JOINT ANTI-FRAUD STRATEGY FOR SHARED & INDIRECT MANAGEMENT 2020-2025

DG REGIO – DG EMPL – DG MARE

Updated in December 2019

(REGIO, EMPL, MARE)

Contents

1.   Introduction

The anti-fraud measures taken until now have followed and are enshrined in a coherent, comprehensive strategy. The three-shared management DGs responsible for implementing the European Structural and Investment Funds have last updated their strategy in 2015[1] with a view to specifying the underlying principles and objectives, and clarifying the role of managing authorities in their cooperation with other bodies and services responsible for the fight against fraud. The 2015 JAFS complements the efforts undertaken by the three DGs to protect the financial interests of the Union in the context of the Single Audit Strategy 2014-2020.

As the strategy applies to funds implemented under the "Shared Management" mode[2], the prime responsibility lies with Member States' authorities. The Commission oversees their compliance with the regulation and offers guidance to the Member States. Under shared management, implementation tasks have been entrusted with the Member States. In order to ensure that the funds are used in accordance with all applicable rules and principles, the Member States need to take all the necessary measures, including legislative, regulatory and administrative measures, **to protect the Union's financial interests and in particular to prevent, detect and correct irregularities (by recovering also from the beneficiaries themselves), including fraud[3]**. This is one of the general principles that Member States' management and control systems need to comply with.

Current Cohesion policy control requirements[4] at Member State and regional level concerning the use of the Funds, already imply that fraud is more difficult to commit. This can be seen to motivate Member State/regions to invest further in anti-fraud administrative capacity.

At the Commission's level, the Fraud Risk Assessment is linked to the **annual risk assessment** exercise of each Directorate-General. Objective 3 of REGIO, EMPL and MARE **Management Plans** 2019 is the: "*Minimisation of the risk of fraud through application of effective anti-fraud measures, integrated in all activities of the DG, based on the DG's anti-fraud strategy (AFS) aimed at the prevention, detection and reparation of fraud*". The AARs contain a section on fraud prevention and detection and activities implemented in line with the sectorial anti-fraud strategy.

The specific characteristic of fraud is its intentional character. Fraud[5] is an irregularity[6] committed intentionally by economic operators, with the consequence of constituting a criminal offence. Whenever fraud and corruption cases are detected, Member States have an obligation to reimburse the respective EU contributions affected. The obligation to correct applies equally to non-fraudulent irregularities. Whereas the best defence against irregularities, fraud and corruption is the operation

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[1] ARES(2015)6023058, 23.12.2015.
[2] Funds covered are under the shared management mode: ERDF, CF, ESF, YEI, EUSF, EGF, FEAD. This strategy also covers the funds managed by REGIO under indirect management: IPA, IPA-CBC and ENI-CBC (as from 1 January 2020). EMPL funds under indirect management are not covered.
[3] See Article 72 (f) of the Common Provisions Regulation (EU) No 1303/2013 (CPR).
[4] E.g. legal requirements on public procurement, auditing standards to be adhered to by national auditors, compulsory publication of the list of beneficiaries, regulatory involvement of civil society in monitoring committees and EU audits of Cohesion Policy Funds allowing the three DGs to have an independent view on the compliance with EU funding conditions.
[5] See criminal law concept in Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7. 2017, p. 29.
[6] See definition of irregularities in article 2 (36) Regulation (EU) 1303/2013 (Common provisions regulation).

of an effective management and control system, due to their specificities, a specific approach is required to tackle fraud and corruption.

1.1   Principles of the JAFS

The JAFS motto promoted by the DGs when dealing with the programme authorities is "zero tolerance to fraud and corruption".

Built on the principle of zero tolerance to fraud, the 2014 – 2020 assurance framework under the Common Provisions Regulation has marked a decisive step towards a more structured prevention and detection approach against fraud and corruption in cohesion. Specifying the anti-fraud related capacity building objectives for Member States' managing authorities implementing the funds under shared management, the regulation has set out the obligation to put in place effective and proportionate anti-fraud measures as part of a robust management and control system for 2014-2020.

Fraud instances may have three adverse impacts:

✓ they can cause financial damage[7] whilst undermining the effectiveness and efficiency of the Funds and the achievement of objectives;
✓ they can create reputational damage both to the Union and the Member States' interests, which both may appear to be lax and lacking control;
✓ Finally, they can also undermine the citizens' trust in European solidarity promoted by Cohesion policy.

Conversely, the development of national anti-fraud and anti-corruption strategies is likely to strengthen the quality of the governance and will therefore contribute to social and economic development and the impact of the policy[8].

Therefore, REGIO, EMPL and MARE are committed and expect likewise their partners (Member States' responsible authorities and beneficiaries) to implement the anti-fraud provisions of the 2014-2020 and of the future ESI Fund legislation effectively and to be committed to a zero tolerance to fraud and corruption approach in the implementation of the Funds. This starts with the adoption of the right tone from the top in all bodies managing the Funds.

In accordance with these principles, REGIO, EMPL and MARE seek to take preventive measures and to contribute to promoting the right tone, while giving appropriate and swift follow-up to OLAF's final case reports:

Because Zero tolerance to fraud reflects the need to prevent any damage, including reputational, to the spending under cohesion policy, no threshold of "materiality" applies when it comes to preventing and identifying possible instances of fraud. The measures to be put in place need to be effective and proportionate and in particular take into account the risks identified.

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[7] Whenever fraud cases are detected, Member States have the obligation to reimburse the related EU contributions to the Commission.
[8] See Chapter 4 of the *Seventh report on economic, social and territorial cohesion*, September 2017.

Effectiveness of the measures taken requires that these anti-fraud measures are truly available and applicable whenever needed and, in addition, must be of practical use and added value for the authorities. On this basis REGIO, EMPL and MARE have intensified their efforts from the outset to assist Member States programme authorities in the further strengthening of their operational anti-fraud related administrative capacities. The Commission services have offered technical, administrative and financial assistance, and increased their efforts, together with OLAF, with a view to preventing and detecting possible fraud and corruption cases and to providing better cooperation and communication with Member States on fight against fraud. A more structured approach has been adopted. This includes efficient information sharing and improved data analysis, in accordance with a typology of findings, practical guidance to adopt an anti-fraud policy and updated action plans, training to commit to certain principles and integrity standards and increase competence of Member States' staff, financial support for independent consultancy and audit, and monitoring of results achieved. An action plan was developed in 2015 to take into account these different aspects of the fraud prevention challenge.

The Commission services finally need to implement a risk based and proportionate approach, to avoid additional controls and to follow a less burdensome approach, tailoring the measures developed on the specific risks identified. Measures are based on a proper analysis and evaluation of the exposure of a programme or a project, or specific types of expenditure and procedures, to fraud. Risk analysis is key to successful measures to prevent and counter fraud and corruption.

1.2   General Objectives of the JAFS

Anti-Fraud is a continuous priority for the managing authorities. The present strategy covers, in a structured approach, all three of the key objectives of the fraud risk management process, including efficient **prevention, detection and correction of fraud**.

The guidelines issued for Member States management authorities[9] offer a practical ready-to-use tool, based on which they have been able to perform and customise a risk assessment and to take efficient action for prevention of fraud and corruption. The Commission has recommended that the managing authorities develop a structured approach to tackling fraud. The combination of a thorough fraud risk assessment, adequate preventive and detective measures, as well as coordinated and timely investigations by competent authorities can significantly reduce the fraud risk and provide adequate deterrence against fraud

At programme level, updated fraud **prevention** objectives need to be taken into account in the design of measures to support Member States on training, staff integrity policies, guidance offered about professional conduct, and specific awareness raising for staff of managing bodies, intermediaries and possible beneficiaries. Given the difficulties to prove fraudulent conduct and to repair the reputational and material prejudice, it is as a rule preferable to prevent fraudulent activity. This calls for a robust internal control system, combined with a proactive, structured and targeted

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[9] The Commission issued guidance in 2014 to help managing authorities with the performance of a robust risk assessment. See Doc. EGESIF 14-0021-00, 16.6.2014, Risk assessment and effective and proportionate anti-fraud measures.

fraud risk assessment. Awareness raising and the development of an **ethical culture** are therefore key to the achievement of the aim of an effective fraud prevention.

New developments have come up in the policy discussions with stakeholders, which require action relevant for an updated risk assessment. For instance, this concerns single bidding and conflict of interests. A revised concept of conflict of interests with particular relevance for shared management expenditure was introduced in the Financial Regulation[10].

At project implementation level, achievement of fraud prevention and **detection** objectives requires proportionate and effective measures including a systematic fraud risk assessment by the managing authorities. The use of technology to analyse big data sets, such as risk-scoring tools and data-mining techniques, the identification of 'red flags' or fraud indicators, fraud reporting and risk based checks, verifications and audits and sometimes involvement of external actors.

Finally, corrective policies need to protect the EU financial interests and can achieve a **deterrent** effect. Financial corrective and withholding measures need to be expeditious in order to produce their full effect. To achieve this objective, the following developments in the applicable framework and in the available instruments are relevant for a deterrent fight against fraud:

- The PIF directive, which provides harmonised offences, including fraud and corruption[11].
- The setting up of the European Public Prosecutor's Office[12], whose powers extend to fraud affecting cohesion funds. It will most likely take up its activities at end of 2020.
- Other new instruments include the Early Detection and Exclusion System (EDES)[13]. Even if not directly applicable to Member States authorities acting under shared management, information on exclusion – for expenditure under direct and indirect management - may need to be shared also with national authorities when assessing a fraud risk and the possible in-eligibility of a registered beneficiary.

As a result, an updated anti-fraud strategy comprising a new action plan should be endorsed on specific complementary fraud prevention, detection and correction measures to be taken in the area of ESI Funds[14].

The sectorial strategy continues to cover the ERDF, CF, ESF, YEI, EUSF, EGF and FEAD[15]. Moreover, funds managed by REGIO under "Indirect Management" are also part of the document. It covers IPA, IPA-CBC and as from 1 January 2020 ENI-CBC[16].

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[10] Financial Regulation (EU, Euratom) No 2018/1046 applicable to the general budget of the Union, article 61, OJ 193, 30.7. 2018, p.1.

[11] Directive (EU) No 2017/1371 on fight against fraud and protection of the EU financial interests by means of criminal law, OJ L 198, 28.7. 2017, p.29.

[12] Regulation (EU) No 2017/1939 on implementation of enhanced cooperation to set up the European Public prosecutor's Office, OJ L 283, 31.10.2017, p.1.

[13] Financial Regulation No 2018/1046, Title V, chapter 2, section 2, articles 135 ss.

[14] See below point 4.

[15] European Regional Development fund, Cohesion fund, European Social fund, Youth Employment Initiative, the European Solidarity fund, the European Globalisation fund and the European Fund for the Most Deprived.

[16] IPA and IPA-CBC are pre-accession programmes under the IPA I and II instruments (national and cross-border); As from 1/1/2020, ENI-CBC programmes run with one Member State and neighbouring countries will be transferred to from NEAR to REGIO.

2.   Background for the update of the JAFS

REGIO and EMPL had established a first joint anti-fraud strategy (JAFS) in close cooperation with OLAF already in 2008, before the CAFS in 2011 made anti-fraud strategies compulsory for each Commission DG and service. The first revision of this Joint Fraud Prevention Strategy (2008-2009) for the European Regional Development Fund (ERDF), the Cohesion Fund (CF) and the European Social Fund (ESF) took place in 2010-2011 (covering also the European Fisheries Fund (EMFF), then in 2012-2013 and 2014. In 2015, following the entry into force of the Common Provisions Regulation 1303/2013 for the multiannual financial framework 2014-2020 a fourth version of a Joint Anti-Fraud Strategy (JAFS) was adopted in a continuation of the previous JAFS. Since 2015 and the previous update of the JAFS, the context of anti-fraud actions has considerably developed. The assurance framework was strengthened and further completed. The Financial Regulation was updated in 2018. It includes a new concept of conflict of interests[17] applicable to all financial actors, including national authorities at any level, involved in budget implementation including under indirect and shared management.

Relevant measures were implemented both at administrative and at institutional level including as part of the action plan attached to the previous JAFS (point 2.1). Various important events now call for a new revision of the JAFS: first, the overarching Commission Anti-Fraud Strategy (CAFS) has recently been revised (point 2.2) and the ESIF DGs need to include these new elements in their sectorial JAFS. A reason for updating the JAFS is the outcome of a stocktaking study on Member States' compliance with the new anti-fraud requirements. Other recent analyses complement this picture with interesting data on the effectiveness of the anti-fraud measures stemming from a performance audit commissioned by the Commission (point 2.3.). In the follow up, the ECA undertook a performance audit on "Tackling fraud in EU cohesion spending"[18]. Its findings and recommendations have been published in May 2019 (point 2.4). The legal framework on prevention of conflict of interests changed with a new provision in the Financial regulation applicable to authorities acting under shared management.

2.1   Summary of initiatives and actions taken since 2015 to counter fraud

The implementation of the 2014-2020 programming period is by now well underway. Nearly all operational programmes have committed a large part of their allocation. Against the background of a series of implementing measures taken by national authorities and initiatives by the Commission, it is time to take stock of the results achieved. The review of actions undertaken under the 2015 JAFS action plan is outlined below. They are assessed against five common criteria: their effectiveness, efficiency, relevance, coherence, and EU added value[19]. The list of actions undertaken to prevent and detect fraud shows the on-going commitment of the Commission to fight fraud, stay vigilant and updated about current trends and help Member States build capacity in this field.

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[17] Article 61 of the Financial Regulation
[18] Ref. N°06/2019
[19] See Table 1 Annex

It is worth noting that **all actions foreseen under the 2015-20 action plan have been implemented**. Some additional initiatives have been launched, with the aim to improve fraud prevention and detection capacity of Member States and the Commission knowledge of the phenomenon.

Priority objective N°1 of the 2015 action plan requested the qualitative analysis of Member States programme authorities' fraud risk assessments. The objective is to verify if Member States comply with the new legislative requirement under article 125.4(c) of the CPR. A first analysis was done by auditors while examining the Management and Control System for the most risky programmes. On top of that, to get a more precise picture of the Member States' compliance, the Commission carried out a stocktaking study for 50 operational programmes covering all Member States and a performance audit of effectiveness of anti-fraud measures in seven Member States. This allowed to better grasping the impact of the new requirements, how far Member States comply with the legal provisions on effectiveness of anti-fraud measures put in place, and what still can be improved[20].

Priority objective N°2 concerned the use by Member States programme authorities of IT tools to detect potential fraud. In this respect, the use of Arachne has been continuously encouraged and monitored by the Commission, and various features have been added to improve the tool. As a result, the use of Arachne has increased since 2015. 20 Member States have already agreed to use it, although not all with the same depth and frequency. Managing authorities interviewed are aware of the technical capabilities. New versions are regularly installed taking into account requests from authorities using the tool. However, for a more systematic use further improvements are needed. Similar tools capable of increasing the MCS' capacity to detect fraud are also considered as valuable.

Besides the two priority objectives, other specific objectives had been defined in the previous action plan.

Under **objective N°3** on fraud prevention and detection initiatives by the DGs, a very high number of anti-fraud actions have been undertaken since the beginning of 2014. Several studies were completed, anti-fraud websites and internal manuals on cooperation with OLAF updated, so that desk officers and auditors were made alert of possible fraud risks. In the internal management processes of the three Directorates general, **the risks inherent to the internal processes** have been reviewed, implementing and promoting a zero tolerance to fraud in any general and public communication. Processes have been improved to further eliminate or reduce risks. Consequently and considering that no materiality tolerance applies with respect to fraud, fraud does not currently reflect a critical risk to the achievement of REGIO, EMPL and MARE objectives.

Particularly relevant in this respect are the measures put in place with a view to a proactive and efficient cooperation with OLAF. T**he close collaboration with OLAF units** has helped to improve the mutual understanding of working methods and legal bases, increasing efficiency for both actors. Regular meetings have proved helpful to discuss novelties and solve difficult situations. Moreover, they allow for a coordinated approach covering all investigators in OLAF in the three units for shared management fraud cases. Tailor-made instructions issued by OLAF in 2017 for its investigative staff have led to more focused reports, breaches of EU or national law identified in OLAF reports have been clarified and OLAF financial recommendations are more precise than in the past.

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[20] See below point 2.3

According to **objective N°4** effective guidance has been offered to Member States authorities, which has revealed instrumental for the development of their risk analysis and anti-fraud policies. Capacity building measures offered to managing authorities have amongst others included trainings, exchange of best practices, regular exchanges on anti-fraud policy and the promotion of integrity pacts. Training offered on technical tools enabled programme authorities to develop their detection capacities[21].

Objective N°5 of the 2015 action plan covered efficient and timely follow up of OLAF cases. The recent improvements such as electronic transfer of OLAF files, the consultation of OLAF investigators with the relevant DG on the legal basis to be used for the recommendations, the systematic monitoring of implementation rates, improved monitoring of cases in follow-up and centralisation of the database have speeded up the treatment of files.

As a result, REGIO and EMPL have been able to improve the rate of successful follow-up of OLAF financial recommendations and have reached higher recovery rates for the last 2 years.

Recovery rates refer to the amounts of EU funds recuperated (either withdrawn by the national authorities, deducted at closure of the programme or recovered), as a proportion of the original OLAF financial recommendation stemming from the final report. This evolution of the recovery rate in the last years reflects a better cooperation with OLAF and a thorough follow-up procedure of OLAF reports in the three Directorates General to transmit OLAF recommendations systematically and immediately to the programme authorities thus opening a fair contradictory procedure.

The REGIO recovery rate therefore has continuously increased over the last couple of years as depicted below:
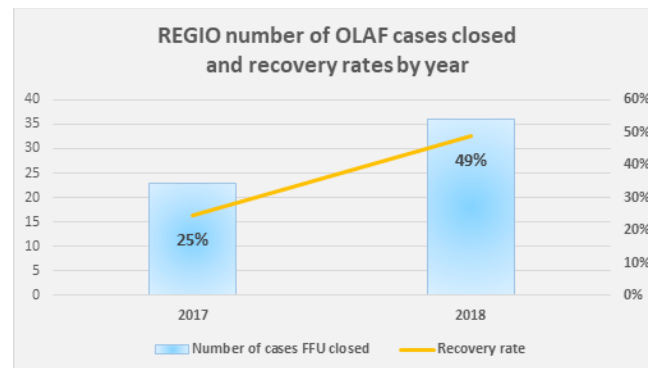
For EMPL recovery rates for transmitted OLAF recommendations were 100% in 2017 and 77% in 2018. This development is linked with a closer cooperation and regular bilateral meetings in particular during the period of the closure of operational programmes from the 2007-2013 period.

For MARE, all OLAF recommendations are followed-up on a timely basis.

Some remaining potential risks in the practical organisation of the information flow and document management in a cooperation with OLAF have been identified[22] and will be given necessary follow up. The trend will continue to be monitored[23]. It needs to be emphasised that financial corrections

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[21] Refer to Table 1 for more details on these activities.
[22] See for some further practical risk analytical assessment the comments in Annex 1, lit g): "Risks to the internal processes".
[23] The JAFS 2015 includes objective 5 on "Monitoring of the timely implementation by geographical Directorates of recommendations in final case reports issued by OLAF".

may apply, both in case of OLAF findings concluding on a case of fraud, as well as in case of findings, which simply support financial recommendations based on established irregularities, but where no fraud finding based judicial recommendations, are made by OLAF. In every case, the managing authority needs to be given the opportunity to react to the findings through a fair contradictory process. Managing authorities in all cases do not accept the recommendations and a clear breach of a legal provision needs to be demonstrated if the Commission is to adopt a financial correction decision. REGIO, EMPL and MARE may come to the conclusion that due to factual and legal reasons it is not justified nor possible to impose financial corrections.

2.2   The update of the Commission Anti-Fraud Strategy (CAFS)

(a) The implementation of the 2011 CAFS

In 2011, the Commission had adopted its previous horizontal anti-fraud strategy ('CAFS'). This comprised: (i) a Communication from the Commission to the other institutions, describing strategic objectives and key operational steps to attain them, and (ii) a more detailed internal Commission Action Plan. Its three priorities have since been implemented: (i) anti-fraud provisions were introduced in spending programmes under the MFF for 2014 – 2020, (ii) anti-fraud strategies at service level were implemented, and (iii) the public procurement directives were revised[24].

The 2011 CAFS already stressed zero tolerance to fraud and corruption, which is followed by the DGs under the JAFS. The CAFS implements at horizontal level principles of ethics, enhanced transparency, fraud prevention, effective investigation capacity, sanctions and good cooperation between internal and external actors[25]. The overall objectives of the 2011 CAFS covered the whole of the anti-fraud cycle:

1. enhancing internal procedures for the purpose of fraud prevention, including in particular the 'fraud-proofing' of procurement and grant-awarding procedures;
2. improving the techniques of fraud detection;
3. developing a real "anti-fraud culture" in the Commission;
4. enhancing relations with implementation partners (e.g. Member States, third countries, international organisations) as regards combating fraud;
5. reinforcing cooperation between OLAF and all stakeholders (DGs, national authorities, etc.);
6. ensuring efficient corrective actions (sanctions and recovery).

An evaluation concluded in 2019 that the 2011 CAFS has been successfully implemented, but that it is still relevant and effective as a policy framework for the Commission in protecting the EU budget[26]. The implementation of the overall objectives of the 2011 CAFS contributed to increase prevention and detection of fraud in cohesion and fisheries under the shared management mode of the Union budget. To achieve appropriate reparation and deterrence, in line with the modern assurance framework under 2014 – 2020 programmes, the capacities of the Commission to ensure appropriate financial corrections and deterrence in case of fraud have been strengthened, in a close cooperation

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[24] See further to the adoption of the Directives the EC Decision laying down the guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with applicable rules on public procurement, C (2019) 3452, 14.5. 2019.
[25] See COM (2011) 376 of 24.6. 2011.
[26] SWD (2019) 500, 29.4.2019, see in particular p. 17 and p. 71.

with OLAF. It was however necessary to adapt the CAFS to the evolving situation (new funding schemes and fraud trends, development of IT tools, etc.).

(b) The objectives of the 2019 CAFS

On 29 April 2019 the Commission adopted its **new 2019 CAFS**[27] including an action plan[28] addressed to the Commission Directorates-General (DGs).

The new anti-fraud strategy of the Commission invites its services to further develop cooperation with key partners such as OLAF - while continuing based on established exchange and information sharing practices. The cooperation and implementation practices need to be reviewed against the background of results achieved, and with a view to strengthening complementarities, and further increasing efficiency in a cooperation. The new JAFS must assess the results of the monitoring of measures put in place since 2015 and evaluate the implementation of the action plan adopted in 2015.

The Commission has set out two priority objectives for its 2019 CAFS, related to improving (i) data collection and analysis and (ii) coordination, cooperation and processes. For the priority objectives, preliminary corporate-level result indicators are to be developed by 2020.

The principles guiding the fight against fraud, highlighted by the 2019 CAFS, are:

- Zero tolerance for fraud;
- Fight against fraud as an integral part of internal control;
- Cost-effectiveness of controls;
- Professional integrity and competence of EU staff;
- Transparency regarding the use of EU funds;
- Prevention of fraud, notably fraud-proofing of spending programmes;
- Effective investigative capacity and timely exchange of information;
- Rapid correction (which includes recovery of defrauded funds and judicial / administrative sanctions);
- Good cooperation between internal and external actors, in particular between the EU and the relevant national authorities, and between the services of all EU institutions and bodies concerned;
- Effective internal and external communication in the fight against fraud.

To maximise effectiveness and efficiency, the new 2019 CAFS puts a stronger emphasis on methodology and cooperation, emphasising the comprehensive approach required to counter EU-fraud. The accompanying Action Plan[29] also carries forward the work of the 2011 CAFS, particularly in ensuring the soundness of public procurement, and encouraging trans-national cooperation. In addition, the Action Plan addressed to the Commission services and executive agencies, aims at improving anti-fraud cooperation and workflows across the EU-services. It covers for example the Commission's and other EU bodies' cooperation with OLAF and with the European Public

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[27] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and the Court of Auditors. COM (2019) 196 updating the 2011 Commission Anti-Fraud Strategy, COM (2011) 376 of 24.6.2011
[28] Commission internal action plan for the implementation of the Commission anti-fraud strategy, SEC(2019)170
[29] SWD (2019) 171, 29.4. 2019

Prosecutor's Office (EPPO), currently in the process of being established. A specific page of the action plan is devoted to shared management with targeted actions.

2.3   Monitoring of the implementation of anti-fraud measures by managing authorities

Article 125(4)c of the Common Provisions Regulation for 2014-2020 programmes provides a specific obligation for managing authorities to put in place **effective and proportionate anti-fraud measures** taking into account the risks identified. To be able to measure how Member States comply with the new provision, the Commission ordered **a study** (2.3.1) and **a performance audit** to monitor the implementation efforts (2.3.2). They have led to some relevant conclusions on the proportionality and effectiveness of the measures. The lessons learnt from the data collected by the study and the external audit are summarised below.

2.3.1   Stock taking study[30] on proportionality of the anti-fraud measures

In 2018, REGIO published an external study assessing measures and practices in Member States to prevent fraud and corruption within European Structural and Investment Funds. The analysis has been based on a sample of 50 programmes and comprises at least one operational programme for each Member State. The effectiveness of measures put in place by Member States has been examined against the background of the fraud risks assessed for each programme, classifying the risks identified in six categories. These included conflict of interests, manipulation of project costs, manipulation of public procurement, double funding, lack of skills and collusive bidding. For each risk category and sub-risk, the measures designed as a result of the fraud risk assessment were analysed on whether, considering the specific risk level identified for each risk category for the programme, they are proportionate. This took into account Commission recommended measures and additional measures of the fraud risk assessment conducted by the different Member States authorities.

One of the main findings of the study is that the new legal provision in article 125 (4) c) CPR has had a positive impact on fraud awareness and more targeted actions. According to the study, anti-fraud and anti-corruption efforts are more formalised and systematic in the 2014 – 2020 programming period. The mitigating measures implemented are generally proportionate to self-assessed risks.

At the same time, the study report stresses further needs for improvement when it comes to consistency, objectivity and proportionality of measures. In fact, authorities in Member States with moderate and low fraud risk indicators sometimes tend to assess their risks as higher than countries with high-risk indicators. Further improvement of action to assess fraud risks would therefore according to the study yield even better chances to achieve the intended fraud –prevention results. Proportionality of anti-fraud measures put in place in the Member States was lowest for collusive

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[30] REGIO – *Preventing fraud and corruption in the European Structural and Investment Funds – taking stock of practices in the EU Member States*, October 2018, study mandated by REGIO and conducted by PriceWaterhouseCoopers.

bidding and double funding. Some authorities may underestimate such risks during their self-assessment. [31]

The research concludes that the involvement of a variety of authorities, from those directly involved in the daily management of the ESI funds to the law enforcement bodies, leads to enhanced coordination of anti-fraud activities and reduces fraud risks. A more inclusive process leads to better mitigation of fraud risks. There is a continued need for communication to Member States authorities on anti-fraud activities, in particular on Arachne, which is known to them, but in its current form not yet perceived as sufficient by all authorities to meet their needs.

REGIO is following up on the study as reflected in the Action Plan attached to this updated JAFS with the development of additional capacity building measures.

2.3.2   Performance audit on effectiveness of anti—fraud measures[32]

EMPL has commissioned a Performance Audit of effectiveness of anti-fraud measures in seven Member States. The scope for this external audit is the assessment of the effectiveness of the anti-fraud environment in ESIF, evaluated through the measures put in place by seven Member States' authorities for 2014–2020 in accordance with article 125(4)c CPR.

Similar to the study, the external audit concludes in its main analytical findings on the implementation of anti-fraud measures, on a number of positive factual assessments about anti-fraud measures taken, in particular with a view to managing the risks of fraud and to prevent fraud:

- The analyses conclude on a general proportionality of measures in relation to the risks identified, at least where the risks are high;

- Managing authorities set up dedicated teams to draw up the fraud risk assessments, with some scope to improve the expertise brought to the process by increasing the involvement of external stakeholders;

- The role of the Commission guidance to help managing authorities assess gross risks is instrumental, to identify mitigating controls and assess net risks, with room for improvement in the way to ensure the reliability of these assessments;

- Some anti-fraud training is organised for staff of programme authorities, of which the extent, relevance and quality varies however greatly;

- Managing authorities use national databases to support assessment and detection of fraud risks, but only a limited number are making systematic use of the Commission's Arachne[33] risk-scoring tool to identify and manage fraud risk at project or programme level;

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[31] For further analysis of the study see developments in Annex 1, REGIO lit. h).

[32] EMPL – Performance Audit of effectiveness of anti-fraud measures in seven Member States pursuant to Article 125.4.c) of Regulation (EU) No 1303/2013.

[33] An overview of the role of ARACHNE can be found here:
http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7883&type=2&furtherPubs=yes; ARACHNE FAQs

- Developed anti-fraud policies include many of the elements recommended in Commission guidance, with sometimes scope to improve the emphasis and communication on 'zero tolerance' approach, including clearer definitions and practical guidance on terms such as fraud, corruption and conflicts of interests;

- As a rule, cases of suspected fraud identified by the sampled managing authorities at the time of the audit are transmitted to the relevant competent authorities for investigation and potential prosecution.

As part of the measures to follow up fraud cases, managing authorities have also implemented arrangements to support appropriate treatment of EU funds in cases of irregularity or suspected fraud, including prompt suspension and/or recovery, depending on circumstances.

However, in as much as the effectiveness of the anti-fraud measures by managing authorities is concerned the audit analyses also a number of areas with a need for further risk mitigation:

- None of the managing authorities visited have currently set targets or performance indicators to help manage and monitor the performance of their anti-fraud measures;

- Most of the external websites of managing authorities contain some information relevant to anti-fraud measures, but some could better emphasise and communicate a 'zero tolerance' approach, and none uses this opportunity to send a strong deterrent message to potential fraudsters – for example by making more explicit indications of the anti-fraud policy, its information on the managing authorities' anti-fraud work, or its success in preventing fraud and providing clearer information for potential whistle-blowers as a means to deter potential fraudsters;

- Some managing authorities do not identify specific responsibilities as owners of action plans, or include specific deadlines for action plans to be implemented – thus limiting their ability to monitor and manage implementation of the relevant counter-measures;

- Internal whistle-blowing arrangements to support detection and reporting of fraud exist, but only a very few included specific assurances of confidentiality and anonymity. Most managing authorities also provide mechanisms for external stakeholders, however virtually none provides them with assurances of anonymity/confidentiality, nor information on how this information would be used; the quality of the training provided to staff, the clarity and practicality of guidance documents can be improved;

- The quality of the training provided to staff, the clarity and practicality of guidance documents can be improved.

- The level (of intensity) of the use of IT tools (such as ARACHNE) and national databases in assessing fraud risks of specific operations and in fraud-detection can be improved.

- Managing authorities have fraud detection processes in place, however, there was often scope to improve these by more explicit coverage of 'red flag' indicators;

- Managing authorities have generally arrangements in place to investigate suspected fraud and transmit cases of fraud to the competent authorities. However, there is less evidence that they have robust procedures to learn lessons from such cases, including reviews of internal control systems, which may have failed, or reviews of the implications of cases for the fraud risk assessment.

2.4   Relevant Special Reports by the European Court of Auditors

In this context, the European Court of Auditors (ECA) has issued in 2019 two special reports on anti-fraud.

The first, more horizontal Special Report No 1/2019 on "*Fighting fraud in EU spending: action needed*"[34], invites the Commission amongst others to put in place a robust fraud reporting system, providing information on the scale, nature and root causes of fraud (recommendation 1) and to achieve better coordination in tackling fraud, ensuring strategic fraud risk management and fraud prevention (recommendation 2). The report also recommends the Commission to intensify its fraud prevention activities, and to urge Member States to make active use of the ARACHNE database to prevent fraudulent and irregular use of EU funds (recommendation 3).

A second Special Report No 06/2019[35] "*Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination*" focusses more specifically on Member States action. The ECA has analysed if managing authorities and Anti-Fraud coordination services in the seven Member States visited have properly met their responsibilities at each stage of the anti-fraud process. Broadly in line with the results of the Commission mandated study and external audit (see above 2.3), this Special Report concluded about clear improvements in the systematic conduct of fraud risk assessments and in the fraud prevention measures over recent years. However, the efforts to detect fraud and the response could be enhanced by a strengthened fraud detection, response and coordination.

The ECA in its second report has issued five recommendations, some addressed to the Commission, a majority to the Member States and a few to the co-legislators on how to achieve better results. In particular, the auditors ask Member States to:

- Develop formal strategies and policies to combat fraud against the EU funds (recommendation 1);
- Make the fraud risk assessment more robust by involving relevant external actors (recommendation 2);
- Improve detection measures by generalising the use of data analytics tools (recommendation 3).

The auditors also ask the Commission to:

- Monitor fraud response mechanisms to ensure their consistent application (recommendation 4);
- Encourage Member States to expand the functions of Anti-Fraud Coordination Services (recommendation 5).

The Court's conclusions and recommendations of the second report on tackling fraud in EU cohesion spending have been accepted by the Commission (for one sub-recommendation partially). They have been further analysed and the Commission replies to these recommendations have been translated into the revised Action Plan associated to the updated JAFS[36] [37].

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[34] https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=48858
[35] https://www.eca.europa.eu/Lists/ECADocuments/SR19_06/SR_FRAUD_COHESION_EN.pdf
[36] See below point 4.
[37] The Council has adopted in August 2019 conclusions on this second special audit report of the Court, taking note of its main results and broadly sharing the observations of the Commission to the findings and recommendations related to cohesion policy. Council conclusions on European Court of Auditors' Special

3. Fraud Risk Assessment

After the review of the actions implemented, stock-taking of the proportionality and effectiveness of anti-fraud measures in Member States, and taking into consideration the recent institutional developments, it was time to update the fraud risk assessment. More details can be found in Annex 1 to complement this section.

Fighting fraud is a shared responsibility between Member States and the Commission. In the first line, managing authorities must put in place effective and proportionate anti-fraud measures. The Commission recommended that reaching this objective requires to carry out a risk assessment[38] at programme level. The Commission helped the authorities in this respect and developed a guidance with a practical, ready to use toolbox to prevent and detect instances or suspicions of fraud.

Under shared management, the following risk features are inherent to the management of Structural and Cohesion Funds and need to be taken into consideration:
- Selected projects are delivered by a multiplicity of organisations and systems in all Member States and involve hundreds of thousands of diverse operations and beneficiaries;
- Programmes set-up their eligibility rules at national or regional level, or at both, adding a layer of complexity to EU-rules and requirements;
- The fraud risk assessments rely on a variety of sources of information.

Whereas fraud is not a widespread phenomenon affecting the majority of the operational programmes, the self-assessment of relevant risks - such as collusive bidding or conflict of interests - by managing authorities leads to conclude that measures in place are not yet for all operational programmes proportionate to identified needs and equivalent. This indicates the need for further administrative capacity building (3.1). Historical data on fraud cases represent a source of information that can be used to enhance the knowledge of risks (3.2). Finally, fraud and suspicions of fraud constitute a reputational risk for the Commission, even where the financial impact on the funds may not be material.

3.1   Need for further progress on anti-fraud and administrative capacity building

Against the background of recent policy debates, the following four risk domains deserve particular attention in an updated anti-fraud strategic framework for shared management:

In a strategic anti-fraud perspective, there is the need to make further progress on administrative capacity building and the use of new detection tools (3.1.1). This includes the targeted involvement

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Report No 6/2019: "*Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination*", see Council Doc. 11752/19, 29.08.2019.

[38] A risk is defined as 'Any event or issue that could occur and adversely impact the achievement of the Commission's political, strategic and operational objective…'. There is a risk of fraud in particular when there is a serious vulnerability in a process, a file and/or a document that may give rise to a potential fraud.

of external actors in procurement and a more systematic approach to anti-fraud prevention and detection throughout the project administration (3.1.2). Specific red flag indicators such as single bidding have attracted close attention. There is a request for further analysis (3.1.3). Other developments concern the increased effort invested into preventing and avoiding the phenomenon of conflict interests affecting national authorities in charge under shared management (3.1.4).

3.1.1   A more systematic approach to fraud prevention and detection: new tools

External analysis has shown that fraud detection processes still need improvement by a more conscious coverage of red-flag indicators, as the analyses performed have yielded. The systematic use of data analytical tools and data mining devices by competent Member States authorities may support prevention and detection of specific risks in the design and in the selection of projects and in the choice of beneficiaries. The analytical device called Arachne is a voluntary preventive risk scoring and detection tool developed by the Commission and provided to Member States authorities cost-free. By September 2019, 20 Member States used Arachne, of which 16 had integrated it into their management and verification processes for at least one operational programme. Four were at the stage of evaluating the tool, they upload on a regular basis new data but the use of the tool is not yet integrated in their management verification procedures. Four Member States were reflecting on whether to use it, 2 of them were performing a pilot test while the 2 other Member States were still waiting for an internal decision. Only four Member States have currently decided not to use the tool.

The use of IT-risk scoring and data mining tools is not yet systematic though. 54% of all European Structural and Investment OPs (232) had their data uploaded in Arachne by the competent Member State authorities, and updated on a regular basis. Uploading data is a prerequisite for making full and efficient use of the tool, but is not enough to detect red flags. A more systematic use is recommended.

Some Member States have started to include more systematically and comprehensively relevant analysis, red flags and risk based information according to specific categories into specific IT tools used to develop a risk based spending approach in practical terms when selection projects and beneficiaries at the level of the managing authorities. Arachne can give programme authorities some indications regarding categories of risks, among which 'concentration' and 'reputational & fraud' are the most relevant. The risk of concentration is particularly interesting to detect possible cases of double funding. The category 'reputational & fraud' can highlight fraud risks and cases of conflict of interests [39] via links between people and companies, using publicly available data. This being said, the scores calculated by the system need, however, to be interpreted with great care as they depend on the use made by the programme authorities. It needs however to be noted that they represent 'red flags' and not by themselves indications of a suspicion of fraud.

3.1.2   Involvement of independent external actors in procurement: multidisciplinary approach and integrity pacts

The external analyses of anti-fraud measures performed do not show evidence that management authorities have multi-disciplinary consultation processes in place to learn lessons from investigation

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[39] See more detailed information in Annex 1, lit e) "Risk categories derived from Arachne risk-scoring tool".

cases. To be efficient, a strategy against fraud requires the involvement of a variety of actors and the definition of a multidisciplinary approach. The relevant actors include not only management and audit authorities. Fraud prevention requires also the sharing of information and experience with other competent stakeholders such as administrative and judicial investigation bodies and prosecution services. The initiatives to involve third parties could also concern the civil society and provide on a targeted basis engagement of relevant independent and competent advisory bodies. This can be done in the form of Integrity Pacts for large projects with a greater public interest and / or with a strategic importance.

Integrity Pacts are agreements between a contracting authority and the companies bidding for public contracts providing for a commitment to abide by standards of integrity, transparency and efficiency. The parties accept for purposes of accountability the monitoring by a civil society organisation, thereby ensuring credibility and legitimacy in the contracting and in the execution phases of the projects. A targeted approach based on volume, visibility and specific risk exposure of projects should be designed. So far, the launching of 17 Integrity Pacts has been overall successful and has shown some first important results, like spotting and avoiding potential irregularities, helping contract authorities in handling public contracts in accordance with the regulatory framework and, last but not least, identifying and signaling potentially harmful and illegal practices before the procurement is concluded. Other, more flexible set-ups should be considered as well, to allow for the implementation of these principles on a larger scale and to achieve a wider citizen engagement, without delaying to an important extent the adoption of the projects and the commitment of funds.

3.1.3 Awareness of specific risk indicators in the area of procurement: e.g. single bidding

The above-mentioned external analyses on implementation of anti-fraud measures point at a need for more explicit coverage of red-flag indicators in the fraud detection process. Specific risk indicators may help to identify gaps in the transparency, open character and competitive nature of procurement procedures and practices. Single bidding in public procurement is a practice, which finds in the individual circumstances different explanations. However, it raises a need to be vigilant in any procurement procedure.

Single bidding is a multi-faceted phenomenon with a variety of possible explanations, including the state of the market, availability of contractors, proportion of EU funds in public spending, etc. It however raises doubts about an effective organization of the procurement process and calls upon improved administrative capacity building of procurement entities and the need to address the risk of corruption and lack of competition. This risk inherent to widespread single bidding may be affecting many EU regions[40]. With a view to look more in depth into the possible implications of single bidding from the point of view of cohesion policy funding, REGIO therefore commissioned a targeted study[41] on single bidding covering ten selected Member States.

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[40] Commission, Seventh Report on Economic, Social and Territorial Cohesion, 2017, chapter 4 para. 3.6. See also summary data in Annex 1 REGIO lit.d).

[41] Study by M. Fazekas, Single Bidding and Non-competitive Tendering Procedures in EU-Co-funded Projects. Scope and Explanations, The report was published in May 2019: https://ec.europa.eu/regional_policy/en/information/publications/reports/2019/single-bidding-and-non-competitive-tendering

Single bidding, especially when it becomes systemic in a Member State, is a red flag for possible mistakes or integrity problems in the implementation of public procurement procedures. REGIO thus considers reinforcing its efforts to enhance integrity in public procurement and undertake efforts to further increase administrative capacity. The follow-up to the single bidding study is being discussed within the Commission, with the aim to achieve more systematic and complete transparency on the practices of contracting authorities.

3.1.4   Prevention and detection: Conflict of interests

The prevention and avoidance of situations of conflict of interests is also of a major importance and concern to achieve fair competition, transparency and equal treatment, even beyond public procurement. The early prevention and effective detection of situations, which may lead to a perception of a conflict of interests, is not systematically a fraud issue. However, initiatives must take into account possible risks of fraud related to such conflict of interests. It is paramount for the development of the appropriate Member States' administrative capacities. Further initiatives to prevent situations of conflict of interests are needed to achieve a compliant and efficient organization of public procurement processes. Their avoidance is a condition to reach the objectives of integrity and sound financial management in public administration.

The 2018 revised Financial Regulation provides explicitly in its article 61 that also national authorities implementing the budget under shared management need to take appropriate measures such as to prevent and avoid any action, which may bring the interests of financial actors, at any level, into conflict with those of the Union. As a follow-up, specific initiatives have been launched. A survey among Member States was conducted by BUDG together with awareness raising initiatives on the treatment of conflict of interests to assess the need for action and appropriate update guidance.

REGIO, EMPL and MARE at sector specific level are monitoring to secure that the appropriate prevention measures to implement the new provisions are in place. REGIO, EMPL and MARE auditors have included in their 2014-2020 early preventive system audits and for the implementation of compliance audits, relevant questions about the actions taken by managing and by audit authorities to prevent and properly address situations, which may objectively be perceived as a conflict of interests. Since the beginning of 2019, REGIO together with EMPL and MARE has undertaken further targeted audit missions in some Member States to control specific situations, which may lead to a perception of a situation of conflict of interests. In the revised Enquiry Planning Memorandum 2019/2020 REGIO plans based on its new audit strategy, to undertake further thematic audit missions on the prevention of conflict of interests. The other DGs will await the guidance to be issued by DG BUDG and determine the course of action once further detail is provided in that guidance on the various situations that could occur in respect of CoIs.

3.2 Analysis based on updated findings, facts and figures - Sources of risk assessment

It needs to be stressed that fraud is not widespread, systematic and present in every transaction checked. As indicated in the Fraud Risk Assessment accompanying the recent CAFS[42], out of roughly 1 000 examined transactions per year, the European Court of Auditors found suspected fraud in 11 cases in 2016, down from 27 in 2015[43]. Compared to amounts spent, the proportion of fraud in the above detection statistics remains limited.

However, this assessment needs continued close monitoring. Member States can become aware of fraud risks based on their own information and investigations, on OLAF reports, or from European Commission audits. A quantitative and qualitative updated risk assessment must use all available figures, statistics and findings about the occurrence of fraudulent practices in the reporting by national authorities (3.2.1), relevant investigations with financial recommendations of OLAF (3.2.2) and in audits carried out by the Commission Directorates general and audit authorities (3.2.3).

3.2.1 Member States reporting of fraudulent irregularities

The overall **fraud detection rate** for Cohesion policy and Fisheries according to the latest PIF report[44] is 0,47% of the payments for the period 2007-2013 and 0,86% for the period 2014-2020 (including 2 outstanding cases for SK which modify the results upwards). These rates signal that the fraud risk remains largely constrained, even if all fraudulent irregularities must be prevented, detected and corrected. For 2014-2020, this rate will still change with the payments to be done until the end of the period and it is too early to draw conclusions.

The 2018 PIF report further analyses **the domains in which most fraudulent irregularities** are detected and reported (by amounts for 2007-2013)[45]. It refers to significant increases in the number of cases related to incorrect/missing or false documents, infringement of public procurement rules and ethics & integrity. The spending priorities most concerned are Research and technological development (8,6%), increasing the adaptability of workers and firms, enterprises and entrepreneurs (9,7%), and improving access to employment and sustainability (9,5%)[46]. The thematic priorities tourism (1,4%) and urban and rural regeneration (0,9%) stand out in terms of fraud detection rate[47]. For 2007-2013, fraudulent irregularities, which affect issues of ethics and integrity (covering namely conflict of interest irregularities), were also more frequently reported.

At least as much as they may indicate an objective fraud risk affecting the respective spending priorities, these reporting statistics reflect also the efficiency of detection efforts deployed at managing level. Prevention efforts should continuously focus on these fraud-prone areas.

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[42] COM(2019) 196 final - SWD(2019) 170 final of 29.4.2019

[43] 9 cases were reported to OLAF by ECA in 2018 out of 728 transaction audited (=1,2%); out of these OLAF considered the need to open investigations in two cases, ECA Annual Report, point 1.42, OJ C 340, 8.10. 2019, p.28.

[44] 30th Annual Report on the protection of the European Union's financial interests – Fight against fraud – 2018, (PIF= "Protection des Intérêts Financiers"), COM(2019) 444 final of 11.10.2019 : https://ec.europa.eu/anti-fraud/sites/antifraud/files/pif_report_2018_en.pdf

[45] Para. 4.3.2.1. See also table Annex 1, lit a).

[46] Frequency of irregularities reported as fraudulent as compared with all irregularities reported.

[47] % of amounts of fraudulent irregularities detected as divided by amounts decided for the same priority.

The PIF report contains information on **the main sources of detection** of fraudulent irregularities. Risk analysis and comparison of data do not figure prominently here, showing that more can still be done here to detect fraud at the level of national authorities. This was also confirmed by the recent study and the ECA audit (see above point 2.4).

3.2.2   OLAF activity since 2015 as a source of DGs risk assessment

The recent OLAF activity reports give some additional indications of risk tendencies. The 2018 report[48] refers to examples of setting up fake companies to obtain EU-funds and to disguise business transactions. The number of cross-border cases investigated is increasing. ERDF cases include collusion between beneficiaries and contractors in public procurement, inflated and false invoices and use of shell companies[49]. The report for 2016 mentions public procurement fraud — facilitated for example through corruption, irregular or fictitious subcontracting or the use of offshore accounts — as the most important focus of OLAF investigations. Recent reports also highlight plagiarism, fraudulent double funding, falsification of CVs and timesheets and creating bogus subsidiaries or hiding links between companies as frequent fraud patterns[50].

OLAF also identified recurrent modi operandi in Cohesion policy[51]. Examples include false or falsified supporting documents, various types of public procurement fraud, intentionally claimed ineligible expenditure and undisclosed conflict of interests in the implementation of the funds.

(a) ERDF, CF, EUSF, IPA and IPA-CBC expenditure concerned in transmitted OLAF cases

The **number of OLAF cases in follow-up** gives a certain indication of the risky fields and programmes.[52] OLAF investigations are opened based on all types of sources, REGIO, EMPL, MARE transmissions, as well as other public and private sources, including whistleblowers or press articles. Investigations are dependent on the existence of sufficient suspicion. OLAF opens investigations based on priorities and whether OLAF is best placed to investigate. Another parameter is the amount of EU funds affected. An ad hoc analysis has been carried out in REGIO of the complete (2007 – 2013) data of OLAF cases affecting ERDF/CF projects and in which the final OLAF report is accompanied with a financial recommendation. The present assessment is based on the analysis of 140 such cases. It needs to be stressed that not in all cases in which OLAF issues financial recommendations the investigations have yielded findings of fraud or other criminal conduct. Financial recommendations may sometimes also be based on findings of irregularities without evidence of fraudulent intention. The OLAF cases and financial recommendations have been analysed by domain, type of irregularity and more particularly procedures and tendering phases concerned.

Based on OLAF investigations concluded in cases affecting ERDF/CF funded projects within the responsibility of REGIO, the **highest fraud risk concentrates in the domain of Infrastructure** (43%),

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[48] OLAF Report 2016, pp. 15-18: https://ec.europa.eu/antifraud/sites/antifraud/files/olaf_report_2016_en.pdf
See also OLAF Report 2017, p. 14, referring to collusion and conflict of interest.
[49] The OLAF report 2018, published September 2019:
https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2018_en.pdf
[50] OLAF Report 2016 (see previous footnote), pp. 10, 18; OLAF Report 2017 (see FN 21), pp. 17 19
[51] See also Information note on fraud indicators for ERDF, ESF and CF, COCOF 09/0003/00-EN of 18.2.2009
[52] See on "Investigation data based on OLAF cases" some additional explanations in Annex 1 lit.c).

followed by Research & Development projects and IT (15% and 12% respectively). Half of the cases (50%) concern **public procurement**.

- *Affected domains*: 60 cases (43%) concern **infrastructure**. This is the largest risk area, followed by Research & Development (21 cases, 15%), Information technology (16 cases; 12%) and environment (13 cases; 9%).

OLAF cases by domains 2007-2013 PP Cut-off date 30/08/2019
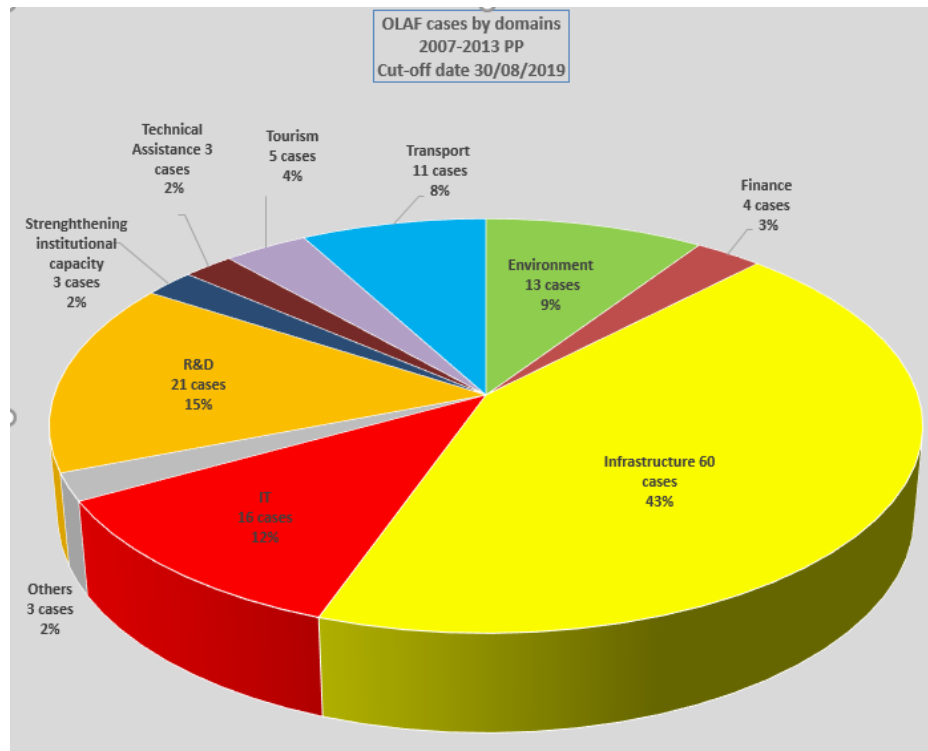
- *Types of irregularities and procedures concerned*: 70 cases (or 50%) concern the **violation of public procurement rules**. The second most frequent type of illegal conduct is irregular expenditure (18 cases; 13%), followed by falsified documents (14 cases; 10%) and conflict of interests (12 cases; 9%).

OLAF cases by Typology
2007-2013 PP
Cut-off date: 30/08/2019

Violation EU laws
2 cases
1%

Collusion/Cartels
2 cases
1%

Conflict of interest
12 cases
9%

Corruption
3 cases
2%

Double funding
2 cases
1%

Falsified documents
14 cases - 10%

Irregular expenditures
18 cases
13%

Pub. Proc.rules not
respected
70 cases
50%

Overpricing:
8 cases
6%

Irregularities with
beneficiary
1 case
1,5%

Objectives voluntarily not
met
1 case
1,5%

Others
6 cases
4%

This is why the Commission has carried out a more detailed analysis in this domain breaking down risks in pre-tendering, tendering and post-tendering phases, with different types of fraud.

Tendering phases: The in-depth analysis of public procurement cases for 2007-2013 leads to further findings in each of the tendering phases (before/during/after award). The assessment shows the following results:

In the **pre-tendering** phase (37% of the OLAF public procurement cases), the main type of illegal conduct is the use of unlawful or discriminatory selection or award criteria by the contracting authority which accounts for 27%, followed by discriminatory technical specifications (23%) and conflict of interests (19%).

In the **tendering** phase (50% of OLAF public procurement cases), conflict of interests and discriminatory evaluation of tenders by the evaluation committee both account for 23% of cases, followed closely by lack of transparency and equal treatment (21%). Falsified documents/missing information represent 15% of cases and corruption/bribery/collusion total 9%.

In the **post-tendering** phase (13% of OLAF public procurement cases), the main type of fraud concerns projects where the tender conditions and objectives are intentionally not respected at implementation, or not achieved (34%). Substantial modification of the contract/tender specification and reduction in scope both account for 22% of cases. Conflict of interest is also present in this phase, representing 11%, like the award of additional works/services contracts without competition.

Other specific projects covered by OLAF investigations include cross-border and transnational programmes which are managed as regional or national programmes. They can present specific risks linked to their structure and nature. The analysis of OLAF cases covering these programmes reveals that from 14 cases investigated, eight have led to financial recommendations (of which only one is

still in financial follow-up). [53] For the eight finalised investigations, illegal activity was mainly committed through infringement to public procurement rules, irregular expenditure or falsified invoices/timesheets. Concerning the Solidarity Fund (EUSF) addressing specific emergencies, the risks are considered low based on OLAF investigations. Only one case gave rise to a recommendation. [54]

The occurrence of risks in indirectly managed pre-accession programmes (programmes with candidate countries, namely IPA and IPA-CBC) has also been analysed. From the four OLAF cases concerning these types of programmes, only one has led to recommendations by OLAF.[55] A risk to be scrutinised is the occurrence of conflict of interests. IPA-CBC programmes can involve numerous partners.

(b) Risk assessment for ESF, EGF, YEI, FEAD

In line with OLAF's methodology and guidance(s) for DG's anti-fraud strategies, DG EMPL has carried out a comprehensive fraud risk assessment of its main activities under the shared management mode.

The evaluation of **OLAF cases currently in follow-up** provided the following picture (the data covers ESF, EGF, YEI and FEAD):
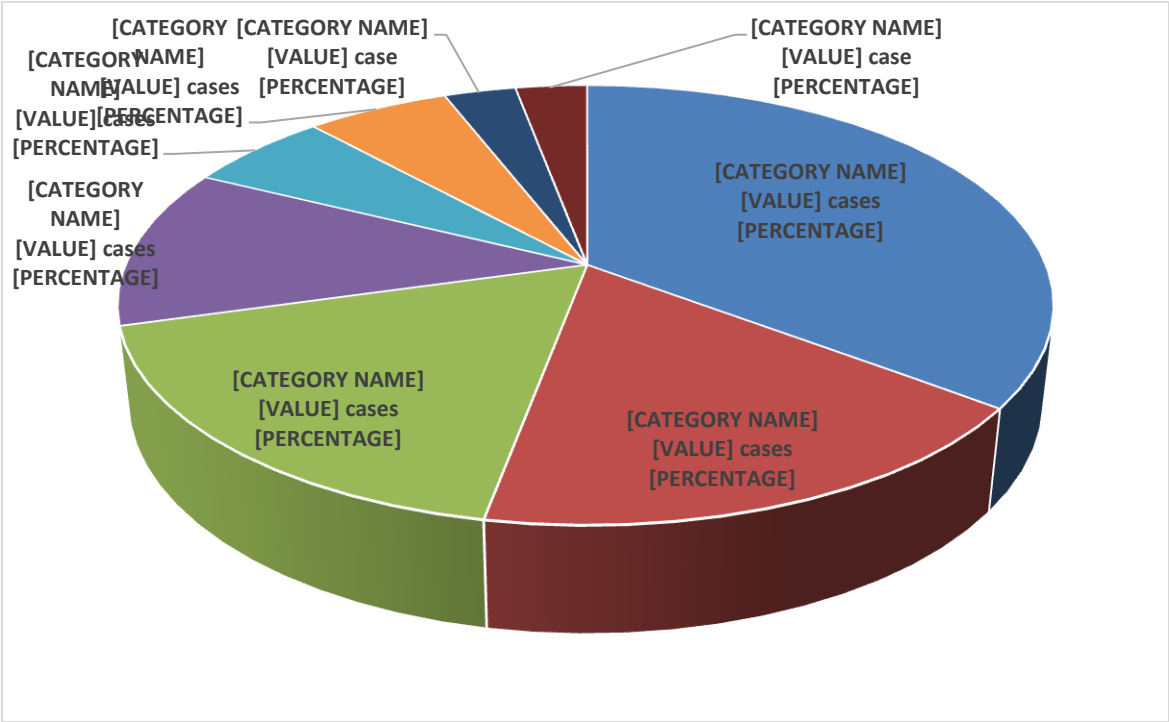
The results of the fraud risk assessment exercise mainly identified fraud risks in the following areas:

Ineligible costs in grant award procedures: Already at the design stage of the award of grants, care must be taken to avoid collusion with third parties with a view to attribute grants to these third parties. In addition, fraud attempting to get ineligible expenditure accepted and reimbursed is and will continue to be an important challenge taking into account the large number of grants awarded

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[53] Six cases are currently under investigation by OLAF and a final case report is not yet available.
[54] Audits carried out by the Commission on the EUSF interventions have not resulted in findings.
[55] Three cases are currently under investigation by OLAF.

by the ESF. This includes claiming fictitious deliverables (e.g. on the number of participants, unit costs, outputs, results, etc.) to obtain higher amounts of funding.

Although the ESF and FEAD are mainly managed through grants, **undue influence in procurement procedures**, be it 'pressure' to award contracts to a particular tenderer or to avoid tendering procedures in favor of direct awards or bid-rigging are existing challenges that will continue to be important targets for anti-fraud measures. A particular challenge here is to be able to distinguish fraud from irregularities, which lack the element of intention, as is the case with fraud.

Conflicts of Interests remain an area for concern, be it in the area of grants or public procurement. Although several important steps have been taken, as mentioned in section 3.1.4 above, prevention and detection of potential situations of conflict of interests will remain an important area for action.

(c) Relevant fraud risks identified for EMFF

MARE has based its Fraud Risk Assessment on the experience gained since the beginning of the current programming period. The data gathered and analysed for this exercise includes Commission audit experience, irregularities reported by the audit authorities in SFC 2014, irregularities reported by different national authorities in the IMS system, and 13 OLAF fraud cases.

The analysis shows that the risk of fraud is mainly linked to ineligible projects and/or expenditure, inadequate methodology for Simplified Cost Ooptions or their incorrect application (although under the EMFF there is limited use of SCOs) and beneficiaries who are ineligible for the EMFF funding received.

3.2.3 Further risk assessment based on audits of the DGs and audit authorities

In addition to data based on reporting of cases of irregularities by Member States authorities and fraud communicated to the Commission (OLAF), the 3-shared management DGs (REGIO, EMPL, MARE) conduct their own fraud risk assessment independently and separately. Even if their auditors are not primarily responsible for investigating fraud, they may identify and assess fraud risks through performance of suitable audit procedures. They take into account the particularities of the funds under management and their knowledge of the policy area. Although shared management Directorates general share the same Regulation, some risks are specific or more predominant in some areas. [56] Relevant detection fraud risks are identified in the common Single audit Strategy.[57]

For 2014-2020 audit findings from REGIO and EMPL are recorded in the IT tool "MAPAR". Findings from audits specific to fraud and irregularities refer to the shortcomings in the fraud-specific system requirements. Key Requirement (KR) N°7 concerns the anti-fraud environment and effective and proportionate anti-fraud measures put in place. Since 2016, a total of 12 EMPL audits and 22 REGIO audits have covered the KR 7. Findings do not yet cover all Member States.

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[56] Further details per DG are presented in Annex 1.

[57] See point 3.2.5 Single audit Strategy [draft update 2019], including risks e.g. due to the limited period of keeping supporting documents.

From 2016 to 2018, 15 audit missions carried out have revealed 22 findings in KR 7. The majority (17) was evaluated as 'important', four as 'very important' and one as 'critical'.

From 2017 to 2019, eleven DG MARE audits covered the KR 7, out of which 3 revealed critical findings.

The findings cover different types of fraud-specific systemic risks. These include:

- no/incomplete procedures to avoid conflict of interests,
- anti-fraud action plan not fully implemented or in need to be improved,
- need to improve the Fraud Risk Assessment,
- no integration of Arachne in the Management and Control systems,
- not enough users can access Arachne, lack of implementation because of technical limitations,
- lack of specialised training for the department dealing with irregularities, fraud prevention module only partially working, insufficient possibilities to check companies outside the Member States,
- the procedures of the MA are not tailored to incorporate proportionate anti-fraud measures,
- weaknesses in detection and reporting mechanisms for red flags, lack of training to monitor red flags,
- lack of confidentiality in the whistle-blowing procedure.

To mitigate these risks, the findings identified by auditors are systematically being followed-up. The Management and Control Systems are monitored throughout the period. 10% retention on each payment claim, combined with the new financial system in place (i.e. annual examination and acceptance of accounts and analysis of legality and regularity) allow to financially covering any serious risks of fraud. In addition to fully tackle the systemic issues, in particular in case of a perception of conflicts of interests, several actions are recommended in the audit reports based on relevant findings:

- increase transparency by using the E-procurement process,
- better targeted and risk-based management controls,
- mandatory declaration of "absence of conflict of interests" from the decision makers,
- use of different risk assessment and IT tools (including Arachne) to identify the possible connections and check the holding structure, focusing on the companies involved in the project under investigation.

For their fraud risk assessment, REGIO, EMPL and MARE have therefore also considered the Member States' specific situation determined (inter alia):

- by the results of the verifications carried out by national and Commission auditors on the extent to which effective internal controls are present and function reliably (the effectiveness of the management and control systems and the reliability of the systems for certification of expenditure in the Member States).
- by their knowledge of the risk of fraud (re-)occurring in certain Member States as evidenced e g through OLAF's and national investigations.
- by the general level of fraud risk regarding disbursement of public funds in a given Member State;
- by the amounts managed by Member States and the potential incentive to try to capture part of these amounts for vested political and private economic interests;

- by the degree of prevalence of corruption (e g bribes, kickbacks and absence of measures to prevent, detect and remedy situations of conflict of interests) in a given Member State[58].

These risks need to be further scrutinised and their development monitored with a view to help concentrating the limited available management and control resources for fraud prevention and detection on the most risky areas. In the recent past, structured and targeted actions have already been implemented with a view to public procurement capacity building in the Member States and enhancing their management and control systems to increase the capacity to prevent and detect fraud. It should be monitored whether this has an impact on the type and frequency of procurement cases.

However, taking into account the new anti-fraud provisions for 2014-2020 to be implemented by Member States,[59] the fraud risk assessment carried out by the DGs for their shared management area enables them to identify the Member States, regions or programmes which are particularly vulnerable to fraud and/or where national authorities are not taking sufficient action to mitigate the risks through reinforced management and control systems. Moreover, the potential transnational aspects of fraud and corruption in Cohesion policy need to be fully analysed. Objectives and actions under the JAFS should be oriented accordingly but must also take into account resource limitations and cost-effectiveness.

4.   A joint revised Action Plan 2020 – 2025

Based on information, results and evidence collected in the fraud risk assessment, further mitigating action to provide effective and proportionate anti-fraud measures is needed to contribute to a robust general assurance environment. Member States have the primary responsibility to take action to address the risks of fraud identified in the implementation of Cohesion programmes under shared management. The Commission has a duty to intervene in their support to further mitigate the identified fraud risks.

During the process of revising the sectorial JAFS, the new contextual developments have been taken into consideration. The JAFS' objectives comply with the objectives outlined in the Commission overarching strategy (CAFS) and its accompanying action plan. The assessed past actions and initiatives contribute to the anti-fraud objectives of prevention, detection and correction. A high number of measures have been implemented with effective results as illustrated in section two and in table 1 (see annex). This assessment is confirmed by the stocktaking study and the external audit on Member States' compliance with the regulatory provisions in the CPR.

In the second stage of the process, the fraud risk assessment has listed in section three continued risks, using qualitative and quantitative data at our disposal. Measuring the occurrence of fraud is not an exercise where complete information is available. However, all available information was gathered in this process by the three DGs, with some priority areas identified.

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[58] The three DGs used the CPI when selecting the Member States in which anti-corruption and anti-fraud seminars were organised in 2014-2015, with the assistance from OLAF and Transparency International and in view of helping them to prepare for the start of the financial period 2014-2020. See Annex 1, lit. f).

[59] Member States system audits allow to have a larger coverage of ESIF programmes.

The risks that are currently not yet sufficiently addressed are covered with this revised action plan. Targeted action on specific aspects is needed. The objectives pursued and actions proposed are outlined below. In a continuity with the previous JAFS from 2015, some basic actions in the fight against fraud will therefore be continued, some others fine-tuned to reply to more precise needs identified.

Some require action by the Member States and others are rather internal to the Commission. The action plan contains baselines and indicators of progress where possible/measurable.[60] It should, however, be kept in mind that in the field of anti-fraud, it is not always possible to precisely measure the success of an initiative[61]. At the end of the implementation of the JAFS, the three DGs should have obtained a more advanced knowledge of fraud risks in the Member States. No overall indicator has been elaborated as regards the estimated impact of the JAFS on fraud and corruption levels in the Member States since such an impact would be impossible to estimate and interpret. This is because:

a) the JAFS is not the primary driver of anti-fraud policies and actions in the Member States but rather complementary; It is a tool designed for the Commission to support Member States in their anti-fraud efforts.

b) it would be impossible to isolate and measure the impact of JAFS on the prevention and detection of fraud cases in the Member States as opposed to the estimated impact of national anti-fraud measures or the combined impact of both EU and national efforts.

The DGs will continue to report on the results of the JAFS 2015-2020 and 2020-2025 in their respective annual activity reports.

Training, the issuing of guidelines, financial and technical support to Member States are effective measures. However, the precise impact on fraud prevention of the initiatives cannot be quantified. Similarly, the increase of the fraud detection rate is difficult to demonstrate, as it depends on the reporting by Member States' authorities, and on how systematic they are in sharing data on their fraud cases once detected.

The three Directorates General will continue the dissemination of information on fraud prevention within their services and to Member States' competent authorities. This includes the exchange of good practices, in particular through the implementation of the updated Public Procurement Action Plan designed to improve compliance of public procurement procedures in cohesion policy, and to assist the development of more professional skills of procurers of contracting agencies.

The revised JAFS action plan for funds under the responsibility of REGIO, EMPL and MARE, is extended to **2025**, to cover until the end of the current programming period (2014-2020), as the eligibility period for programmes ends on 31 December 2023 and closure is expected by 2025 (with the last annual accounts foreseen in February 2025). At the same time, this extended lifespan will also cover the start of the next programming period (2021-2027). A revision of the JAFS, will thus be possible if judged necessary, when more experience will be obtained on the implementation of the 2021-2027 programmes.

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[60] Managing authorities follow a more structured and formalised approach and have to some extent developed anti-fraud policies, including the elements recommended in the EC guidance. But they still miss monitoring of effectiveness with clear targets and performance indicators and a set of actions against a time line.

[61] See Commission replies to ECA findings in special report No 6/2019 on tackling fraud in cohesion, and in particular to recommendation 3(c).

4.1 Actions to support the Member States in the implementation of anti-fraud measures

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Action N°1: Support Member States in further administrative capacity building in the field of fraud prevention and detection

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Needs identified:

Member States' authorities in charge of anti-fraud measures have put in place a number of relevant measures for fraud prevention and detection. However, there is continued room and need for improvements. Managing authorities should strive to systematically report fraud suspicions to national criminal and judicial authorities and systematically assess the wider implications of fraud cases uncovered in their programmes.

Objective:

The **objective** is to actively support Member States' authorities in their administrative efforts to implement efficient and appropriate anti-fraud measures. To this end, it is necessary to reach a broad audience, going beyond usual training activities, such as to ensure a better understanding of the level and nature of fraud risks in ESI Funds.

Outputs, responsible unit(s), baseline, indicator and timing

1. As a follow-up of the stocktaking study on Member States' implementation of effective and proportionate anti-fraud measures, the Commission intends to offer new capacity building measures to authorities in Member States.

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
An e-learning module and a toolbox on how to prevent and detect fraud and corruption in ESI funded projects is to be developed by an external contractor. The e-learning will cover the basic knowledge needed for staff that are new to the field of fraud and corruption, whereas the toolbox will provide practical and real case examples also useful for experienced staff. The learning material will be provided in several EU languages.	REGIO.E1 – capacity building	Cfr. analytical outcomes of the 2018 study and compendium	E-learning module and toolbox in place	15 months after the signature of the contract

2. Template letters used for the follow-up of OLAF reports will be updated to remind managing authorities of their obligations to report fraud and assess wider implications of fraud cases uncovered.

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Update of template letters used by REGIO, EMPL and MARE for the follow-up of OLAF reports to include a paragraph on the obligations of the Managing Authorities to systematically report fraud suspicions to the national criminal and judicial authorities (on top of IMS) and to assess wider implications of fraud cases uncovered in their programmes.	REGIO.C1 – audit coordination EMPL.G1 - audit coordination MARE.E1 - Budget, procurement and control ASSOC: REGIO.02 – Better Implementation	Existing template letters	Updated template letters in use in the DGs	2020

3. The Commission will continue to produce or update guidance, best practices on relevant topics, offer training, encourage sharing of good practices, exchange with the Member States on anti-fraud policy and systematically invite in particular OLAF to EGESIF meetings, Annual Control Meetings and Technical Meetings with audit authorities. [62]

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
3.1 Update guidance on anti-fraud for Member States where necessary. Dissemination of information for fraud prevention purposes. For example on Conflict of interests, based on BUDG mapping exercise. Also on Fraud Risk Assessment and new risks identified.	REGIO.C1 – audit coordination REGIO.E1 - capacity building EMPL.G1 - audit coordination MARE.E1 - Budget, procurement and control ASSOC: REGIO.02 – Better Implementation	3.1 Existing guidance	3.1 Recommendations to Member States to involve external actors in a fraud risk assessment	3.1 2020-2021
3.2 Provide training and information on anti-fraud issues to Member States in EGESIF meetings, Annual Control Meetings (ACM), Technical Meetings (TM) with AAs, Monitoring Committees (MC). Training sessions can also be delivered in cooperation with external contractors where deemed more efficient.	Desk Officers in Monitoring Committees Auditors in Annual Control Meetings, Technical Meetings with AAs	3.2 Existing trainings and meetings	3.2 Number of trainings and meetings per year	3.2 Several times during the year and on specific occasions like ACM, TM, MC

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[62] See also Action No 39, Action plan accompanying the CAFS, SWD (2019) 171, 29.4. 2019.

Need identified:

The Member States are still insufficiently using data-mining and risk-scoring tools to help them prevent and detect fraud. Risks such as conflicts of interests, collusion, single-bidding, double-invoicing, falsified documents or statuses are difficult to detect based on isolated paper documents. Programme authorities should make systematic use of data-mining and risk-scoring tools when selecting projects and beneficiaries, when verifying expenditure or when preparing for audits. To increase fraud deterrence, the use of exclusion databases by programme authorities during the selection procedures also needs to be considered.

Objective:

The **objective** is to achieve a more effective detection of anomalies in the selection and implementation phases, which could constitute red flags and might need further investigation, through highlighting of recurring illegal patterns.

Outputs, responsible unit(s), baseline, indicator and timing

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Increase the systematic use of ARACHNE or alternative data-mining tools available at national level[63]. Member States should be encouraged to use exclusion databases such as EDES when selecting beneficiaries of their programmes. Commission auditors to use Arachne more systematically when preparing their audits.	EMPL.G1 - audit coordination EMPL.G2 – Audit Shared Management I ASSOC: REGIO.C1 – audit coordination REGIO.C2 – audit I (and all REGIO auditors) Desk officers from REGIO and EMPL	1.722 active users 12.541 connections 54% of all OPs use Arachne (3Q19)	1.850 active users 14.000 connections 60% of all OPs use Arachne	During the whole period covered by JAFS

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[63] Reference to Action N° 4 of the CAFS Action plan on ARACHNE

Needs identified:

Recent stakeholder contributions have emphasised the importance for Member States to adopt anti-fraud strategies and/or managing authorities to adopt anti-fraud policies as a strong statement of their intention to fight fraud. For Member States, which have not yet adopted a National Anti-Fraud Strategy, managing authorities should develop anti-fraud policy statements at programme level, showing to the beneficiaries their strong commitment to fighting fraud affecting ESI funds.

Objective:

In this frame, the **objective** is to strengthen processes for the involvement of external competent public service and civil society actors in the management procedures for purposes of a more efficient fraud prevention and detection.

Outputs, responsible unit(s), baseline, indicator and timing

1. Encourage Member States to adopt National Anti-Fraud Strategies (NAFS) as a priority. Whilst awaiting the adoption of a NAFS, encourage national authorities to adopt anti-fraud policies and statements at programme level[64].

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
At national level, 11 NAFS have been adopted. This process is supported and monitored by OLAF.	For NAFS support: OLAF	Number of NAFS adopted: 11	Number of NAFS adopted	On-going (no deadline)
At the level of programmes, shared management DGs will strive to encourage programme authorities to adopt an anti-fraud policy or statement. This can be done via a communication in EGESIF meeting, Monitoring Committee meeting and/or letter addressed to MAs.	For OP level policies: Geographical units managing shared management OPs from REGIO, EMPL and MARE ASSOC for monitoring: REGIO.02 – Better implementation REGIO.C1 –	Number of Anti-fraud policies adopted: unknown at end 2019	Number of Anti-fraud policies adopted: to be monitored through a survey by 2025	In time for the adoption of the 2021-2027 programmes

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[64] See also Action No 37, CAFS Action plan, SWD (2019) 171.

	audit coordination
	EMPL.G1 - audit coordination
	MARE.E1 - Budget, procurement and control

2. Encourage Member States to analyse the specific situation and risks in each programme and as necessary to involve external competent actors since the fraud risk assessment and later in the public procurement procedures. Special police services, investigative and judicial bodies have a specific knowledge about the relevant criminal conduct in a country. They can contribute to identify fraud risks. They should be involved more systematically in the process[65].

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Communication in EGESIF meetings, Monitoring Committee meetings and/or letters addressed to managing authorities on the involvement of external competent actors.	Geographical units managing shared management OPs from REGIO, EMPL and MARE ASSOC for monitoring: REGIO.02 – Better implementation REGIO.C1 – audit coordination EMPL.G1 - audit coordination MARE.E1 - Budget, procurement and control	Results from the 2018 study on anti-fraud measures and ECA audit N°1/2019	Number of communications made, letters sent to national authorities	In time for the adoption of the 2021-2027 programmes

3. Integrity Pacts can also enhance transparency in public procurement procedures for high value contracts. The pilot-project for Integrity Pacts will run until the end of 2021. REGIO is considering how to build on and utilise the experiences from the pilot, allowing all programme authorities to learn from this process. REGIO will continue to promote the involvement of the civil society in Cohesion Policy implementation in order to increase transparency and public demand for

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[65] See also Action No 42, CAFS Action plan, SWD (2019) 171.

accountability of EU funds spending. REGIO will also advocate increased use of open data on public procurement[66].

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Continued support for capacity building, including targeted use of Integrity Pacts and promotion of the involvement of the civil society in Cohesion Policy implementation on specific priority programmes in need for further action on capacity building	REGIO.E1 - capacity building in cooperation with unit C.1 ASSOC: EMPL.G1 - audit coordination	Number of Integrity Pact pilots finalised – 1 (2019);	Number of Integrity Pact pilots finalised by 2025	Continued action over implementation period and as much as possible in time for the adoption of the 2021-2027 programmes

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[66] See also Action No 41.

4.2   Internal measures for Commission services

Action N°4: Enhance the anti-fraud knowledge and increase cooperation among DGs

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Need identified:

It is essential that the DGs keep a high profile on anti-fraud action and maintain the right tone at the top. During the past couple of years, the collaboration with OLAF was stepped up and resulted in better mutual understanding. Relevant information should be appropriately and systematically shared between DGs (e.g. after missions). REGIO, EMPL and MARE together with their counterparts in the Member States need to have up-to-date knowledge of emerging trends to perpetrate fraud, and on ways to prevent and detect such new types of fraud. This is also included in the CAFS.

Cooperation with consultancy and academics, commissioning of external studies and attending anti-fraud conferences, also helps to be up to latest developments in fraud-detection techniques and contributes to a better analysis of fraud.

With the creation and setting-up of EPPO[67], usual communication channels on fraud cases might change. The EPPO will become operational at the end of 2020. This updated JAFS is without prejudice to possible modifications to reflect this new institutional set-up. As appropriate, and taking into account the outcome of the current reform of the OLAF Regulation[68], REGIO, EMPL and MARE will however continue to use existing communication channels in place with OLAF to report cases of suspicion of fraud and other illegal conduct. [69]

Objective:

The **objective** is to further strengthen the structured and systematic exchange of experience and information with other services dealing with fraud and corruption, and in particular with OLAF, but including as appropriate also other DGs (e.g. HOME on aspects of corruption) which are facing similar good performance issues and challenges (two-way processes).

Outputs, responsible unit(s), baseline, indicator and timing

1. Organise regular meetings with counterparts from selection, policy and investigative units with the aim to enhance the available statistics about fraud cases in cooperation with OLAF. Further improve practical work processes with regard notably to handling of investigative documents in electronic format.

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[67] The European Public Prosecutor's Office

[68] Regulation (EU, Euratom) No 883/2013, OJ L 248, 18.9.201, p.1. The European Parliament adopted its first reading report on the Commission proposal on 16.4. 2019, http://www.europarl.europa.eu/doceo/document/TA-8-2019-0383_EN.html?redirect

[69] See article 24 (1) of Regulation 2017/1939 on setting up the European Public Prosecutor's Office, related to transmission of information about criminal conduct within the competence of the EPPO. See also Recital (51) on use of existing information channels.

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Organise yearly and ad hoc meetings with counterparts in OLAF investigative units to adjust procedures and exchange on general issues. Regular meetings during the investigations and other meetings to clarify aspects (e.g. electronic, paperless SECEM transmission of documents in an exchange on OLAF files) and train colleagues[70].	REGIO.C1 – audit coordination EMPL.G1 - audit coordination MARE.E1 - Budget, procurement and control ASSOC: OLAF.01, OLAF.B3-B4-B5, OLAF.D2	Yearly and ad hoc meetings with competent OLAF units. Statistics available on OLAF cases[71]	Number of meetings per year Statistics available on OLAF cases	During the whole period covered by JAFS

2. Collaboration with academics in the form of studies, reports and useful presentations on a varied number of topics. Information gathered on anti-fraud issues can be shared where relevant with Member States on SFC, InfoRegio, Circabc.

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Targeted studies and cooperation with academics active in the field of fighting fraud and corruption, data analysis. Regular presence at conferences or seminars dealing with fraud and or irregularities. Update Member States authorities on latest reports and studies published.	REGIO.E1 - capacity building REGIO.C1 – audit coordination EMPL.G1 - audit coordination + SFC team MARE.E1 - Budget, procurement and control	Current ongoing cooperation with academics Existing communication anti-fraud via SFC, InfoRegio, Circabc. Number of anti-fraud events and seminars attended	Number of instances of cooperation with academics Regular update of websites when relevant information or studies are published Number of seminars attended per year	During the whole period covered by JAFS

3. Monitoring of OLAF's financial recommendations

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Follow-up of OLAF cases with a financial recommendation transmitted to spending DGs to	REGIO.C1 – audit coordination	Recovery rates for 2018 and	"Recovery" rates[73] (covering all	During the whole period covered by

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[70] Reference to Action point N°56 of the CAFS Action Plan

[71] E.g. Number of cases of fraud suspicions transmitted to OLAF, proportion of recommendations recovered, amounts corrected.

		2019 (if available)	ways to protect the EU budget)	JAFS
be able to report on amounts of EU funds withdrawn, recovered and corrected[72].	REGIO.02 – Better Implementation EMPL.G1 - audit coordination MARE.E1 - Budget, procurement and control			

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[73] The term "recovery rate" means the amount of EU funds recovered or withdrawn or avoided from being spent divided by the amount recommended by OLAF. This metric is highly dependent on the quality and exploitability of OLAF reports.
[72] Reference to Action Point N°60 of the CAFS Action Plan

Action N°5: Raising awareness regarding OLAF-related procedures and update of the anti-fraud training offer to ensure that Commission staff remains vigilant to fraud

Need identified:

Newcomers to the DGs need to know how to deal with incoming OLAF reports and handle OLAF documents. This should avoid delays in follow-up and corresponding recovery procedures. It should prevent also putting at risk confidential information. Auditors can play a role in fraud prevention/detection. Thematic audits on key requirement N°7 are foreseen in the single audit strategy. REGIO needs to have an agreed checklist. Auditors need it to be able to review the anti-fraud measures and assess if conflict of interests tainted a procedure.

A clear understanding of fraud in shared management (see action point N°4) and on cooperation with key anti-fraud partners such as OLAF and in the future possibly the EPPO, must be communicated. As a basis, there needs to be a continuous reviewing of the training policy and the content of the training provided. In-house training provided at the Commission and audit checklists used should be regularly reviewed.

Objective :

The **objective** is to effectively ensure that REGIO, EMPL and MARE desk officers and auditors are continuously vigilant to prevent and detect fraud, including conflict of interests.

Outputs, responsible unit(s), baseline, indicator and timing

1. Provision of targeted instructions to staff of the DGs via WIKI

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Updated WIKI (or Anti-fraud manual) describing the procedure regarding anti-fraud and the follow-up of OLAF cases and of the financial recommendations. Where/When relevant, modalities for cooperation with the EPPO considering the set-up, material competences and functions of the EPPO.	REGIO.C1 – audit coordination EMPL.G1 - audit coordination MARE.E1 - Budget, procurement and control ASSOC: REGIO.02 – Better implementation	Instructions and guidance issued so far	Number of updates of WIKI pages, notes to staff and information sessions about the OLAF-related procedures	During the whole period covered by the JAFS, and as early as the EPPO will have become operational end of 2020

2. Development of a checklist for the analysis of Key Requirement N°7 on proportionate and effective anti-fraud measures for auditors.

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Development of a new checklist for KR N°7 agreed by the 3 DGs Include information based on conflict of interests mapping and future guidance by BUDG under article 61 FR in relevant compliance audits of the 3 DGs	MARE.E1 - Budget, procurement and control ASSOC: REGIO.C1 – audit coordination EMPL.G1 - audit coordination	N/A	Available and efficient/complete checklist verified during a mission	Checklist ready for the thematic audits planned (end 2019)

3. Review of the training offer for Commission staff (desk officers and auditor) and Member States experts. Development and introduction of a new e-learning module on fraud awareness raising and training of Commission staff on "preventing fraud and corruption in ESIF" and taking into account relevant regulatory changes (e.g. article 61 FR on prevention of conflicts of interests).

Output/Deliverable	Chef de file	Baseline	Indicator	Timing
Review of the training offer and introduction of an e-learning module on fraud awareness raising Include relevant explanations on implementation of article 61 FR in the learning programme based on guidance to be offered by BUDG	REGIO.C1 – audit coordination EMPL.G1 - audit coordination MARE.E1 - Budget, procurement and control	Existing training in each DG in 2019	Updated training offer and e-learning module in each DG Attendance to the trainings or enrolment of newcomers to the e-learning tool	Review of the training offer is continuous, with a first update towards end 2020

5.   Means and resources

The DGs have at their disposal limited means and resources to tackle fraud. Therefore, the actions need to be focused on priority risks taking also account of anti-fraud measures already available at Member States level. Each DG has its own specific priorities tailored to its needs, but a common approach is aligned for the 3 DGs. The main resources available at the end of 2019 are:

Human resources directly dedicated to the fight against fraud:

REGIO	EMPL	MARE
REGIO C1 - Audit coordination unit – Relations with OLAF	EMPL G1 - Audit direct management, Discharge, incl. legal advice to audit units	MARE E1 – Audit coordination unit and OLAF correspondence
REGIO E1 - Administrative Capacity unit		
Auditors (as part of their general control mandate)	Auditors (as part of their general control mandate)	Auditors (as part of their general control mandate)
REGIO Geographical units - Transmission of information on suspected fraud to OLAF. Implementation of OLAF's financial and administrative recommendations; recoveries of irregular amounts.	EMPL Geographical units - Transmission of information on suspected fraud to OLAF. Implementation of OLAF's financial and administrative recommendations; recoveries of irregular amounts.	MARE C2, D2 - Geographical units - Transmission of information on suspected fraud to OLAF. Implementation of OLAF's financial and administrative recommendations; recoveries of irregular amounts.
REGIO 02 - Better Implementation unit		MARE D3 – EMFF coordination unit

IT tools:

	REGIO	EMPL	MARE
ARACHNE	Tool available to auditors, but not yet systematically used. One ARACHNE expert in unit C2	EMPL auditors use ARACHNE for the preparation of all audit on beneficiaries. Team of ARACHNE experts.	Not applicable
Database of OLAF cases	List used to track cases, their status and amounts recommended for recovery and recovered. Also used for statistical purposes.	Use of an ACCESS Database that logs each event linked to a case, the amounts and types of recoveries and the types of fraudulent activity (GESCOMAF)	List used to track cases, their status and amounts recommended for recovery
MAPAR	Audit findings, including those relating to KR N°7	Audit findings, including those relating to KR N°7; OLAF new cases for follow-up entered in MAPAR	Not applicable

Budget:

A relevant part of the budget of the DGs can be used to finance Administrative Capacity Building actions under Technical Assistance. Seminar and events in Brussels and in Member States, studies are also financed by Technical Assistance as they contribute to the fraud prevention and detection capacity of national authorities.

- TAIEX-REGIO PEER 2 PEER: on average EUR 73 450 per year. Estimation based on past use of the instrument during the period 2016-2019 for the events implemented on the topics of fraud prevention, integrity, controls and audit.
- The multi beneficiary grant "*Integrity Pacts - Civil Control Mechanisms for Safeguarding EU Funds"* to Transparency International and other 15 civil society organisations 2016-2019: EUR 7,238,585.00. Project will be extended for additional two years until end of 2021 with some additional funding.

The investments made into ARACHNE should also be considered as they help prevent and detect fraud in Member States. For 2018, the budget is of EUR 2.26 million shared equally by REGIO and EMPL. The yearly budget is stable unless specific developments are required[74].

Other specific procedures, networks:

Procedures are described in the WIKI, available to all staff in REGIO. Units C1 and 02 regularly update them. In EMPL, there is an intranet webpage dedicated to anti-fraud policy, including legislation, policy-documents, templates and a manual of procedures containing all OLAF-related procedures. In MARE, a dedicated site on the Intranet contains all relevant OLAF-related documents.

Auditors and desk officers contribute to fraud prevention and detection for their respective programmes. Each DG has also invested resources into setting up some cells and task-groups to discuss cross-cutting issues relating to anti-fraud. This includes moreover, the consultation of desk officers for general issues including related to fraud via REGIO's Implementation Network, a forum of desk officers from all countries.

The DGs also need to make available relevant resources to attend the meetings of the Fraud Prevention and Detection network ("FPD-net") several times a year. These are organised by OLAF and regroup all OLAF contact points to discuss cross-cutting issues. Specific sub-groups are currently being set up in accordance with the CAFS 2019.

Shared Management DGs are invited and need to make available resources to attend the meetings organised by OLAF's Policy Directorate with Member States' experts on anti-fraud or AFCOSs (Anti-Fraud Coordination Services), called "COCOLAF meetings" (from its French acronym: Comité de Coordination de la Lutte Anti-Fraude). These allow exchanging best practices and comparing working methods regarding anti-fraud in all Member States.

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[74] For 2019, DG AGRI joined the project, which increased the budget to EUR 2.32 million. The split is 39.5% REGIO, 39.5% EMPL and 21% AGRI. For 2020 a similar budget of EUR 2.91 million is envisaged.

Table 1 - Initiatives and actions taken by the DGs since 2015 to counter fraud

	Effectiveness *Intended or expected outcome*	Efficiency *Successful and without waste*	Relevance	Coherence	EU added value
Priority objective N°1: Qualitative analysis of MS' fraud risk assessments (FRA)	Fraud risk assessment analysed for 50 OPs through the stock taking study and the audit on effectiveness of anti-fraud measures in 7 Member States. The FRA has been carried out by a large majority of OPs analysed. In 47 out of 50 OPs, the FRA process was well advanced. When it is done proactively (as opposed to mechanically), it is effective.	The study and the audit conclude that the FRA process is more formalised and structured. This is a positive development. Improvements concern risks such as collusion and double funding. The involvement of external actors should be supported.	Yes – Art 125.4c) requires a fraud risk assessment as a basis for the anti-fraud measures.	Yes – with other policies	Yes – The study covered all 28 MS demonstrating EU added value
Priority objective N°2: the use of IT tools	By September 2019, 21 Member States had used Arachne. Studies show that risk-scoring tools improve fraud detection. 100% of MAs interviewed are aware of the existence	This requires even better availability of data based on the reporting of cases where fraud was detected using IT tools. But some national authorities are not yet keen to	Yes – Art 125.4 (c) and COM guidance support the use of risk scoring tools	Yes – with other policies (ARACHE is available for REGIO, EMPL, MARE and is foreseen to be extended to AGRI funds)	Yes – ARACHNE is the only EU wide risk scoring tool and is offered for free to MS and which has an EU coverage.

	and technical capabilities of ARACHNE. But only moderate take-up so far (33% of MAs interviewed).	systematically share this type of information.			

Both indicators have been reached:

- Although the designation process took longer than expected for some programmes, the Management and Control systems of a sample of OPs have been analysed. Moreover, a comprehensive stock-taking study covering the 3 DGs was ordered. The first task was to analyse the FRA of 50 sampled OPs. They constituted the basis of the study on Member States' compliance with the legal provisions on anti-fraud measures.

- The coverage of Member States using ARACHNE (for at least one OP) is carried out regularly by EMPL. By September 2019, 21 Member States had used Arachne, 16 had integrated it into their management and verification processes for at least 1 operational programme.

Various other actions have been undertaken, falling within or sometimes exceeding the scope of the 2015 Action Plan:

	Effectiveness *Intended or expected outcome*	Efficiency *Successful and without waste*	Relevance	Coherence	EU added value
Collaboration with academics to stay updated in developments regarding risks and anti-fraud measures	Studies were completed. Cooperation helps COM to monitor fraud and update knowledge using modern fraud-prevention and detection tools and statistics. Since 2015, a stock taking study on anti-fraud and corruption measures and two studies on single bidding in public	It is limited to necessary costs. Topics are discussed with academics and results are shared with COM staff	Yes – human resources and expertise in the field are lacking at COM level and is acquired via this collaboration	Yes – Cooperation with HOME (on fighting corruption)	Yes – studies have an EU-wide scope

	procurement were commissioned by REGIO. EMPL did external audit on effectiveness of anti-fraud measures.				
Dissemination of anti-fraud information & Instructions to EU staff on OLAF-related procedures	Relevant pages about anti-fraud policy and procedures in the follow-up of OLAF final reports have been created in WIKI (internal pillar). They are accessible to all staff and regularly updated.	Yes – the WIKI is the internal platform used by COM staff. Meetings with the Implementation Network when procedure change.	Yes – It is relevant to the work of desk officers, auditors.	Yes – Is combined with instructions on other procedures.	Only possible at EU level
Close cooperation with OLAF on anti-fraud activities	In general, desk officers and auditors are alert to monitor possible fraud cases. Increased cooperation with OLAF has resulted in closer synergies, more systematic coordination, and mutual assistance. Active participation in FPDnet meetings allows exchanges with other DGs	Annual meetings are a proportionate effort and may yield important long-term results in the cooperation.	Makes the difference in all practical cases of suspicion of fraud and irregularities.	Yes – Proportionate and in line with the overall anti-fraud policy	Can only be done at EU level. Therefore, since 2015, information in 23 cases on possible fraud has been transmitted by REGIO to OLAF.

	and services.				
Training of EU staff in fraud awareness raising. Ensuring that auditors and desk officers are vigilant to fraud prevention/ detection.	Since 2015, 7 targeted anti-fraud training events have been organised for Commission staff. Since 2018, new e-learning module available to all newcomers, publicised through regular HR newsletters	An increased number of information on cases of suspicion of fraud and irregularities were transmitted to OLAF.	Ensures that all staff has the same knowledge of rules & procedures	Yes – reference is made to other policies	Only possible at EU-level
Commission anti-fraud measures and exchange of best practices	14 TAIEX-REGIO Peer2Peer events were financed and organised during the period 2016-2019 for exchanges on the topics of fraud prevention, integrity, controls and audit.	Objectives are effectively achieved and implemented with very proportionate costs and effort.	Gives competent authorities ownership and invites them to include the transnational dimension in their strategies and action plans.	Fully complement ary with initiatives at EU-level and with measures and initiatives adopted by Member States.	Financial support is granted to Member States to achieve a specific value added for protection of EU-financial interests
Issue guidance for MS	The article 125 (4) CPR study[75] has shown that guidance on FRA has helped MS authorities to formalise their approach. Trainings offered on ARACHNE allow users in MS to develop their detection	Yes. If in a limited number of cases red flags are not proportionate to the risks identified, the data mining can be improved. The study has shown that improvement can be made to render	Guidance is tailor made and takes into account the specific risks identified. ARACHNE trainings are provided on an ad hoc basis.	Yes – Guidance goes through inter-services consultation to ensure consistency. ARACHNE is consistent with other IT tools such as EDES.	Yes – the same information needs to be provided to all MS and is available in all languages

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[75] See footnote n°10

	capacities	ARACHNE more user-friendly.			
Develop exchange with MS on anti-fraud policy	Active participation in COCOLAF meetings allows REGIO/EMPL to guide MS and support exchange between MS. The Peer2Peer instrument effectively encourages exchanges of experts (see above).	This process has developed its dynamics and multiplier effects and therefore has proved to be efficient. It is welcomed by MS	The regulatory requirement was introduced in 2014. MS benefit from others' experience	Exchanges are part of the capacity building initiatives with MS and coherent with the CAFS objective	COM provides EU added value which cannot be fully obtained by initiatives developed elsewhere
Promotion of Integrity Pacts	Have yielded first results. Amongst others, monitors have reported detection and resolution of irregularities, it has led to more transparent relationships at micro-level, i.e. between contracting authorities, the Integrity Pact (IP) monitors (CSOs) and the bidders and it open avenues for wider civic engagement.	Targeted use for a limited number of high-risk projects. Many of the projects are delayed, but not due to the use of Integrity Pacts (IPs) but rather because they are complex procurement projects. The IP model is quite resource intensive, and DG REGIO is considering how to scale up the use of IPs or elements of the IP model.	In the 17 projects covered, important issues of harmful practices have been detected in due time to prevent irregularities.	The project is one of several means of administrative capacity building and objectives of simplification and swiftness of procurement procedures.	Offered to Member States with specific exposure due to limited capacity and which lack financial and administrative means.
Monitor the timely implementation of OLAF recommendations.	Mostly effective except for cases where judicial recommendations are	The new procedure has increased efficiency in recovering the EU funds unduly spent in	Yes – the recommendations of OLAF need to be monitored in order to ensure sound	Yes – DG BUDG monitors the consistency of recovery actions across the	Yes – can only be done at COM level

	addressed to the MS. For REGIO, the number of OLAF cases closed increased from 23 (2017) to 36 (2018). The recovery rate increased during this period from 25% to 49%. For EMPL, the recovery rates were 100% (2017) and 77% (2018).	a timely manner. Withdrawing EU funds affected by fraud however has limited impact on fraud deterrence. MARE follows up timely on all OLAF recommendations.	financial management	COM	
EIPA trainings	Special two-day training module on anti-fraud for Member States authorities with a focus on practical work and real life examples. 3 trainings took place in 2018 and 2019. Additional sessions will be organised in 2020.	Targeted audience of participants from managing authorities, certifying authorities, intermediate bodies and auditors. The feedback from attendants has been very positive.	Very positive feedback and the training modules have rapidly been fully booked each time. Similar trainings are also organised on public procurement, a high-risk area for fraud and corruption.	One of several actions and other trainings on anti-fraud and corruption and public procurement to enhance Member States' capacity to manage EU funds.	EU-added value for coherent implementation of EU-legislation
Public Procurement Guidance for Practitioners	A practical guide on how to avoid the most common errors in public procurement in ESIF funded projects.	The second edition of the guidelines was published in 2018 and is translated to most EU languages.	Incorporates changes and new elements stemming from the new Directives on public procurement.	Coherent with the action plan on public procurement and other updated guidance (financial corrections)	Indispensable to achieve an overall coherent and aligned implementation practice throughout the EU.
Implementation of new provision relating to	Not yet fully possible to assess, but the new provision	Thematic audits are useful means to monitor the	Yes – the existing provision has been clarified	Yes – COI was already covered, now it is	Yes – Relevant both with respect to

conflict of interests situations (Art 61 FR)	should help reduce situations of COI in shared management Ops	efficiency of the new provision. The use of Arachne is cost effective to identify risky projects/ contracts/ contractors. Integrity Pacts are also effective when used for very large projects as they entail a cost.	to include also national authorities implementing the budget under shared management	extended to the 'objective perception of COI'	the national and EU dimension of the implementation of the EU-budget.

Based on the indicators in the previous JAFS, all targets have been reached:

For the objective "Enhanced collaboration with academics", studies launched have been completed.

Anti-fraud websites are updated timely when a report or when a study is published.

The DGs regularly updated their internal manuals on relations with OLAF. REGIO transposed its manual in WIKI pages accessible to all staff and updated when necessary.

Desk officers and auditors are offered anti-fraud trainings twice a year to be alert to possible fraud cases. Moreover, REGIO has introduced an e-learning tool for newcomers in 2018 available at all times and compulsory for newcomers to the DG.

The 3 DGs actively participated in FDPNet meetings and COCOLAF meetings and reported back at regular intervals.

A number of external training sessions are foreseen annually for Member States. They cover anti-fraud measures, best practices, red flags and other relevant topics.

Up-to-date information is available on SFC2014 (tab Anti-Fraud) and on InfoRegio.

The follow-up of OLAF reports is done in Geographical units with support from a horizontal and/or coordination unit. Reporting to OLAF is scheduled once a year in January.

Annex 1 - Fraud Risk Assessment (FRA)

For the 2007-2013 period, based on Member States' reporting, the PIF report estimates that the **fraud detection rate** by Member States overall amounts to 0,47% of the payments for Cohesion policy. For 2014-2020, the fraud detection rate is currently 0,86%, mainly linked to 2 high irregularities reported by one country. This could show a certain increase in the detection efforts by competent authorities, but is still very low compared to the overall payments made and will evolve over time as more controls take place.

REGIO, EMPL and MARE consider that data reported by Member States needs to be treated with caution as the scope of fraud and/or corruption may be bigger than the reporting from Member States seems to suggest (due to the risk of undiscovered/unreported fraud). It should also be emphasised that the Commission's assessment of the risk of fraud includes a reputational dimension, even if in financial terms the risks may be fairly limited.

REGIO / EMPL

The Fraud Risk Assessment of REGIO and EMPL have been carried out using a diversity of objective indicators, including Member States' reporting (a), Commission audits (b), OLAF investigations (c), independent external analytical studies (d), use of risk based management tools (e), public perception surveys (f) and internal processes (g). In a second step, these risk parameters have been shared with the Implementing Directorates as part of an internal consultation on the exercise. Their feedback has been factored in the results of the assessment.

Moreover, the Commission's assessment of the risk of fraud includes a reputational dimension that must not be neglected (i.e. even if in financial terms the risks might be considered fairly 'limited', in terms of reputation they may be much more significant and even critical).

a)   Trends in Member States reporting on fraudulent irregularities (source: PIF report).

Member States notify fraudulent irregularities during the year via IMS (Irregularities Management System). The figures are published annually in the PIF report[76]. They demonstrate certain trends to be further analysed.

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[76] Report in the protection of the EU financial interests (PIF is the French Acronym)

Irregularities reported as fraudulent, by period and Member State (PIF report 2018), including fraud detection rate (amounts detected / amounts paid)[77]:

Table CP 27: Number of irregularities reported as fraudulent, amounts involved and fraud detection rate by Member State - Programming period 2007-13

Member State	Irregularities reported as fraudulent PP 2007-13		Payments PP 2007-2013 (1)	Fraud detection rate
	Reported N	Involved amounts EUR	EUR	%
AT	8	1,542,060	1,133,073,296	0.14
BE	6	437,725	2,043,040,307	0.02
BG	33	6,909,882	6,478,262,826	0.11
CY	11	1,156,899	632,159,410	0.18
CZ	166	221,238,815	25,297,525,107	0.87
DE	230	31,745,661	24,876,529,713	0.13
DK	2	234,251	636,568,650	0.04
EE	22	12,184,524	3,313,626,524	0.37
ES	132	19,216,750	35,344,283,649	0.05
FI	3	66,629	1,624,713,804	0.00
FR	6	2,886,409	13,409,450,111	0.02
GR	66	94,982,697	20,402,688,084	0.47
HR	4	2,184,460	753,547,336	0.29
HU	114	10,694,618	24,451,677,505	0.04
IE	2	15,672	792,923,528	0.00
IT	77	76,299,295	26,319,188,280	0.29
LT	15	1,859,994	6,826,777,738	0.03
LU	0	0	50,487,332	0.00
LV	63	37,044,374	4,655,067,616	0.80
MT	16	305,510	812,089,226	0.04
NL	15	4,324,984	1,689,006,806	0.26
PL	339	427,714,210	67,882,583,780	0.63
PT	59	153,970,870	21,627,850,677	0.71
RO	319	239,981,387	17,164,488,940	1.40
SE	4	66,797	1,652,455,347	0.00
SI	26	27,892,274	4,121,031,332	0.68
SK	223	227,828,035	10,922,645,890	2.09
UK	49	12,164,403	9,661,144,852	0.13
CB	41	6,876,654	7,748,282,958	0.09
TOTAL	**2,010**	**1,614,949,184**	**342,323,170,624**	**0.47**

(1) Net payments until April 2019 from CF, ERDF, ESF, EFF

Table CP 28: Number of irregularities reported as fraudulent, amounts involved and fraud detection rate by Member State - Programming period 2014-20

Member State	Irregularities reported as fraudulent PP 2014-20		Payments PP 2014-2020 (1)	Fraud detection rate
	Reported N	Involved amounts EUR	EUR	%
AT	1	200	202,835,237	0.00
BE	1	1,553	439,291,562	0.00
BG	1	370,891	1,755,910,702	0.02
CY	0	0	266,435,157	0.00
CZ	15	2,646,264	4,970,430,480	0.05
DE	10	473,429	4,526,906,605	0.01
DK	12	870,189	137,687,112	0.63
EE	9	1,612,780	1,142,284,451	0.14
ES	0	0	5,631,276,118	0.00
FI	1	425,525	520,161,435	0.08
FR	2	9,043,511	3,345,623,300	0.27
GR	4	12,613,172	5,102,004,586	0.25
HR	2	1,093,157	1,027,492,028	0.11
HU	38	9,877,015	6,875,619,535	0.14
IE	0	0	214,053,983	0.00
IT	0	0	5,413,642,493	0.00
LT	3	343,691	1,949,706,637	0.02
LU	0	0	16,325,936	0.00
LV	3	58,963	932,912,265	0.01
MT	0	0	148,279,671	0.00
NL	0	0	299,359,158	0.00
PL	98	44,650,568	21,251,977,464	0.21
PT	1	2,168,010	6,657,375,487	0.03
RO	5	153,425	4,310,931,222	0.00
SE	1	303,550	511,348,991	0.06
SI	0	0	603,459,535	0.00
SK	35	644,730,949	3,038,951,565	21.22
UK	2	366,322	2,084,485,734	0.02
TOTAL	**244**	**731,803,163**	**84,920,542,844**	**0.86**

(1) Net payments until 2018 from CF, ERDF, ESF, EMFF. Total includes payments related to cross border co-operation.

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[77] The Member State abbreviated "CB" (cross border) in these tables refers to European Territorial Cooperation Programmes.

b)   Analysis of results of audit findings related to anti-fraud

The Delegated Act EU 480/2014 (Annex IV) foresees 18 "Key Requirements" of the management and control systems. For the 2014-2020 period, a new Key Requirement n°7 was introduced: Effective implementation of proportionate anti-fraud measures, to be implemented by Managing Authorities. The Regulation now foresees that Member States should prevent, detect and correct irregularities, including fraud (part underlined added to previous periods). The authorities audit KR7 as part of their system audits and report their assessment in line with REGIO/EMPL's "coloured table".

c)   Use of investigation data based on OLAF cases

Available data on OLAF cases in REGIO and EMPL have been analysed, with a cut-off date of 30/08/2019 (cases since 2014 where final reports have been received) and enriched to include the main typology of fraud and the domain in which the findings have occurred.

The most common typology of fraud which emerges from these investigations covers infringements to public procurement rules (35% for EMPL; for REGIO the rate increased to 50% compared to 39% 2 years ago), followed in the case of EMPL by overpricing (17%) and in the case of REGIO by irregular (fraudulent) expenditure (21%). In the case of EMPL: ineligible expenditure accounts for 12% of cases and in the case of REGIO, overpricing accounts for 7% of cases.

For EMPL, **the nature of the fraud exposure is stable over the years**: in essence, fraud attempts to unduly benefit from ESF/FEAD funds and directly awarded grants are anticipated to continue.

For REGIO, it is confirmed that Infrastructure is a fraud risk exposed domain and public procurement remains the area with the highest exposure. Various tools have been put in place to monitor the MCS and ensure public procurement rules are respected, including the Commission Action plan to avoid errors under Public Procurement adopted in 2014 and regularly updated (last in March 2017). This action plan includes anti-fraud and anti-corruption actions.

OLAF has put a focus in the allocation of its investigative resources on structural funds (see so-called "Investigative Policy Priorities"). Cohesion and more particularly infrastructure and transport are prominent domains in which OLAF intends to open investigations.

A challenge lies in the operational exploitability of OLAF findings related to fraud, for purposes of imposing financial corrections under the Common provisions regulation. Financial recommendations cannot be implemented for this purpose unless the reasoning and relevant arguments are clearly put forward and consider the legal provisions breached which may lead to financial corrections. The timeliness of reports is also considered crucial to prevent any risk of non-recoverability of amounts at stake, and further reputational damage.

These issues have been raised with OLAF. An improvement is experienced since 2017. Increasing recovery (implementation of financial corrections) rates observed. The duration of cases with a criminal follow up is still of a concern. Criminal proceedings may slow down the financial follow-up where national authorities rely on national judiciary and it is expected that this situation will further improve with the uptake of its responsibilities by the European Public Prosecutor's Office.

d)   Reinforced monitoring of relevant indicators: Single-bidding risk analytical study

The 7th Cohesion Report was published in September 2017 and contains an interesting analysis of the risk of corruption and lack of competition on the basis of public procurement data[78] (the source being TED data) commissioned by REGIO to an external expert. Indicators relating to use of open procurement procedures, such as the ratio of single bidders, may provide an insight into the challenges of transparency, the effectiveness of competition and risks of corruption.

The single bidder-ratio varies significantly across regions (Map 4.3). The cases with only one bid exceed 40% in many regions in EL, PL, SK and IT. In regions in SE, IE, UK and DK, this ratio rarely exceeds 10%, pointing towards markets that are more competitive and less risk of corruption. The overall corruption risk index of this study shows that north-west countries plus LV and ES score best. The second map (4.4) shows the evolution of this risk over time. Regions depicted in green show an improving trend over time (LT, LV, many regions in PL, CZ and SK). On the other hand, the ratio deteriorates from 2007 to 2015 in regions in purple (GR, IT, EE, some regions in ES).

In order to look more into depth into the grassroots and possible implications of the phenomenon from the point of view of cohesion policy funding, the Commission ordered a study on recent trends and policy implications in selected 10 Member States.

Based on the analysis of the available data at EU and national levels, the study "Single bidding and non-competitive tendering procedures in EU co-funded projects" draws a number of lessons and amongst others, concludes that there is a need for a robust system of public procurement data collection and publication.

The impact and likelihood of the risks, as a consequence of single bidding, need both to be considered of relevance. Widespread instances reveal a lack of transparency, limited competition and unequal treatment. This may be a consequence of fraud and corruption, or further facilitate them, and lead to high financial risks, and therefore requires further monitoring.

e)   Update of risk categories derived from ARACHNE risk-scoring tool

The Arachne Risk Scoring Tool was developed by EMPL and REGIO for Cohesion Policy and represents the state of the art in terms of data mining and data enrichment to identify risks of fraud. It is provided for free to Cohesion policy programme authorities. Arachne can be applied in each step of the project cycle such as project selection and award, project implementation and before certification of payments. It contains more than 100 potential risks associated to projects, beneficiaries, contracts and contractors that are divided into 7 subcategories.

The Commission is able to launch an overall assessment of every risk indicator in Arachne based on the registered projects and data.

- One risk category relates to "**reputational and fraud risks**". Data submitted in this area (2007-2013 and 2014-2020 projects for Member States voluntarily contributing to the tool) was analysed for the purpose of the risk assessment. For 2007-2013 programmes (where data is being phased-out), only

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[78] http://ec.europa.eu/regional_policy/sources/docoffic/official/reports/cohesion7/7cr.pdf : See page 157 and following of the report. Source: Fazekas (2017), based on Tender Electronic Daily (TED) database

Romania shows an average score of 40 points out of 50 (high scoring) for the reputational and fraud risk for 2 of their 7 Operational Programmes. This relates to 1 ESF and 1 ERDF programme registered in Arachne for Romanian programmes. For the 2014-2020 period, 8 ETC programmes, 1 programme of Malta and 1 French OP have an average reputational and risk score of over 40. 5 programmes (1 of MT and 4 ETC's) have over 70% of their projects declared with a high reputational risk score. Since not all data from all programmes (235 out of 450 OP's) is available in Arachne, these results should be used with caution. They do not provide a complete picture.

- Another fraud risk was explored: the category "**concentration**". More than 45 Operational Programmes have projects where the average scoring of the concentration category is higher than 30 points out of 50 (high scoring) are found in the UK, Malta as well as in Austrian, Belgian and Hungarian cross-border programmes.

Since May 2017, Arachne allows comparisons of data over time. This could help identify trends in fraud prevention/detection in Member States.

Arachne gives a risk scoring based on voluntary input from Member States and information from external databases. The risks identified can be analysed, but need to be put in their respective context before drawing conclusions on potential weaknesses. Further analysis is needed of the data for these categories before drawing conclusions.

f)   Recent Transparency International's (TI) ranking called "Corruption perception index"

Every year, Transparency International publishes a ranking of all countries according to the perceived public sector corruption (not strictly related to EU Funds). For 2018, the best scoring country in the EU (i.e. with a perception of low corruption) is Denmark, followed by Finland, Sweden and the Netherlands. The Member States with lowest scores (below 50 of a max score of 100) are Romania, Hungary, Greece, and Bulgaria. Other Member States score between 51 and 85. Although this only gives an indication of a perception, it is an additional element to be considered in a risk assessment.

This index is about public perception, covers corruption in the larger sense without focussing on ESIF funds, and does not allow to differentiated between (regional) programme authorities and individual management and control systems in a given Member State. They should therefore only be regarded as a subsidiary indicator for risk assessment purposes.

g)   Review of risks to the internal processes, and internal document management

The procedures in place in REGIO have been reviewed and are constantly being improved to reduce fraud risks and enhance the follow-up of OLAF recommendations.

Potential risks have been identified by the audit coordination unit in charge of the relations with OLAF (C1) or by the authorising officers (AO) in relation to the process of follow-up of OLAF final case reports:

- At the evaluation/selection stage, some information about project implementation is requested to AO by OLAF, but when it is provided, no further feedback is sent. The AO would appreciate receiving complete feedback about the allegations before the cases enter in active investigation and certainly

before investigations are closed. This would allow taking precautionary measures, especially when closure of programmes is on-going.

- When final case reports are sent to the AO, three separate documents are sent in paper format (a transmission note, the report and the financial recommendations). This practice is considered outdated, not fully reliable and complicates the follow-up.

- During the follow-up, the audit coordination unit locks away all OLAF reports received physically and saves the information electronically in a secured database (password protected). It is however not accessible to geographical desks and they would like to have easy access to a database where all cases can be checked. The question of technical differences in the follow-up procedures in REGIO and EMPL has been a subject for further consultations, as some OLAF reports could cover multi-fund programmes.

- In the monitoring phase of cases, the risks of late follow-up of final case reports need to be hedged. This can be avoided if the follow-up is always correctly monitored and the OLAF report sent swiftly by the geographical unit to the programme authorities. However, as final case reports were so far transmitted by OLAF on paper, until recently a challenge remained to coordinate the physical and the electronic workflow such as to avoid any risk of a loss of documents. Another challenge is the time it takes to analyse the legality of the findings and the Member State's reply.

To address the remaining shortcomings, OLAF was recently asked to use encrypted (SECEM) email to send OLAF related documents to REGIO. Since then, the situation has partly improved and the processes of transmission have been speeded- up. Monitoring is now easier. The fact of not being able to attach documents in ARES still limits the trail.

Any risk that no (or late) follow-up is given to a financial recommendation must be excluded, and therefore some further improvements in the internal work-processes need to be discussed with the Better Implementation unit and OLAF.

h) Results of the most recent studies and performance audits in the field of Cohesion and fraud prevention

In this context, the study[79] has analysed the performance of 50 ESIF operational programmes from all Member States in respect of the fraud-risk assessment process and subsequent anti-fraud measures put in place for 2014-2020.

It revealed that the new legislative requirements to address fraud and corruption in ESI Funds for the 2014-2020 programming period have catalysed a number of changes at Member State level that have resulted in a more formalised and more systematic approach. The FRA process is one example. Using the Commission template put at the disposal for the FRA helped to put more focus on fraud and corruption risks, and created clear links between identified risks and specific mitigating measures. Moreover, going through this process, and having the list of Commission recommended mitigation measures did contribute to some authorities adopting new controls, or improving existing

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[79] Conducted by PriceWaterhouseCoopers

ones. In this way, the Commission effort to increase the focus on anti-fraud and corruption among ESI Funds authorities in the 2014-2020 programming period has had a significant positive impact.

The study has further evaluated the proportionality of the anti-fraud measures put in place to the risk identified. A second conclusion is that the mitigating measures implemented are generally proportionate to the self-assessed risks. The team identified just a handful of instances where the measures in place were considered truly inadequate to the risks. This highlights the effort put in place by authorities in order to conduct a fraud risk assessment and mitigation of identified risks through appropriate controls. Of the six risk categories analysed, collusive bidding and double funding were the 2 where there was the greatest room for improvement in terms of implementing proportionate mitigating measures.

A further finding is that some authorities may underestimate the risks during the self-assessment. A comparison between the self-assessed level of risk by authorities of the OPs in the sample and external indicators of potential fraud and corruption risks at the MS level, notably Transparency International's Corruption Perception Index, shows a discrepancy. This indicates that MS may be assessing the level of fraud risks differently.

Result of the EMPL Fraud Risk Assessment (FRA) 2019

	Fraud risk title	Fraud cause/modus operandi (by stage in the procurement life cycle)	Consequences	Mitigating actions
GRANTS				
1	Collusion between programme authorities and third parties in the **selection of operations** (e.g. at the phase of designing selection criteria or in the context of the selection itself) to ensure that the resulting award will benefit certain third parties	A desire to ensure that future selected operations favor particular candidates/ tenderers so that the persons/entities behind them are sure to benefit financially from the support	The resulting programme is skewed/biased towards certain entities so that these are more likely to benefit financially from the operations and no longer objective/neutral	Selection criteria for the award of grants have to be approved by the Monitoring Committee.
2	**Bid-Rigging** / collusion among applicants	Desire to influence the outcome of the award procedure by falsely increasing the chances that a particular proposal is selected. Applicants collude with other applicants to win a subsidy	The award procedure/ decision is no longer based on the truth. A proposal of inferior quality may end up being chosen. Distortion of the competition.	
3	Voluntary collusion (public official-beneficiary), coerced collusion (public official-beneficiary) or corruption (bribes) by political pressure on public officials in the context of the **implementation of the grant**	A desire to ensure payment of a subsidy against the rules of eligibility	Payments are made although costs are not eligible Breach of non-profit principle Loss of EU funds	
4	**False (or missing) documents** regarding the eligibility of operations or costs (e.g. concerning the substance and timing of the operation, the type of expenditure, the delivered outputs or results, unit-costs, the geographic eligibility, the eligibility of beneficiaries)	Desire to ensure payment of a subsidy against the rules of eligibility of substance, timing, type, location, beneficiary or any other types of fraudulent actions	Payments are made although costs are not eligible, breach of non-profit principle, loss of EU funds	The audit trail requirements
5	**Double-Funding** (same expenditure is financed from different sources)	Desire to ensure receiving more money than is really due according to the rules of eligibility	Higher payments are made although costs are not eligible Breach of non-profit principle Loss of EU funds.	The audit-trail requirements

	Fraud risk title	Fraud cause/modus operandi (by stage in the procurement life cycle)	Consequences	Mitigating actions
6	**Overpricing** by carousels, backhanders, compulsory fees/commissions, plagiarisms (using the work of others 'for free'), inventing events/ participants/ number of delivered units and falsification to hide it	Desire to ensure receiving more money than is due according to the rules of eligibility	Higher payments are made although costs are not eligible. Breach of non-profit principle and of the equal treatment, competition and transparency principles. Loss of EU funds Violation of grant agreement/contract.	The audit-trail requirements
PUBLIC PROCUREMENT				
7	Collusion between programme authorities and third parties in the **award of contracts** (e.g. at the phase of designing award criteria or in the context of the award itself) in order to ensure that the resulting procurement procedures will benefit certain third parties.	A desire to ensure that future contracts favour particular candidates/ tenderers so that the persons/entities behind them are sure to benefit financially from the support	The resulting award is skewed/biased towards certain entities so that these are more likely to benefit financially from the operations and no longer objective/neutral	EU Procurement Legislation
8	**False Documents** regarding the eligibility or quality of the offer	A desire to ensure to influence the outcome of the procurement procedure by falsely increasing the chances that a particular tenderer is selected (documents on the legal, financial or operational capacity are false/forged/non authentic/misrepresenting)	The award procedure/ decision is no longer based on the truth: An ineligible tenderer might be selected as beneficiary or an applicant lacking financial capacity and/or sufficient sources of or applicant lacking operational capacity / professional competencies and qualifications required to complete the proposed action	EU Procurement Legislation
9	**Bid-Rigging** / collusion among bidders;	Desire to influence the outcome of the award procedure by falsely increasing the chances that a particular tenderer is selected. Tenderers collude with other tenderers to win a contract	The award procedure/ decision is no longer based on the truth. A bid of inferior quality may end up being chosen. Distortion of the competition.	EU Procurement Legislation
10	Voluntary collusion (public official-beneficiary), coerced collusion (public official-beneficiary) or corruption (bribes) by political pressure on public officials in the context of the **implementation of the**	A desire to ensure undue payment in favor of the contractor or related third parties	The resulting procedure is skewed/biased towards certain entities and no longer objective/neutral	EU Procurement Legislation

	Fraud risk title	Fraud cause/modus operandi (by stage in the procurement life cycle)	Consequences	Mitigating actions
	contract.			
11	**False Documents** regarding the existence, timing or nature of the deliverables	Desire to obtain payment in the absence of the required deliverables		Audit trail requirements
CONFLICTS OF INTEREST				
12	Fraud in the design and implementation of procurement and grant- procedures as a result of conflicts of interest of financial actors including national authorities at any level, involved in the budget implementation.	Desire to influence the outcome of the procurement / grant-award-procedure by ensuring that it is designed to favour particular applicants/ tenderers ('pyjama-job') or that particular tenderers/ applicants are selected	The resulting procedure is skewed/biased towards certain entities and no longer objective/neutral.	EU Procurement Legislation
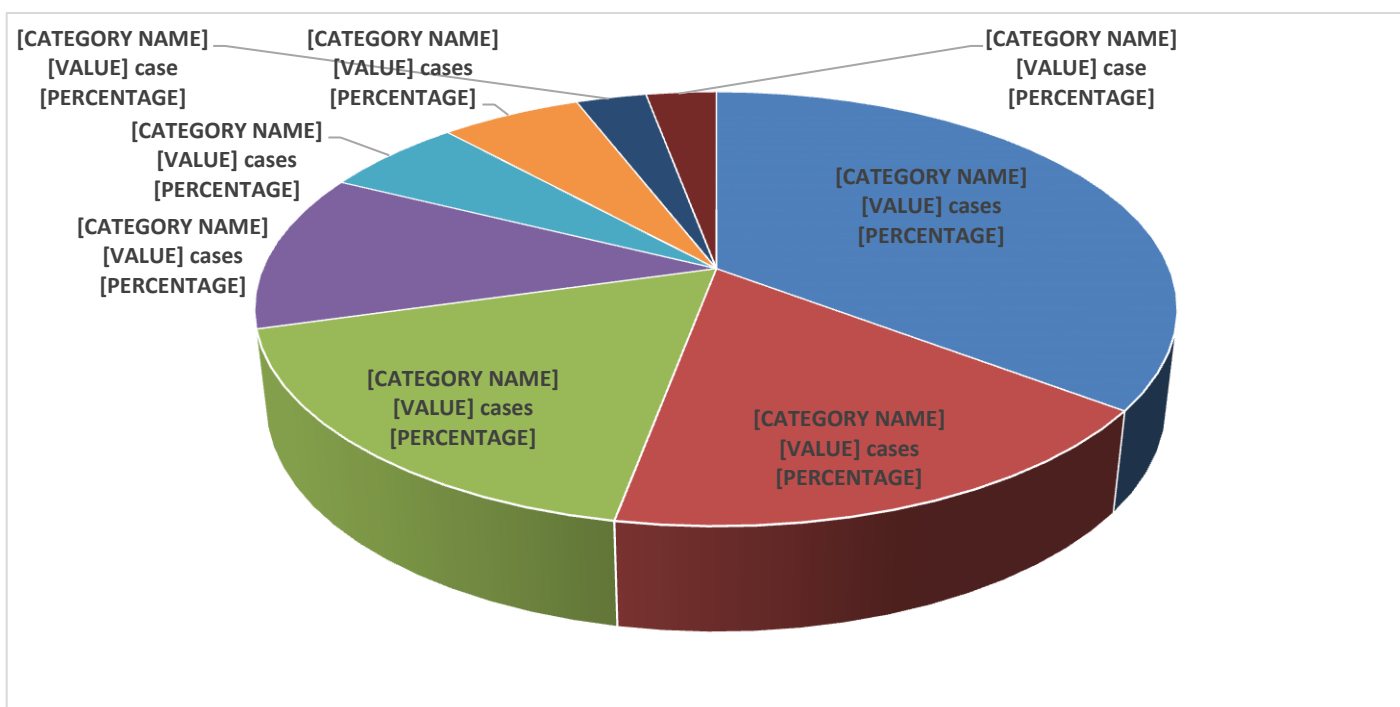
MARE

The risk assessment is performed based on a 3-grade scoring system for the Impact and Likelihood of the risks, aiming like this at a more objective evaluation of their consequences. Likelihood 1 means is not expected to occur, 2 – might occur, 3 – is likely to occur. Impact 1 means no or negligible financial impact, 2 – mediocre or partial financial impact, 3 – very serious/ grave financial impact.

While the main focus is on the financial risk, there is also an element of reputational risk.

Due to the shared funds' control and supervision, and the obligation by the Member States to implement effective and proportionate anti-fraud measures, risks are to different extents mitigated by existing controls such as administration set-up, management control and audits. High-scoring risks which are not sufficiently mitigated require appropriate additional actions (specific risk assessment and thematic audits, awareness raising and training, capacity building actions for the MSs), which are aligned and organised with the joint efforts of the 3 DGs.

Fraud Risk Title	Fraud Cause / Modus Operandi	Likelihood 1- Low/ 2- Medium /3-High	Impact 1- Low/ 2- Medium / 3-High	= Risk score (Likelihood*impact) RED if > 3.	Controls in place of the Fund's MCS	NET Risk -1 points if controls exist, RED if >3 (Financial impact, reputation loss)	Risk Response (Avoid, Reduce, Accept, Transfer/Share)
Incorrect supporting information or documentation	Intention to receive a grant based on falsified documentation.	2	1	2	Management controls MA/IB; AA audits; EC audits	1	Accept
Ineligible or partially ineligible projects	Intention to receive more favourable funding by placing the project under a measure with less conditions and / or higher cofinancing rates. Intention to avoid pro-rata recovery by not disclosing that the durability period for investments in infrastructure and productive investments is not respected.	2	3	6	Management controls MA/IB; AA audits; EC audits	5	Reduce
Accounting and calculation at project level	Intention to receive higher cofinancing by falsifying calculations or manipulation accounting entries at project level.	1	2	2	Management controls MA/IB; AA audits; EC audits	1	Accept

Fraud Risk Title	Fraud Cause / Modus Operandi	Likelihood 1- Low/ 2- Medium /3-High	Impact 1- Low/ 2- Medium / 3-High	= Risk score (Likelihood*impact) RED if > 3.	Controls in place of the Fund's MCS	NET Risk -1 points if controls exist, RED if >3 (Financial impact, reputation loss)	Risk Response (Avoid, Reduce, Accept, Transfer/Share)
Ineligible expenditure	Intention to receive undue co-financing by declaring • expenditure incurred before or after the eligibility period, • expenditure not paid by the beneficiary, • expenditure not related to the project, • expenditure outside of the eligibility area, • ineligible VAT or other ineligible costs, Or by incorrectly applying compensation schemes/SCOs.	2	3	6	Management controls MA/IB; AA audits; EC audits	5	Reduce
Environmental requirements	Intention to receive undue co-financing by falsifying environmental impact assessments or applying for NATURA 2000 projects which are not in NATURA 2000 areas.	1	2	2	Management controls MA/IB	1	Accept
Ineligible beneficiaries	A. Intention to receive a grant or higher co-financing by • Non-SMEs applying for measures reserved for SMEs, • Non-SMEs applying for a higher rate exclusively	2	3	6	Management controls MA/IB; AA audits; EC audits	5	Reduce

Fraud Risk Title	Fraud Cause / Modus Operandi	Likelihood 1- Low/ 2- Medium /3-High	Impact 1- Low/ 2- Medium / 3-High	= Risk score (Likelihood*impact) RED if > 3.	Controls in place of the Fund's MCS	NET Risk -1 points if controls exist, RED if >3 (Financial impact, reputation loss)	Risk Response (Avoid, Reduce, Accept, Transfer/Share)
	applicable to SMEs. B. Intention to receive a grant despite non-compliance with EMFF admissibility rules (CFP, IUU). C. Intention to receive a grant by hiding that measure specific conditions are not fulfilled.						
Public Procurement	Intention to receive a grant through fraudulent actions in relation to public procurement procedures throughout the tendering process.	1	3	3	Management controls MA/IB; AA audits; EC audits	2	Accept
Private Procurement	Intention to receive higher co-financing through fraudulent actions in relation to private procurement rules, such as falsifying or inventing offers.	1	3	3	Management controls MA/IB; AA audits; EC audits	2	Accept
Financial instruments	Intention to receive grants or more favourable funding conditions through non-compliance with the implementation modalities.	1	3	3	Management controls MA/IB; AA audits; EC audits	2	Accept