensure that effective and deterrent criminal penalties are adopted in cases of serious fraud affecting the EU’s financial interests in relation to VAT.²⁴

2.4. Measures taken by Member States

2.4.1. Summary

This summary gives an overview of trends in and priorities for Member States’ anti-fraud measures, but it is not exhaustive; Member States were asked to report a maximum of three anti-fraud measures, but some may have taken more.²⁵

In 2017, Member States reported 73 measures²⁶ to protect the EU’s financial interests and fight fraud. The measures covered the entire anti-fraud cycle, mostly in the area of shared management, but also on financial crime, customs and illicit trade, public procurement, conflicts of interest, anti-corruption and anti-fraud strategies, organised crime, anti-fraud coordination services (AFCOSSs), the definition of fraud, and whistleblowers. Most of the measures concerned detection, followed by prevention, investigation and prosecution, recovery and sanctions.

The majority (77 %) were sectoral rather than cross-cutting (23 %). Of the sectoral measures, 15 concerned revenue in the fields of tax fraud and customs. Another 41 concerned expenditure, covering all areas of the budget. Sector-related measures will be dealt with in the paragraphs dedicated to the various budgetary areas, while this section focuses on the cross-cutting measures.

2.4.1.1. National anti-fraud strategies (NAFS)

By the end of 2017, a total of 10 Member States²⁷ had adopted a national anti-fraud strategy and sent it to the Commission. This shows their understanding of the importance of a strategic approach to combating fraud and irregularities. The Commission welcomes these developments and calls on the other Member States to draft such strategies.

2.4.1.2. Public procurement and corruption

Many of the measures adopted by Member States in 2017 on public procurement are aimed at tackling corruption and conflicts of interest, and enhancing transparency. Six Member States²⁸ reported taking such measures.

(Constitutional Court, Italy), made by decision of 23 November 2016, received at the Court on 26 January 2017, in the criminal proceedings against M.A.S., M.B., judgment of the Court (Grand Chamber), 5 December 2017;

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130dee23bf505dd284bfca15ec6074b29881b.e34KaxiLc3eQc40LaxqMbN4Pb38Me0?text=&docid=197423&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=122561>

²³ Within the meaning of Article 3(1) of Regulation (EC, Euratom) No 2988/95.

²⁴ Case C-42/17 *M.A.S.*, paragraph 35, recalling the judgment in *Taricco* (Case C-105/14);

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=167061&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=124335>

²⁵ Reported measures are analysed in detail in the SWD referred to in footnote 1, point (i).

²⁶ Some of these were part of a package including, for instance, legislative, administrative, operational or organisational measures adopted together to apply at various levels in the country’s institutional structure. This brings the total of reported measures to 111.

²⁷ Bulgaria, Croatia, Czech Republic, France, Greece, Hungary, Italy, Latvia, Malta and Slovakia. Romania reported a NAFS in the past, but this is now outdated.

²⁸ Czech Republic, Spain, Malta, Estonia, Cyprus and Romania.

2.4.1.3. Other measures

Other reported cross-cutting measures mainly concerned financial and organised crime (Czech Republic, Poland and Lithuania), reviewing the organisation and competences of specific bodies (Greece and Sweden) or improving inter-agency cooperation.

Three Member States reported measures to address revenue and expenditure in certain sectors:²⁹

- Latvia launched a national anti-fraud campaign (#FraudOff!) to raise public awareness of fraud, complemented by specific training for the administrations concerned;
- Italy took measures to combine administrative and penal initiatives that make it possible to reconstruct illicit financial flows and seize the assets of criminal organisations; and
- Slovenia took measures to increase the detection and clearance rate for crimes that harm the EU budget.

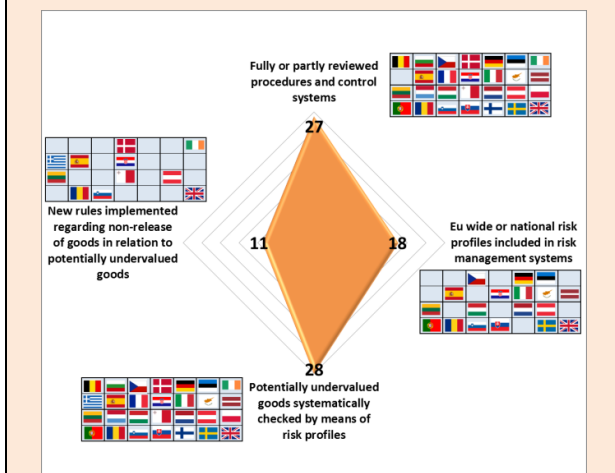
2.4.2. Implementation of 2016 recommendations

In the 2016 PIF report, the Commission made four recommendations to the Member States; one targeted revenue and three expenditure.

Overall, the follow-up to the recommendations (see diagrams below) showed that most Member States have made or are making significant and constructive efforts.³⁰ The majority gave appropriate attention to most recommendations.³¹

The Commission had recommended that Member States:

(1) review their management and control strategy with regard to customs valuation

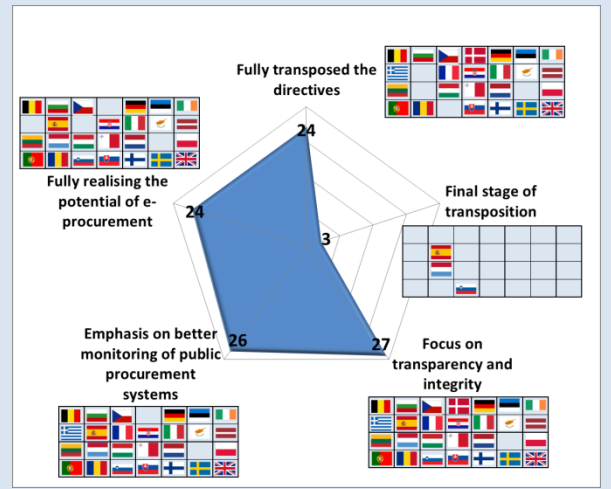


²⁹ Although the Member States do not explicitly define these as cross-cutting measures, they fit best in this section.

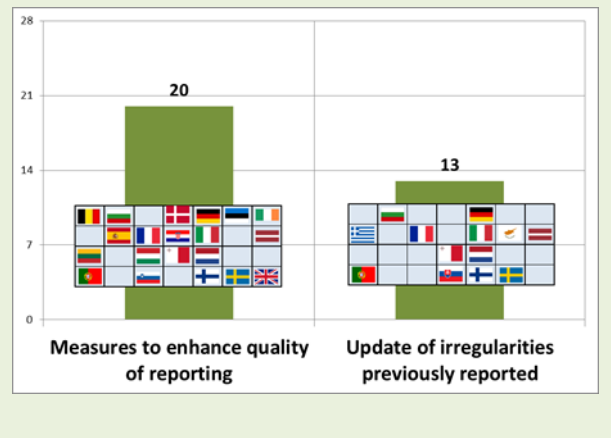
³⁰ The UK did not provide any information concerning the follow-up to the recommendations.

³¹ Detailed analysis of the replies can be found in the SWD referred to in footnote 1, point (i).

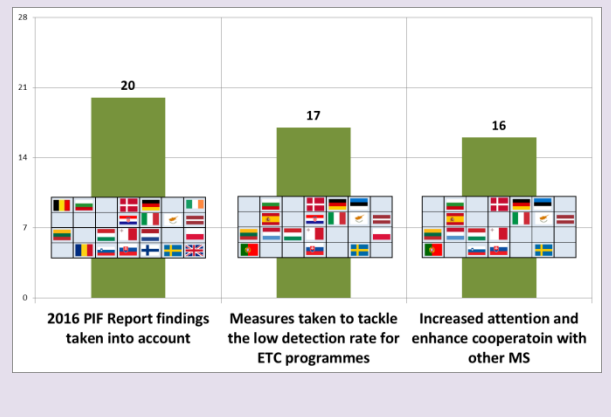
(2) fully transpose the revised Public Procurement Directives



(3) improve the quality of data when reporting irregularities



(4) take into account the risk-analysis findings



Nevertheless, there is still room for improvement, such as implementing new rules on customs undervaluation and the non-release of goods in cases of doubt; wider use of the EU-wide risk profiles based on 'clean average prices' could be

envisaged. More could be done to ensure fully digital public procurement procedures. Also, although some Member States provide or arrange training and seminars on using IT systems for reporting, so as to enhance data quality and update

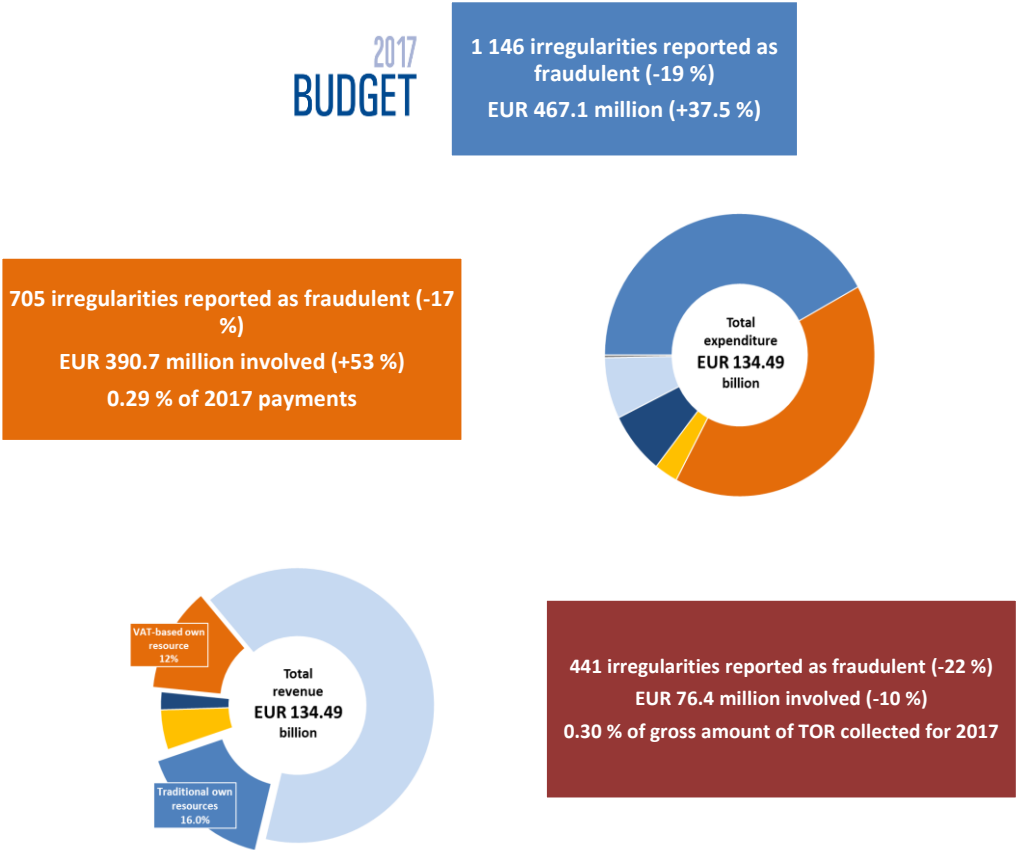
irregularities already reported, others could step up their efforts. Lastly, cooperation among Member States could be improved as regards the increased threat of transnational fraud and European territorial cooperation programmes.

2.5. Summary of statistics concerning detected irregularities and fraud³²

In 2017, a total of 15 213 fraudulent and non-fraudulent irregularities were reported to the Commission, 20.8 % fewer than in 2016. They involved approximately EUR 2.58 billion, 8.6 % down from the previous year.

The detection of an irregularity implies that corrective measures have been taken in order to recover the irregular financial amounts involved and that criminal proceedings have been launched if fraud is suspected.

Figure 3: Irregularities reported as fraudulent in 2017



³² For a detailed analysis of the reported irregularities, see the SWD referred to in footnote 1, point (ii).

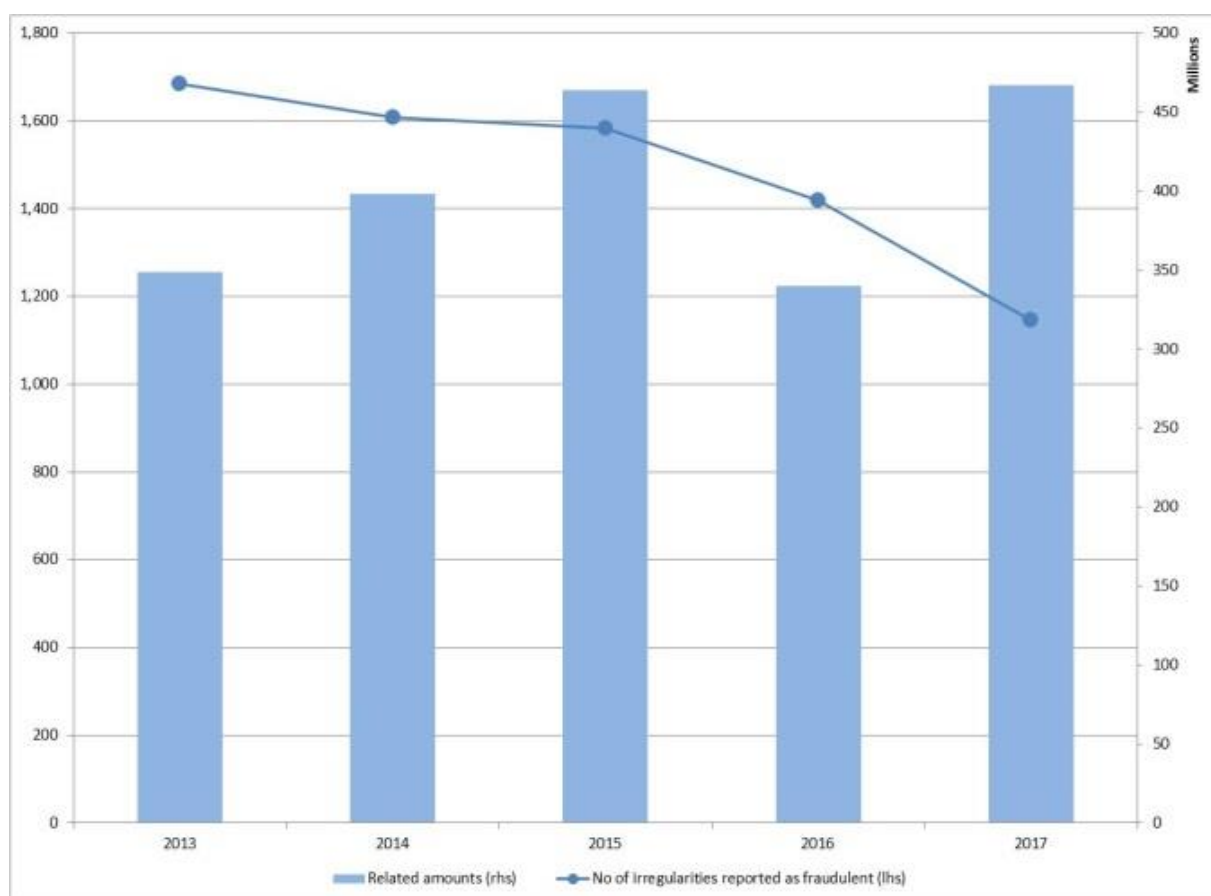
2.5.1. Detected fraudulent irregularities

The number of irregularities reported as fraudulent (which includes cases of suspected or established fraud) and the associated amounts is not a direct indicator of the level of fraud affecting the EU budget. It merely shows how many cases of potential fraud are being detected by Member States and EU bodies.

In 2017, a total of 1 146 irregularities were reported as fraudulent (i.e. 7.5 % of all irregularities detected and reported),³³ involving about EUR 467 million (representing 18.1 % of all financial amounts affected by irregularities)³⁴ and covering both expenditure and revenue, as shown in Figure 3.

The number of fraudulent irregularities reported in 2017 fell by 19.3 % as compared with 2016, while the financial amounts involved increased by 37.5 %. Looking at a five-year period (2013-2017), this was 32 % fewer than in 2013, 23 % below the five-year average. The financial impact fluctuates greatly (see Figure 4), as it can be affected by individual cases involving very large sums.

Figure 4: Irregularities reported as fraudulent and associated amounts, 2013-2017



A breakdown of all fraudulent irregularities reported in 2017, by Member State and by budget sector, is set out in Annex 1.

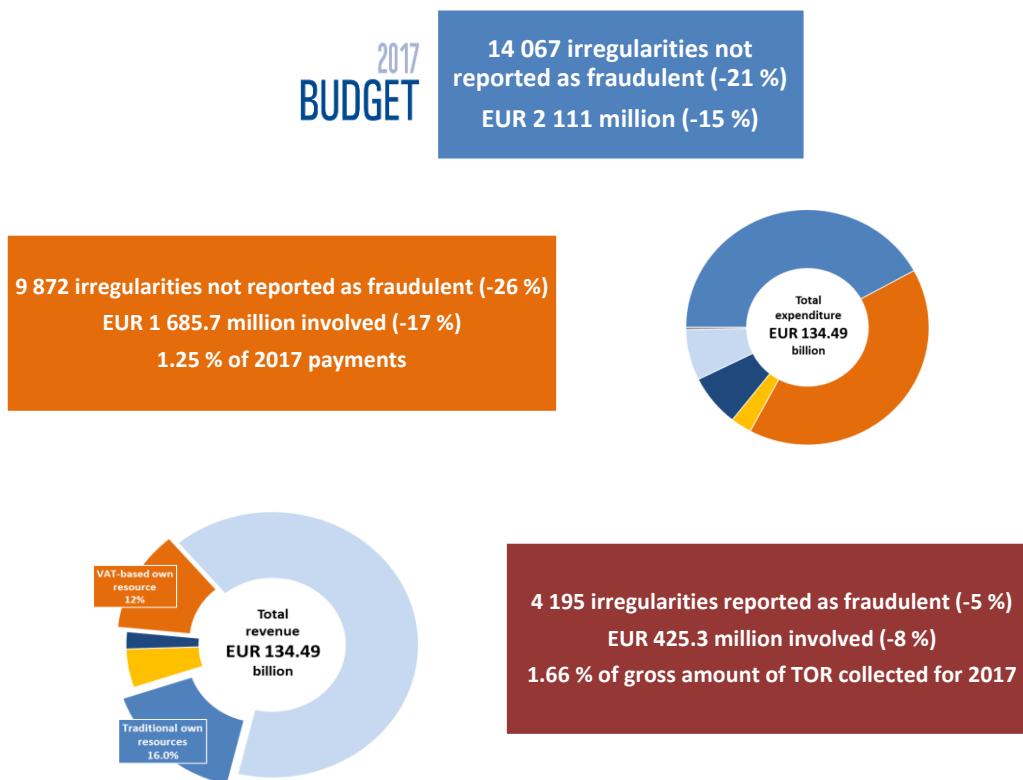
2.5.2. Detected and reported non-fraudulent irregularities

In 2017, the Commission was notified of 14 067 irregularities not reported as fraudulent (20.9 % fewer than in 2016). The figures fell for all sectors except pre-accession. The financial amounts involved decreased by approximately EUR 2.1 billion, as shown in Figure 5.

³³ This indicator is the 'fraud frequency level' (FFL). See section 2.3.2 of the Commission staff working document *Methodology regarding the statistical evaluation of reported irregularities for 2015* (SWD(2016) 237 final).

³⁴ This indicator is the 'fraud amount level' (FAL). See section 2.3.3 of the document referred to in footnote 33.

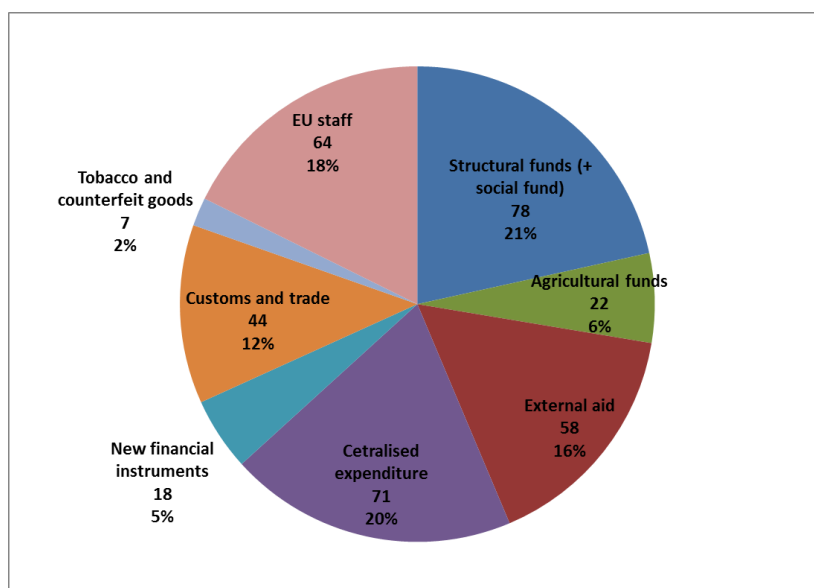
Figure 5: Irregularities not reported as fraudulent in 2017



2.5.3. OLAF investigations

In 2017, OLAF opened 215 investigations and concluded 197, recommending financial recoveries worth EUR 3.1 billion, of which EUR 2.7 billion related to revenue. This exceptionally high figure stems from major underevaluation fraud cases concluded by OLAF during the year. At the end of the year, 362 investigations were ongoing.³⁵

Figure 6: Ongoing investigations at the end of 2017, by sector³⁶



³⁵ https://ec.europa.eu/anti-fraud/about-us/reports/olaf-report_en

³⁶ In 2017, as in the previous year, OLAF has continued to deal with a relatively high number of cases related to the European Parliament. While many of the investigations are currently on-going, in 2017 cases typically related to the misuse of European Parliament funding to support the activities of national parties. These cases are recorded under the category 'Eu staff'. See OLAF 2017 report (footnote 35, page 23).

3. ANTI-FRAUD POLICIES, MEASURES AND RESULTS — REVENUE

3.1. EU institutions' anti-fraud measures – revenue

When it comes to fighting fraud in the revenue area, the swift, timely and accurate exchange of information is of the essence. This ensures adequate coordination to disrupt fraud schemes that are by nature transnational. The EU fights fraud and irregularities in these areas by

reinforcing the legal framework and international cooperation agreements, ensuring operational coordination via Joint Customs Operations (JCOs) and facilitating the exchange of information in relation to VAT fraud.

Member States have adopted national measures to:

- review strategic plans, risk assessments and indicators;
- reorganise competent services; and
- enhance information exchanges.

Figure 7: Policy highlights in the revenue areas

Coordination, cooperation and information exchange	11 JCOs coordinated by OLAF
	Proposal for amending Regulation (EU) No 904/2010 on VAT fraud (discussions ongoing in Council)
	Mutual assistance agreements with non-EU countries: Mercosur and Azerbaijan
	Anti-fraud clause in free trade agreement with Japan

3.1.1. Mutual administrative assistance

3.1.1.1. Implementation of Article 43b of Regulation (EC) No 515/97

Regulation (EU) 2015/1525,³⁷ amending Regulation (EC) No 515/97³⁸ on mutual administrative assistance in customs matters, introduced a new Article 43b requiring the Commission to assess the need to extend the container status message (CSM) directory and the import, export and transit (IET) directory to export data not limited to excisable goods. The Commission is also required to assess the feasibility of extending the transport directory to data on the import, export and transit of goods by land and air.

The Commission reported its preliminary findings in the 2016 PIF report.³⁹ In the

meantime, it has pursued its work and finalised its assessment.⁴⁰

3.1.1.2. Anti-Fraud Information System (AFIS)

AFIS is an umbrella of anti-fraud applications operated by OLAF, using common technical infrastructure. It is an important IT tool for many administrations and other users involved in protecting the EU's financial interests. It also enables substantial economies of scale and synergies in the development, maintenance and operation of such a wide and diverse set of IT services and tools, aiming at:

- the timely and secure exchange of fraud-related information between the competent national and EU administrations; and
- the storage and analysis of relevant data.

AFIS covers two major areas:

- mutual assistance in customs matters; and
- irregularities management.

³⁷ Regulation (EU) 2015/1525 of the European Parliament and of the Council of 9 September 2015 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 243, 18.9.2015, p. 1).

³⁸ OJ L 82, 22.3.1997, p. 1.

³⁹ See COM(2017) 383 final, section 3.1.1.2.

⁴⁰ For more details, see the SWD referred to in footnote 1, point (vi).

At the end of 2017, AFIS had 8 600 registered end-users on behalf of more than 1 800 competent services in Member States, non-EU partner countries, international organisations, Commission departments and other EU bodies. In 2017, a total of 16 324 cases were available in the AFIS mutual assistance databases and modules.

The irregularity management system (IMS), which uses the AFIS platform, received 88 347 new communications on irregularities from Member States and candidate countries.

Two new IT systems provided for in Regulation (EC) No 515/97 (as amended), the CSM directory and the IET directory, went live on 1 September 2016.

AFIS received 637 million CSMs in 2017. The IET directory contains declaration data on the import and transit of goods and on the export of excise goods. Some 5.3 million export declarations and related messages were processed.

AFIS was used for secure access and exchange of information in 11 JCOs (see next section).

The anti-fraud transit information system (ATIS) received information on 22.5 million new transit consignments. These are also available in the IET directory.

3.1.1.3. Joint customs operations (JCOs)

JCOs are coordinated and targeted operational measures implemented by Member States' and non-EU countries' customs authorities over a limited period to combat illicit cross-border trafficking in goods.

In 2017, OLAF coordinated and supported 11 JCOs cooperating with Member States and contributing intelligence and technical, financial and logistical support.

The JCOs targeted various threats, including cigarette smuggling, revenue fraud, counterfeit products, illicit cash movements and narcotics. Figure 8 presents a summary of most of the operations.

Figure 8: Joint customs operations in 2017

Operation	Participating countries	Scope	Results
JCO Renegade	Asia-Europe meeting: all Member States, Norway, 12 Asian countries, Interpol, Europol, Regional Intelligence Liaison Office (WTO)	Counterfeit goods, in particular auto spare parts (ASPs)	70 000 ASPs; 400 000 other counterfeit goods; 56 million cigarettes (worth EUR 12 million in customs duties and taxes)
JCO Cerberus	27 Member States, Europol support	Failures to declare cash, money laundering and criminal organisations involved in terrorist activities.	Detention of EUR 6.4 million
JCO Magnum II	Coordinated by Estonian customs with the involvement of 14 Member States, Europol and Frontex	Smuggling of tobacco products transported by road from non-EU countries (Belarus, Ukraine and Russia)	Seizure of around 20 million cigarettes
Octopus II	Organised by French customs	Revenue fraud	Evaluation ongoing
Load, Lock Sea, Lucky and Pascal	Coordinated by French customs	Regional maritime surveillance operations to detect illicit trafficking of sensitive goods by sea, in the Atlantic and Mediterranean areas	Over 5 tonnes of cannabis resin seized and 10 people arrested
JCO Postbox	Led by Belgian, German and Swedish customs under the 'customs against internet crime' action	Excise fraud and illegal trade in counterfeit goods, drugs and weapons in shipments transported by mail and express courier services	Over 3 000 seizures of thousands of illicit products, including pharmaceutical preparations, narcotics, cigarettes, counterfeit goods, protected species and weapons

Operation	Participating countries	Scope	Results
JCO Darius	Organised by Dutch customs	Smuggling of specific new psychoactive substances (NPS) and counterfeit and undervalued goods, transported by fast-couriers and postal services	Over 300 seizures
Joint Action Hansa	Driven by UK customs in cooperation with Europol	Internal movement of illegal excisable goods, mainly cigarettes	Seizures of large numbers of cigarettes and other tobacco products

3.1.2. Mutual assistance and anti-fraud provisions in international agreements

In the context of Article 19 of Regulation (EC) No 515/97, negotiations were finalised with Mercosur (Argentina, Brazil, Paraguay and Uruguay) and Azerbaijan on mutual administrative assistance provisions forming a legal basis for the exchange of information on fraud and irregularities. Negotiations with Tunisia and Indonesia made good progress.

The EU also made progress in ongoing negotiations on including an anti-fraud clause in free trade agreements with Mexico, Mercosur, Chile, Indonesia and Tunisia, and concluded an agreement with Japan.

3.1.3. Fight against illicit trade in tobacco products

On 12 May 2017, the Commission issued a progress report⁴¹ on the preliminary outcome of its 2013 Communication *Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products — a comprehensive EU strategy*,⁴² which came with a comprehensive action plan.

Council conclusions on stepping up the fight against illegally traded tobacco products in the EU (adopted on 7 December 2017)⁴³ and the 'Fighting illicit tobacco' stakeholder conference (co-organised by OLAF and the European Economic and Social Committee in March 2018) feed into the Commission's work on a new action plan to fight illicit tobacco, envisaged for late summer 2018.

In addition, the EU's ratified the World Health Organisation's Framework Convention on Tobacco Control (FCTC) Protocol on 24 June 2016. The FTCT Protocol will enter into force on

25 September 2018. The Commission will represent the EU at the first meeting of the parties to the Protocol in October 2018 and continue to play a leading role in encouraging Member States, neighbouring countries and the main source and transit countries to ratify and implement the Protocol.

3.1.4. Fight against VAT fraud

On 30 November 2017, as a follow-up to its April 2016 action plan on VAT,⁴⁴ the Commission adopted a proposal to amend Regulation (EU) No 904/2010 on administrative cooperation in the area of VAT.⁴⁵ On June 2018, the Council reached a political agreement on the proposal. The proposal is geared to making the EU's VAT system more fraud-proof and closing loopholes that can lead to large-scale VAT fraud. The new rules aim to build trust between Member States, so that they can exchange more information, and boost cooperation between national tax authorities and law-enforcement bodies. Key measures include:

- strengthening cooperation between Member States (e.g. new IT system for information processing and risk analysis within Eurofisc (EU network of anti-fraud experts), joint audits);
- reinforcing communication and data exchange between national tax authorities in Eurofisc and European law-enforcement bodies (OLAF, Europol and the future EPPO);
- improving cooperation between national tax and customs authorities for certain customs procedures for imports from outside the EU, which are currently open to VAT fraud; and

⁴¹ COM(2017) 235 final.

⁴² COM(2013) 324 final.

⁴³ Council doc. 15638/17.

⁴⁴ *An action plan on VAT: towards a single EU VAT area – time to decide*, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee (COM(2016) 148).

⁴⁵ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

- strengthening information-sharing to tackle VAT fraud on second-hand cars.

3.2. Member States' anti-fraud measures – revenue

Some 12 Member States reported measures to fight customs and tax fraud; these included:

- refining risk indicators to address the undervaluation of import declarations;⁴⁶
- reviewing national customs risk assessment and raised the minimum fine for failure to declare the amount of cash carried;⁴⁷
- drafting an internal customs plan;⁴⁸
- setting strategic and operational priorities for customs and excise;⁴⁹ and
- implementing a new post-clearance audit method extending inspections to all activities of the economic operator in question.⁵⁰

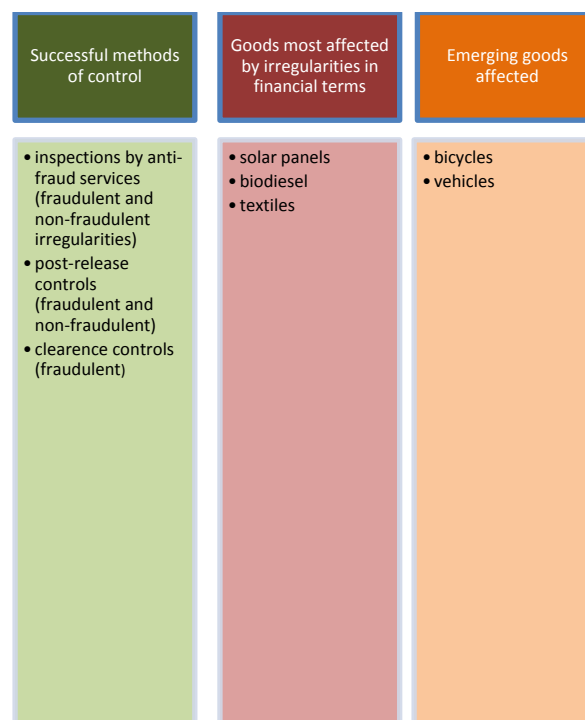
Three countries introduced measures to ensure the correct payment of EU own resources⁵¹ or more successful recoveries,⁵² or to combat tax fraud and evasion.⁵³

Two countries established or reviewed the organisation of specific bodies.⁵⁴

One Member State⁵⁵ addressed the need to improve the quantity and quality of information exchanged through international platforms.

3.3. Statistics on detected irregularities and fraud – revenue

Figure 9: Key patterns in irregularities detected and reported in 2017



3.3.1. Detected fraudulent irregularities⁵⁶

A total of 441 irregularities were reported as fraudulent in 2017. This is 33 % lower than the five-year average (658 irregularities on average in 2013-2017). The affected amount of TOR estimated and established (EUR 76 million) in 2017 was 28 % lower than the five-year average (EUR 106 million).

As regards the investigation into undervaluation fraud in the UK, a pre-infringement procedure was launched with a formal notice letter in March 2018. The procedure was launched in record time and in view of the fact that the UK had for several years failed to take appropriate measures to protect the EU's financial interests and refused to make available to the EU budget the TOR losses resulting from its inaction. The infringement covers the period since 2011. If the UK authorities do not succeed in recovering the duties due, they will be held financially liable for any associated TOR not made available to the EU budget.

For the second year, the Commission entered a reservation in the 2017 annual activity report on the accuracy of the TOR amounts transferred to the EU budget by the UK.

⁴⁶ The Netherlands, in particular as regards textile goods.
⁴⁷ Portugal.
⁴⁸ Finland.
⁴⁹ Belgium.
⁵⁰ Italy.
⁵¹ Denmark.
⁵² Spain.
⁵³ Slovenia.
⁵⁴ Germany and Greece.
⁵⁵ France.

⁵⁶ For information on the recovery of TOR amounts affected by fraud and irregularities, see the SWD referred to in footnote 1, point (ii).

3.3.2. Detected and reported non-fraudulent irregularities

The number of irregularities reported as non-fraudulent for 2017 amounts to 4 195, which is 8 % fewer than the five-year average (4 564 in 2013-2017). The total affected amount of TOR estimated and established amounts to EUR 425 million in 2017, which is 15 % higher than the five-year average of EUR 369 million.

4. SECTORAL ANTI-FRAUD POLICIES, MEASURES AND RESULTS — EXPENDITURE

4.1. Member States' sectoral anti-fraud policies and measures involving several expenditure sectors

Member States reported several measures that address different funds at the same time, mostly the European Structural and Investment Funds (ESIFs).⁵⁷ Some of the measures extend to other shared management funds, such as the Asylum and Migration Fund (AMIF), the Fund for European Aid to the Most Deprived (FEAD) and the European Globalisation Adjustment Fund (EGF). The measures differ widely in nature and purpose, and range from simplification of procedures to a review of the system for financial corrections; from risk assessments to training courses on specific cross-cutting issues.⁵⁸

4.2. Agriculture — sectoral anti-fraud policies, measures and results

4.2.1. Agriculture — Member States' anti-fraud measures

Nine Member States reported anti-fraud measures specific to agriculture. Three countries focused on the 'artificial creation of eligibility criteria'.⁵⁹ Other measures involve:

- mandatory fraud prevention training and a rural development anti-fraud strategy;⁶⁰
- preventing irregularities when granting aids and subsidies;⁶¹
- checks on the basis of procurement rules and evaluating the 'reasonableness' of costs;⁶²

- improving the timeliness and quality of the information reported via IMS;⁶³
- reviewing the external and internal control system, following the detection of a scam;⁶⁴ and
- reviewing procedures in areas such as flagging practices, the use of risk indicators and cooperation with law enforcement.⁶⁵

4.2.2. Agriculture — statistics on detected irregularities and fraud

The Common Agricultural Policy (CAP) comprises two main components:

- direct support (SA), through direct payments to farmers and market support measures, which are financed by the European Agricultural Guarantee Fund (EAGF — about 80 % of the CAP budget); and
- rural development (RD), which is mainly financed through the European Agricultural Fund for Rural Development (EAFRD — the remaining 20 % of the CAP budget).

The EAGF follows an annual implementation cycle, while the EAFRD finances multiannual programmes.

The trend of irregularities detected and reported by Member States over the last five years is influenced by these differences: SA shows a stable, flat trend, while RD follows a curve, peaking in 2015. Analysis of the irregularities confirms the higher risk associated with market support measures and RD investments.⁶⁶

4.2.2.1. Detected fraudulent irregularities

For the reporting years 2013 to 2017, the fraud frequency level (FFL) is about 11 % and the fraud amount level (FAL) 25 %. Both indicators, but especially the FAL, were higher for SA than for RD.

In absolute numbers, the majority of detected potential frauds affected RD, but the total financial amount of cases concerning SA was higher and increased significantly in 2017. The predominance of SA in financial terms was due to a few cases concerning market measures and involving very large sums. However, even net of

⁵⁷ The ESIFs broadly cover agriculture, fisheries and cohesion policies.

⁵⁸ For a complete overview, see paragraph 5.1 of the SWD referred to in footnote 1, point (i).

⁵⁹ Germany, Lithuania and Cyprus.

⁶⁰ Hungary.

⁶¹ Slovakia.

⁶² The Netherlands.

⁶³ Austria.

⁶⁴ Luxembourg.

⁶⁵ Poland.

⁶⁶ All the assessments presented in this section are based on findings detailed in chapter 3 of the SWD referred to in footnote 1, point (ii).

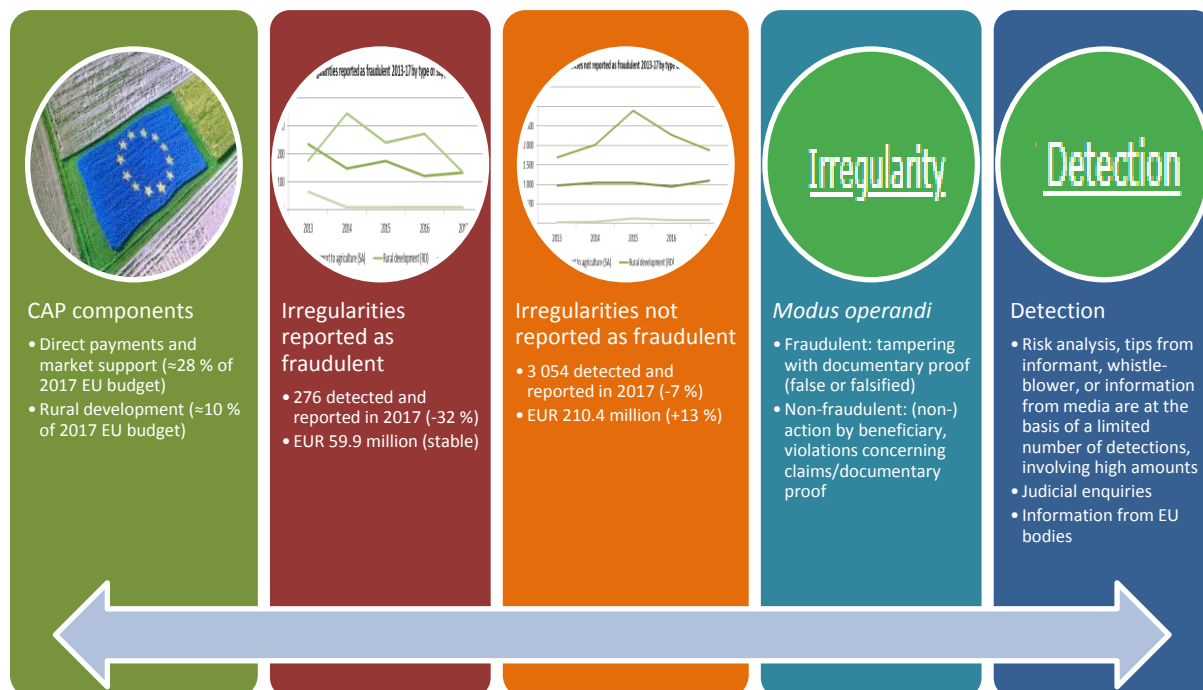
these exceptional cases, the average financial amount of potential frauds in the area of market measures is higher than that of RD cases. The average financial amount of potential fraud concerning direct payments is lower than that of RD cases and decreased in 2017.

The Fraud Detection Rate (FDR) was higher for RD than for SA as a whole. Nevertheless, market measures were most affected, with an FDR of 1.17 %. However, it should be borne in mind

that this is heavily influenced by a few cases with exceptional financial amounts. In financial terms, the main market measures concerned were ‘fruit and vegetables’, ‘pigmeat, eggs and poultry, bee-keeping and other animal products’ and ‘products of the wine-growing sector’.

The ratio of dismissed cases is higher in agriculture than in the cohesion policy area. Judicial authorities seem less inclined to prosecute alleged crimes in this sector.

Figure 10: Agricultural policy – key facts and figures



4.2.2.2. Detected and reported non-fraudulent irregularities

In general, the patterns described in section 4.2.2 also apply to irregularities not reported as fraudulent. RD-related irregularities predominate both numerically and in terms of total financial amounts. However, the average amount involved in SA cases is higher and rose further in 2017. Again, a few cases concerning market measures and involving large sums contributed to this higher average. However, even net of these exceptional cases, the average financial amount of non-fraudulent irregularities in market measures in 2013-2017 is still higher than that of RD cases. The average financial amount of non-fraudulent irregularities concerning direct payments is lower than that of RD cases and is decreasing.

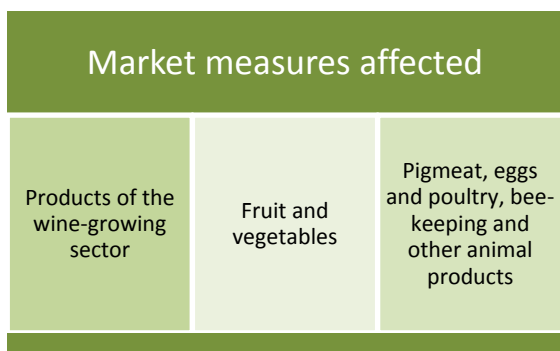
Among the most recurrent detected and reported non-fraudulent irregularities, violations concerning payment claims or documentary proof predominate and there are

many reports of falsification. However, these cases are not classified as fraudulent.⁶⁷

The Irregularity Detection Rate (IDR) was higher for RD than for SA as a whole. However, the IDR for market measures is 1.39 %, the highest of the whole policy area. Again, this is influenced by a few cases involving large financial amounts.

Figure 11: Market measures most affected by irregularities (fraudulent and non-fraudulent)

⁶⁷ This situation mainly concerns Italy. These irregularities may be reclassified at a later stage and such an approach may be linked to a preliminary phase of ongoing investigations.



4.3. Cohesion policy and fisheries — sectoral anti-fraud policies, measures and results

4.3.1. Cohesion policy and fisheries — Member States' anti-fraud measures

Cohesion policy and fisheries were the policy areas most targeted by measures adopted by Member States in 2017.

Eight countries reported that they had introduced ARACHNE in their management system,⁶⁸ IT tools in public procurement,⁶⁹ a computerised accounting system⁷⁰ or improvements to their beneficiary information system.⁷¹ Four introduced a fraud risk-assessment tool⁷² or developed specific risk analysis on economic crime.⁷³

Four countries adopted measures concerning the management or reporting of irregularities.⁷⁴ Three adopted measures specific to one fund.⁷⁵ The remaining measures concerned conflicts of interest,⁷⁶ the introduction of a verification procedure⁷⁷ and anti-fraud training.⁷⁸

⁶⁸ Belgium, Bulgaria, Luxembourg, the Netherlands and the UK.

⁶⁹ Poland.

⁷⁰ Slovenia.

⁷¹ Finland.

⁷² Germany, Cyprus and Luxembourg.

⁷³ Sweden.

⁷⁴ Bulgaria, Croatia, Denmark and Malta.

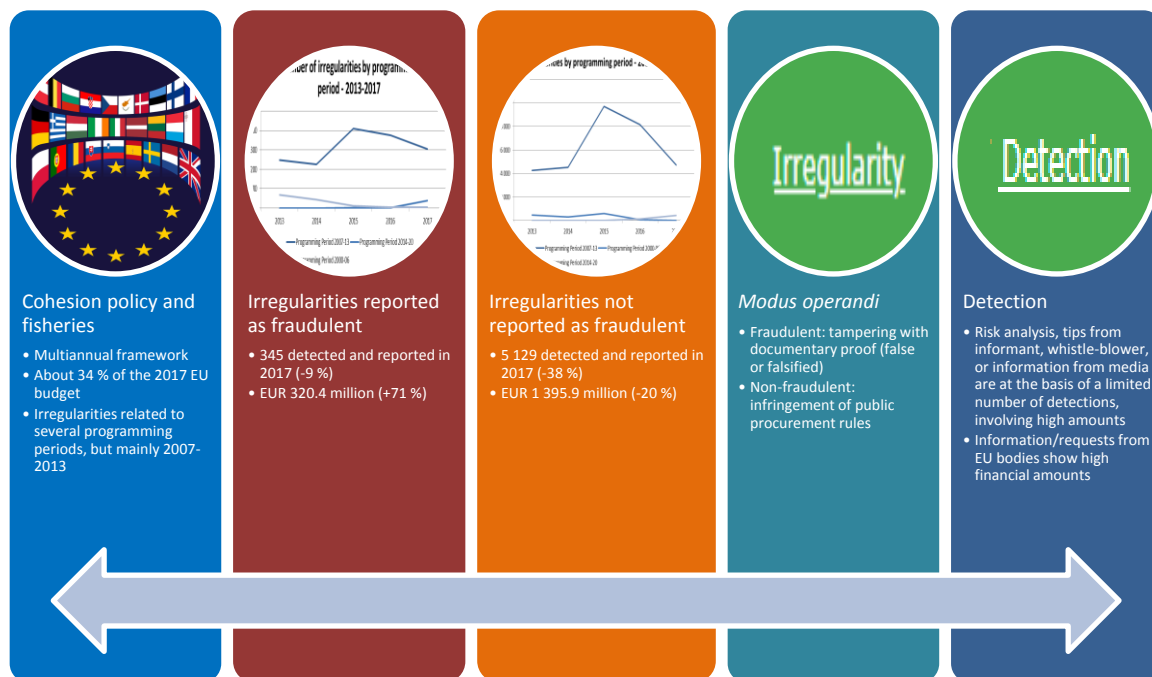
⁷⁵ Germany (ESF), Ireland (ESF) and Italy (EMFF).

⁷⁶ Belgium.

⁷⁷ Austria.

⁷⁸ Finland.

Figure 12: Cohesion and fisheries policies – key facts and figures



4.3.2. Cohesion policy and fisheries — statistics on detected irregularities and fraud

Analysis of cohesion policy is more complex than that of other budget sectors, because the information received (reported irregularities) relates to different programming periods (PPs) governed by partially different sets of rules.

Also, the fact that PPs are multiannual significantly affects the underlying trends. Given the similarities in the management of the funds, fisheries and cohesion policies are analysed together.

The number of irregularities reported in relation to cohesion and fisheries policies peaked in 2015, in line with the progress of the programme cycle.

Irregularities reported in 2017 concern four different PPs, with the largest proportion (94 %) relating to PP 2007-2013 and only 570 (less than 2 %) to PP 2014-2020.⁷⁹ In line with the implementation cycle, reporting with reference to PP 2014-2020 basically started in 2016 and increased in 2017. There are still not enough data for a meaningful analysis.

As the bulk of reported irregularities relate to PP 2007-2013, the analysis focuses mainly on that programming cycle as a whole.

4.3.2.1. Detected fraudulent irregularities

The number of potential frauds continued to fall slowly from the 2015 peak, while the financial amounts increased (mainly due to irregularities relating to PP 2007-2013).

The ‘research and technological development (RTD)’ and ‘transport’ priorities were among those most affected by potential fraud. As regards the former, infringements of contract provisions were the most-reported violations, for potentially fraudulent and non-fraudulent irregularities. Infringements concerning public procurement rules were reported, but very few as fraudulent. Very few violations concerning ethics and integrity were reported, but most were classified as potential fraud. More specifically, most involved a conflict of interest or belonged to the ‘other’ category.

⁷⁹ All the assessments presented in this section are based on findings detailed in chapter 4 of the SWD referred to in footnote 1, point (ii).

Figure 13: Focus on PP 2007-2013

PP 2007-2013	
Fraudulent irregularities <ul style="list-style-type: none"> • 1 934 - EUR 1.46 billion • FDR 0.44 % (highest for convergence and fisheries; lowest for European territorial cooperation (ETC) programmes) • priorities most affected: RTD, transport, tourism 	Non-fraudulent <ul style="list-style-type: none"> • 37 869 - EUR 8.46 billion • IDR 2.53 % (highest for convergence objective and fisheries; lowest for ETC) • priorities most affected: RTD, transport and tourism

As regards the ‘transport’ priority, infringements relating to supporting documents were the most-reported violations for potential fraud. Infringements concerning public procurement rules were the most reported, but they were rarely reported as potential fraud. The opposite was true for infringements concerning ethics and integrity: these violations were rare, but almost all involved potential fraud. They concerned conflicts of interest, corruption or ‘other’.

The ratio of established fraud was higher and dismissals lower for cohesion policy measures than for agriculture.

4.3.2.2. Detected and reported non-fraudulent irregularities

The number of non-fraudulent irregularities follows the main trend highlighted above. The financial amounts peaked in 2016 and then decreased more slowly than the numbers. The resulting higher average financial amounts for PP 2007-2013 may be the outcome of better targeting or just fortuitous.

4.4. Indirect management (pre-accession) — sectoral anti-fraud policies, measures and results

4.4.1. Indirect management (pre-accession) — statistics on detected irregularities and fraud

The analysis of irregularities relating to indirect management focuses on the pre-accession instruments.

Reported irregularities still concern two main periods:

- 2000-2006 – pre-accession assistance (PAA) programmes to prepare the accession views of 2004 and 2007, which are slowly phasing out (only five irregularities, involving EUR 0.1 million, were reported in relation to PAA in 2017); and
- 2007-2013 – the pre-accession instrument (IPA), where the number of reported irregularities was basically unchanged from 2016 (114, involving EUR 17.3 million).

For PAA, only one irregularity was detected and reported as fraudulent. For the IPA, the number of irregularities reported as fraudulent dropped to 17 (from 22 in 2016), but these involved EUR 3.1 million (up from EUR 0.7 million). The main area concerned is still rural development support.

4.5. Direct management — sectoral anti-fraud policies, measures and results

4.5.1. Direct management — statistics on detected irregularities and fraud

Statistics on direct management are based on recovery orders issued by Commission departments and recorded in the Commission’s accrual-based accounting system (ABAC).

4.5.1.1. Detected fraudulent irregularities

In 2017, ABAC recorded 65 recovery items classed as fraudulent,⁸⁰ which accounted for EUR 7.33 million. Comparing this with the total funds actually disbursed, the FDR is 0.03 %, i.e. around the stable five-year average.

4.5.1.2. Detected and reported non-fraudulent irregularities

As regards non-fraudulent irregularities, 1 585 recovery items totalling EUR 64.15 million were

⁸⁰ Referred to in the system as ‘OLAF notified’ cases.

recorded in 2017. Over a five-year period, the IDR remained stable at around 0.5 %.

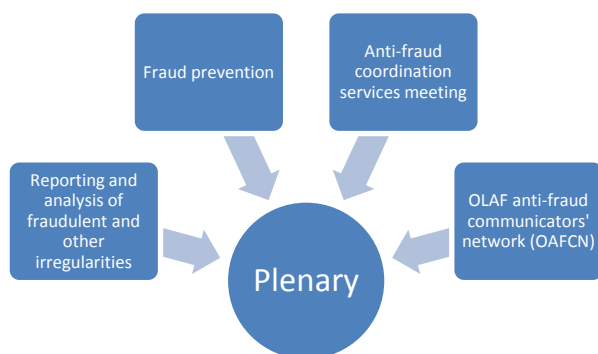
5. RECOVERY AND OTHER PREVENTIVE AND CORRECTIVE MEASURES

Detailed information on recoveries, financial corrections and other preventive and corrective measures (interruptions and suspension of payments) is published in the *Annual management and performance report*, which as from 2016 includes the former annual Communication from the Commission to the European Parliament, the Council and the European Court of Auditors on the protection of the EU budget.⁸¹

6. COOPERATION WITH THE MEMBER STATES

The Advisory Committee for Coordination of Fraud Prevention (COCOLAF) brings together Commission (OLAF) and Member State experts. It provides a forum for discussing the main developments in the fight against fraud and the preparation of this report, as required by Article 325(5) TFEU. Its work is structured around four working groups and a plenary session (see Figure 14).

Figure 14: COCOLAF structure and subgroups



Two subgroups prepared guidance documents in 2017:

- Reporting and Analysis subgroup – *Handbook on the requirement to report irregularities*, which provides guidance on common aspects of Member States' reporting of irregularities for PP 2014-2020; and

⁸¹ The AMPR is part of the EU budget integrated financial reporting package (COM(2018) 457 final). Information concerning recovery on revenue side is also given in the Commission Staff Working Document 'Statistical evaluation of the irregularities reported in 2017'.

- Fraud Prevention subgroup – *Fraud in public procurement – a collection of red flags and best practices*, which contains numerous example cases, red flags, solutions and best practices that are grouped thematically according to the phases of the tender procedure.

The Anti-fraud coordination service (AFCOS) meet annually under the chairmanship of OLAF. In 2017, OLAF's investigative cooperation, in particular during on-the-spot checks and digital forensic operations, was discussed with the AFCOS representatives at the annual meeting. Other subjects for discussion included:

- the role of AFCOSs;
- recent policy developments; and
- the use of AFIS email for case-related correspondence between OLAF and AFCOSs.

The OLAF Anti-Fraud Communicators' Network (OAFCN) brings together communications officers and spokespersons from OLAF's operational partners in the Member States. It plays a pivotal role in communicating the threat of fraud to the public across the EU, and the joint efforts made by national and EU authorities to combat it.

In 2017, OLAF signed two administrative cooperation arrangements to facilitate investigative cooperation with Italy's *Carabinieri* and *Direzione Nazionale Antimafia e Antiterrorismo*.

Member States and the Commission exchanged views on anti-fraud matters in meetings of the Council's Working Party on Combating Fraud (GAF). Four GAF meetings took place in 2017: two under the Maltese Presidency and two under the Estonian Presidency.

7. EARLY DETECTION AND EXCLUSION SYSTEM

The Early Detection and Exclusion System (EDES) aims at reinforcing the protection of the EU's financial interests by ensuring:

- the early detection of economic operators representing risks to the EU's financial interests;
- the exclusion of unreliable economic operators from obtaining EU funds and/or the imposition of a financial penalty; and
- in the most severe cases, the publication on the Commission's website of information relating to the exclusion and/or the financial penalty, in order to reinforce the deterrent effect.

This system, which was set up in 2016, represents a significant improvement in the application of rules on administrative sanctions with respect to fundamental rights, independence and transparency. In the absence of a final national judgment or, where applicable, a final administrative decision, EU institutions, agencies, offices and bodies can decide to impose sanctions on unreliable economic operators only after obtaining a recommendation⁸² from the centralised interinstitutional panel.⁸³

The panel has no investigative powers. In principle, it bases its assessment on facts and findings established in the context of audits or investigations carried out by the European Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of the competent authorising officer.⁸⁴ It is composed of a standing high-level independent chair,⁸⁵ two permanent members representing the Commission (as owner of the system) and one *ad hoc* member representing the authorising officer of the service requesting the recommendation. It respects the right of defence of the economic operator concerned and applies the principle of proportionality.⁸⁶

In 2017, various authorising services referred 11 cases, relating to 11 economic operators, to the panel through its permanent secretariat. Of these, 10 were from the Commission and one from a joint undertaking implementing an EU public-private partnership. This report also covers an additional four cases referred to the permanent secretariat in 2016 and concerning four economic operators, since they were presented to the panel in 2017.⁸⁷

The Commission must also report on decisions taken by authorising officers:⁸⁸

- not to exclude economic operators, so as to ensure continuity of service for a limited period pending the adoption of remedial measures by the operators concerned; and

- not to publish information on administrative sanctions on the Commission website, either to protect the confidentiality of investigations or to respect the principle of proportionality where a natural person is concerned.

Authorising officers took no such decisions in 2017.

8. FOLLOW-UP TO THE EUROPEAN PARLIAMENT RESOLUTION ON THE 2016 ANNUAL REPORT

On 3 May 2018, the European Parliament adopted a resolution on the Commission's *2016 annual report on the protection of the EU's financial interests – fight against fraud*.⁸⁹ The Commission welcomes the resolution and notes the Parliament's recognition of its activity in the fight against fraud. It will be able to take action on many of the issues raised in the resolution, in particular as regards close cooperation between OLAF and EPPO. It will comment in detail on the resolution in its formal reply, which will be transmitted to the Parliament later this year.

9. CONCLUSIONS AND RECOMMENDATIONS

Legal and administrative measures to target fraud and irregularities and protect the EU's financial interests have to be adapted on an ongoing basis. In this respect, 2017 was a landmark year, with the adoption of legislative acts that will pave the way to further integration and convergence. Remaining differences in national legal and administrative frameworks warrant tailor-made measures, such as those adopted at national level and described in this report. Nonetheless, certain common conclusions and recommendations can be drawn to highlight prevalent threats and take advantage of best practices that have proven effective in particular countries or budgetary areas.

9.1. Revenue

Despite a general fall in the number of irregularities detected, as in 2016 imported solar panels were the goods most affected by fraud and irregularities in financial terms. Many of the irregularities involving solar panels were detected following a mutual assistance notice issued by OLAF. This underlines the importance of OLAF's investigations in the detection of irregularities on transactions with certain types of goods (e.g. incorrect CN codes or origin

⁸² For the situations referred to in Article 106(1)(c) to (f) of the Financial Regulation (i.e. grave professional misconduct, fraud, serious breaches of contractual obligations, or irregularities).

⁸³ i.e. the panel referred to in Article 108(5) to (10) of the Financial Regulation.

⁸⁴ The authorising officer can be that of an EU institution, an agency, an office or another body.

⁸⁵ The chair has a standing high-level independent deputy.

⁸⁶ For more information on the panel, see SWD footnote 1, point (v).

⁸⁷ As of 30 June 2018, the panel had issued 31 recommendations. For further details, see the SWD footnote 1, point (v) and its annexes.

⁸⁸ Data provided in the SWD, footnote 1, point (v).

⁸⁹ 2017/2216(INI)
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0196&language=EN>

declarations, evasion of anti-dumping duties, undervaluation of declared goods).

The countries of origin most affected by fraud and irregularities were China (in terms of the number of cases) and the United States (in financial terms).

OLAF investigations highlighted large-scale revenue frauds through the undervaluation of goods imported in the EU. Such fraud results in huge losses, not only in customs duties, but also in evaded VAT.⁹⁰ OLAF's investigations underlined that fraudsters will exploit any loopholes and that quantity fraud can pay off.

OLAF's experience shows that undervaluation will remain a threat to be dealt with in the coming years.

To close these loopholes, customs control strategies involving a combination of different controls are pivotal. The customs control strategy should strike the right balance between trade facilitation/simplification and the protection of the EU's financial interests.

Recommendation 1

Member States are asked to remain vigilant as regards the risk of undervaluation of goods, in particular cheap products imported in extremely large quantities, such as textiles and footwear.

In order to enhance customs controls, Member States are requested to ensure that:

- strategies are in place and target all types of customs procedure and all operators;
- proper coordination among all customs services dealing with risk analysis and controls exists; risk profiles provide clear instructions and risk information is shared with other Member States;
- close monitoring of the controls results (feedback) and strict follow-up of Mutual assistance instructions are in place.

They are also requested to:

- systematically include an automated random element and take into consideration the time-barring three-year period for the communication of customs debt as a risk indicator in the post-release risk analysis;
- risk-orient post-release audits and strictly monitor their results; and
- carry out customs controls on operations made by authorised economic operators (AEO) taking account of the risk management performed with respect to the different elements of these operations.

⁹⁰ See section 2.5.3 and *OLAF report 2017*, pp. 26-27.

The Commission also invites national competent authorities to make full use of the handbook on operational customs controls based on Member States' best practices and of the Customs audit guide.

9.2. Expenditure

The analysis in this report confirms the main trends and patterns highlighted in previous years.

Detection rates remain high for programmes in the least-developed regions of Europe and in fisheries, and low in relation to cross-border programmes.

In agriculture, market support measures are affected by a limited number of highly costly irregularities, which still require an appropriate level of attention.

The focus is shifting towards fraud aimed at artificially creating the conditions to access funding. Several Member States have reported specific measures in this respect.

Although fewer irregularities and less fraud were reported in 2017, the average financial amounts increased, suggesting that controls are better targeted.

Risk analysis, tips from informants or whistleblowers, or information from the media can play a role in improving targeting, especially as it seems that their use is still not widespread. Information from judicial enquiries led to the discovery of some non-fraudulent irregularities involving high average financial amounts. The same was true of controls that started because of information/requests from, or irregularities identified by, an EU body.

Recommendation 2

Member States are invited to:

- further exploit the potential of risk analysis, tailoring the approach to the different types of expenditure and taking advantage of best practices and the risk elements highlighted in this report;
- facilitate and assess the spontaneous reporting of potential irregularities and strengthen the protection of whistleblowers, who are also a crucial source for investigative journalism;⁹¹ and

⁹¹ See *Strengthening whistleblower protection at EU level*, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee (COM(2018) 214 final) and the proposal for a Directive on the protection of persons reporting breaches of Union law (COM(2018) 218 final).

- promote systematic and timely cooperation between judicial and administrative authorities.

All these measures would have a greater impact if embedded in a national anti-fraud strategy.

9.3. Cooperation at all levels

The above recommendations are aimed at strengthening a trend, in terms of policy and legislative initiatives, that is already visible in several Member States and is supported by the analysis presented in this report.

The correct and targeted use of data and information is effective for stepping up the fight against fraud and keeping up with the expectations of civil society. European citizens not only look at their own country, but increasingly judge the success of the European project on the basis of what happens in other Member States.

However, the necessary data and information are often spread across several authorities. Cooperation at national and EU level will be of the essence.

Cooperation between judicial and administrative investigations has already proven even more pivotal for combating fraud efficiently and effectively.

At the level of the EU institutions, the Commission will ensure that a strong and fully functioning OLAF complements EPPO's criminal law approach with administrative investigations.

ANNEX 1 — IRREGULARITIES REPORTED AS FRAUDULENT IN 2017

The number of irregularities reported as fraudulent reflects the results of Member States' work to counter fraud and other illegal activities affecting the EU's financial interests. The figures should not be interpreted as indicating the level of fraud in the Member States' territories. This annex does not cover non-EU (pre-accession) countries or direct expenditure.

MEMBER STATES	Agriculture		Internal policies		Cohesion policy and Fisheries		Pre-accession		TOTAL EXPENDITURE		REVENUE	
	N	EUR	N	EUR	N	EUR	N	EUR	N	EUR	N	EUR
Belgique/België											26	15 502 626
Bulgaria	16	3 852 238			1	64 425			17	3 916 663	19	1 192 724
Ceská republika	8	494 087			33	6 609 802			41	7 103 889		
Danmark	3	8 119			1	32 352			4	40 471	1	87 967
Deutschland	6	981 201			18	1 657 451			24	2 638 652	46	6 586 501
Eesti	8	2 199 728			5	5 325 933			13	7 525 661	4	310 930
Éire/Ireland	2	15 242							2	15 242	1	33 992
Ellada	2	26 628			10	1 343 670			12	1 370 298	31	14 131 439
España	5	298 302			20	410 096			25	708 398	34	3 911 652
France	9	1 326 255							9	1 326 255	98	13 221 533
Hrvatska	2	358 047			1	1 052 812			3	1 410 859	8	852 915
Italia	36	1 370 571			3	703 086			39	2 073 657	20	1 036 186
Kypros					3	520 212			3	520 212	4	118 402
Latvija	1	4 353			6	7 506 305			7	7 510 658	6	257 710
Lietuva	6	1 246 395			1	41 360			7	1 287 755	38	1 538 484
Luxembourg	1	15 857							1	15 857		
Magyarország	14	1 075 823			6	1 479 560			20	2 555 383	4	335 228
Malta					1	38 685			1	38 685	2	366 319
Nederland	6	183 866			3	421 614			9	605 480	8	2 800 617
Österreich	1	122 538							1	122 538	7	5 654 247
Polska	79	37 954 297			64	19 612 173			143	57 566 470	52	2 526 634
Portugal	4	176 918			12	31 604 726			16	31 781 644	2	269 552
Romania	64	7 973 885			75	67 164 713	2	649 636	141	75 788 234	9	413 780
Slovenija	1	46 897			2	2 553 647			3	2 600 544	4	159 180
Slovensko	2	149 444			77	172 181 299			79	172 330 743		
Suomi/Finland					1	26 786			1	26 786	4	83 383
Sverige											4	4 527 821
United Kingdom					2	40 118			2	40 118	9	466 886
TOTAL	276	59 880 690			345	320 390 825			623	380 921 151	441	76 386 708

ANNEX 2 — IRREGULARITIES NOT REPORTED AS FRAUDULENT IN 2017

This annex does not cover non-EU (pre-accession) countries or direct expenditure.

MEMBER STATES	Agriculture		Internal policies		Cohesion policy and Fisheries		Pre-accession		TOTAL EXPENDITURE		REVENUE	
	N	EUR	N	EUR	N	EUR	N	EUR	N	EUR	N	EUR
Belgique/België	17	312 940	2	978 381	51	6 092 879			70	7 384 200	189	14 579 103
Bulgaria	124	11 211 037			77	29 676 418	15	20 932	216	40 908 388	1	253 408
Česká republika	25	1 083 012			282	60 949 351			307	62 032 363	89	8 608 026
Danmark	9	305 497			3	694 020			12	999 517	55	2 038 865
Deutschland	61	2 437 925			83	10 519 246			144	12 957 171	1 617	85 727 353
Eesti	37	1 812 973			24	2 821 971			61	4 634 944	1	11 149
Éire/Ireland	18	802 856			44	3 299 833			62	4 102 689	31	2 947 035
Ellada	118	2 537 342			504	272 493 429			622	275 030 771	10	274 902
España	335	17 433 317			1 115	366 925 909			1 450	384 359 226	230	78 825 931
France	162	5 021 836			26	4 008 636			188	9 030 472	200	16 578 121
Hrvatska	28	511 700			10	586 362	10	1 368 047	48	2 466 109	7	262 098
Italia	575	44 759 711			555	86 114 764			1 130	130 874 475	119	12 024 057
Kypros					30	3 214 441			30	3 214 441	1	10 564
Latvija	18	779 102			31	3 719 969			49	4 499 071	4	196 843
Lietuva	137	5 385 775			72	23 629 198			209	29 014 973	19	1 026 160
Luxembourg												
Magyarország	202	11 115 144			149	27 217 704			351	38 332 848	20	5 909 986
Malta	13	932 900			23	2 317 833			36	3 250 733		
Nederland	45	1 481 953			63	4 809 513			108	6 291 466	442	78 000 552
Österreich	22	489 080			8	2 418 922			30	2 908 002	49	1 739 162
Polska	133	6 553 892			499	195 767 291			632	202 321 183	46	1 453 150
Portugal	401	26 556 512			392	63 808 455			793	90 364 967	32	4 907 356
Romania	445	60 524 561	1	11 951	368	102 999 634			814	163 536 146	23	2 778 540
Slovenija	14	314 974			41	1 438 319			55	1 753 293	8	320 139
Slovensko	48	4 193 841			248	108 249 854			296	112 443 695	11	756 807
Suomi/Finland	7	137 810			7	621 523			14	759 333	27	1 947 211
Sverige	6	2 127 418			11	869 607			17	2 997 025	165	6 704 023
United Kingdom	54	1 578 873			413	10 595 510			467	12 174 383	799	97 376 431
TOTAL	3 054	210 401 981	3	990 332	5 129	1 395 860 591	25	1 388 979	8 211	1 608 641 882	4 195	425 256 972

ANNEX 3 — LIST OF ACCOMPANYING STAFF WORKING DOCUMENTS

1. Implementation of Article 325 by the Member States in 2017 (SWD(2018) 384)
2. Statistical evaluation of irregularities reported for own resources, natural resources, cohesion policy and pre-accession assistance and direct expenditure (SWD(2018) 386 – part 1 and 2)
3. Follow-up of recommendations to the Commission report on the protection of the EU's financial interests — fight against fraud, 2016 (SWD(2018) 383)
4. Early Detection and Exclusion System (EDES) — Panel referred to in Article 108 of the Financial Regulation (SWD(2018) 382)
5. Annual overview with information on the results of the Hercule III Programme in 2017 (SWD(2018) 381)
6. Assessment of the implementation of Article 43b of Regulation (EC) No 515/97 (SWD(2018) 385)