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**COMMISSION STAFF WORKING DOCUMENT**

**Implementation of Article 325 TFEU by the Member States in 2014**

*Accompanying the document*

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

**Protection of the European Union's financial interests - Fight against Fraud  
Annual Report 2014**

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## LIST OF ABBREVIATIONS

AFCOS	Anti-Fraud Coordination Service
CAP	Common Agricultural Policy
CF	Cohesion Fund
CP	Cohesion Policy
Col	Conflict of interest
DG	Directorate General
EAFRD	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EC	European Commission
EFF	European Fishery Fund
EU	European Union
EUR	Euro
ERDF	European Regional Development Fund
ESF	European Social Fund
MS	Member State
OLAF	European Anti-Fraud Office
SME	Small and Medium Sized Enterprise
TFEU	Treaty on the Functioning of the European Union

## **1. IMPLEMENTATION OF ARTICLE 325 TFEU BY MEMBER STATES**

Article 325(5) of the TFEU requires the Commission, in cooperation with the Member States, to submit a report each year to the European Parliament and the Council on the measures taken to implement that Article. The Commission bases the part of the report relating to the Member States on the answers to the 'Article 325' questionnaire, as agreed upon with them within the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF), and adapted each year in the light of past experience, so as to facilitate the monitoring of anti-fraud measures. Consequently, each year the Commission draws up a report in cooperation with the Member States on the measures taken to implement this obligation, according to Article 325 of the Treaty on the Functioning of the European Union (TFEU). This report is addressed to the European Parliament and the Council and it is published.

This questionnaire covers the period from 1 January to 31 December 2014. Traditionally, information for this section of the Report is collected by the Commission through a questionnaire composed of a general part, where Member States list the three the most important measures (legislative, administrative, organisational or operational) taken, and of a part dealing with a specific subject agreed with Member States' COCOLAF representatives each year. Over time the report had become more and more voluminous. Both the Council and the European Parliament were concerned that its size was increasing and the fact that the document is annual, horizontal and multisectoral hampered a detailed assessment of all the aspects of the protection of the EU's financial interests by the Member States. Since 2013, the Commission has therefore applied a new approach. In 2014, for the first time the questionnaire (for the PIF Report 2013) was structured around questions offering multiple 'closed' answers (with, when required, some sub-questions providing further limited choices) and limiting the possibility to submit free text (fixed at 300 characters maximum). As a result of Member States' requirements, the number of available characters for the 2014 questionnaire has been increased to 600 maximum. In addition, the Member States were given the possibility to report up to 5 most important measures and additional measures, concerning mainly federal countries and countries with devolved administration in the field of anti-fraud strategy.

The questionnaire was successfully managed through the 'EU survey' platform, offering the possibility to extract data once the allowed time is up. This tool has proven to function well for replies and data collection since 2013 Report. The information, made available in a structured manner, allowed for a more comparative approach and better presentation of the replies provided by the Member States. Based on this experience, the same technical solutions were also used for the collection of the contributions of Member States for the 2014 Report.

As in previous years, the first part of the questionnaire asks the Member States to present the main measures that give effect to Article 325, i.e. measures to combat fraud and all illegal activities affecting the financial interests of the EU. This part is structured in the

same way as the 2013 questionnaire. Member States are invited to describe two or three 'key' measures taken in 2014, in order to implement Article 325 of the Treaty. The second set of questions concerns the application of definitions used in irregularity reporting by the Member States.

## **2. MOST IMPORTANT ANTI-FRAUD MEASURES ADOPTED BY MEMBER STATES IN 2014 UNDER THE ARTICLE 325 TFEU**

### **2.1. Results of the measures reported in the Questionnaire**

Member States reported ninety-six measures adopted in 2014 in total, referring to various areas concerning the protection of the EU's financial interests and the fight against the fraud. Fifteen Member States<sup>1</sup> used the opportunity to report more than three 'most important' measures adopted to protect the financial interests of the EU, while five Member States<sup>2</sup> reported only one measure.

Most measures adopted by the Member States targeted fraud prevention and detection. The Member States reported an increased number of adopted anti-fraud provisions compared to 2013, which is explained by the adoption of the bulk of Union legislation for the new programming period 2014-2020.

The majority of the measures adopted concerned the fraud prevention phase of the anti-fraud cycle for both programming periods 2007-2013 and 2014-2020. Fraud prevention activities involved: a legislative definition of a specific topic adopted by ten Member States<sup>3</sup>, seven Member States<sup>4</sup> reported conducting fraud awareness training or internal training measures, fourteen Member States<sup>5</sup> adopted new measures or revised procedures concerning the management of funds, control and audit, and seven Member States<sup>6</sup> adopted measures on the reporting of irregularities.

Five Member States<sup>7</sup> reported that they have adopted a National Anti-fraud Strategy (NAFS) for the programming period 2014-2020. Nine Member States<sup>8</sup> reported national anti-fraud measures with regard to the cohesion policy funds<sup>9</sup>, while six Member States<sup>10</sup> adopted national anti-fraud measures pursuant to agriculture funds<sup>11</sup>.

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<sup>1</sup> Belgium, Bulgaria, Greece, Spain, France, Italy, Latvia, Lithuania, Hungary, Netherlands, Poland, Portugal, Romania, Slovakia and Sweden

<sup>2</sup> Five measures were reported by Belgium, Bulgaria, Greece, Spain, Italy, Latvia, Lithuania, Hungary, Poland, Portugal, Romania and Slovakia, four measures were reported by France, Netherlands and Sweden. Only 1 measure was reported the Czech Republic, Denmark, Cyprus, Luxembourg and Finland.

<sup>3</sup> Belgium, Bulgaria, Estonia, Spain, Latvia, Lithuania, Austria, Poland, Romania and Slovakia

<sup>4</sup> Denmark, Germany, Ireland, France, Hungary, Portugal and Sweden

<sup>5</sup> Germany, Ireland, Greece, Italy, Latvia, Lithuania, Hungary, Netherlands, Austria, Poland, Slovenia, Slovakia, Finland and Sweden

<sup>6</sup> Bulgaria, France, Croatia, Austria, Portugal, Slovakia and Sweden

<sup>7</sup> Bulgaria, Greece, Croatia, Malta and Slovakia (NAFS concerning structural actions: Greece, Croatia and Malta, while NAFS concerning all sectors: Bulgaria and Slovakia)

<sup>8</sup> France, Croatia, Lithuania, Hungary, Netherlands, Portugal, Romania, Finland, and the United Kingdom

<sup>9</sup> Article 125, 4. (c) of Regulation (EU) No 1303/2013, OJ 347, 20.12.2013, p. 320.

<sup>10</sup> Germany, Ireland, Hungary, Portugal, Slovakia and the United Kingdom

<sup>11</sup> Article 58, of Regulation (EU) No 1306/2013, OJ 347, 20.12.2013, p. 549.

A national fraud prevention strategy for public procurement for the new programming period 2014-2020 was adopted in Bulgaria. A national anti-corruption programme for the current programming period was adopted in Lithuania, and a regional programme was adopted in Italy. Thirteen Member States<sup>12</sup> reported fraud detection and six Member States<sup>13</sup> reported investigation measures. Nine Member States<sup>14</sup> adopted criminal sanctions and penalties concerning fraud prosecution.

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<sup>12</sup> Bulgaria, Czech Republic, Greece, Ireland, Italy, Latvia, Luxembourg, Netherlands, Austria, Poland, Romania, Slovenia and the United Kingdom.

<sup>13</sup> Estonia, France, Italy, Hungary, Netherlands and Poland.

<sup>14</sup> Belgium, Estonia, Greece, Spain, France, Hungary, Malta, Portugal, Romania.





## 2.2. Measures reported by area

In areas pre-selected in the questionnaire<sup>15</sup>, the largest number of measures reported by the Member States were in relation to public procurement and financial crime (twenty-six), followed by conflict of interest (twenty-four), corruption (twenty), AFCOS (fifteen), fraud definition (fourteen), whistle-blowers (ten) and organised crime (six)<sup>16</sup>.

The 'other' field was selected by the Member States forty-one times, separately or in combination with the above mentioned areas, in order to clarify a measure, or to introduce another area (for example management and control of funds, state aid, etc.), or a strategy in the programming period 2007-2013 and 2014-2020 to counter fraud affecting the financial interests of the Union.

The amount of replies reported as 'other' for the year 2014 increased (from twenty-six to forty-one), which can be explained by the adoption of a bulk of provisions concerning the new programming period 2014-2020 and dealing with remaining issues regarding the old programming period 2007-2013.

All of the answers were analysed according to the anti-fraud cycle: prevention, detection, prosecution and sanctions.

### 2.2.1. The 'Other' category

The Member States referred, in forty-one cases, to the category 'other' to clarify the area (preselected in the questionnaire as public procurement, financial crime, organised crime etc.) or in order to introduce a reference to 'another' area. These measures correspond to the following phases of the anti-fraud strategy:

- Fraud prevention regarding both PP 2007-2013 and PP 2014-2020<sup>17</sup>:

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<sup>15</sup> The questionnaire outlined eight areas of specific PIF sectors to which the measures taken by the Member States applied; the 'other' field was used to report miscellaneous areas or horizontal strategies. Federal countries and countries with devolved administration in the field of anti-fraud strategy had the possibility to list 'additional measures' in a special field (Belgium and Latvia).

<sup>16</sup> Reference to 'area' is, therefore, not equal to a single measure adopted.

<sup>17</sup> **Ireland** (Anti-Fraud Seminar on EAFRD with participation of EC-red flags; reorganisation of existing bodies to prevent fraud affecting ESF claims), **Latvia** (clarification of the obligations of the audited entity, legislative horizontal provision), **Lithuania** (criteria for identifying applicants or aid recipients who have artificially created conditions for obtaining aid under measures under the Lithuanian Rural Development Programme for 2014-2020), **Netherlands** (new specific procedures for establishing the eligibility of the declared costs in the ESF fund), **Portugal** (seminars organised by the Audit Authority and the Agency for Development and Cohesion with the participation of EC, to improve the quality of expenditure at the end of the 2007-2013 programming period and to set up efficient systems for the prevention and detection of errors), **Poland** (1. working group on combating fraud in projects co-financed by EU funds in the Cohesion policy, aiming at efficient exchange of information with investigative authorities and 2. prevention of undue payments - stronger mechanisms for verification of aid applications for small scale projects, provincial governments performing the tasks of MAs under rural development program of the PP 2007-2013), **Portugal** (ESIF: creation of a database containing information on beneficiaries), **Slovakia** (1. ESIF: legislative consolidation for controls and auditing under a single provision, 2. amended administrative provision concerning financial management of structural funds, monitoring and controls, regarding the Cohesion fund and EMFF for PP the 2014-2020, 3. A system for the financial management and control regarding EAFRD for the programming period 2014-2020), **Sweden** (Seminar for authorities involved in managing and protecting EU funds, exchange of best practice in audit with FI and DK representatives) and **United Kingdom** (Agriculture/fraud risk management at UK PAs: regular revision of guidance or enhancement of anti-fraud measures concerning CAP on the basis of fraud risk assessment, fraud response plan - updated operational and organisational measure).

- Fraud awareness training or internal training measures (Poland, Portugal and Sweden)
- Fraud detection and investigation (Germany, Estonia, Ireland, Italy, Poland and United Kingdom)<sup>18</sup>
- Establishment of new measures or revision of procedures in the management of funds, control and audit (Greece<sup>19</sup>, Lithuania, Netherlands and Slovakia)
- Reporting of irregularities (Croatia)<sup>20</sup>
- National anti-fraud measures pursuant to Regulation (EU) No 1303/2013 (France, Croatia, Lithuania, Hungary, Netherlands, Portugal, Romania, Finland and the United Kingdom)<sup>21</sup> and Regulation (EU) No 1306/2013 (Germany, Ireland, Portugal, Slovakia and the United Kingdom)<sup>22</sup>
- National Anti-Fraud Strategy (NAFS) concerning the PP 2014-2020 for structural actions (Greece, Croatia, Malta<sup>23</sup>) or for all sectors (Bulgaria and Slovakia<sup>24</sup>)

### 2.2.2. Public Procurement

Member States reported twenty-six references concerning public procurement (legislative, administrative, organisational and operational measures). Similar to previous years, these were adopted either as a single measure or in combination with provisions in

<sup>18</sup> **Germany** (EMFF: working group on fraud prevention to produce guidance for paying agencies in the agricultural sector and fishing sector, risk indicators, increased targeted checks), **Estonia** (organisational and operational measure: establishment of a centrally-administered Economic Crimes Bureau to investigate fraud connected with aid funds), **Ireland** (a set of organisational and operational measures, risk indicators and increased number of checks to reduce ineligible expenditure in the ESF fund), **Italy** (extension of powers of Guardia di Finanza also to a Special Unit for Public Spending and Combating EU Fraud in order to control for the purposes of controlling payments from the budgets of the EU) and **Poland** (working group on combating fraud in projects co-financed by EU funds in the Cohesion policy to draw rules for efficient exchange of information- administrative measure).

<sup>19</sup> **Greece** (Register of Fiscal Auditors and Auditors of the Fiscal Audit Committee (EDEL) with a view to ensuring full harmonisation of fiscal control with the internationally accepted auditing standards in line with the need to continuously evaluate and register staff engaged in fiscal control relating to the audits - single organisational measure).

<sup>20</sup> **Croatia** (New administrative measure: Guidelines on management of irregularities and fraud in the context of structural funds programmes for the period 2007-2013).

<sup>21</sup> Pursuant to Article 125 (4) c of the Regulation (EU) No 1303/2013 the managing authorities of structural funds have a clear duty to establish and apply proportional anti-fraud measures on the basis of risk analysis (in their management and control system): **France**, **Lithuania** (new legislation), **Malta** (Pursuant to Article 125(4)(c) of Regulation (EU) No 1303/2013, the managing authorities (MAs) have implemented proportionate anti-fraud measures in their management and control system. The MAs will aim to control the risk of fraud (and combat fraud) by means of a proactive, structured and targeted approach), **Netherlands** (administrative measure), **Slovakia** (administrative measure to enhance transparency), **Finland** (set of legislative provisions) and the **United Kingdom** (Anti-Fraud Policy developed in line with requirements for the 2014-2020 Cohesion policy programmes; operational (new risk indicators + increased number of checks).

<sup>22</sup> **Ireland** (Strategy for implementation and inspection of the 2014-2020 EAFRD co-funded LEADER programme) and **Slovakia**.

<sup>23</sup> **Malta** reported their National Anti-Fraud Strategy separately out of the PIF questionnaire.

<sup>24</sup> **Bulgaria** (Adoption of the 'National Strategy for the period 2014-2020' setting out goals in both the expenditure and revenue areas, for preventing and combating irregularities and fraud affecting the financial interests of the EU, specific activities will be set out in an Action Plan for 2015-2016 for the Implementation of the National Strategy; package of legislative, administrative, organisational and operational measures), **Greece** (National antifraud strategy, new legislation concerning NSRF 2014-2020), **Croatia** (National anti-fraud strategy for 2014-2016 and an Action plan, single administrative measure), **Hungary** (Legislative, organisational and operational measures) and **Slovakia** (Reported their National Anti-Fraud Strategy separately out of the PIF questionnaire: the National Strategy for the Protection of EU Interests in the Slovak Republic was drafted in 2014, formally approved on 7 January 2015 by the government).

other areas, such as corruption, organised crime, conflict of interest, fraud definition, whistle-blowers and 'other'.

Sixteen adopted measures concerned the treatment of public procurement along the anti-fraud strategy cycle:

- Fraud prevention:
  - National strategy for development of the public procurement sector for the programming period 2014-2020 adopted in Bulgaria and in preparation in Romania<sup>25</sup>
  - Implementation of public procurement legislation in line with EU rules and/or administrative updates and/or improvement of IT tools<sup>26</sup>
  - Monitoring, desk checks and audit<sup>27</sup>
- Integrity rules and transparency measures ensuring that EU funds are used rationally and that procurement is transparent<sup>28</sup>
- Sanctions and penalties<sup>29</sup>

### 2.2.3. *Conflict of Interest and Corruption*

#### 2.2.3.1. Conflict of interest

Fifteen Member States<sup>30</sup> referred to measures taken in order to eliminate conflict of interest in the framework of other measures or national strategies (corruption, transparency measures, auditing procedures).

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<sup>25</sup> **Bulgaria** (Improvement in the legislative and institutional framework in the field of public procurement, enhancing the degree of publicity and transparency in the awarding of such contracts. As part of the implementation of the National Strategy adopted in 2014, drafting work is under way on a new Framework Act on Public Procurement which is scheduled to enter into force as from 1 January 2016. The draft public procurement act will transpose the new European Directives 2014/24/EU and 2014/25/EU and the existing Directives 2009/81/EC and 2007/66/EC; package of measures) and **Romania** (Establishment of an Inter-ministerial Group in order to set up a new Public Procurement Strategy in line with EU Directives on Public Procurement or other Public Policies in this matter).

<sup>26</sup> Legislative, administrative and operational measures: **Germany** (update of administrative procedure concerning the management of funds), **Spain** (2 legislative measures: on the competence of the Transparency Council and legislation on functional requirements of accounting register), **Hungary** (updated administrative guidance on implementation of public procurement law), **Romania** (aligning national legislation with EU Recommendation concerning corrections and new Public Procurement National Strategy on the management of funds), **Sweden** (simplified administrative procedure to reduce administrative burden on aid recipients, transparent accounting rules for project owners to reduce the risk of errors and fraud); IT tools: **Bulgaria** (unified information system for managing all operational programmes co-financed through ESIF for the PP 2014-2020), **Spain** (public access to the National Subsidies database under responsibility General State Controller IGAE, penalties for lack of transparency) and **Hungary** (the Public Procurement authority improving transparency of its portal to ensure open access to national procurement notices).

<sup>27</sup> **Luxembourg** (enhanced administrative measure on better monitoring, control and documentation of public contracts submitted by beneficiaries), **Portugal** (operational measure to strengthen procedures regarding auditing and certifying expenditure).

<sup>28</sup> **Belgium** (legislative measure on reporting of a suspected breach of integrity in a federal administrative authority by a staff member), **Bulgaria** (the above mentioned National strategy 2014-2020 with the aim to improve transparency), **Spain** (reported a new horizontal legislative measure establishing the statute of the Transparency Council and listed additional provisions on transparency reported by **autonomous communities** (Balearic Islands, Catalonia, Galicia, Castile and Leon, Murcia and Navarre) and **Lithuania**.

<sup>29</sup> **Latvia** (administrative penalties regarding violation of procedures in public procurement being imposed by the Procurement Monitoring Bureau as of 2014, selective ex-ante control of procedures).

<sup>30</sup> Belgium, Bulgaria, Estonia, Spain, Ireland, France, Italy, Latvia, Lithuania, Hungary, Austria, Portugal, Romania, Slovenia and the United Kingdom.

Eight Member States<sup>31</sup> introduced specific measures to prevent the **conflict of interest**. These concerned the following legislative and/or organisational provisions:

- Guidance on checks on conflict of interest (France and Italy in the Cohesion policy area)
- Provisions concerning detection and reporting (France, Austria)
- Reorganisation of existing bodies or strengthened cooperation (Austria, Romania)
- Amendments to the Penal Code in the framework of the fight against corruption (Estonia, Greece) and strengthened sanctions for conflict of interest (Romania)<sup>32</sup>
- Publication of information on preventing conflict of interest and corruption – a new legislative measure (Spain)<sup>33</sup>
- An IT tool as an ex-ante mechanism (Romania)

Examples of measures:

France introduced an updated administrative guidance on the introduction of checks on conflict of interest in a Vademecum, distributed by the Inspection Coordination Committee<sup>34</sup> in 2014 to its operation controllers, which highlighted the issue of conflict of interest. When the inspection plan is drawn up, checks are made to ascertain whether a conflict of interest has arisen (previous jobs and relations with others persons are inspected). Should a conflict of interest be detected, the CICC must be informed so that it can decide which measures to take.

Italy introduced ex-ante checking for incompatibility and conflicts of interest, aiming to guarantee that staff of the Audit Authority are not led into collusive practices vis-à-vis persons involved in the management of the Structural Funds and the EMFF (management structures and beneficiaries), who might act or behave fraudulently.

Romania is developing an IT tool, 'Prevent', which is an ex-ante control mechanism for conflict of interest in public procurement (including those financed from EU funds). This IT tool will act as a kind of whistle-blower for stakeholders.

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<sup>31</sup> Germany, Estonia, Greece, Spain, France, Italy, Austria and Romania.

<sup>32</sup> **Romania** (As a part of the new criminal public policy, introduced an adapted definition of the conflict of interest criminal offence in the Criminal Code, which included strengthened sanctions).

<sup>33</sup> **Spain** (Statute of the 'Transparency Council': obligation of active and regular publication of the most relevant information for the prevention of possible conflict of interest and corruption - a new strategy which must guarantee and apply the law by monitoring its implementation. Among the powers of the TC is initiation of a disciplinary procedure with possible application of penalties. The published information concerns tender, subsidies and public aid granted, indication of the amount, purpose and beneficiaries; remuneration received annually by senior officials and heads of public institutions and received compensation, if any, to cease or leave the office; decisions of approval or recognition of compatibility affecting public employees, and authorisation of private activities of the public officials).

<sup>34</sup> Commission de Coordination des Contrôles (CICC).

### 2.2.3.2. Corruption

Eleven Member States<sup>35</sup> referred to measures taken in order to eliminate corruption in the framework of other measures or national strategies (corruption, transparency measures, auditing procedures) and introduced specific measures to fight **corruption in the public procurement** (see in the table below).

These involved the following provisions:

- Concerning the prevention of corruption:
  - Legislative measures to 'prevent corruption of officials' implementing the legal instruments of the Council of Europe and the Council Framework Decision into national law (Germany, Latvia and Romania)<sup>36</sup>
  - National Anti-Corruption programme (Lithuania)<sup>37</sup> or a regional plan (Italy – a three year anti-corruption plan for Emilia Romagna)
  - Declaration of Conflict of interest (Lithuania – clarified declarations of private interests and restrictions on the acceptance and offering of gifts and services by customs officers and state officials)
  - Enhanced the transparency strategy to fight corruption in public procurement (Hungary - activities by the Public Procurement Authority)
- Targeted investigation (Italy - on the basis of the risk analysis concerning EU funding in the Agriculture food sector)
- Sanctions and penalties (Estonia, Greece, Spain)

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<sup>35</sup> Belgium, Estonia, Ireland, Greece, Spain, Italy, Latvia, Lithuania, Hungary, Romania and Slovenia

<sup>36</sup> **Germany** (improved legal framework), **Latvia** (concerning liability of legal persons), **Romania** (adopted new definitions of corruption offences in their amended Criminal Code as a part of their National Anticorruption Strategy 2012-2015).

Table 2: Measures taken by Member States to counter corruption in public procurement

Corruption in public procurement																				
MS	BE	EE	IE		EL				ES	IT			LV	LT			HU		RO	SI
Measure No (answer 1 - 5)	M4	M1	M1	M2	M1	M2	M3	M4	M5	M2	M4	M5	M2	M3	M4	M5	M3	M4	M2	M1
Public sector	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Private sector		✓											✓	✓	✓		✓		✓	
Measures addressing transparency in public procurement									✓			✓		✓	✓		✓	✓	✓	✓
Measures to improve the effectiveness of management of the public procurement												✓	✓	✓	✓		✓	✓	✓	✓
Measures to prevent corruption amongst personnel, including management	✓					✓	✓				✓	✓	✓	✓		✓	✓	✓	✓	
Measures addressing transparency of companies participating in public procurement									✓			✓	✓				✓		✓	
Measures to improve the effectiveness of control and audit			✓	✓	✓			✓		✓			✓	✓	✓		✓	✓	✓	✓

The table shows answers of eleven Member States concerning adopted measures to fight corruption in public procurement (selected in the general part of the questionnaire). M1-M5 are numbers of measures answered in order in the general part of the questionnaire

Table 3: Additional answers and comments

Corruption in public procurement					
MS	EE	IE	LV	HU	
Measure No (answer 1 - 5)	M1	M1	M2	M3	M4
Other measures preventing corruption in public procurement; Comment	<p><b>Other:</b> Clarification of Penal Code: In Section 300 of the Penal Code (Breaches of requirements of the Public Procurement Act), the scope of punishment was extended to cover legal persons. Section 300' Breach of procedural restriction - heavier punishment for particularly severe infringements (amounting to more than EUR 300 000).</p>	<p><b>Comment:</b> Inspection Services Staff attended a 1 day briefing from an Advisor in DG Agri Anti Fraud in relation to Fraud in the CAP which covered the following topics: Irregularities and Fraud, Red Flags for Fraud in EAFRD Investment Projects and Fraud Prevention and Detection by Paying Agencies.</p>	<p><b>Other:</b> All the above stated measures have not been introduced only during 2014. Some of measures are in place for longer period of time, e.g., asset disclosure for public officials, and is improved occasionally.</p>	<p><b>Comment:</b> The Public Procurement Authority (PPA) is continuously improving its portal, which ensures open access to national public procurement notices. The PPA keeps a database of published notices and uses it for annual public procurement statistical analyses. The PPA publishes codes of ethics. The PPA places great emphasis on learning from international experiences related to combating corruption in public procurement, by organising professional conferences. The lists kept by the PPA (banned suppliers, excluded suppliers, recognised suppliers) also contribute to transparency.</p>	<p><b>Other:</b> In 2014, Hungary had to draw up an action plan, in accordance with the Partnership Agreement, on proper performance of public procurement procedures when using EU funds. The action plan includes 22 measures (e.g. practical guidelines, preparing summaries, introducing a new law on public procurement, publishing sample public procurement notices and documentation), a number of which were implemented in 2014 (e.g. tighter definition of eligibility criteria, cooperation with the Competition Authority for more effective action against anti-competitive practices, anticorruption conference).</p>
					<p><b>Comment:</b> To open competition as much as possible and prevent any discrimination in public procurement, immediate action was taken to strictly define eligibility requirements, with a view to preventing contracting entities from restricting competition in the course of tender procedures. In a given tender procedure, bidders may only be required to have a turnover of up to the estimated value of the contract and to have completed works in a similar field corresponding to 75% of the estimated value of the contract. The previous experience requirement is governed by the principle of technical equivalence.</p>

The table shows additional answers and comments of four Member States regarding ‘other measures to fight corruption in public procurement’ or ‘comments’ (free text field in the general part of the questionnaire).

### 2.2.3.3.Examples of adopted measures:

Horizontal measure: Estonia introduced amendments to the Penal Code, which also includes fraud involving the use of aid funds, the violation of public procurement rules and corruption offences. The Code removed the distinction between gratuities and bribes (both in terms of passive and active corruption), i.e. in the case of bribery, from the point of view of classification it is no longer important whether the official activity for which the bribe was given was legal or illegal. In light of this, the range of sanctions provided for bribery has been amended (§ 293 298). The criminal liability provision relating to breaches of public procurement requirements has been amended (Section 300).

Specific measure: Greece adopted two main legislative measures aimed at fighting conflict of interest and corruption. The first legislative measure adopted to prevent corruption of officials concerns the introduction of a penalty to prevent both active and passive corruption of officials in the public sector. Secondly, a legislative amendment concerning the competence of the Audit Committee was introduced in the audit of declarations of assets and conflict of interest.

### 2.2.4. Measures on the Protection of Whistle-blowers

#### 2.2.4.1.Description of measures

Although the ‘whistle-blowers’ area was marked in the responses of nine Member States<sup>38</sup>, only Belgium and Latvia adopted direct measures on the protection of Whistle-blowers (see below). In Denmark the paying agency for agricultural funds established a web portal for reporting fraud.

These concerned the following provisions:

- Improvements in the context of the prevention of conflict of interest in the activities of public officials:
  - Adoption of new or amended legislative provisions on the basis of proposed measures to ensure the implementation of the recommendations adopted by the OECD Working Group on Bribery of Foreign Public Officials in International Business Transactions (Latvia and Slovakia).

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<sup>38</sup> Belgium, Denmark, Ireland, Italy, Latvia, Lithuania, Hungary, Portugal and Slovakia: **Belgium** (legislative amendments on reporting of a suspected breach of integrity in a federal administrative authority by a member of its staff, separate measure in Flanders: introduction of a new protocol which enhances the role of the Flemish Ombudsman), **Denmark** (operational measure: paying agency for agricultural funds has established a web-portal for reporting fraud), **Ireland** (Anti-fraud briefing seminar vered by advisor from Dg AGRI in relation to EAFRD), **Italy** (anti-corruption plan for Emilia Romagna), **Latvia** (1. extended scope of public officials in the Criminal Law, liability of legal persons was improved including adjudicating offences of public officials holding managerial positions, 2.operational measure: Inter-institutional working group established to elaborate whistleblower protection regulation), **Lithuania** (application of anti-fraud measures as required by Art. 125(4) of Regulation (EU) No 1303/2013, **Hungary** (operational measure on structured cooperation with law enforcement), **Portugal** (1.anti-fraud seminar organised by IFAP in collaboration with DG AGRI, 2.legislation drafted by IFAP on the process of identifying risk situations of fraud) and **Slovakia** (legislative measure on the basis of proposed measures to ensure implementation of the recommendations adopted by the OECD Working Group on Bribery in International Business Transactions for Slovakia).



- Reporting system of a suspected breach of integrity in a federal administrative authority by a member of its staff (Belgium).
- Fraud prevention, detection and prosecution:
  - Inter-institutional working group established to elaborate whistle-blowers' protection regulation (Latvia)
  - Amended legislation to strengthen the protection of whistle-blowers (Belgium-federal, Belgium – Flanders)
  - IT tools: establishment of a web-portal for reporting fraud in Agriculture (Denmark)

#### 2.2.4.2. Example of a measure adopted in Belgium

On federal level in Belgium a Royal Decree of 9 October 2014 implementing Article 3(2) of the Law of 15 September 2013 concerning the 'reporting of a suspected breach of integrity in a federal administrative authority by a member of its staff' lays down arrangements for the establishment, organisation, operation, responsibilities, powers, roles, functions, selection and all other necessary procedures for the smooth operation of the internal component of the reporting system.

An additional measure was adopted by the Flemish Government, which approved a revised regulation on the protection of whistle-blowers' and on 9 May 2014 it concluded a new protocol with the Flemish Ombudsman to strengthen the protection of whistle-blowers.

The new features of the whistleblowing system are as follows:

- the Ombudsman is no longer bound by pre-determined deadlines for investigating reported irregularities and formally deciding to place a staff member under whistle-blowers protection;
- the Ombudsman no longer has to disclose at the start of the investigation the name of the protected staff member to the head of the authority concerned;
- the authority concerned must show that any specific measure or disciplinary penalty against a protected staff member is unrelated to the whistleblowing;
- the option of voluntary relocation of the staff member in question is now expressly provided for.

A member of staff of the Flemish Government can, therefore, ask the Flemish Ombudsman for whistleblowing protection if he or she reports irregularities (Article II 3 VPS) and fears reprisal.

Under the procedure provided for in the Ombudsdecreet, the Flemish Ombudsman can decide to place the person concerned under protection (Article 2a (2)). Such protection continues for two years after the end of the investigation.

### 2.2.5. Measures to prevent financial crime, organised crime and tax fraud

Seventeen Member States<sup>39</sup> reported measures to prevent financial crime, organised crime and tax fraud.

These measures concerned the following areas in the whole anti-fraud cycle:

#### 2.2.5.1. Financial and Organised Crime:

- Fraud prevention:
  - Legislative and operational provisions introducing or amending criminal offences to prevent financial crime (Romania)<sup>40</sup>
  - Legislative measures to specifically tackle terrorist financing (Spain)<sup>41</sup>
  - Administrative guidelines for authorities on the treatment of a suspected crime (Spain, Sweden)<sup>42</sup>
  - Operational measure on structured cooperation with law enforcement (Hungary)<sup>43</sup>.
- Prosecution and sanctions:
  - Legislative measures to control cross-border movements of cash, new sanctions introduced (Belgium and Malta)<sup>44</sup>

#### 2.2.5.2. Financial Crime and Tax Fraud:

- Fraud prevention:
  - Measures to tackle fraud in the **VAT area** (Latvia, Estonia and Poland)<sup>45</sup>
  - Measure to tackle tax avoidance: the introduction of a residence disclosure notification requirement (Belgium)<sup>46</sup> and measure in the **tobacco sector** (Poland)<sup>47</sup>

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<sup>39</sup> Belgium, Bulgaria, Czech Republic, Estonia, Greece, Cyprus, Spain, Latvia, Lithuania, Netherlands, Hungary, Malta, Poland, Portugal, Romania, Slovenia and Sweden.

<sup>40</sup> **Romania** (new definition of criminal offences as foreseen by its new Criminal Code and its implementing rules + operational provision: enhancing recovery of criminal prejudices through data analysis on perpetrators assets and through exchanging information with similar structures for other Member States or other international networks).

<sup>41</sup> **Spain** (amendment on prevention of money laundering and terrorist financing).

<sup>42</sup> **Spain** (money laundering and terrorist financing (risk-based approach, remodelling of procedural requirements and revision of institutional structure), **Sweden** (guidelines to clarify what is meant by errors and suspected crime: the target group are administrators and directors within the Swedish authorities who deal with EU funds, horizontal measure, applicable to all funds).

<sup>43</sup> **Hungary** (horizontal provision: exchange of information among bodies and authorities involved in auditing EU aid).

<sup>44</sup> **Belgium** (horizontal provision: control measures, powers and record of notifications – punishment of infringements), **Malta** (introduced an increased punishment related to a number of offences - sanctions for obtaining money or property by false pretences, corporate liability for offences and other cases of fraudulent gain-consolidation of the Penal laws and laws of criminal procedure).

<sup>45</sup> **Latvia** (introduced operational measure to include risk indicators to ensure that in relevant countries of the EU involved in transactions the VAT tax is correctly calculated and paid), **Estonia** (VAT - changes in the taxation law), **Poland** (legislative measure - change in the rules governing the deduction of VAT from expenditure related to motor vehicles).

<sup>46</sup> **Belgium** (legal arrangements to be declared by BE residents: disclosure obligation targets trusts, but also non-resident companies, corporations, associations, foundations that are located in tax havens - in line with EU Savings Tax Directive).

<sup>47</sup> **Poland** (clarification of the rules on tobacco taxation to prevent tax avoidance).

- Fraud prevention, detection and prosecution:
  - Nine Member States<sup>48</sup> introduced administrative, legislative, organisational and operational measures to combat financial crime and tax fraud in the **customs sector**<sup>49</sup>

#### 2.2.6. Measures Reported Concerning Anti-Fraud Coordination Service (AFCOS)

Six Member States reported in the general part of the questionnaire specific measures concerning their Anti-Fraud Coordination Service (AFCOS):

- Fraud prevention:
  - Designation of AFCOS (Spain and Sweden)<sup>50</sup>
  - AFCOS reorganisation (Bulgaria)
  - Introduction of a new communication strategy for AFCOS (France)
  - New definitions of fraud offences and training (Romania)
- Investigation (Bulgaria and Malta).

Sweden communicated the **designation of the Economic Crimes Authority (Ekobrottsmyndigheten) as the Swedish Anti-Fraud Coordination Service (AFCOS)**. The decision was implemented by means of an amendment to the authority's instructions and entered into force on 1 January 2015<sup>51</sup>. **Spain appointed the national Anti-Fraud Coordination Service (Servicio Nacional de Coordinación Antifraude) as their Anti-Fraud Coordination Service (AFCOS)** and adopted relevant administrative anti-fraud measures<sup>52</sup>.

In Bulgaria there was AFCOS reorganisation (administrative and organisational measures) in 2014 which involved the creation of the 'Administrative Investigations sector' to carry out administrative investigations with powers to require documents and information by state and local authorities, organizations, companies and individuals,

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<sup>48</sup> Bulgaria, Czech Republic, Estonia, Greece, Latvia, Netherlands, Poland, Portugal and Slovenia  
<sup>49</sup> **Bulgaria** (checks performed by the customs authorities, introduction of equipment for measuring and testing excise goods), **Czech Republic** (organisational measure: establishment of a special team bringing together the Corruption and Financial Crime Detection Section, the Directorate-General for Finance and the Directorate-General for Customs to tackle financial crime, in particular customs duty and VAT evasion), **Estonia** (changes in the taxation law), **Greece** (introduced risk analysis criteria within the ICISnet, Customs information system to apply targeted customs control on exports of any goods), **Latvia** (amended legislation on mutual assistance and cooperation – Naples II Convention – better cooperation for faster detection, prevention and punishment of perpetrators), **Netherlands** (adopted two specific operational measures in customs: 1. antidumping measure concerning solar panels - focus on declaring false countries of origin or by transshipment and 2. general intensified controls on origin – targeted checks in customs), **Poland** (guidelines on 'Verifying the declared customs value of textile goods and footwear imported from Far Eastern countries mainly from China'), **Portugal** (national budget law introduced law on customs crimes, indication of organised crime or with an international dimension) and **Slovenia** (reorganisation and adoption of a legislative framework which newly defined process for financial investigation).

<sup>50</sup> **Sweden** and **Spain** reported the designation of AFCOS as one of their most important measures to protect the financial interests of the EU, however, in 2014 AFCOS were also designated in Denmark, Ireland, Greece, Luxembourg, Austria, Portugal and the United Kingdom, thus by the end of 2014 all the Member States had designated or established their Anti-Fraud Coordination Service.

<sup>51</sup> Pursuant to Article 3(4) of the OLAF Regulation (single legislative measure).

<sup>52</sup> It was established by the Royal decree 802/2014 of 19 September which involved various anti-fraud measures, including the creation of the 'National Accounting Office' and updating of powers of various bodies (D.G. for Community Funds; Secretariat-General for Autonomous and Local Coordination; D.G. for Public Service; D.G. for Coordination of powers with the Autonomous Communities and Local Authorities).

conducting on-the-spot checks and taking statements from individual persons, while the control on the procedures for irregularity administration were transferred to the 'Irregularities reporting' sector. AFCOS staff have undergone training at OLAF. The creation of 'Administrative investigations sector' links up with the Directorate's statutory powers to conduct administrative investigations for the purpose of establishing irregularities.

The French AFCOS (la Délégation Nationale à la Lutte contre la Fraude, DNLF) used part of its website to improve communication on measures to prevent fraud against the European Union's financial interests. It contains information summarising the DNLF's role as an Anti-Fraud Coordination Service, action undertaken by relevant national administrations, a presentation of OLAF, an interactive map of Europe showing all European AFCOS that are DNLF partners (with a description and contact details) and, since December 2014, OLAF's press releases have been included on the site. The DNLF website improves communication on measures to prevent fraud against the European Union's financial interests by presenting the action of all the actors concerned and also by highlighting the European network of anti-fraud coordination services.

Romania reported the adoption of new definitions of fraud offences against the EU's financial interests and training on this matter. The amended legislation is a part of implementation rules of the new Romanian Criminal Code and aligns with EU trends on fraud definition. In this regard the Romanian AFCOS (Departmentul pentru Lupta Anti-Frauda, DLAF) has been involved in enhancing cooperation with judicial authorities and law enforcement agencies for targeting inspections and investigations and for the preparation of a proper implementation of antifraud preventive measures for the Multiannual Financial Framework for 2014-2020.

Malta reported the preparation of a Manual on the Financial Investigative Function and Operations of the Internal Audit and Investigations Department (IAID). The manual includes Malta's obligations under bilateral, multilateral and other international agreements/arrangements against irregularities and fraud.

### 2.3. Structured answers of 28 Member States – measures taken concerning the EXPENDITURE areas of the EU budget

EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU																	
Member State	Measure	DOMAIN										Single Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure
		Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other	If other please specify						
BE	M3	Royal Decree of 26 January 2014 on measures to control cross-border movements of cash. Relates to money laundering.										x	New Legislation	LEGISLATIVE MEASURE			
		scope of legislation	reasons for legislative measures	brief description of the measure	26.01.2014	H											
BE	M4	Royal Decree of 9 October 2014 implementing Article 3(2) of the Law of 15 September 2013 concerning the reporting of a suspected breach of integrity in a federal administrative authority by a member of its staff. The Decree lays down arrangements for the establishment, organisation, operation, responsibilities, powers, roles, functions, selection and all other necessary procedures for the smooth operation of the internal component of the reporting system (see additional measure for the Flemish Community).										x	New Legislation	LEGISLATIVE MEASURE			
		scope of legislation	reasons for legislative measures	brief description of the measure	09.10.2014	H											
BE	M5	Law of 15 May 2014 amending the Law on public procurement and certain works, supply and service contracts of 15 June 2006 and the Law of 13 August 2011 concerning public procurement and certain works, supply and service contracts in the fields of defence and security. Relates to public procurement.										x	Amendment	LEGISLATIVE MEASURE			
		scope of legislation	reasons for legislative measures	brief description of the measure	15.05.2014	H											

**EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU**

Member State	Measure	DOMAIN										Single Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure																																						
		Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other	If other please specify																																												
BE	Additional measure	<p>Like the Federal Government (see measure 4), the Flemish Government has had a whistle-blowing mechanism since 2004. The whistle-blowing mechanism is provided for in the Ombudsdecreet (decree of 7 July 1998 establishing the Ombudsman's Service) and in the protocols concluded between the Flemish Ombudsman and the Flemish Government and Audit Vlaanderen (formerly IVA, Internal Audit Department of the Flemish Administration).</p> <p><b>The decree establishing the Ombudsman's Service was amended to strengthen protection for whistle-blowers.</b> On Friday 6 December 2013 the Flemish Government approved the revised regulation for the protection of whistle-blowers and on 9 May 2014 it concluded a new protocol with the Flemish Ombudsman. New features of the whistle-blowing system are:</p> <ul style="list-style-type: none"> <li>- the Ombudsman is no longer bound by pre-determined deadlines for investigating reported irregularities and formally deciding to place a staff member under whistle-blower protection;</li> <li>- the Ombudsman no longer has to disclose at the start of the investigation the name of the protected staff member to the head of the authority concerned;</li> <li>- the authority concerned must show that any specific measure or disciplinary penalty against a protected staff member is unrelated to the whistle-blowing;</li> <li>- the option of voluntary relocation of the staff member in question is now expressly provided for.</li> </ul> <p>A member of staff of the Flemish Government can thus ask the Flemish Ombudsman for whistle-blowing protection if he or she reports irregularities (Article II 3 VPS) and fears reprisals. Under the procedure provided for in the Ombudsdecreet, the Flemish Ombudsman can decide to place the person concerned under protection (Article 2a (2)). Such protection continues for two years after the end of the investigation. During the protection period the competent authority can only impose disciplinary penalties on or take other measures against the whistle-blower if they are unrelated to the reporting of the irregularity. Already ongoing administrative procedures are suspended and can only be resumed if the ombudsman's investigation shows that they are unrelated to the reporting of the irregularity.</p> <p>Note: There is no whistleblowing mechanism as yet in Wallonia or Brussels Capital.</p>																																																					
		BG	M1	<p>By a Decision of the Council of Ministers recorded under Minutes No 53, item 4, of 17 December 2014, the Government adopted a <b>National Strategy, for the period 2014-2020, for preventing and combating irregularities and fraud affecting the financial interests of the EU.</b> For the effective achievement of the strategic and operational goals set, specific activities will be set out in an <b>Action Plan</b> for 2015-2016 for the implementation of the National Strategy, with the responsible institutions being specified and the specific deadlines set.</p>	<p>The Strategy comprises 4 goals (areas):</p> <p>1-stepping up prevention (through new regulations, increased administrative capacity, transparency and access to information);</p> <p>2-increasing effectiveness in detecting and countering irregularities and fraud (strengthened cooperation between revenue authorities, enhanced internal control and interaction between State bodies, the private sector, non-governmental organisations and civil society);</p> <p>3-strengthening cooperation with OLAF and the competent institutions of the EU and the Member States;</p> <p>4-increasing the effectiveness of activities in the fields of investigation, recovery and penalties.</p>	<p>x</p> <p><b>LEGISLATIVE MEASURE</b></p> <table border="1"> <thead> <tr> <th>scope of legislation</th> <th>reasons for legislative measures</th> <th>brief description of the measure</th> <th></th> </tr> </thead> <tbody> <tr> <td>New legislation + Amd</td> <td>Competences; Powers; Definition of a specific topic; Recovery; Financial penalties; Other administrative penalties</td> <td>To clarify or consolidate existing rules; To remedy flaws; To enforce the rules in line with developments in EU law</td> <td>The National Strategy envisages the drafting and adoption of legislative acts relating to the application of European legislation already in force, the removal of shortcomings in the existing legislative framework and the further development of the national statutory rules protecting the financial interests of the EU.</td> <td>31.12.2016</td> </tr> </tbody> </table> <p><b>ADMINISTRATIVE MEASURE</b></p> <table border="1"> <thead> <tr> <th>scope of administrative measure</th> <th>reasons for administrative measure</th> <th>type of act within measure</th> <th></th> </tr> </thead> <tbody> <tr> <td>New measure + Update</td> <td>Management of funds; Monitoring/desk checks ; On the spot checks; Investigation; Irregularities reporting; Penalties; Recovery</td> <td>To clarify or consolidate existing rules; To enhance existing measure</td> <td>Other: Administrative measures are to be taken both in the implementation of the adopted strategy and under the 2015-2016 Action Plan.</td> <td>31.12.2016</td> </tr> </tbody> </table> <p><b>ORGANISATIONAL MEASURE</b></p> <table border="1"> <thead> <tr> <th>scope of organisational measure</th> <th>expected results in terms of resources</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>New measure + Update</td> <td>Competence; Inter- agency cooperation ; General trainings; Fraud awareness trainings; Simplification of procedures</td> <td>Increased resources</td> <td></td> <td>31.12.2016</td> </tr> </tbody> </table> <p><b>OPERATIONAL MEASURE</b></p> <table border="1"> <thead> <tr> <th>scope of operational measure</th> <th>expected results of operational measure</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>New measure + Update</td> <td>IT tools ("IT data feeding", "Other IT"); Web reporting/Hotline; Flagging practice; Risk indicators; Increased number of checks; Structured cooperation with law enforcement; Structured cooperation with judicial authorities</td> <td>Enhanced coordination; Enhanced cooperation; Enhanced information flow; Targeting of checks; Targeting of investigations; Enhanced ex-ante controls; Enhanced ex-post controls</td> <td></td> <td>31.12.2016</td> </tr> </tbody> </table>	scope of legislation	reasons for legislative measures	brief description of the measure		New legislation + Amd	Competences; Powers; Definition of a specific topic; Recovery; Financial penalties; Other administrative penalties	To clarify or consolidate existing rules; To remedy flaws; To enforce the rules in line with developments in EU law	The National Strategy envisages the drafting and adoption of legislative acts relating to the application of European legislation already in force, the removal of shortcomings in the existing legislative framework and the further development of the national statutory rules protecting the financial interests of the EU.	31.12.2016	scope of administrative measure	reasons for administrative measure	type of act within measure		New measure + Update	Management of funds; Monitoring/desk checks ; On the spot checks; Investigation; Irregularities reporting; Penalties; Recovery	To clarify or consolidate existing rules; To enhance existing measure	Other: Administrative measures are to be taken both in the implementation of the adopted strategy and under the 2015-2016 Action Plan.	31.12.2016	scope of organisational measure	expected results in terms of resources			New measure + Update	Competence; Inter- agency cooperation ; General trainings; Fraud awareness trainings; Simplification of procedures	Increased resources		31.12.2016	scope of operational measure	expected results of operational measure			New measure + Update	IT tools ("IT data feeding", "Other IT"); Web reporting/Hotline; Flagging practice; Risk indicators; Increased number of checks; Structured cooperation with law enforcement; Structured cooperation with judicial authorities	Enhanced coordination; Enhanced cooperation; Enhanced information flow; Targeting of checks; Targeting of investigations; Enhanced ex-ante controls; Enhanced ex-post controls		31.12.2016													
scope of legislation	reasons for legislative measures	brief description of the measure																																																					
New legislation + Amd	Competences; Powers; Definition of a specific topic; Recovery; Financial penalties; Other administrative penalties	To clarify or consolidate existing rules; To remedy flaws; To enforce the rules in line with developments in EU law	The National Strategy envisages the drafting and adoption of legislative acts relating to the application of European legislation already in force, the removal of shortcomings in the existing legislative framework and the further development of the national statutory rules protecting the financial interests of the EU.	31.12.2016																																																			
scope of administrative measure	reasons for administrative measure	type of act within measure																																																					
New measure + Update	Management of funds; Monitoring/desk checks ; On the spot checks; Investigation; Irregularities reporting; Penalties; Recovery	To clarify or consolidate existing rules; To enhance existing measure	Other: Administrative measures are to be taken both in the implementation of the adopted strategy and under the 2015-2016 Action Plan.	31.12.2016																																																			
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New measure + Update	IT tools ("IT data feeding", "Other IT"); Web reporting/Hotline; Flagging practice; Risk indicators; Increased number of checks; Structured cooperation with law enforcement; Structured cooperation with judicial authorities	Enhanced coordination; Enhanced cooperation; Enhanced information flow; Targeting of checks; Targeting of investigations; Enhanced ex-ante controls; Enhanced ex-post controls		31.12.2016																																																			













**EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU**

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			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS							Other
EL	M1	Setting up a <b>Register of Fiscal Auditors and Auditors</b> of the Fiscal Audit Committee (Auditing Authority)				✓						✓	Setting up a Register of Fiscal Auditors and Auditors of the Fiscal Audit Committee (EDEL) with a view to ensuring full harmonisation of fiscal control with the internationally accepted auditing standards, in line with the need to continuously evaluate and register staff engaged in fiscal control relating to the above-mentioned audits in a corresponding register, by recording specific information about them in the context of the implementation of the principles of sound financial management and transparency, so as to ensure that audits are effective and achieve their objectives.	<b>ORGANISATIONAL MEASURE</b>			
												x		New measure	scope of organisational measure	expected results in terms of resources	brief description of the measure
EL	M2	<b>Legislative reforms to repair the damage from wrongdoings relating to active and passive corruption:</b> a) Paragraph 1E of Law 4254/2014 'Measures to support and develop the Greek economy in the context of implementation of Law 4046/2012 and other provisions'. b) Article 32 of Law 4258/2014 'Definition procedure and regulation of matters relating to water courses – urban planning arrangements'	✓	✓		✓							Legislative reforms to repair the damage from wrongdoings relating to active and passive corruption: a) Paragraph 1E of Law 4254/2014 'Measures to support and develop the Greek economy in the context of implementation of Law 4046/2012 and other provisions'. b) Article 32 of Law 4258/2014 'Definition procedure and regulation of matters relating to water courses – urban planning arrangements'	<b>LEGISLATIVE MEASURE</b>			
												x		Amendment	scope of legislation	reasons for legislative measures	brief description of the measure
EL	M3	<b>Audit of declarations of assets and conflict of interest</b> - Article 222 of Law 4281/2014 'Measures to support and develop the Greek economy, organisational issues of the Ministry of Finance and other provisions'.		✓		✓							Audit of declarations of assets and conflict of interest - Article 222 of Law 4281/2014 'Measures to support and develop the Greek economy, organisational issues of the Ministry of Finance and other provisions'.	<b>LEGISLATIVE MEASURE</b>			
												x		Amendment	scope of legislation	reasons for legislative measures	brief description of the measure







EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU

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			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS						Other
HR	M1	NATIONAL ANTI-FRAUD STRATEGY IN THE FIELD OF PROTECTION OF EU FINANCIAL INTERESTS FOR THE PERIOD 2014-2016														
HR	M2	GUIDELINES ON MANAGEMENT OF IRREGULARITIES AND FRAUD IN THE CONTEXT OF STRUCTURAL FUNDS PROGRAMMES FOR THE PERIOD 2007-2013														
IT	M1	The measure concerns the prevention of conflicts of interest of staff of the Audit Authority and the assessment of the threshold by the MEF-DRGS-IGRUE for issuing the opinion on the designation of the audit. The notes IGRUE n. 47832 of 30.5.2014 and no. 56513 of 07/03/2014 indicate, inter alia, what aspects will be subject to checks before the opinion can be issued attesting that the Audit Authority complies with this requirement, and what procedure is to be followed by MEF-DRGS-IGRUE to carry out checks prior to issuing the opinion on the appointment.														



EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU																			
Member State	Measure	Title and description of measure	DOMAIN									Single Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure		
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other							If other please specify	
IT	M2	Stepping up monitoring and control of critical issues of the project with the introduction of a new computer system for reporting at the Ministry of Education, Universities and Research (MIUR) (16 May 2014). The system introduces new procedures in the control process which is characterised by the parallels between the activities carried out by the actors involved. The information available on the system helps Project Officers to keep to deadlines, improves communication between actors and makes it possible to flag up problems encountered in order to share appropriate response efforts.	✓																
IT	M3	Extension of foreign exchange policing powers to the Guardia di Finanza's Special Unit for Public Spending and Combating EU Fraud for the purposes of controlling payments from the budgets of the EU, the Government, the Regions and local authorities.																	
IT	M4	Monitoring of EU funding in the agri-food sector by the Carabinieri for Food and Agricultural Policy	✓	✓	✓	✓													

EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU

Member State	Measure	Title and description of measure	DOMAIN										Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure				
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other	Single Package					New measure or Update			
IT	M5	Three-year plan for the prevention of corruption (PTPC) for the period 2013-2016, approved by Decision of the Regional Executive of Emilia Romagna No 66 of 27 January 2014.																		
LV	M1	The Amendments to the Latvian Administrative Violations Code entered into force on 1 September 2013. Since 2014 the Procurement Monitoring Bureau (PMB) has been imposing administrative penalties regarding violations of procedures in public procurement, PPP. According to the Law on Management of EU Structural Funds and the CF the PMB ensures selective ex-ante control of procurement procedures in order to evaluate if the documentation, process is in compliance with the national laws on public procurement, EU Directives and the jurisprudence of the ECJ thus reducing the risk of irregular payments.																		



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Member State	Measure	Title and description of measure	DOMAIN							If other please specify	Single Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers							
LT	M1	Method for <b>identifying artificially created conditions for obtaining aid.</b>														
LT	M2	<b>Publication of purchases by project promoters on the website of the National Paying Agency under the Ministry of Agriculture</b> (hereinafter 'NPA') (the project management authority). Conditions and requirements have been established for publishing purchases on the NPA website (www.nma.lt) that are not required to be published under the relevant legislation. This ensures that EU funds are used rationally and that procurement is transparent.	✓													
LT	M3	<b>Application of anti-fraud measures in administering EU Structural Funds, as required by Article 125(4)(c) of Regulation (EU) No 1303/2013</b> of the European Parliament and of the Council of 17 December 2013.	✓			✓	✓		✓	✓	✓					
LT	M4	<b>The Lithuanian National Anti-Corruption Programme for 2015-2025 has been adopted.</b>				✓					✓					

**EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU**

Member State	Measure	Title and description of measure	DOMAIN								Single Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure		
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS							Other	
LU	M1	Area: Public procurement. <b>Better monitoring, control and documentation of public contracts</b> submitted by beneficiaries.	✓									x	<b>ADMINISTRATIVE MEASURE</b>				Cohesion policy	
													scope of administrative measure	reasons for administrative measure	type of act within measure			
												Update	Monitoring/desk checks: Audit checklist	To enhance existing measure	Recommendation			
HU	M1	Contacts and <b>exchange of information in order to improve cooperation among bodies and authorities involved in auditing EU aid</b> , and making 'operative' cooperation (in individual cases) more effective	✓									x	<b>OPERATIONAL MEASURE</b>			H		
													scope of operational measure	expected results of operational measure				
												Update	Structured cooperation with law enforcement	Enhanced cooperation		01.01.2014		
HU	M2	<b>Activities of the Public Procurement Authority (PPA) to support effective implementation of public procurement law</b> (issuing guidelines, continuously improving the IT system/portal)	✓									x	<b>ADMINISTRATIVE MEASURE</b>			H		
													scope of administrative measure	reasons for administrative measure	type of act within measure			
													Update	Other: To facilitate the application of the law, the Public Procurement Authority (PPA) issues guidelines providing practical information for the entities involved in public procurement procedures, and updates them on a regular basis to reflect any changes. The guidelines are available via the official portal of the PPA.	To enhance existing measure			Circulaire/circular, Instructions, Guidelines, Manuals
													scope of operational measure	expected results of operational measure				
												Update	IT tools ("IT data feeding", "Other IT");	Enhanced information flow; Enhanced ex-ante controls; Enhanced ex-post controls;		01.01.2014		
HU	M3	<b>Activities of the Public Procurement Authority that are aimed at combating corruption in public procurement</b> (information, training, activities intended to <b>increase transparency</b> )			✓							x	<b>OPERATIONAL MEASURE</b>			H		
													scope of operational measure	expected results of operational measure				
												Update	IT tools ("IT data feeding", "Other IT"); Other: Activities of the Public Procurement Authority that are aimed at combating corruption in public procurement: information, organising training courses for the entities concerned, activities intended to increase transparency (e.g. keeping a register of recognised suppliers, keeping a list of banned suppliers, introducing codes of ethics)	Enhanced cooperation; Enhanced information flow		01.01.2014		









**EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU**

Member State	Measure	Title and description of measure	DOMAIN								Single Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure			
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS							Other		
PT	M2	Seminars organised by the Audit Authority and the Agency for Development and Cohesion in May and October 2014 (both held in Lisbon) with the participation of the Commission. The objective was to improve the quality of expenditure at the end of the 2007-2013 programming period and to set up efficient systems for the prevention and detection of errors and fraud in the 2014-2020 programming period. Anti-fraud seminar, organised by IFAP in collaboration with DG AGRI (held in Lisbon) in November 2014 which dealt with situations that may point to fraud involving Community funds.	✓	✓			✓	✓	✓	✓			New measure	Flagging practice; Risk indicators; Increased number of checks; Structured cooperation with law enforcement	Enhanced coordination; Enhanced cooperation; Enhanced information flow; Targeting of checks; Targeting of investigations; Enhanced ex-ante controls; Enhanced ex-post controls	01.01.2015	Agriculture / Fisheries / Cohesion policy		
PT	M4	Over the course of 2014, the Audit (Inspectorate-General of Finance) and Certifying (Development and Cohesion Agency) Authorities strengthened the procedures involved in auditing and certifying expenditure. This entailed checking the procedures in force to ensure that the Management Authorities monitor, prevent, detect and correct any instances of irregularity, fraud, conflicts of interest, etc. Wherever applicable, recommendations for improvement were made, which will be monitored over the course of the following year.	✓				✓	✓					New measure / Update	Flagging practice; Risk indicators; Increased number of checks; Structured cooperation with law enforcement	Enhanced coordination; Enhanced information flow; Targeting of checks; Targeting of investigations; Enhanced ex-ante controls; Enhanced ex-post controls	31.12.2014	Cohesion policy		
PT	M5	Over the course of 2014, IFAP drafted legislation on the process of identifying risk situations, or greater risk of fraud, and revised and amended the existing provisions on the procedure applicable in cases of complaints or suspicions of intentional non-compliance.	✓				✓	✓	✓				Update	Irregularities reporting; Penalty; Recovery	To clarify or consolidate existing rules; To enhance existing measure	Circulaire/circular, Instructions, Guidelines, Manuals	Agriculture / Fisheries		
															Update	Flagging practice; Risk indicators; Structured cooperation with law enforcement; Structured cooperation with judicial authorities		Enhanced cooperation; Enhanced information flow; Targeting of checks; Targeting of investigations;	31.12.2014



EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU

Member State	Measure	Title and description of measure	DOMAIN								Single	Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure		
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS								Other	
RO	M2	Corruption: <b>adoption of new definitions of corruption offenses</b> , including those relating to public procurement in order to align them to the existing realities of the Member State and to the European trends										x	<b>LEGISLATIVE MEASURE</b>						
														scope of legislation	reasons for legislative measures	brief description of the measure			
														New legislation	Definition of a specific topic	To clarify or consolidate existing rules; To enforce the rules in line with developments in EU law	incriminating bid - rigging behaviour, or adapting the definition of corruption on Romanian state of play and complying them to EU trends	17.07.2009	
															<b>ADMINISTRATIVE MEASURE</b>				
															scope of administrative measure	reasons for administrative measure	type of act within measure		
															Update	Management of funds; Monitoring/desk checks; On the spot checks; Investigation; Recovery + Other: National Anticorruption Strategy 2012-2015, comprising an Action Plan and preventive measures in order to develop a proper conduct and approach of national institutions and to diminish corruption acts (including those that affect public procurement)	Cross-cutting measure, multi-agency measure/ measure with impact on various bodies; National Anticorruption Strategy gathers the efforts of all national institutions for a coherent and coordinated approach of anticorruption measures	Decision, Resolution	
RO	M3	Fraud Definition: Adoption of <b>new definitions of fraud offences against the EU's financial interests and training</b> in the matter.										x	<b>LEGISLATIVE MEASURE</b>						
														scope of legislation	reasons for legislative measures	brief description of the measure			
														Amendment	Definition of a specific topic	To clarify or consolidate existing rules; To enforce the rules in line with developments in EU law	The legislative measure is part of implementation rules of the new Romanian Criminal Code and aligns to EU trends on fraud definition	01.02.2014	
															<b>ORGANISATIONAL MEASURE</b>				
															scope of organisational measure	expected results in terms of resources			
															New measure	Inter- agency cooperation; General trainings	Neutral on resources		



**EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU**

Member State	Measure	Title and description of measure	DOMAIN										Single Package New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other						
SI	M1	Ministry of Finance: <b>issue of instructions for effecting repayments of non-earmarked EU funds in 2014.</b> AKTRP: operational measure - establishment of fraud register for rural development programme in Slovenia for 2014-2020 programming period. KPK: upgrade of IT tool to assist national bodies, general public and media, facilitating insight into public expenditure by public institutions on goods and services. SVRK: change in managing authority instructions regarding eligible costs: abolition of reporting by sector and reintroduction of mandatory documentary evidence, thus permitting 100% administrative control and more precise documentary evidence concerning the purchase of equipment.	✓			✓	✓	✓			✓			ADMINISTRATIVE MEASURE scope of administrative measure      reasons for administrative measure      type of act within measure		H	
			x	Update	Eligibility criteria: Management of funds; Monitoring/desk checks; On the spot checks;	Cross-cutting measure, multi-agency measure/ measure with impact on various bodies: The monitoring institutions (managing authority's control unit, audit authority, European Commission and European Court of Auditors) have detected a type of irregularity relating to the instrument 'Development Centres of the Slovenian Economy'. To ensure proper implementation in future the managing authority has changed its instructions regarding eligible costs by abolishing reporting by sector and reintroducing mandatory documentary evidence, thus permitting 100% administrative control and more precise documentary evidence concerning the purchase of equipment. Those instructions are published on the MA's website.	Circulaire/circular, Instructions, Guidelines, Manuals										
SI	M2	<b>Certifying authority (CA): enhanced checking of achievement of operations' targets/indicators.</b> In November 2014 a project group was designated to examine questions relating to public procurement. The managing authority ensures administrative capacity, additional jobs and training relating to public procurement.	✓				✓				✓			x ORGANISATIONAL MEASURE scope of organisational measure      expected results in terms of resources		11.11.2014	Cohesion policy / Migration and Asylum
				Update	Competence; Inter- agency cooperation; General trainings	Neutral on resources											



EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU

Member State	Measure	Title and description of measure	Public procurement	Financial crime	Organised crime	DOMAIN								Single Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectorial measure		
						Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other	If other please specify									
SK	M4	System for the financial management of the Structural Funds, the Cohesion Fund and the European Maritime and Fisheries Fund for the programming period 2014–2020, version 1.0 of 5 November																			
SK	M5	System for the financial management of the European Agricultural Fund for Rural Development of 2 July 2014.																			
FI	M1	Adoption of regulations on national implementation of the Structural Funds 2014-2020																			

EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU																	
Member State	Measure	Title and description of measure	DOMAIN							Single Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure		
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers							AFCOS	Other
SE	M1	<p>The Swedish 'SEFI Council' [Council for the Protection of the EU's Financial Interests] (the Economic Crimes Authority - Ekobrottsmyndigheten, the Swedish Board of Agriculture - Jordbruksverket, the Västerbotten County Administrative Board - Länsstyrelsen Västerbotten, the Migration Board - Migrationsverket, the Police Authority - Polismyndigheten, the Swedish ESF Council - Svenska ESF-rådet, the Swedish Agency for Economic and Regional Growth - Tillväxtverket, the Financial Management Authority - Ekonomistyrningsverket) <b>has approved guidelines to clarify what is meant by errors and suspected crime.</b> The guidelines are intended to help authorities decide whether a particular act in connection with an aid application or an aid payment that is fully or partly financed from EU funds should be treated as a suspected crime. The target group is administrators and directors within the Swedish authorities who deal with EU funds.</p>															
SE	M2	<p>On 16 October the Economic Crimes Authority - Ekobrottsmyndigheten organised a one-day <b>seminar for the authorities involved, aimed at improving effectiveness when preventing, detecting, investigating and taking measures with regard to the misuse of EU funds.</b> The seminar shed light on regulatory simplification from a number of perspectives, including from the perspective of the European Court of Auditors. Government representatives from Finland and Denmark described how they audit EU funds. Public prosecutors from the Economic Crimes Authority - Ekobrottsmyndigheten presented their work on EU fraud. The aim of the day was mainly to offer an opportunity to exchange experiences and provide inspiration.</p>															
SE	M3	<p>On 16 October 2014 the government decided to <b>designate the Economic Crimes Authority - Ekobrottsmyndigheten as the Swedish Anti-Fraud Coordination Service (AFCOS).</b> The decision was implemented by means of an amendment to the authority's instructions and entered into force on 1 January 2015.</p>															



EXPENDITURE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU

Member State	Measure	Title and description of measure	DOMAIN									Single Package New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure			
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other						If other please specify		
SE	M4	The authorities managing the Social Fund and the Regional Fund have together undertaken a major <b>development effort to implement simplified cost options</b> (Articles 67 and 68 of Regulation (EU) No 1303/2013). The aim is to <b>reduce the administrative burden on aid recipients and free up resources for a more result-oriented approach at programme and project level</b> . Sweden considers that simple, transparent accounting rules for project owners can ultimately reduce the risk of errors, irregularities and fraud.																	
UK	M1	The United Kingdom's agricultural sector: <b>the systems and procedures to manage potential and actual fraud undertaken under the Common Agricultural Policy (CAP)</b>																	
UK	M2	Anti Fraud Policy developed in line with requirements for the 2014-2020 Cohesion policy programmes																	

## 2.4. Structured answers of 28 Member States – measures taken in the REVENUE part of the EU budget

REVENUE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU																		
Member State	Measure	Title and description of measure	DOMAIN									Single	Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other							
BE	M1	Royal Decree of 19 March of 2014, MB 02/04/2014, lists the <b>legal arrangements which are to be declared by BE residents</b> . This <b>disclosure obligation</b> targets trusts, but also non-resident companies, corporations, associations, foundations that are located in tax havens, if the legal rights to the shares are held entirely or partially by a BE resident or if the beneficiary of the economic rights to the assets and capital is a BE resident. The list is based on the list in Annex 1 of the proposed directive amending the EU Savings Tax Directive although this list is more complete.																
BE	M1	Royal Decree of 19 March of 2014, MB 02/04/2014, lists the <b>legal arrangements which are to be declared by BE residents</b> . This <b>disclosure obligation</b> targets trusts, but also non-resident companies, corporations, associations, foundations that are located in tax havens, if the legal rights to the shares are held entirely or partially by a BE resident or if the beneficiary of the economic rights to the assets and capital is a BE resident. The list is based on the list in Annex 1 of the proposed directive amending the EU Savings Tax Directive although this list is more complete.																
BE	M2	Royal Decree implementing Article 2§1,13° b), second paragraph of the <b>Income Tax Code</b> 1992 inserted by the Act containing various provisions of July 30, 2013. The new law containing various provisions of July 30, 2013 adds to article 2§1 of the Income Tax Code 1992, the <b>definition regarding the concept of legal construction</b> . A legal construction means, under this definition, among others, a legal relationship that is created by an act of the founder, where goods or rights are controlled by a manager, for the benefit of beneficiary or for a specific purpose.		✓														
BG	M5	A Regulation has been issued by the Minister of Finance <b>on the specific requirements</b> applying to, and <b>checks performed by the customs authorities</b> on, equipment for measuring and testing excise goods, in implementation of the provisions set out in Article 103(2) of the Excise and Tax Warehouses Act (ZADS). The Regulation is aimed on the one hand at decreasing the administrative burden and costs for business, and on the other at ensuring that effective controls are carried out by the customs authorities on the placement, manufacture and storage of excise goods in, and their removal from, customs warehouses and other premises.																

REVENUE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU

Member State	Measure	Title and description of measure	DOMAIN										Single Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other	If other please specify						
CZ	M1	In mid-2014, preparations were concluded for the <b>establishment of a special team to tackle the most serious forms of tax and customs crime</b> . This grouping, known as 'Kobra', has been incorporated in the existing structure of the <b>police and customs authorities</b> . It has been established as a permanent joint team bringing together the Corruption and Financial Crime Detection Section, the Directorate-General for Finance and the Directorate-General for Customs. The role of the team, which has a nationwide mandate and whose members are drawn in particular from the police and customs authorities, is to concentrate on the <b>battle against tax evasion, tax offences and customs duty evasion</b> .		✓	✓													
													x	New measure	Reorganisation of existing bodies; Competence; Inter- agency cooperation; Simplification of procedures	Increased resources		15.06.2014
CZ	Additional information	The main reason for setting up the team was to attempt to ensure effective and speedy exchange of information and coordination in joint police and customs operations, so that tax and customs duty evasion is promptly identified, investigated and brought to book. The joint team's main function is to ensure that taxes and customs duties are properly collected, that amounts unlawfully received are paid back to the state budget and that offenders are prosecuted; tackling such offences involving VAT and customs evasion is done in close cooperation with the authorities of the other Member States, with particular regard to fuel imports and miscellaneous raw materials. <b>Work towards the establishment of the 'Kobra team' was intended to ensure greater effectiveness in tackling financial crime, in particular customs duty and VAT evasion.</b> The focus of the team's work will be the most serious forms of such crime, including organised crime committed by criminal gangs.																
EE	M3	Changes in taxation law: 1) 1 July 2014 - Employment register; 2) 1 November 2014 - VAT form 'INF' - transactions with partners exceeding EUR 1000 a month must be declared; 3) 1 December 2014 - rules governing the use of company cars were clarified. The full text of the Act can be found at: <a href="https://www.riigiteataja.ee/en/eli/523012015008/consolide">https://www.riigiteataja.ee/en/eli/523012015008/consolide</a>																
													x	Amendment	Competences; Powers; Definition of a specific topic; Recovery; Other administrative penalties;	To clarify or consolidate existing rules; Other: Changes in taxation law.	the Taxation Act.	23.12.2014

REVENUE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU

Member State	Measure	Title and description of measure	DOMAIN										Single	Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure	
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS	Other	If other please specify								
EL	M4	Application of <b>risk analysis in customs controls for all goods</b> - within the ICISnet customs information system, methodologies for carrying out targeted checks are applied in risk analysis		✓		✓														
CY	M1	AMENDED LAW 188(l) 2007 on <b>money laundering</b>		✓	✓															
LV	M4	The Amendments made to the law "On the Convention drawn up on the basis of Article K.3 of the EU Treaty, <b>on mutual assistance and cooperation between customs administrations</b> (Naples II Convention)"		✓																



REVENUE - Most important anti-fraud measures adopted by Member States in 2014 under Article 325 TFEU

Member State	Measure	Title and description of measure	DOMAIN								Single	Package	New measure or Update	Specify type of measure (legislative, administrative, operational and/or organisational)	date	Horizontal measure (H)	Sectoral measure			
			Public procurement	Financial crime	Organised crime	Corruption	Conflict of interest	Fraud definition	Whistle-blowers	AFCOS								Other		
NL	M3	Anti-dumping solar panels (anti-dumping under Regulation (EU) No 1238/2013), pro-active and real time control of all imported solar panels after the antidumping was established.										x	ORGANISATIONAL MEASURE							
														scope of organisational measure	expected results in terms of resources					
														New measure	Other: A dedicated team of all involved custom offices and specialist is established. The measure has a wide scope in accordance with the competences of the Customs as laid down in the Dutch General Customs Law.	Increased resources		01.01.2014		
															OPERATIONAL MEASURE					
															scope of operational measure	expected results of operational measure				
NL	M4	Intensified control on origin (certificates, declarations)		✓																
															scope of operational measure	expected results of operational measure				
														x	New measure	Increased number of checks;	Targeting of checks		01.09.2014	
																scope of operational measure	expected results of operational measure			
PL	M2	Guideline on 'Verifying the declared customs value of textile goods and footwear imported from Far Eastern countries (mainly from China)'																		
																scope of operational measure	expected results of operational measure			
														x	New measure	Flagging practice; Risk indicators; Increased number of checks	Targeting of checks; Other: Reduction or elimination of the practice, employed by certain unscrupulous importers, of understating the customs value of textile goods and footwear imported from Far Eastern countries so as to have customs duties under-assessed or to avoid paying them altogether. The Guideline came into actual use as from the beginning of 2014.		24.12.2013	



### 3. SPECIFIC PART OF THE QUESTIONNAIRE 2014: DEFINITIONS USED IN IRREGULARITY REPORTING BY THE MEMBER STATES

The purpose of this year's specific part was to identify differences among the Member States in applying the definitions relating to irregularity reporting, the timing in which the reporting is done and the timing of the reporting of 'suspected fraud'.

The information collected is analysed thoroughly by OLAF, with the aim of guiding the Member States toward a harmonised approach in the interpretation of such definitions and increasing the comparability of data reported by the Member States.

#### 3.1. Summary of the replies

The purpose of this year's specific part was to identify differences among Member States in applying the definitions relating to irregularity reporting (fraudulent and non-fraudulent) and the timing of the reporting. The information collected is analysed by OLAF, with the aim of guiding the Member States toward a harmonised approach in the interpretation of such definitions and increasing the comparability of the data reported by the Member States.

Almost all Member States made reference to their Civil Servants Code or Penal Code regarding legal obligations for public officials to refer to law enforcement or a judicial authority on any crime an official becomes aware of in the execution of their tasks, while the remaining four Member States<sup>53</sup> have no such provision in their national legislation.

All Member States reported the existence, and use, of guidelines on irregularity reporting; Twenty Member States<sup>54</sup> provided details on which definitions are specifically included in their internal guidelines.

Seven Member States<sup>55</sup> reported the application of the definition of '*economic operator*' in line with the relevant Union sectorial Regulations and guidelines for their application<sup>56</sup>, as well as consistent with the Council Regulation on the protection of the Union's financial interests<sup>57</sup>, with exception of a Member State exercising its prerogatives as a public authority.

A national definition of the '*primary administrative or judicial finding*' (PACA), which determines the timing of the reporting of irregularities, was reported by sixteen Member States<sup>58</sup>. The questionnaire ascertained some differences in the application of the 'primary administrative or judicial finding' (PACA) according to the sector and irregularity. While half of the Member States reported uniform application of the PACA in all sectors and types of irregularity (fraudulent or non-fraudulent)<sup>59</sup>, uniform application for all types of irregularity but different applications per sector is applied in six Member States<sup>60</sup>, in two

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<sup>53</sup> Denmark, Ireland, Sweden and the United Kingdom

<sup>54</sup> Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Greece, Croatia, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Netherlands, Poland, Romania, Slovenia, Slovakia, Finland and Sweden

<sup>55</sup> Belgium, Czech Republic, Estonia, Latvia, Netherlands, Poland and Romania

<sup>56</sup> Regulations (EC) Nos 1828/2006 and 1848/2006

<sup>57</sup> Article 7 of Regulation (EC, Euratom) No 2988/95.

<sup>58</sup> Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Greece, Italy, Cyprus, Latvia, Lithuania, Hungary, Netherlands, Poland, Romania, Slovakia and Finland

<sup>59</sup> Bulgaria, Germany, Estonia, Ireland, Croatia, Italy, Hungary, Malta, Austria, Poland, Romania, Slovenia, Sweden and the United Kingdom

<sup>60</sup> Belgium, Denmark, France, Cyprus, Lithuania and Netherlands



Member States<sup>61</sup> there are different applications of PACA between types of irregularity but uniform application per sector and in five Member States<sup>62</sup> there are different applications per sector and per type of irregularity. As regards the reporting of ‘suspected fraud’, all except two Member States<sup>63</sup> pointed out that they do not request authorisation from the judicial authority before reporting suspected fraud. Eight Member States<sup>64</sup> use the definition of ‘suspected fraud’, as set out in EU legislation, in their national guidelines.

Sixteen Member States<sup>65</sup> make explicit reference in national legislation to fraud against the EU budget, while twelve Member States<sup>66</sup> say that their national legislation contains general definitions of the behaviour, without any specific reference to the ‘victim’.

Half of the Member States<sup>67</sup> use an internal system for signalling suspected irregularities outside of the Irregularity Management System (IMS), used for reporting of irregularities by the Member States to the Commission. Ten Member States<sup>68</sup> rely upon IMS only and four Member States<sup>69</sup> do not use internal IT systems for signalling suspected irregularities at all.

There are differences in relation to the reporting of cases subject to criminal proceedings: eight Member States<sup>70</sup> report the follow-up to the Commission after indictment, seven Member States<sup>71</sup> report the follow-up after the initial sentence, fifteen Member States<sup>72</sup> say that they do so after the definitive sentence (final court decision) and seventeen Member States<sup>73</sup> specify an ‘other’ practice of follow-up reporting.

### **3.2. Legal obligation for public officials to refer to law enforcement or a judicial authority on any crime he/she becomes aware of in the execution of his/her tasks.**

The Member States were asked to specify whether there is any legal obligation for public officials to inform a law-enforcement or a judicial authority about any crime he/she becomes aware of in the execution of his/her tasks. Twenty-four Member States referred to an Article of their Civil Servants Code or Penal (Procedure) Code regarding legal obligations for public officials to refer to law enforcement or a judicial authority on any crime he/she becomes aware of in execution of his/her tasks, while the remaining four Member States<sup>74</sup> answered no existence of such provision.

The replies received are detailed in Table 4.

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61	Latvia and Slovakia
62	Greece, Spain, Luxembourg, Portugal and Finland
63	Italy requests authorisation systematically and Romania does so on a case-by-case basis.
64	Belgium, Bulgaria, Czech Republic, Estonia, Greece, Latvia, Romania and Slovakia
65	Belgium, Bulgaria, Czech Republic, Denmark, Greece, Spain, Croatia, Italy, Cyprus, Hungary, Malta, Portugal, Romania, Slovenia, Slovakia and Sweden
66	Germany, Estonia, France, Latvia, Lithuania, Luxembourg, Netherlands, Ireland, Austria, Poland, Finland, and the United Kingdom
67	Belgium, Bulgaria, Czech Republic, Estonia, Spain, Croatia, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Romania and Slovakia
68	Germany, Ireland, France, Italy, Netherlands, Austria, Portugal, Slovenia, Finland and Sweden
69	Denmark, Greece, Poland and the United Kingdom
70	Belgium, Denmark, Germany, Greece, Latvia, Poland, Romania and Finland
71	Belgium, Germany, Greece, Latvia, Austria, Romania and Finland
72	Belgium, Denmark, Germany, Greece, Spain, Latvia, Luxembourg, Hungary, Malta, Austria, Poland, Romania, Slovenia, Slovakia and Finland
73	Belgium, Bulgaria, Czech Republic, Estonia, Ireland, France, Croatia, Italy, Cyprus, Lithuania, Netherlands, Austria, Poland, Portugal, Slovenia, Sweden, United Kingdom
74	Denmark, Ireland, Sweden and the United Kingdom

Table 4: Legal obligation for public officials to refer to law enforcement or judicial authority on crimes they become aware of in the execution of their tasks

Legal obligation for public officials to refer to a law enforcement or a judicial authority on any crime he/she becomes aware of in the execution of his/her tasks				
MS	YES	Article and title of Act	Date of entry into force	Comment
BE	✓	Section II The way prosecutors are supposed to act in the exercise of their function. Article 29 of the <b>Code of Criminal Procedure</b> (Art.29 al1 Sv.) Every public official, that in the performance of his duties, learns of a crime, is obliged to immediately give notice to the public prosecutor.	10.7.1967	The tax officer informs the public prosecutor (Art.29 al3 Sv.) or is asked to organize a concertation in the context of the law Una Via. No direct cooperation is possible between the tax and the criminal authorities (Charter of the Tax Payer, Aug. 1986); without prejudice of the general competence of criminal investigation and prosecution of the Customs and Excise Administration as for customs duties, offenses regarding the traffic of legally prohibited or restricted goods at import, export, and transit, and in excise procedures.
BG	✓	Art. 205, par. 2, <b>Penal Procedure Code</b>	29.4.2006	When a public official becomes aware of a crime (which is considered at that stage as a suspicion of fraud) they must notify immediately the pre-trial procedure authority.
CZ	✓	Section 8(1) of Act No 141/1961 on criminal procedure (the <b>Code of Criminal Procedure</b> ): 'The state authorities shall without delay report to the public prosecutor or to the police authorities any facts indicating that a criminal act has been committed.'	1.9.1995	The reporting requirement is laid down in Section 25(4) of Act No 255/2012 on audits (the Audit Regulation) as a requirement generally to report activity to the authorities responsible for imposing penalties. The reporting requirement is also incumbent on all employees under the Labour Code (the notification of irregularities to the Tax Office and the Ministry of Finance being further governed by Section 22 of the Financial Control Act).
DK		No such provision		
DE	✓	<b>Federal Government Guidelines on the Prevention of Corruption in the Federal Administration</b> (Richtlinie der Bundesregierung zur Korruptionsprävention in der Bundesverwaltung): Point 10 - Reporting and measures in the case of suspected corruption.	30.7.2014	Reporting and measures in the case of suspected corruption: 10.1. When the suspicion of corruption is borne out by facts, the head of department must immediately notify the Public Prosecutor and the highest administrative authority. Also, internal investigations must be held, and measures to prevent a cover-up must be taken. 10.2. Every year the highest Federal authorities must provide information in the specified anonymous form to the Federal Ministry of the Interior - also in the case of subordinate sectors - regarding cases of suspected corruption in which procedures have been launched.
EE	✓	There is an obligation to report a criminal offence in the first degree (see Section 307, <b>Estonian Penal Code</b> on <a href="https://www.riigiteataja.ee/en/eli/522012015002/consolide">https://www.riigiteataja.ee/en/eli/522012015002/consolide</a> ) and incidents of corruption on the part of officials (see Section 6, Estonian Anti-Corruption Act on <a href="https://www.riigiteataja.ee/en/eli/529012015001/consolide">https://www.riigiteataja.ee/en/eli/529012015001/consolide</a> ).	12.7.2014	There is no obligation to report fraud where failure to comply with that obligation results in sanctions being imposed.

Legal obligation for public officials to refer to a law enforcement or a judicial authority on any crime he/she becomes aware of in the execution of his/her tasks				
MS	YES	Article and title of Act	Date of entry into force	Comment
IE		No such provision		
EL	✓	Article 37 of the <b>Code of Criminal Procedure</b> [Κώδικα Ποινικής Δικονομίας]	8.8.1986	Under Article 37 of the Code of Criminal Procedure: 1. Investigating officials have a duty to communicate without delay to the competent public prosecutor any information they obtain by any means regarding offences that may be prosecuted on the prosecutor's own initiative. 2. Other public officials and persons exercising public office temporarily are subject to the same duty with regard to the offences referred to in paragraph 1, if they became aware of them in the performance of their duties. 3. The communication must be in writing and must include all the available information concerning the offence, the perpetrators and the evidence.
ES	✓	Organic Law 10/1995 of 23 November 1995 on the <b>Criminal Code</b> : Article 408. Royal Decree of 14 September 1882 approving the Law on Criminal Procedure: Article 105 for officials of the Public Prosecutor's Office, Article 259 for 'naming and shaming' and Article 262 by virtue of post, profession and office.	14.9.1882	Article 408 of the Criminal Code: 'Any authority or public official who, failing in the obligations of his post, intentionally fails to seek the prosecution of offences of which he obtains knowledge or of those responsible for such offences, shall incur the punishment of specific disqualification from public employment or office for a period of six months to two years.' Article 262 of LECRIM (Law on Criminal Procedure): 'Anyone who by virtue of his post, profession or office becomes aware of a public offence shall report it immediately ... if the person who fails to report the offence is a public servant, his superior shall also be informed.'
FR	✓	Article 40(2) of the <b>Criminal Procedure Code</b>	25.10.1795	'Any established authority, public official or civil servant who, in the performance of his duties, becomes aware of a crime or offence is required to notify the Public Prosecutor of the Republic without delay and to send to this magistrate all the information, official reports and documents relating thereto.'
HR	✓	Article 14 a of <b>Civil Servants Act</b>	4.5.2012	Article 14 a of Civil Servants Act determines legal protection of the employee who reports suspicion of corruption. Furthermore, Articles 301 and 302 of Criminal Code (OJ 125/11, 144/12) determine obligation for every person to report preparation of a criminal offence and commission of a criminal offence.
IT	✓	Article 331 <b>Code of Criminal Procedure</b> 'Reporting of offences by public officials and public service employees'	22.9.1988	/

Legal obligation for public officials to refer to a law enforcement or a judicial authority on any crime he/she becomes aware of in the execution of his/her tasks				
MS	YES	Article and title of Act	Date of entry into force	Comment
CY	✓	Article 69A of the <b>Public Service Act</b> (Act 1/90), obligation of officials to report corruption	19.12.2013	/
LV	✓	<b>Criminal Law</b> , Section 315. Failing to Inform of Crimes (a serious or especially serious crime), 01.04.1999.; Criminal Procedure Law, Section 6. Mandatory Nature of Criminal Proceedings, 01.10.2005; Law on Prevention of Conflict of Interest in Activities of Public Officials, Article 20, 21, 21.1, 10.05.2002	1.4.1999	Other national regulations on reporting irregularities and internal procedures of institutions.
LT	✓	Paragraphs 73 and 84 of the <b>Rules on the administration and funding of operational programmes</b> , approved by Lithuanian Government Resolution No 1225 of 12 November 2008 on the approval of the Rules on the administration and funding of operational programmes (2007–2013 programming period).	30.11.2008	Other legislation: Paragraph 204 of the Rules on the administration of the operational programme for investments from the European Union Funds for 2014–2020, approved by Lithuanian Government Resolution No 1090 of 3 October 2014 on the approval of the Rules on the administration of the operational programme for investments from the EU Funds for 2014–2020 (entry into force: 15 October 2014).
LU	✓	Article 9 of the Law of 16 April 1979 laying down the general terms and conditions of employment for civil servants, as amended by Article 23 of the <b>Criminal Code</b> (Article 5 of 13 February 2011 stepping up measures to combat corruption...)	13.2.2011	Any duly constituted authority, public official or civil servant, and any employee or agent responsible for a public service mission, whether they be employed or mandated under public or private law, who, in the performance of their duties, becomes aware of facts that may constitute a crime or offence, is required to notify the Public Prosecutor without delay and to send to the Public Prosecutor all the information, notwithstanding any rule of confidentiality or professional secrecy that may be applicable to them.
HU	✓	Section 171(2) of Act XIX of 1998 <b>on criminal procedure</b>	1.1.2000	Legal obligation is also established by: (1) Section 86(4) of Government Decree No 4/2011 of 28 January 2011 on the rules for the use of aid from the European Regional Development Fund, the European Social Fund and the Cohesion Fund in the 2007-2013 programming period; (2) Section 160(5) of Government Decree No 272/2014 of 5 November 2014 on the rules for the use of aid from certain EU funds in the 2014-2020 programming period.

Legal obligation for public officials to refer to a law enforcement or a judicial authority on any crime he/she becomes aware of in the execution of his/her tasks				
MS	YES	Article and title of Act	Date of entry into force	Comment
MT	✓	Article 16 of the <b>Internal Audit and Financial Investigations Act</b> (cap. 461 of the Laws of Malta).	25.7.2003	If an entity has reason to suspect any irregularity and, or a suspected case of fraud of public funds, it shall refer the matter forthwith to the Director, and shall supply to the Director all information in his possession relating thereto.
NL	✓	Article 162 of the <b>Code of Criminal Procedure</b> . The Article is called 'Duty to report' and provides that any official who, in the performance of his duties, becomes aware of a crime has a duty to report it.	1984	/
AT	✓	Section 78 of the 1975 <b>Code of Criminal Procedure</b> - notification obligation, right to report and detain. Section 53 of the 1979 Civil Service Regulations (Beamtendienstrechtsgesetz) - notification obligation.	30.12.1975	/
PL	✓	<b>Code of Criminal Procedure</b> , Article 304 - Obligation to report a crime	6.6.1997	National and regional bodies which, in the course of their activities, have learned of the commission of a prosecutable crime have a duty to report that crime immediately to the prosecuting authorities or the police and to take, prior to the arrival of the law-enforcement authorities or prior to the issue by these authorities of appropriate instructions, the steps necessary to prevent the concealment of evidence and proof of the crime.
PT	✓	Article 242 of the <b>Code of Criminal Procedure</b> (Código do Processo Penal - CPP), approved by Decree-Law No 78/87 of 17 February 1987, as amended by Decree-Law No 317/95 of 28 November 1995.	28.11.1995	Public officials are required to report any crime they become aware of in the exercise of their duties or in their official capacity, even if the criminals are unknown. Article 243(3) of the CPP and Article 35(6) of the General Law on Tax Fraud (Regime Geral das Infrações Tributárias - RGIT), approved by Law No 15/2001 of 5 June 2001, provide that in the case of tax crimes, the official notice must be sent to the public prosecution service without delay, within a period not exceeding 10 days.

Legal obligation for public officials to refer to a law enforcement or a judicial authority on any crime he/she becomes aware of in the execution of his/her tasks				
MS	YES	Article and title of Act	Date of entry into force	Comment
RO	✓	Article 263 of the Romanian <b>Criminal Code</b>	21.6.1968	This Article was replaced by Article 267 of the new Romanian Criminal Code, which came into force on 1 February 2014.
SI	✓	10.a: YES with regard to FURS: Article 145 of the <b>Code of Criminal Procedure</b> , Article 17 of the Inspection Act; 10.b NO: Answer is NO with regard to SVRK and AKTRP.	14.11.2011	The national authority is required to report criminal offences In accordance with the aforementioned provision of the Code of Criminal Procedure. Under the provisions of the Inspection Act the inspector is especially liable if he does not notify the responsible authorities about instances of fraud.
SK	✓	Section 60(2)(g) of <b>Act No 400/2009 on public service</b> and amending and supplementing certain acts, as subsequently amended, in force from 1 November 2009.	1.11.2009	The obligation to report crimes laid down in Section 3(2) of Act No 301/2005 (the Code of Criminal Procedure), as amended, also applies to the state authorities and other legal persons. Section 340 of Act No 300/2005 (the Criminal Code), as amended (Crime: Failure to report a crime), applies to all persons. Obligation on employees of a control body (including government auditors) to report suspected criminal activity to the prosecution authorities within the meaning of Section 13 of Act No 502/2001 on financial control and internal auditing and amending certain other acts, as amended.
FI	✓	Act on the <b>National Audit Office</b> 676/2000, Section 17	14.7.2000	/
SE				No such provision
UK				No such provision

### 3.3. Guidelines regarding the application of definitions in irregularity reporting

The Member States were asked to clarify if there are any guidelines in use concerning the interpretation of the definitions and on which base they were elaborated. All Member States reported the existence and use of guidelines on irregularity reporting.

The majority of Member States reported the use of internal guidelines developed by the Member States, in some instances based on former guidelines provided by the European Commission<sup>75</sup> and in other instances based on guidelines provided by the European Commission along with national guidelines<sup>76</sup>. Eight Member States<sup>77</sup> reported the use of guidelines provided by the European Commission only.

Table 5: Use of guidelines by Member States

Guidelines in use concerning interpretation of definitions			
MS	provided by the EC	developed by the MS	provided by the EC alongside national guidelines
BE			✓
BG			✓
CZ			✓
DK		✓	
DE	✓		
EE			✓
IE	✓		
EL			✓
ES	✓		
FR	✓		
HR		✓	
IT		✓	
CY		✓	
LV			✓
LT		✓	
LU	✓		
HU			✓
MT		✓	
NL			✓
AT	✓		
PL		✓	
PT	✓		
RO			✓
SI			✓
SK			✓
FI			✓
SE		✓	
UK	✓		

The table above shows what type of guidelines are in use in the Member States

<sup>75</sup> Denmark, Croatia, Italy, Cyprus, Lithuania, Malta, Poland and Sweden

<sup>76</sup> Belgium, Bulgaria, Czech Republic, Estonia, Greece, Latvia, Hungary, Netherlands, Romania, Slovenia, Slovakia and Finland

<sup>77</sup> Germany, Ireland, Spain, France, Luxembourg, Austria, Portugal and the United Kingdom

### 3.3.1. Internal guidelines on the interpretation of definitions in irregularity reporting developed by the Member States

The twenty Member States which have replied that they use internal guidelines (alongside those provided by the Commission or not) were asked to specify whether they have developed specific instructions on how to interpret certain specific concepts defined in the regulations. Three ‘concepts’ were identified and a fourth category allowed Member States to provide additional inputs:

- “economic operator”<sup>78</sup>;
- “primary administrative or judicial finding (PACA)”<sup>79</sup>;
- “suspected fraud”<sup>80</sup>;
- “other definitions” to be further specified.

Table 6: Concepts and definitions specified in internal guidelines

Internal guidelines developed by the Member States				
MS	economic operator	PACA	suspected fraud	other definitions
BE	✓	✓	✓	
BG		✓	✓	✓
CZ	✓	✓	✓	
DK		✓		
EE	✓	✓	✓	✓
EL		✓	✓	
HR				✓
IT		✓		
CY		✓		✓
LV	✓	✓	✓	✓
LT		✓		
HU		✓		
MT				✓
NL	✓	✓		✓
PL	✓	✓		
RO	✓	✓	✓	✓
SI				✓
SK		✓	✓	✓
FI		✓		✓
SE				✓

The table shows what type of definition is used in the internal guidelines of the Member States

- **Definition of economic operator** was reported by Belgium, Czech Republic, Estonia, Latvia, Netherlands, Poland and Romania.
- **Definition of Primary administrative or judicial finding (PACA)** was reported by Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Greece, Italy, Cyprus, Latvia, Lithuania, Hungary, Netherlands, Poland, Romania, Slovakia and Finland.

<sup>78</sup> The concept of “economic operator” is linked directly to the definition of “irregularity”. For a legal definition, in relation to irregularity reporting, see, *inter alia*, article 27 (a) of Regulation (EC) No 1828/2006.

<sup>79</sup> The PACA is the triggering moment for the obligation to report an irregularity to the Commission. For a legal definition, in relation to irregularity reporting, see, *inter alia*, article 27 (b) of Regulation (EC) No 1828/2006.

<sup>80</sup> Suspected fraud is a specific subset of the irregularity concept. For a legal definition, in relation to irregularity reporting, see, *inter alia*, article 27 (c) of Regulation (EC) No 1828/2006.

- **Definition of suspected fraud** was reported by Belgium, Bulgaria, Czech Republic, Estonia, Greece, Latvia, Romania and Slovakia.
- **‘Other definitions’** were reported by Belgium, Bulgaria, Estonia, Croatia, Cyprus, Latvia, Malta, Netherlands Romania, Slovenia, Slovakia, Finland and Sweden (will be explained later).

### 3.3.1.1. Definition of economic operator

Seven Member States<sup>81</sup> reported the application of the **definition of economic operator** and natural, or legal, person acting as a project applicant or beneficiary, in their national guidelines<sup>82</sup>. The definition is applied in line with the relevant EU Regulations and guidelines for their application issued by the European Commission (1828/2006, 1848/2006) and is in line with the Council Regulation on the protection of European Communities (Article 7 of Regulation EC, Euratom 2988/95).

*Table 7: Interpretation of the definition of economic operator in internal guidelines*

Internal guidelines developed by the Member States	
MS	Definition of economic operator
BE	'Economic operator' means any <b>natural or legal person or other entity taking part in the implementation of assistance from the Funds</b> , with the <b>exception of a Member State exercising its prerogatives as a public authority</b> (Article 27, Regulation (EC) No 1828/2006).
CZ	An 'economic operator' is any <b>natural or legal person or other entity involved in the implementation of aid from EU funds, with the exception of the Member States in the exercise of public powers</b> . In this connection it must be emphasised that operations carried out by <b>state authorities</b> for the purpose of implementing EU Structural Funds <b>cannot be regarded as the exercise of public powers</b> within the meaning of the above definition.
EE	The economic operator is <b>any natural or legal person or other body involved in using the aid, including a Member State public authority</b> . The guidelines can be found on the Ministry of Finance website: <a href="http://www.fin.ee/toetustega-seotud-rikkumised">http://www.fin.ee/toetustega-seotud-rikkumised</a>
LV	"Economic operator" means <b>any natural or legal person or another entity taking part in the administration of assistance from EU funds</b> , with the exception of Member States exercising their prerogatives as a public authority (the exception in practice in not application to the management of EU funds programmes and project implementation). For the purpose of these guidelines an economic operator is <b>a project applicant, as well as a beneficiary</b> (Guidelines of the Managing Authority of EU Structural Funds and Cohesion Fund (MA of EU funds) No.10.11 for Reporting on the Irregularities Identified during the EU Funds Implementation and Recovery of Irregular Expenditure in the Programming Period 2007-2013). <b>"Economic operator" (beneficiary) shall mean any person who has applied to the financial support from European Union or state budget</b> , as well as a person who has applied for and received the European Union or state budget funding (Internal procedure of Rural Support Service (RSS) No.3 of 8 December 2011 "Procedure for the reporting of irregularities/ undue payments and the recovery of undue payments in the Rural Support Service");
NL	Article 7 of Regulation (EC, Euratom) No 2988/95 refers to economic operators who are <b>'natural or legal persons and other entities on which national law confers legal capacity</b> who are suspected of having committed irregularities, persons who took part in committing the irregularity and persons who are under a duty to take responsibility for the irregularity or to ensure that it is not committed'.
PL	Under the latest national guidelines concerning <b>cohesion policy for the 2007-2013</b> financial perspective, the term <b>'economic operator'</b> refers both to <b>bodies engaged in implementing EU funds</b> , whether as a party to a <b>cofinancing agreement or as a recipient of aid (beneficiary)</b> , and to <b>bodies performing tasks in connection with the implementation of EU funds</b> (tasks arising from their function in the management and control system). As a result, any breaches of rules resulting from acts of commission or omission by these bodies that also qualify as irregularities will be subject to obligatory reporting to the European Commission under the relevant regulations. As the <b>definition of economic operator in Regulation 1848/2006 concerning the CAP is different</b> , there is no such doubt as regards the interpretation of economic operator, which in this instance is <b>synonymous with beneficiary</b> .
RO	The term 'economic operator' has <b>the meaning assigned to it by the applicable regulations</b> and the guidelines for their application issued by the <b>European Union</b>

<sup>81</sup> Belgium, Czech Republic, Estonia, Latvia, Netherlands, Poland and Romania

<sup>82</sup> I.e. developed by the Member States or provided by the European Commission alongside national guidelines.



### 3.3.1.2. Definition of Primary administrative or judicial finding (PACA)

The Member States were asked to specify whether there is a specific interpretation of the definition of primary administrative and judicial finding (PACA) in the national guidelines. Sixteen Member States reported about such interpretation<sup>83</sup>. The definitions are in line with the EU regulations in force and reflect specific national procedures applied and bodies involved. Denmark, Lithuania and Slovakia specifically reported guidance on PACA for the current programming period 2014-2020.

Concerning the date (or phase) of the primary administrative or judicial finding, more details are provided in the specific replies provided in relation to this question (see paragraph 3.4 on ‘Types of PACA’).

Table 8: Definition of the Primary administrative or judicial finding (PACA) in national guidelines on reporting

Internal guidelines developed by the Member States	
MS	Definition of PACA
BE	'Primary administrative or judicial finding' means a <b>first written assessment by a competent authority</b> , either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure (Article 27, Regulation (EC) No 1828/2006). This document must include the results of a hearing involving both parties.
BG	In the <b>national legislation there is a provision that treats the application of PACA</b> , art. 14, par. 1 of the Ordinance for establishing procedures for administering irregularities of funds, instruments, and programmes co-financed by the EU. Moreover, in national issued methodological guidelines it is <b>described which document should be considered as PACA</b> . It is the document issued by the Managing authority in which it is declared that an irregularity is established. This statement is based on a preliminary check as a result of which facts that prove a committed irregularity are found.
CZ	Primary administrative or judicial finding' means the competent administrative or judicial authority's <b>initial written assessment in which</b> – on the basis of specific facts – <b>the authority comes to the opinion that irregularities have occurred</b> , without prejudice to the possibility that such a conclusion may in the course of administrative or judicial proceedings be subsequently revised or withdrawn.
DK	During the 2014-2020 programme period, the working definition of PACA mentioned below serves as guidance for case handlers in the <b>structural funds sector</b> . Definition of the primary administrative or judicial finding (PACA). In practice, the Danish Business authority reports the <b>cases in the statement of expenditure (request for payment) that is submitted to the Commission when a final audit report has been drawn up by verifying authorities</b> such as the National Audit Office of Denmark, the Court of Auditors, the Commission, the audit authority or the administrative authority. The audit report should conclude that an irregularity has been committed, and propose the action to be taken in respect of the applicant. In cases where <b>case handlers send a recovery order, this would also be considered "a primary administrative or judicial finding"</b> . Irregularities due solely to the complete or partial failure to carry out an operation when an aid beneficiary goes bankrupt are not reported. Nor are cases reported in which the beneficiary voluntarily brings the matter to the attention of the administrative or certifying authority before one of them discovers it, regardless of whether the public contribution has already been paid. <b>If fraud is suspected, a primary administrative or judicial finding is drawn up when it is decided to transfer the case to the Public Prosecutor</b> for Serious Economic and International Crime (Danish acronym, SØIK).

<sup>83</sup>

Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Greece, Italy, Cyprus, Latvia, Lithuania, Hungary, Netherlands, Poland, Romania, Slovakia and Finland

Internal guidelines developed by the Member States	
MS	Definition of PACA
EE	A primary finding is deemed to be an assessment by the competent administrative or investigating authority in the initial written document (on-the-spot report, final audit report, etc.) where, on the basis of the facts, it can be concluded whether the rules have been infringed. Any infringement established or suspected must be reported within 10 working days of the official confirmation of the infringement or suspected infringement, i.e. with documents supporting these suspicions (a decision, on-the-spot report, cost statement, audit report, etc.). The guidelines can be found on the Ministry of Finance website: <a href="http://www.fin.ee/toetustega-seotud-rikkumis-ed">http://www.fin.ee/toetustega-seotud-rikkumis-ed</a>
EL	There is a <b>primary administrative or judicial finding</b> when <b>all</b> of these <b>three conditions</b> are met: a) the amount to be recovered has been calculated, b) the identity of the debtor is known and c) the debtor has been duly informed of the debt.
IT	<b>Primary administrative finding:</b> assessment by the decision-making bodies of the data and evidence in the first record of findings or in the files so as to preclude the need requirement to forward cases every time that offences constituting irregularities or fraud have clearly not been committed. <b>Primary judicial finding</b> - this must be the point at which: in ordinary proceedings, the request is made to bring the case before the courts, or for alternative procedures, under Article 405 Code of Criminal Procedure; in proceedings before the general court sitting with a single judge, the public prosecutor serves a direct summons for trial by issuing a summons under Articles 550 and 552 Code of Criminal Procedure.
CY	The primary administrative finding is made in writing by the competent department. The <b>document setting out the findings of the administration (department) must conclude</b> , on the basis of specific events, <b>that an irregularity was committed</b> , i.e. that the applicant infringed a provision of national or EU legislation which resulted or could have resulted in the wrong and/or undue payment of Community aid to the applicant. For the document to be official, it must be signed by the head of the department.
LV	<b>“primary administrative or judicial finding” means a first written assessment</b> by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure. For the purpose of <b>Regulation No 2035/2005 a cooperation or responsible institution can also be a “primary administrative finding”</b> . In the explanation provided in Article 1 of the Regulation “primary administrative or judicial finding” means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure. In this case it shall not be literally perceived that administrative or legal proceedings have been initiated, because the consideration of the case is subject to national regulatory acts. A cooperation or responsible institution is often the first identifying the irregularity, which is also recorded in writing (Guidelines on <b>In the case of common agricultural policy in accordance “primary administrative or judicial finding” means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed,</b> without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.
LT	The <b>Methodological recommendations</b> for investigating and identifying irregularities, approved by Order No 1K-173 of 29 May 2009 by the Minister for Finance on the approval of the Methodological recommendations for investigating and identifying irregularities: Paragraph 15 of the Methodological recommendations lays down that the <b>conclusion of an investigation is the first written assessment</b> (the primary administrative or judicial finding - hereinafter PACA) concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure, as indicated in Article 27(b) of Commission Regulation (EC) No <b>1828/2006</b> of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No <b>1083/2006</b> laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No <b>1080/2006</b> of the European Parliament and of the Council on the European Regional Development Fund (OJ L 371, 2006, p. 1) as last amended by (C) Also, paragraph 210 of the Rules on the administration of the operational programme for investments from the European Union Funds for <b>2014–2020</b> lays down that the European Commission must be notified about any irregularities identified within two months following the end of the reference quarter. An <b>infringement is identified</b> when the institution has conducted an investigation into the infringement and has adopted a decision (equivalent to the PACA) that an infringement has been identified (paragraphs 314 and 318 of the Rules on the administration and funding of projects, approved by Order No 1K-316 of 8 October 2014 by the Minister for Finance on the approval of the Rules on the administration and funding of projects).

MS	Definition of PACA
HU	<p>1. The Agricultural and Rural Development Office, which is the body discharging the tasks of paying agency for aid from the European Fund for Agriculture and Rural Development (EAFRD) and the European Agricultural Guarantee Fund (EAGF), uses the definition laid down by Article 35 of Regulation <b>1290/2005/EC</b>, but the internal written procedure also specifies which types of decision (e.g. decision establishing undue benefit, amending or revoking a decision, etc.) include an order to return undue aid.</p> <p>2. The document entitled 'Handbook for reporting irregularities relating to aid from the European Regional Development Fund, the European Social Fund and the Cohesion Fund in the <b>2007-2013</b> programming period', drawn up by the Hungarian anti-fraud coordination service (AFCOS) and available on the website of the National Tax and Customs Administration, states the following: "The "first administrative or legal finding" mentioned in Section 90(2)(a) of Government Decree No 4/2011 is <b>based on the decision issued by the head of the body carrying out the procedure, pursuant to the irregularity report.</b>"</p>
NL	<p>A primary administrative finding is a <b>report by a management authority, certifying authority, audit authority or other control department</b> (it may also be an EU control), where <b>enough facts are recorded which involve the irregularity detected</b>. There is no set form to follow for this type of report (memo, letter, an entry in the Article 13 check-list). It only has to be recorded when: - the individual findings are final (and the adversary procedure has taken place) and - any amount to be corrected is identified.</p>
PL	<p>It is <b>not possible from the wording of the definition to identify one type of document that can be considered a PACA</b> to the exclusion of all others (not even at the level of a fund, sector or body). Under the relevant guidelines, the competent authority decides which of the documents drawn up and collected in a given case is to be recognised as meeting the criteria laid down in the definition of PACA. <b>The national guidelines explain that a PACA will generally be a written assessment confirming the existence of an irregularity in a given case.</b> The guidelines provide an <b>indicative list of documents that can be recognised as a PACA, but it is no more than an aid and not exhaustive</b>, so documents not mentioned therein can also serve as a PACA. The guidelines also state that, in the event of the receipt of anonymous information, press reports or other unconfirmed information from any source suggesting a possible irregularity, the competent authority is to carry out an investigation to verify the allegations made. The verification of the information will culminate in the drafting of a final official document which will, if justified, constitute a PACA or exclude the occurrence of irregularities.</p>
RO	<p>Under the current <b>Emergency Order</b>, the following are deemed to be primary administrative findings: a) the <b>report identifying irregularities and establishing budget debts</b> issued by the competent authorities and the document establishing the amount involved issued by the Audit Authority; b) the <b>inspection document issued by DLAF and the inspection report issued by OLAF</b>.</p>
SK	<p>Further guidance on interpreting the definition of a <b>primary administrative or judicial finding</b> can be found, for instance, <b>in the Financial Management System for the Structural Funds, the Cohesion Fund and the European Maritime and Fisheries Fund for the programme period 2014-2020, version 1.0</b>:</p> <p><b>'An irregularity</b> is formally documented at national level upon the approval of a report on the detected irregularity, following the approval/discussion/forwarding/familiarisation with/delivery of an official document, depending on the type of control/audit/verification carried out, or the entry into force of an administrative decision.</p> <p><b>A suspected irregularity</b> which has been detected, or the detection of an irregularity in an approved irregularity report, is justified in particular on the basis of:</p> <ol style="list-style-type: none"> <li>I. a report on an administrative check/on-the-spot check of the inspected entity;</li> <li>II. findings and recommendations from a certification check;</li> <li>III. a sub-report received on a government audit of an audited entity;</li> <li>IV. a report received on a government audit of an audited entity, where no irregularities have been set out in the sub-report on the government audit;</li> <li>V. a final administrative decision by the financial control administration/Ministry of Finance;</li> <li>VI. familiarisation of the management body with the discussed report on the results of the checks carried out by the Public Procurement Office/final administrative decision by the management body;</li> <li>VII. a report received on an audit by the European Commission or European Court of Auditors;</li> <li>VIII. a report received on an investigation by the European Anti-Fraud Office (OLAF);</li> <li>IX. the discussed report on the results of the checks carried out by the Supreme Audit Office;</li> <li>X. the discussed report on the results of the checks carried out by the Government Office of the Slovak Republic;</li> <li>XI. the discussed report on the results of an internal check/internal audit;</li> <li>XII. receipt of a decision to institute criminal proceedings;</li> <li>XIII. a decision by the Anti-monopoly Office concerning a restrictive agreement within the meaning of Section 4(1) of Act No 136/2001'.</li> </ol>
FI	<p>The definition has been clarified with practical examples on the types of findings:</p> <p><b>Primary administrative or judicial finding</b> means the <b>first written assessment</b> on a detected irregularity. In practice this means that during audit or other control activities an irregularity has been detected based on concrete facts. Such written assessment can be, for example, an audit report, a report on on-the-spot control, a payment decision, a decision to suspend or finish the payments or a decision on recovery/withdrawal.</p>

### 3.3.1.3. Definition of suspected fraud

The Member States were asked to provide further information on the application of the ‘definition of suspected fraud’ in their national guidelines. Eight Member States (Belgium, Bulgaria, Czech Republic, Estonia, Greece, Latvia, Romania and Slovakia) reported information about the interpretation of such definition in their national guidelines<sup>84</sup>.

The national legislation reflects the definitions used in the relevant EU legislation, i.e. the Article 1.1.(a) of the Convention on the Protection of European Communities’ Financial Interests drawn up on the basis of Article K.3 of the Treaty on European Union and Article 27 of Regulation (EC) No 1828/2006. In addition, Bulgaria reported using the ‘suspicion of irregularity’ and Slovakia reported a new procedure on IRQ3 irregularity qualification<sup>85</sup>, in force as of 2015.

The replies provided are detailed in Table 9.

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<sup>84</sup> The full version of definitions can be seen in the two tables below.

<sup>85</sup> IRQ3 Irregularity qualification refers to the specific code used in the Irregularity Management System (IMS) to indicate that a given irregularity is a “suspicion of fraud”.

Table 9: Application of the definition of ‘suspected fraud’ in internal guidelines on the reporting of eight Member States

Internal guidelines developed by the Member States	
MS	Definition of suspected fraud
BE	‘ <b>Suspected fraud</b> ’ means an irregularity giving rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in point (a) of Article 1(1) of the <b>Convention on the protection of the European Communities’ financial interests</b> (Article 27, Regulation (EC) No 1828/2006).
BG	The national legislation adopts the same definition as the one in the <b>EU Regulations and PIF Convention 1995</b> , in par. 1, p. 3 of the Supplementing provisions of Ordinance for establishing procedures for administering irregularities of funds, instruments, and programmes co-financed by the EU. <b>Moreover</b> , in national issued methodological guidelines it is described that <b>suspected fraud is a type of irregularity</b> . That means an <b>infringement should be found and if there is a suspicion that it was committed intentionally then the case is qualified as a suspected fraud</b> . The focus is on the committed infringement because if there is only a suspicion of the infringement the case is said to be <b>suspicion of irregularity</b> .
CZ	<b>Suspected fraud’ is an irregularity that prompts criminal proceedings at Member State level with a view to determining whether the activity in question was intentional and</b> , in particular, whether fraud has been committed <b>within the meaning of Article 1(a) of the Convention on the Protection of the European Communities’ Financial Interests</b> , which was drawn up on the basis of Article K.3 of the Treaty on European Union. Such cases are also subject to the reporting requirement under Czech law – the audit authorities being required in particular to report to the authorities active in criminal proceedings any suspicion of criminal activity arising in the course of an audit.
EE	The <b>Ministry of Finance must be informed of any suspected offence within 10 working days</b> , irrespective of the amount of damages. An offence is a punishable act provided for in the Penal Code or another Act. (See Article 3 of the Estonian Penal Code on <a href="https://www.rigiteataja.ee/en/eli/522012015002/consolide">https://www.rigiteataja.ee/en/eli/522012015002/consolide</a> ). The guidelines can be found on the Ministry of Finance website: <a href="http://www.fin.ee/toetustega-seotud-rikkumised">http://www.fin.ee/toetustega-seotud-rikkumised</a>

Internal guidelines developed by the Member States	
MS	Definition of suspected fraud
EL	An <b>irregularity is deemed to be suspected fraud</b> if the case file has been sent to the competent <b>public prosecutor</b> .
LV	<b>“Suspected fraud”</b> means an <b>irregularity</b> giving rise to the initiation of administrative and/or judicial proceedings at national level <b>in order to establish the presence of intentional behaviour, in particular fraud</b> , such as is referred to in <b>Article 1(1), point (a), of the Convention on the protection of the European Communities’ financial interests</b> ; a) in respect of expenditure, any intentional act or omission relating to: - the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities, - non-disclosure of information in violation of a specific obligation, with the same effect - the misapplication of such funds for purposes other than those for which they were originally granted. (Guidelines of the MA of EU Funds No.10.11)
RO	<b>Fraud</b> - an offence committed in connection with obtaining or using European funds and/or related national public funds, punishable under the Criminal Code or other specific laws; The term <b>'suspected fraud'</b> has the <b>meaning assigned to it by the applicable regulations and the guidelines for their application issued by the European Union</b> .
SK	The Irregularities Notification Manual states that the IRQ 3 (suspected fraud) qualification is assigned where criminal proceedings are begun in connection with an irregularity and a decision or notification of the initiation of criminal proceedings is issued. It is also used where criminal proceedings are deferred pursuant to Section 216(1)(a) and (b) of the Code of Criminal Procedure, if a notification of the deferral of criminal proceedings has been issued. Building on expertise in practical application in accordance with Article 27 of Regulation (EC) No <b>1828/2006</b> and Article 2 of Regulation (EC) No <b>1848/2006, with effect from 1 January 2015 the setting of the IRQ 3 irregularity qualification is determined as follows:</b> 'An irregularity is qualified as suspected fraud on the basis of a control report/the results of the assessment of a reply by the MA/IBMA/PU to the findings and the recommendations from the certification check/system and operational audits/report on the Commission's audit/OLAF investigation to the prosecution authorities. <b>IRQ 3 qualification is assigned to a irregularity demonstrating the sending of relevant documentation to the prosecution authorities.</b> If the irregularity is <b>caused by the MA, only the written version of the irregularity is processed without being registered in the ITMS, and that is sent to the CA and the OLAF Central Contact Point.</b> If the criminal proceedings are <b>instigated by a person or public authority, the MA registers a change of qualification of the irregularity from IRQ 2 to IRQ 3 or a new IRQ3 irregularity on the basis of a 'decision/notification of criminal proceedings', requested from the prosecution authorities</b> at the time when it is informed by a third party that criminal proceedings have begun in connection with the implementation of the operational programme managed by it'. Comment on practice of reporting: From 1 January 2015 – For fraudulent irregularities, the date of the first administrative or judicial finding in the case of an initiative by the public authorities is the date of submission of the irregularity to the prosecution authorities and, in the case of an initiative by natural and legal persons other than the public authorities, following completion of the initial phase of the investigation'.

#### 3.3.1.4. Other relevant definitions in use

‘Other definitions’ in use concerning the reporting of irregularities in their national guidelines were reported by the following ten Member States: Bulgaria, Estonia, Croatia, Latvia, Malta, Netherlands, Romania, Slovakia, Finland and Sweden.

These include clarifications about the definitions of:

- irregularity (the notion of irregularity, the suspicion of irregularity or suspected infringement of the EU law)
- bankruptcy (insolvency proceedings in line with the Council Regulation (EC) No 1346/2000).

The replies are detailed in Table 10.

Table 10: Other definitions in use by ten Member States in their national guidelines on the reporting of irregularities

Internal guidelines developed by the Member States	
MS	Other definitions in use
BG	In the national legislation there is a legal <b>definition of “suspicion of irregularity”</b> in par. 1, p. 4 of the Supplementing provisions of Ordinance for establishing procedures for administering irregularities of funds, instruments, and programmes co-financed by the EU. It states that suspicion of irregularity is any incoming information, including from an anonymous source, for a committed irregularity. The information should at least give reference about the project, financing programme, an administrative structure and a description of the irregularity. In methodological guidelines it is specified that the information should give enough ground to consider there is an irregularity. The follow-up actions require a check of the information and subsequently a decision is made by the Managing authority, issuing PACA, whether to establish irregularity (fraudulent or not fraudulent) or not.
EE	<ol style="list-style-type: none"> <li>1. An <b>infringement of Community law</b> also includes not complying with the requirements of national law and compulsory procedure.</li> <li>2. ‘...would damage...’ - when no infringement is established and the aid would be paid out, i.e. an infringement can occur also before the aid is paid out.</li> <li>3. An infringement means <b>not complying with the requirements set in law</b>, in a decision to grant aid and the annexes thereto, or in procedural guidelines, which can be quantified in money - activities or costs (whether planned or not) linked to an infringement are not eligible for EU aid.</li> <li>4. Cases of financial loss – there are infringements where it is not possible to assess the exact size of the loss but an infringement report must be provided within 10 working days. In such cases, it is written in the report that there has been a <b>suspected infringement, that the exact amount of the damages is being established</b> and that the amount indicated is the total for the project or for the particular action or transaction.</li> <li>5. Case management - case management is generally handled by the body that made the decision to grant the aid. If necessary, other competent bodies (investigating authorities, the Tax and Customs Board, etc.) are also involved; in such cases, the decision-maker has the obligation to review the management of the case and submit infringement reports. The Ministry of Finance monitors case management through these reports and, if necessary, targets and provides information.</li> <li>6. Closing cases - an infringement case is closed when all the circumstances behind the infringement have been resolved and all corrective actions have been taken (for example, the court has made its decision, the amounts have been recovered, the decision to grant aid has been cancelled or modified, etc.).</li> </ol> <p>The guidelines can be found on the Ministry of Finance website: <a href="http://www.fin.ee/toetustega-seotud-rikkumised">http://www.fin.ee/toetustega-seotud-rikkumised</a></p>
HR	<b>All the relevant definitions</b> including the definitions of economic operator, PACA and definition of suspected fraud <b>are embedded in national Guidelines from relevant EC Regulations</b> (Commission Regulation 1828/2006, Commission Regulation 1848/2006, Commission Regulation 498/2007).
LV	<b>Bankruptcy</b> means insolvency proceedings within the meaning of Article 2, point (a), of Council Regulation (EC) No 1346/2000. Within the meaning of Article 120 of the Insolvency Law „bankruptcy” means completion of insolvency proceedings with a court decision without initiation of legal protection proceedings. (Guidelines of the MA of EU Fund No.10.11) <b>Concerning the Latvia-Lithuania Cross-border cooperation Programme and the Estonia - Latvia - Russia Cross Border Cooperation Programme within European Neighbourhood and Partnership Instrument 2007 – 2013 only guidelines provided by the European Commission regarding application of definitions in the irregularity reporting are in use .</b>
MT	<b>Definition of 'irregularity'</b> according to the <b>Internal Audit and Financial Investigations Act</b> (cap. 461 of the Laws of Malta): "means whichever act or omission which unlawfully diminishes public funds and whatever is not consonant with the proper management thereof". In the <b>Criminal Code</b> , we find the following: a. Misappropriation (Article 293); b. Obtaining Money by false pretenses (Article 308); and c. Other Fraudulent Gain (Article 309). According to the Permanent Commission against Corruption Act (cap. 326 of the Laws of Malta), 'corrupt practice' is defined in Article 6.



Internal guidelines developed by the Member States	
MS	Other definitions in use
NL	The definition given to the <b>notion of 'irregularity'</b> is rather broad. The definition includes, among other things, the following points: operations which have led to negative financial consequences for the EU or which could lead to negative financial consequences; both intentional and unintentional operations; operations which are systematic or incidental. Where an operation in or of a project (or a final beneficiary) is in breach of European law, this constitutes an irregularity. Often, irregularities consist of expenditure which has already been incurred or may still be incurred and which is or would possibly be included in a statement of expenditure to be declared to the European Commission, even though the expenditure is not eligible for financing from the structural funds (financial irregularities). Technical mistakes and clerical errors also have to be considered as irregularities and must therefore be recorded.
RO	<b>Irregularity</b> - any deviation from legality, from regularity or from conformity with national and/or European provisions or contractual provisions, or other legal commitments entered into on the basis of such provisions, that results from action or inaction on the part of a beneficiary or an authority responsible for managing European funds and has been or could be detrimental to the budget of the European Union and/or related national public funds through an amount being unduly paid; <b>Irregularities of a systemic/systematic nature</b> - irregularities which are generated by the manner in which the key requirements of the management and control systems are met, and which stem either from flaws in the design of the management and control procedures, from systematic errors in the application of the management and control procedures or the non-correlation of national legislative provisions with European Union regulations; Reporting of irregularities - any activities that lead to the European Commission, European Anti-Fraud Office (OLAF), being informed, in accordance with Romania's obligations as an EU Member State, of an irregularity having been ascertained on the basis of a primary administrative finding. The terms 'management authority', 'intermediate body', 'operation', 'eligibility', 'conflict of interests', 'systemic irregularity', 'error materiality threshold', 'detriment', 'administrative verification', 'delegated project', 'OLAF inspection report', 'debtors ledger', 'primary administrative finding', as well as the principles of free competition, equal and non-discriminatory treatment and transparency, have the meanings assigned to them by the applicable regulations and the guidelines for their application issued by the European Union
SK	<b>At national level there are, for example, the following types of irregularity:</b> <ul style="list-style-type: none"> <li>• an irregularity in the 'initial screening' where administrative/judicial/criminal proceedings are incomplete and the initial information on the irregularity must be registered and also notified to the OLAF office;</li> <li>• an irregularity with no financial impact, where the irregularity (suspected fraud, public procurement infringement or systemic shortcomings) was found prior to payment being made to the beneficiary or partner, or one which cannot be quantified in monetary terms or for which there is no obligation to settle the funding (e.g. false accounting);</li> <li>• an irregularity with financial impact on the state budget, where the irregularity (suspected fraud) was found prior to the approval of the expenditure concerned in the combined payment request/exceptional combined payment request;</li> <li>• an irregularity with financial impact on the expenditure approved in the combined payment request, where the irregularity was found during the phase when the expenditure concerned had been approved in the combined payment request/exceptional combined payment request and had not been recognised in the statement of expenditure in the application for payment to the European Commission;</li> <li>• an irregularity with financial impact on the expenditure declared to the European Commission where the irregularity was found during the phase when the expenditure concerned had already been recognised in the statement of expenditure in the application for payment to the European Commission;</li> <li>• an irregularity combined with financial impact and also with no financial impact, where the irregularity was found during the phase when part of the expenditure concerned had already been paid to the beneficiary/approved in the combined payment request/exceptional combined payment request/recognised in the application for payment to the European Commission and part of the financial correction concerns future expenditure declared by the beneficiary in applications for payment (in particular cross-cutting infringements/shortcomings, especially public procurement infringements).</li> </ul>
FI	The definition on an <b>irregularity</b> has been clarified with practical examples: An irregularity means that the aid has been granted or paid unjustly to the beneficiary due to irregular activity with regard to the valid regulations. The actor conducting the irregularity can be both the intermediate body that has granted or paid the aid and the beneficiary. Technical errors, such as spelling or typing errors, are not considered as irregularities.
SE	A guidance <b>document on handling suspicious criminality in connection with management of EU funds</b> was adopted by the Swedish Council for the protection of the European Union's financial interests in October 2014 and has been distributed to all agencies concerned. The guidance document is used to guide the administrators in how to detect frauds and errors and in which case they are supposed to report a crime to the Swedish Economic Crime Authority. The guidance document includes the definitions of different suspected crimes. It also informs about the obligation to report irregularities to OLAF

### 3.4. Definition of Primary administrative or judicial finding (PACA)

All Member States were asked to give information on how the concept of primary administrative or judicial finding (PACA) is applied and specify the relevant procedures in place.

The questionnaire proposed four types of possibilities:

- TYPE A, applying a uniform procedure in all sectors and types of irregularity, was answered by fourteen Member States<sup>86</sup>;
- TYPE B, applying a uniform procedure for all types of irregularity, however differently per sector, was answered by six Member States<sup>87</sup>;
- TYPE C, applying different procedures between types of irregularities but uniform per sector, was answered by two Member States<sup>88</sup>;
- TYPE D, applying different procedures per sector and per type of irregularity, was answered by five Member States<sup>89</sup>.

#### 3.4.1. TYPE A: Uniform application of Primary administrative or judicial finding (PACA) in all sectors and types of irregularity

In Malta and Slovenia the PACA is the date of the **first information or document** (based on the management verification, audit report before contradictory phase, etc.).

In Bulgaria, Estonia, Croatia, Romania and the United Kingdom it is the date of the **first officially confirmed information** or document (on the basis of the final on the spot report, final audit report etc.).

In Germany and Austria the Primary administrative and judicial finding is defined by the **date of the recovery order**.

Ireland, Italy, Hungary, Poland and Sweden reported **other type of uniform** procedure of PACA.

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<sup>86</sup> Germany, Bulgaria, Estonia, Croatia, Ireland, Italy, Hungary, Malta, Austria, Poland, Romania, Slovenia, Sweden and the United Kingdom

<sup>87</sup> Belgium, Denmark, France, Cyprus, Lithuania and Netherlands

<sup>88</sup> Latvia and Slovakia

<sup>89</sup> Greece, Spain, Luxembourg, Portugal and Finland

Table 11: Application of PACA for type A ('uniform application')

UNIFORM APPLICATION FOR ALL SECTORS AND TYPES OF IRREGULARITY				
Definition of Primary administrative or judicial finding (PACA)				
MS	Date of the first information/document	Date of the first officially confirmed information/document	Date of the recovery order	Other - please specify
BG		✓		
DE			✓	
EE		✓		
IE				✓
HR		✓		
IT				✓
HU				✓
MT	✓			
AT			✓	
PL				✓
RO		✓		
SI	✓			
SE				✓
UK		✓		
MS	Other definitions of Primary administrative or judicial finding (PACA)			
IE	Date of the first <b>officially confirmed information/document</b> is applicable <b>except in the case of the ESF</b> where an irregularity is reported when management has concluded its examination to determine whether or not reportable irregularities exist.			
IT	<b>Administrative:</b> upon completion of the assessment by the decision-making bodies of the data and evidence in the first record of findings or in the files. <b>Judicial:</b> in ordinary proceedings, when the request is made to bring the case before the courts, or for alternative procedures, under Article 405 Code of Criminal Procedure, and in proceedings before the general court sitting with a single judge, when the public prosecutor serves a direct summons for trial by issuing a summons under Articles 550 and 552 Code of Criminal Procedure.			
HU	The date of the <b>decision establishing an irregularity</b> .			
PL	As explained in point 11.b.2, the date of the PACA is the date of the <b>earliest official document drawn up in a case by the competent authority</b> , in which it identifies the possible occurrence of an irregularity within the meaning of the relevant regulation. The competent authorities take decisions concerning PACA at their own discretion, depending on the circumstances accompanying the finding of irregularity and their assessment of the case (case-by-case).			
SE	Irregularities shall be reported to OLAF and several managing authorities have developed internal guidelines for this purpose. Regarding <b>suspected criminality, a report shall be done to the Economic Crimes Bureau as soon as there is a suspicion</b> that an action may be criminal (no crime needs to be established beforehand).			

3.4.2. *TYPE B: Uniform application of Primary administrative or judicial finding (PACA) for all types of irregularity but different application per sector*

Belgium, Denmark, France, Cyprus, Lithuania, Netherlands reported uniform procedure of PACA for all types of irregularity, however differing per sector.

### 3.4.2.1. Agriculture sector

Table 12 shows the definition of PACA used by some Member States for type B (uniform procedure for all types of irregularity, but differing per sector) in the AGRICULTURE sector.

Table 12: Application of PACA for type B - Agriculture

UNIFORM APPLICATION FOR ALL TYPES OF IRREGULARITIES BUT DIFFERENT PER SECTOR - AGRICULTURE			
Definition of Primary administrative or judicial finding (PACA)			
MS	Final audit report	The date of recovery order	Other
BE		✓	
DK		✓	
FR			✓
CY			✓
LT			✓
NL	✓		
MS	Other		
FR	<p>With respect to control of market measures (EAGF), the date of the PACA is the <b>date of reception by the paying agency of the control report before the adversarial procedure</b> (Article 54 of Regulation (EU) No 1306/2013 on the financing, management and monitoring of the CAP). There are two types of control in the rural development sector: administrative controls, where the date of the PACA is the date of the decision revoking the entitlements, and on-the-spot controls, where the date of the PACA is the date of the final report (after the adversarial phase).</p>		
CY	<p>Direct Payments and Rural Development Units: the <b>date on which the IACS department, as the competent authority, concludes, following the conduct of the checks and the examination of the findings, that there is an irregularity</b>. The following applies to the <b>KOAEPP Unit (unit responsible for EU policies, within the CY PA)</b>: the date on which the irregularity is detected, based on the signing of the check-list entitled 'assessment of whether the findings relating to a potential irregularity establish the irregularity' in the Unit's manual on the application of the irregularities procedure.</p>		
LT	<p>1. In cases where <b>no investigation is carried out into a suspected irregularity</b>, the initial identification date of the irregularity is deemed to be the <b>date on which the application or payment request</b> is assessed.</p> <p>2. Where an <b>investigation is carried out into a suspected irregularity</b>, the initial identification date of the irregularity is deemed to be as follows: <b>a. where the penalty for the irregularity is up to LTL 100 000, the PACA is the date of the decision on the irregularity by the committee of the National Paying Agency</b> under the Ministry of Agriculture (the project administration authority); <b>b. where the penalty for the irregularity exceeds LTL 100 000, the PACA is the date of the decision on the irregularity by the committee of the Ministry of Agriculture</b> (the managing authority).</p>		

### 3.4.2.2. Fisheries sector

Table 13 shows the definition of PACA used by some Member States for type B (uniform procedure for all types of irregularity, but differing per sector) in the FISHERIES sector.

Table 13: Application of PACA for type B - Fisheries

UNIFORM APPLICATION TO ALL TYPES OF IRREGULARITIES BUT DIFFERENT PER SECTOR - FISHERIES			
Definition of Primary administrative or judicial finding (PACA)			
MS	Final audit report	The date of recovery order	Other
BE		✓	
DK		✓	
FR	✓		
CY	✓		
LT			✓
NL	✓		
MS	Other		
LT	<p>1. In cases where <b>no investigation is carried out into a suspected irregularity</b>, the initial identification date of the irregularity is deemed to be the <b>date on which the application or payment request</b> is assessed.</p> <p>2. Where an investigation is carried out into a suspected irregularity, the initial identification date of the irregularity is deemed to be as follows: <b>a. where the penalty for the irregularity is up to LTL 100 000</b>, the PACA is the date of the decision on the irregularity by the committee of the National Paying Agency under the Ministry of Agriculture (the project administration authority); <b>b. where the penalty for the irregularity exceeds LTL 100 000</b>, the PACA is the date of the decision on the irregularity by the committee of the Ministry of Agriculture (the managing authority).</p>		

### 3.4.2.3. Cohesion policy sector

Table 14 shows the definition of PACA used by some Member States for type B (uniform procedure for all types of irregularity, but differing per sector) in the COHESION POLICY sector.

*Table 14: Application of PACA for type B – Cohesion policy*

UNIFORM APPLICATION FOR ALL TYPES OF IRREGULARITIES BUT DIFFERENT PER SECTOR - COHESION POLICY			
Definition of Primary administrative or judicial finding (PACA)			
MS	Final audit report	The date of recovery order	Other
BE			✓
DK			✓
FR	✓		
CY	✓		
LT			✓
NL	✓		
MS	Other		
BE	From the <b>closure of the adversary proceedings lasting a maximum of three months</b> . This is not always an audit in the strict sense of the word (e.g. a first-level document check).		
DK	Final <b>audit reports</b> or the <b>date of the recovery</b> order.		
LT	The European Commission must be notified of all irregularities relating to the administration of the EU Structural Funds. PACA date – <b>the date of the conclusion of the investigation into the irregularity (2007–2013) or the date of the decision on the irregularity (2014–2020)</b> . Reports to the European Commission must be provided as stipulated in Article 28 of Regulation (EC) No 1828 or Article 122 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.		

3.4.3. *TYPE C: Different application between types of irregularities but uniform application per sector*

Two Member States, Latvia and Slovakia, replied that they apply different procedures between types of irregularities but have uniform application per sector.

Table 15: Application of PACA for type C

DIFFERENT APPLICATION BETWEEN TYPES OF IRREGULARITIES BUT UNIFORM PER SECTOR			
PACA: 'Simple' (non-fraudulent) irregularities			
MS	Final audit report	The date of recovery order	Other
LV		✓	
SK	✓		
PACA: Suspected or established fraud			
MS	After the preliminary phase of investigation	Referral to law enforcement	Other
LV		✓	
SK	✓		

3.4.4. *TYPE D: Different application per sector and per type of irregularity*

Five Member States, Greece, Spain, Luxembourg, Portugal and Finland, reported different procedures per sector and type of irregularity.

### 3.4.4.1. Agriculture - simple irregularities and suspected or established fraud

Table 16 shows the application of PACA for type D in the agriculture Sector as regards simple irregularities and suspected or established fraud used by five Member States.

Table 16: Application of PACA for type D - Agriculture

DIFFERENT APPLICATION PER SECTOR AND PER TYPE OF IRREGULARITY - AGRICULTURE SECTOR				
PACA: 'Simple' (non-fraudulent) irregularities				
MS	Final audit report	The date of recovery order	After preliminary phase of investigation	Other
EL				✓
ES		✓		
LU		✓		
PT				✓
FI		✓		
MS	Other			
EL	The date of the <b>official document of the competent authority informing the auditee of the offence</b> and initiating the administrative procedure for recovering the amounts wrongly or unduly paid.			
PT	Notification is effected in the quarter in which the preliminary hearing document is sent to the beneficiary, notifying them of the <b>intention to establish the recovery of the unduly received amount and of the period available</b> to them for responding. This is the document preceding the 'reimbursement order' (namely the final decision).			
PACA: Suspected or established fraud				
MS	Referral to law enforcement	Referral to a judicial authority	After preliminary phase of investigation	Other
EL				✓
ES			✓	
LU				✓
PT		✓		
FI	✓			
MS	Other			
EL	In cases of suspected fraud, the Financial Control Committee (EDEL) refers the case either to the <b>Public Administration Inspectorate/Audit Office</b> under the cooperation protocol of 13 August 2012 <b>or to the judicial authorities</b> .			
LU	Suspected fraud is declared on the date of the recovery order and notified to the judicial authorities. It is then up to a court do decide whether there is an established fraud or not; hence a court decision is needed prior to declaring an established fraud.			
MS	Comment			
PT	Irregularities involving suspected fraud are notified to OLAF in the quarter in which the notification is sent to the public prosecution service for investigation, even if the preliminary hearing document has not been issued.			



### 3.4.4.2. Fisheries - simple irregularities and suspected or established fraud

Table 17 shows the application of PACA for type D in the FISHERIES SECTOR as regards simple irregularities and suspected or established fraud used by five Member States.

Table 17: Application of PACA for type D - Fisheries

DIFFERENT APPLICATION PER SECTOR AND PER TYPE OF IRREGULARITY - FISHERIES SECTOR			
PACA: 'Simple' (non-fraudulent) irregularities			
MS	Final audit report	The date of recovery order	Other
EL	✓		
ES	✓		
LU			✓
PT			✓
FI		✓	
MS	Other		
LU	N/A		
PT	In the quarter of the date of the first information/document signed by the head of the entity that detected the situation (for example: final report of on-site inspection, final audit report, etc.)		
PACA: Suspected or established fraud			
MS	Referral to law enforcement	Referral to a judicial authority	Other
EL			✓
ES		✓	
LU			✓
PT		✓	
FI	✓		
MS	Other		
EL	In cases of suspected fraud, the Financial Control Committee (EDEL) refers the case either to the Public Administration Inspectorate/Audit Office under the cooperation protocol of 13 August 2012 or to the judicial authorities.		
LU	N/A		
MS	Comment		
PT	In the quarter of the date of the first information/document signed by the head of the entity that detected the situation (for example: final report of on-site inspection, final audit report, etc.) At the same time, the public prosecution service will have been notified.		

### 3.4.4.3. Cohesion policy - simple irregularities and suspected or established fraud

Table 18 shows the application of PACA for type D in the COHESION POLICY SECTOR as regards simple irregularities and suspected or established fraud used by five Member States.

Table 18: Application of PACA for type D – Cohesion policy

DIFFERENT APPLICATION PER SECTOR AND PER TYPE OF IRREGULARITY - COHESION POLICY			
PACA: 'Simple' (non-fraudulent) irregularities			
MS	The date of the first information/document	Final audit report	Other
EL		✓	
ES		✓	
LU	✓		
PT			✓
FI	✓		
MS	Other		
PT	In the quarter of the date of the <b>first information/document signed by the head of the entity that detected</b> the situation (for example: final report of on-site inspection, final audit report, etc.)		
PACA: Suspected or established fraud			
MS	Referral to law enforcement	Referral to judicial authority	Other
EL			✓
ES		✓	
LU		✓	
PT		✓	
FI	✓		
MS	Other		
EL	In cases of suspected fraud, the Financial Control Committee (EDEL) refers the case either to the <b>Public Administration Inspectorate/Audit Office</b> under the cooperation protocol of 13 August 2012 or to the <b>judicial authorities</b> .		
MS	Comment		
ES	Communication , if any, at the time of referral to the judicial authorities		
LU	Referral to judicial authority		
PT	In the quarter of the date of the first information/document signed by the head of the entity that detected the situation (for example: final report of on-site inspection, final audit report, etc.) At the same time, the public prosecution service will have been notified.		
FI	The police are asked to investigate if fraud is suspected or established. The National Audit Office is notified.		

### 3.5. Reporting of suspected or established fraud (irregularities reported as fraudulent)

Twenty-six Member States replied that they do not request authorisation from the judicial authority before reporting suspected fraud, Italy requests it systematically and Romania does so on a case by case basis.

Table 19 shows the replies of the Member States on whether there is an authorisation requested from the judicial authority before reporting suspected fraud.

Table 19: Requesting authorisation to Judicial Authorities before reporting suspected fraud

Suspected or established fraud (irregularities reported as fraudulent)			
Do you request authorisation from the judicial authority before reporting suspected fraud?			
MS	YES, systematically	YES, case by case	NO
BE			✓
BG			✓
CZ			✓
DK			✓
DE			✓
EE			✓
IE			✓
EL			✓
ES			✓
FR			✓
HR			✓
IT	✓		
CY			✓
LV			✓
LT			✓
LU			✓
HU			✓
MT			✓
NL			✓
AT			✓
PL			✓
PT			✓
RO		✓	
SI			✓
SK			✓
FI			✓
SE			✓
UK			✓

### 3.6. Reference in national legislation to fraud against the EU budget

On the specific reference in national legislation to *fraud against the EU budget*, sixteen Member States<sup>90</sup> replied positively, while twelve Member States<sup>91</sup> replied ‘no’, their national legislation contains general definitions of the behaviour without any specific reference to the ‘victim’ (the ‘EU financial interests’, in this context).

Table 20 details the replies provided by Member States.

<sup>90</sup> Bulgaria, Czech Republic, Denmark, Greece, Spain, Croatia, Italy, Cyprus, Hungary, Malta, Portugal, Romania, Slovenia, Slovakia and Sweden.

<sup>91</sup> Germany, Estonia, France, Latvia, Lithuania, Luxembourg, Netherlands, Ireland, Austria, Poland, Finland, and the United Kingdom.

Table 20: Specific reference in national legislation to 'fraud against the EU budget'

Specific reference in national legislation to fraud against the EU budget		
MS	YES	NO
BE	✓	
BG	✓	
CZ	✓	
DK	✓	
DE		✓
EE		✓
IE		✓
EL	✓	
ES	✓	
FR		✓
HR	✓	
IT	✓	
CY	✓	
LV		✓
LT		✓
LU		✓
HU	✓	
MT	✓	
NL		✓
AT		✓
PL		✓
PT	✓	
RO	✓	
SI	✓	
SK	✓	
FI		✓
SE	✓	
UK		✓

### 3.7. Internal system of signalling of suspected irregularity, developed outside Irregularity Management System (IMS), in use

Fourteen Member States<sup>92</sup> reported that they use an internal system of signalling of suspected irregularity developed outside of IMS<sup>93</sup>. Ten Member States<sup>94</sup> replied that they rely solely on IMS to signal suspected irregularities, while four Member States<sup>95</sup> replied no application of suspected irregularity signalling.

Table 21 shows the replies of the Member States.

<sup>92</sup> Belgium, Bulgaria, Czech Republic, Estonia, Spain, Croatia, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Romania and Slovakia.

<sup>93</sup> the full answers are to be seen on the pp.74-77.

<sup>94</sup> Germany, Ireland, France, Italy, Netherlands, Austria, Portugal, Slovenia, Finland and Sweden.

<sup>95</sup> Denmark, Greece, Poland and the United Kingdom.

Table 21: Use of an internal system of signalling of suspected irregularity (outside IMS)

Internal system of signalling of suspected irregularity (developed outside IMS)			
MS	YES	NO, we rely on IMS	NO
BE	✓		
BG	✓		
CZ	✓		
DK			✓
DE		✓	
EE	✓		
IE		✓	
EL			✓
ES	✓		
FR		✓	
HR	✓		
IT		✓	
CY	✓		
LV	✓		
LT	✓		
LU	✓		
HU	✓		
MT	✓		
NL		✓	
AT		✓	
PL			✓
PT		✓	
RO	✓		
SI		✓	
SK	✓		
FI		✓	
SE		✓	
UK			✓

The Member States which indicated that they have an internal system outside IMS to signal suspected irregularities were requested to specify how it functions. Table 22 shows the detailed replies.

Table 22: Answers describing internal systems of signalling suspected irregularities (developed outside IMS) in use in fourteen Member States

Internal system of signalling of suspected irregularity (developed outside IMS)	
MS	YES - Please specify how it functions
BE	AGENTSCHAP LANDBOUW EN VISSERIJ (Agency for Agriculture and Fisheries): The technical services' control systems are designed to signal suspected irregularities, e.g. through the sampling method for determining where on-the-spot checks will take place or through the systematic analysis of certain data, e.g. stoppages of operations or recurrences of similar incidents involving the same client. The finance department has a system for listing all letters of formal notice and compensation payments from a specific period. ERDF: The findings of case handlers (relating to the certification of expenditure, below threshold transactions, etc.) are systematically added to an internal list of detected errors stored on a shared network drive. NB: ESF Flanders and the SPW's Structural Funds Coordination Department both answered no to question 15.
BG	The national legislation adopts the procedure for administering signals in the Ordinance for establishing procedures for administering irregularities of funds, instruments, and programmes co-financed by the EU. According to the procedure Managing authority is obliged to keep record for any information that is defined as a signal of irregularity. They maintain electronic registers and files with all the documentation concerning a case. All Managing authorities send the registers to AFCOS at a quarterly basis. In that way AFCOS creates a database for signals at national level. Some sectors have electronic systems in which they can insert information for signals and AFCOS has access or can request information from them. These signals are followed up and subsequently a decision is made by the Managing authority whether to establish irregularity or not.
CZ	All authorities responsible for state administration – including authorities auditing the drawing of EU resources and finance authorities administering taxes and proceedings in cases involving the infringement of budgetary discipline (which encompasses matters relating to the legality of drawing subsidies, including those co-financed by the EU) in accordance with the Tax Code – are legally obliged (under Section 8 of the Code of Criminal Procedure) to report to the competent public prosecutor or police authority any justified suspicion concerning the commission of a criminal act relating inter alia to the drawing of EU resources, where such suspicion arises in the course of their activities. This obligation is incumbent upon all state authorities, irrespective of whether they are part of the IMS system. If such an irregularity (suspected commission of a criminal act) is reported to a police authority or to a public prosecutor, the authorities active in criminal proceedings are legally obliged to investigate such suspicion thoroughly. Following a preliminary investigation, a decision is taken either to file the case (if the statement of the facts does not indicate the possibility that a criminal act has been committed) or to instruct the police authority to initiate criminal proceedings (thereafter supervised by the public prosecutor). If criminal proceedings are initiated, the fact will be reported to OLAF by the Supreme Public Prosecutor's Office.
EE	All project information is held in a web-based information system (SFOS). Any infringement, including suspected fraud, must be entered into the system within 10 working days of the facts having been recorded in an official document (on-the-spot report, final audit report, etc.). All cases of damages amounting to over EUR 10 000 must be uploaded to the IMS.

### Internal system of signalling of suspected irregularity (developed outside IMS)

MS	YES - Please specify how it functions
ES	(1) For Structural and Cohesion Funds: regardless of the amount of irregular expense, irregularities are recorded in the European Funds national management applications (Fondos 2007 for ERDF; FSE for ESF), in which there is a module for monitoring them. (2) For agricultural funds: there is a system that receives the irregularities communicated by the different paying agencies; the irregularities are recorded in the system and the communication to be imported into the IMS module is extracted from it.
HR	Every relevant body within the system for managing and controlling of EU funds keeps Register on suspected irregularities which contain information received either anonymously or by identified persons via post, e-mail and telephone. All registers are reported to Service for Combating Irregularities and Fraud on quarterly basis.
CY	An irregularities notification form is filled in and submitted to the competent authority for notification to OLAF.
LV	The Managing Authority of EU structural and Cohesion Fund has an internal management information system (MIS) which is used to collect all projects information, including detected irregularities with financial impact (also below threshold) and all suspected fraud and established fraud cases. Intermediate bodies collect information in their own systems or documents about signals of irregularities (in other words – possible irregularities) and irregularities without financial impact and inform the managing authority by semi-annual monitoring reports if it is necessary. In accordance with the internal procedure set by the Rural Support Service after the evaluation of irregularity or when an undue payments is detected employee who detected the irregularity/undue payment, or employee, to whom it has been determined in accordance with the allocated functions, immediately shall enter the necessary information in Integrated administration and control system sub-module "Irregularity register". The quarterly meeting is organized to review all cases of irregularity, int.al. where there is a suspicion of fraud and to decide whether to report them further to OLAF, as an irregularity or suspected fraud. The Latvia-Lithuania Cross-border cooperation Programme and the Estonia - Latvia - Russia Cross Border Cooperation Programme within European Neighbourhood and Partnership Instrument 2007 – 2013 (ETC programmes) have their own data bases where all cases with possible irregularities are collected. Then these cases are investigated and irregularity is approved or not. If case is identified as suspected fraud, than information regarding this case have to be submitted to OLAF. Recovery in all irregularity cases is the same.

## Internal system of signalling of suspected irregularity (developed outside IMS)

MS	YES - Please specify how it functions
<b>LT</b>	<p>Information relating to projects (and also on investigations carried out and irregularities identified) is registered in the computerised information management and monitoring system for the EU Structural Funds (SFMS). Having conducted their investigations into irregularities, the project administration authorities register the results in the SFMS and within one month following the end of each quarter provide the managing authority by means of the SFMS with reports on the irregularities identified during that quarter, along with any updated information on previously identified irregularities where any information has changed. The managing authority, having reviewed the reports provided and taking into account Articles 28–31 and 36 of Regulation (EC) No 1828, which stipulate the cases that must be notified to the European Commission, enters the relevant report information into the information management system and forwards it to the European Commission. The same procedure applies with regard to the 2014–2020 funding period. Certain authorities responsible for administering EU support, for example the National Paying Agency under the Ministry of Agriculture (hereinafter 'the NPA'), also have their own internal systems. Where a suspected irregularity needs to be investigated, the NPA staff member who suspects the irregularity completes a suspected irregularity questionnaire and forwards this using the Document Management System (DMS) to the unit responsible for investigating irregularities. Upon receipt of the questionnaire, the desk officer charged with investigating the irregularity enters the information in the logbook for suspected/identified irregularities located in the system. At the end of the investigation the information is updated and supplemented.</p>
<b>LU</b>	depending on the authority
<b>HU</b>	<p>The Irregularity module of the Single Monitoring Information System ensures effective, unified, and transparent handling and monitoring of irregularities relating to projects that have received aid, and the monitoring carried out for the purpose of preparing the official irregularity report submitted to the European Commission, and supports the performance of the reporting duties of various institutions. The public reporting system available at <a href="http://www.anti-lop.hu">www.anti-lop.hu</a> supports lawful and transparent use of EU funds and offers a way to report and investigate corrupt practices and illegal acts detected in relation to the aid granted, and to inform whistleblowers of the measures taken following their reports.</p>



Internal system of signalling of suspected irregularity (developed outside IMS)	
MS	YES - Please specify how it functions
MT	The Financial Investigations Unit within the Internal Audit and Investigations Department receives all irregularities and cases of suspected fraud from the Managing and Audit Authorities. Then, the Unit analyse all cases received and reports to OLAF via IMS according to set thresholds. Such a centralized set-up, helps the Financial Investigations Unit in conducting its risk assessment to identify areas / cases which deserve to be further investigative work.
RO	The authorities responsible for managing European funds are obliged to complete a 'Suspicion of irregularity/Suspicion of fraud' form for all findings with financial implications or possible financial implications and for all referrals meeting legal conditions. The form is submitted to the competent inspection bodies. It is used for all programmes except those for which the European Commission has already approved a form with a different content. The authorities responsible for managing European funds are obliged to record suspicions of irregularities in an Irregularities Register, except in the case of programmes for which the European Commission has already approved a register with a different content. The 'Suspicion of irregularity/Suspicion of fraud' form is completed only for amounts paid by the authorities responsible for managing European funds or by bodies with payment functions acting on their behalf, bodies implementing measures in the field of transport under the ex-ISPA Programme and beneficiaries of projects financed under the European Commission's centralised system from European funds and/or from related national public funds. Under EU regulations and the agreements on the financial management and control of operational programmes, the authorities responsible for managing European funds are obliged to report to the certifying authorities, using the 'Suspicion of irregularity/Suspicion of fraud' form, all cases which they have referred to the Romanian Government's Anti-Fraud Department ('DLAF'). The authorities responsible for managing European funds are obliged to record suspicions of fraud in the Irregularities Register.
SK	The IT monitoring system (ITMS) is a central information system for the registration, subsequent processing, export and monitoring of data on programming and on project and financial management for the Structural Funds and the Cohesion Fund and communication with grant applicants/ beneficiaries. It also contains part of the register of irregularities. These are registered as part of the project management information. An irregularity report is subsequently generated, and its creation is linked to the legal implications for the entities involved. In the field of irregularities, the system is also linked to the accounting records. Within 15 calendar days of the date on which the irregularity was detected, the Managing Authority submits the approved irregularity report from the ITMS to the Certifying Authority, the Intermediate Body under the Managing Authority, the Paying Unit and the Beneficiary. The Audit Authority and cooperating bodies submit the approved irregularity report from the ITMS to the Certifying Authority, the Managing Authority and the Paying Unit: a) in the event of an irregularity with financial impact and a systemic irregularity, by the 15th calendar day of the month following the month in which the system audit/operational audit report was received by t b) in the event of an irregularity with no financial impact, where the measures adopted in respect of the irregularity have not been adequately implemented, by the 15th calendar day of the month following the month in which a report on the verification of compliance with the adopted measures and the taking into account of recommendations was drawn up. The MA forwards irregularities with a financial impact on the statement of EU expenditure to the Government Office of the Slovak Republic (AFCOS), which declares to the OLAF office irregularities subject to the reporting requirement. In the event of irregularities relating to the CAP, these are registered and entered in the accounts using the SAP economic information system. For the CAP sector, the register of irregularities is drawn up in the AGIS information system and the accounts for irregularities in the ISUF system.

### 3.8. Follow-up concerning cases reported to the European Commission in the Irregularity Management System (IMS) under criminal proceedings

On the follow-up concerning cases under criminal proceedings reported to the European Commission in the IMS, eight Member States<sup>96</sup> replied that they proceed so ‘after indictment’, one Member State (Austria) replied ‘after the initial sentence’, six Member States<sup>97</sup> replied ‘after the definitive sentence’ (final court decision) and seventeen Member States<sup>98</sup> specified ‘other’ circumstances<sup>99</sup>, including more of the above mentioned options. It is to be noted that there are certain differences concerning the reporting periodicity, also in relation to the role of the Public Prosecutor, on the basis of completion of each stage of criminal proceedings, or depending on the funds involved.

Table 23 shows the follow-up stage of cases under criminal proceedings reported by the Member States to the EC via the Irregularity Management System (IMS) and Table 24 provides the detailed information concerning the ‘Other’ replies.

Table 23: follow-up stage of cases under criminal investigation via IMS

Follow-up concerning cases reported to the EC which are under criminal proceedings				
MS	After indictment	After initial sentence	After definitive sentence - Final court decision	Other
BE	✓	✓	✓	✓
BG				✓
CZ				✓
DK	✓		✓	
DE	✓	✓	✓	
EE				✓
IE				✓
EL	✓	✓	✓	
ES			✓	
FR				✓
HR				✓
IT				✓
CY				✓
LV	✓	✓	✓	
LT				✓
LU			✓	
HU			✓	
MT			✓	
NL				✓
AT		✓	✓	✓
PL	✓		✓	✓
PT				✓
RO	✓	✓	✓	
SI			✓	✓
SK			✓	
FI	✓	✓	✓	
SE				✓
UK				✓

<sup>96</sup> Belgium, Denmark, Germany, Greece, Latvia, Poland, Romania, Finland

<sup>97</sup> Spain, Luxembourg, Hungary, Malta, Slovenia, Slovakia

<sup>98</sup> Bulgaria, Czech Republic, Estonia, Ireland, France, Croatia, Italy, Cyprus, Lithuania, Netherlands, Portugal, Sweden and the United Kingdom

<sup>99</sup> full answers are on pp.80-83

Table 24: 'Other' stages of the follow-up reporting reported by thirteen Member States

Follow-up concerning cases reported to the EC which are under criminal proceedings	
MS	Other
BE	All significant stages in the case are notified. Each stage of the procedure is covered by a follow-up sheet.
BG	The completion of every stage of the criminal proceedings procedure are notified in the IMS. The follow-up is notified in IMS after the completion of every stage of the criminal proceedings (exp. end of pre-trial proceedings, court decision, appeal etc).
CZ	A special report on the state of all new and previously notified criminal-law irregularities (current criminal proceedings in cases relating to the EU's financial interests) is sent regularly (every quarter-year) to the European Commission or to OLAF. Criminal-law irregularities are notified – through inclusion in the quarterly report – after criminal proceedings have actually been initiated, the information being subsequently updated as the proceedings (which may include the initiation of criminal prosecution, the bringing of charges or the delivery of a verdict) unfold. The report is drawn up and dispatched by the Supreme Public Prosecutor's Office, which for this purpose has appropriate mechanisms to satisfy the information requirement within the public-prosecution system and works closely with – inter alia – the Czech police force's Corruption and Financial Crime Detection Unit. Furthermore, the Supreme Public Prosecutor's Office – as the sole AFCOS network contact point – regularly communicates with OLAF and supplies it with information concerning criminal proceedings in accordance with OLAF's specific requirements.
EE	For all cases, follow-up reports are submitted regularly (when new developments occur) to both the national database and the IMS, until the cases are closed.
IE	Option a (after indictment) applies except in the case of ERDF and ESF where in the case of suspected fraud, all related expenditure is removed from the subsequent claim to safeguard the EU budget. As a separate exercise, the member state follows up on those cases to protect the national budget.

## Follow-up concerning cases reported to the EC which are under criminal proceedings

MS	Other
FR	All cases of irregularity are forwarded to OLAF. Pursuant to Article 40 of the Code of Criminal Procedure, the Public Prosecutor of the Republic receives the complaints and denunciations either directly via the paying agencies or via the control bodies. The Public Prosecutor decides to: either launch legal proceedings or implement a procedure other than legal proceedings pursuant to Articles 41-1 and 41-2 or to dismiss the proceedings where warranted by the circumstances of the case. There is both a criminal and administrative follow-up to cases.
HR	Within the IMS, Service for Combating Irregularities and Fraud notifies all stages of criminal proceedings (starting with stages before indictment according to the Criminal Procedure Act (OJ 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14))
IT	Cases can be entered in IMS immediately with the classification code IRQ2. Then, when one of the conditions described in the reply to 12.a is fulfilled, the cases can be reclassified with the code IRQ3 but updating the relevant IMS forms under Article 5.
CY	AGRICULTURAL FUNDS: Notification as the case progresses. STRUCTURAL FUNDS: Notification once the case is closed.
LT	There are no provisions in the legislation governing the administration of the EU Structural Funds relating to the necessity to notify the European Commission only when a specific stage of court proceedings has been launched/concluded. With regard to information on any case which has already been notified to the European Commission (and also cases where court proceedings are ongoing), where new significant information emerges (for example, where the court has adopted a decision not to bring a case, or has adopted a decision in the case, etc.), an updated report on the infringement must be drawn up and notified to the Commission in accordance with standard procedures.
NL	This has never happened. Therefore not applicable.

## Follow-up concerning cases reported to the EC which are under criminal proceedings

MS	Other
AT	No information.
PL	Reporting on follow-up takes place in accordance with the requirements of the relevant EU regulations. This means that in the wake of irregularities that have already been reported (IRQ2) national bodies submit follow-up reports when there is a change in classification (to IRQ3), informing the Commission of the administrative or criminal proceedings initiated in respect of suspected fraud and then of major developments in the cases, e.g. that proceedings have been concluded by a final court decision (IRQ5) and penalties imposed or that proceedings have been closed. <b>Additional comment:</b> As when the very first report on a case contained information on suspected fraud (IRQ3), subsequent reports concerning the case are sent as above, in accordance with the requirements of the relevant regulations, which means that the Commission receives information on major developments in administrative or criminal proceedings aimed at imposing penalties, i.e. that proceedings have been concluded by a final court decision (IRQ5) and penalties or that proceedings have been closed.
PT	With regard to cases involving amounts to be recovered, OLAF is notified of all the stages and/or decisions considered relevant occurring during the judicial or criminal proceedings, e.g. indictment/dismissal; opening of an inquiry/decision to adjudicate/decision not to adjudicate; application to join proceedings as a civil party; lodging of a claim for civil damages; judgement; conviction/acquittal decision; lodging of an appeal; decisions on appeals; etc.
SI	Whenever there is any substantive change in irregularities that have already been reported, irrespective of the stage or progress of the procedure, the individual Ministries responsible report this to the managing authority, which then enters it in the IMS.
SE	To our knowledge, currently no cases under criminal proceedings are notified in IMS.
UK	As information becomes available from the paying agencies, the UK Co-ordinating Body will update the IMS

### **3.9. Reporting of irregularities where the beneficiary is a public authority/body**

All Member States replied that they apply equal treatment of the reporting of irregularities where the beneficiary is a public authority/body, as in other cases, irrespective of the type of beneficiary.