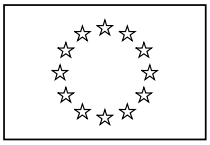

EUROPEAN COMMISSION

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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Protection of the European Union's financial interests - Fight against fraud Annual Report 2011

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{SWD(2012) 228 final}
{SWD(2012) 229 final}
{SWD(2012) 230 final}

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Commission presents, in cooperation with the Member States, this Annual Report on Protection of the European Union's Financial Interests in 2011 under Article 325 of the Treaty on the Functioning of the European Union.

The purpose of this report is to assess the extent to which EU funds or revenue of the EU budget are at risk of misuse because of fraudulent or non-fraudulent irregularities and to explain what is being done to address the issue.

Recent measures to protect the financial interests of the EU

During 2011, the Commission has taken a number of measures to improve the legal and administrative framework for protecting the EU's financial interests:

– An amended proposal for a reform of the European Anti-Fraud Office (OLAF);

– The Commission Anti-Fraud Strategy (CAFS), which also included the Action Plan to fight smuggling along the EU's eastern border;

– The Communication on the protection of the financial interests of the European Union by criminal law and administrative investigations;

– The Communication on fighting corruption in the EU;

– Proposals for modernisation of the public procurement rules; and

– The Communication on the future of VAT.

Decrease in fraudulent and other irregularities affecting the EU budget

In 2011, in all sectors combined, 1230 irregularities were reported as fraudulent, down by about 35% in comparison with 2010. The estimated financial impact of such irregularities reported as fraudulent also decreased, by about 37% in comparison with 2010 to EUR 404 million. Moreover, the number of other irregularities and the estimated financial impact also decreased by about 17% and 6% respectively.

The decrease in reported fraud cases and the related amounts was expected, following the sharp increase in 2010, which was caused by the 'cyclical' effect of the closure of the 2000-2006 programming period for cohesion policy and by the acceleration in reporting following the introduction of the Irregularity Management System (IMS). The impact of both these factors has worn off.

While the overall picture is reassuring and demonstrates, amongst other things, the effects of the procedures the Commission has put in place to deal with irregularities and a general improvement in the management and control systems by Member States, there are still significant differences in the approaches adopted by Member States to report fraudulent and non-fraudulent irregularities. Certain Member States continue to report very low fraud rates. This raises questions about the adequacy of their national reporting systems. The Member States concerned should therefore report on how their control systems are being adapted to target areas where there is a high risk of fraud and irregularities.

It is also clear from the analysis of the threat that the need to combat criminal fraud is still very real, particularly in a recession, and remains high on the Commission's agenda.

Improvement of anti-fraud systems in the area of cohesion policy

The analysis of this year's special topic — the measures taken and irregularities reported in the high-risk area of cohesion policy — shows improvements in the financial control and risk management system. These include legal provisions and guidelines, national or regional strategies, use of risk indicators, administrative procedures and cooperation between national authorities.

Conversely, further progress is needed on monitoring the results of the administrative and criminal anti-fraud investigations by the Member States, including on the recovery of amounts from the final beneficiary in the area of cohesion policy.

Furthermore, better fraud statistics are necessary to enable the Commission and the Member States to focus their efforts in higher-risk areas.

Improvement in recovery procedures

The recovery process, in particular for pre-accession funds and direct expenditure, has been improved. The Commission invites Member States and pre-accession countries with low recovery rates to speed up their procedures, to make use of the available legal instruments and guarantees when irregularities are detected and to seize assets in cases where debts are not paid.

1. INTRODUCTION

Under Article 325(5) of the Treaty on the Functioning of the European Union, the Commission, in cooperation with Member States, each year submits to the European Parliament and the Council a report on the measures taken to implement that Article, i.e. to counter fraud and any other illegal activities affecting the financial interests of the Union.

The Treaty states that the Union and the Member States share responsibility for protecting the Union's financial interests and fighting fraud. National authorities manage four fifths of EU expenditure and collect traditional own resources[1]. In these two areas, the Commission exercises overall oversight, sets standards and verifies compliance. Close cooperation between the Commission and the Member States is essential in order to protect the Union's financial interests effectively. One of the prime objectives of this report is, therefore, to assess the extent to which this cooperation has worked, as far as can be seen from the available data, and how it could be further improved.

This report describes the measures taken at Union level to counter fraud. It also contains a summary and evaluation of the action taken by Member States in one specific area, based on the replies to a questionnaire focusing, this year, on the controls in the area of cohesion policy. The report then presents the latest information on fraudulent and non-fraudulent irregularities reported by the Member States and the situation on recovery of amounts.

The report is accompanied by four Commission Staff Working Papers[2].

2. REPORTED FRAUDULENT AND OTHER IRREGULARITIES

EU legislation requires the Member States to report to the Commission, on a quarterly basis, any irregularities that they have detected in the areas under shared management, pre-accession assistance and traditional own resources.

The Member States must inform the Commission whether reported irregularities raise suspicions of fraud (if they give rise to the initiation of administrative and/or judicial proceedings at national level in order to establish the presence of intentional behaviour, such as fraud[3]) and must update the information as the relevant proceedings to impose penalties are completed.

In this report, irregularities are divided into two broad categories:

'**Irregularities reported as fraudulent'** are irregularities suspected of being fraudulent or established to be so, including irregularities which Member States did not report as fraudulent,

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1 Mainly customs and agricultural duties, but also anti-dumping duties and sugar levies.

2 (i) Implementation of Article 325 by the Member States in 2011; (ii) Statistical evaluation of irregularities reported for 2011 own resources, natural resources, cohesion policy and pre-accession assistance; (iii) Recommendations to follow up the Commission report on protection of the EU's financial interests — fight against fraud, 2010; (iv) Methodology regarding the statistical evaluation of reported irregularities for 2011.

3 For example, under Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy, OJ L 355, 15.12.2006, pp. 56–62.

but where it was possible to deduce elements of potential fraudulent behaviour from analysis of the information[4].

'**Irregularities not reported as fraudulent**' are any other type of irregularities reported, but not ascertained to be fraudulent.

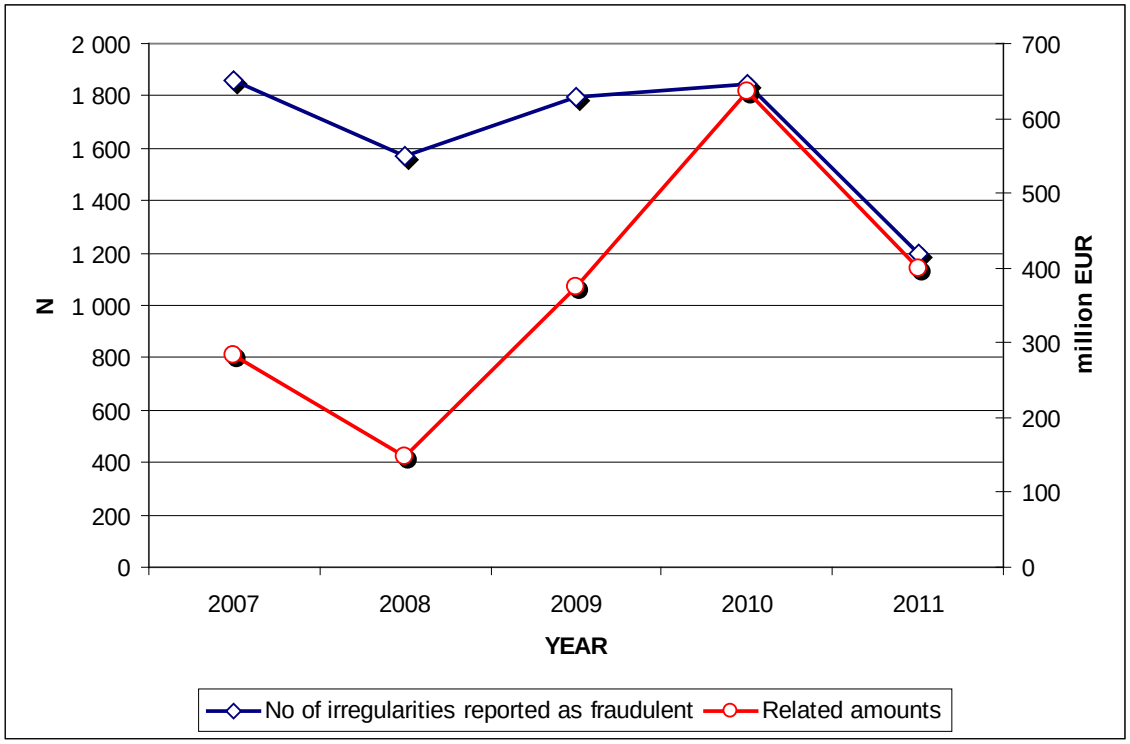
In general, the quality (i.e. completeness and timeliness) of the reporting of irregularities has improved. Some deficiencies and inconsistencies still remain, but these are a limited number of cases and, therefore, have no significant effect on the accuracy of this analysis. The distinction between irregularities reported as fraudulent and those not reported as fraudulent might not be fully comparable between different Member States, as it could depend on national practices and rules.

In response to requests of and discussions with the European Parliament, the Commission is henceforth placing greater emphasis on its analysis of irregularities reported as fraudulent.

2.1. Analysis of irregularities reported as fraudulent by the Member States in 2011

In the period 2007-2011 the number of irregularities reported as fraudulent in all sectors combined remained fairly stable until 2010 (see Chart 1). In 2011, 1 230 irregularities were reported as fraudulent (suspected and established fraud), down by about 35% in comparison with 2010, as shown in Table 1. The estimated financial impact of such irregularities reported as fraudulent also decreased, by about 37% in comparison with 2010 to EUR 404 million.

Chart 1: ALL SECTORS: Irregularities reported as fraudulent and related amounts — 2007-2011



[4] For instance, if a false or falsified document is used or when criminal investigations or proceedings are under way; such irregularities therefore include those detected by the Commission, including OLAF. The concept of suspected fraud is not used in the reporting on traditional own resources (TOR).

The decrease in irregularities reported as fraudulent and the related amounts was partly expected, following the increases in 2009 and 2010. The main reasons for this decrease are: the end of the temporary acceleration in reporting following the introduction of the Irregularity Management System (IMS) in 2008; a general improvement in the management and control systems; specifically for Cohesion Policy, the 'cyclical' nature of these programmes, whereby reported irregularities increased towards the closure of the 2000-2006 programming period[5] – i.e. reporting years 2009 and 2010; and a consequent contraction subsequently, as the 2007-2013 programming cycle is implemented in a progressive way[6].

Table 1: Irregularities reported as fraudulent — 2011

Area	Number of irregularities reported as fraudulent		Estimated financial impact of irregularities reported as fraudulent			
	2010	2011	2010		2011	
			(€ million)	% of allocations	(€ million)	% of allocations
Agriculture	414	139	69	approx. 0.12%	77	approx. 0.14%
Fisheries	0	2	0	0%	0.03	approx. 0.005%
Cohesion policy	464	276	364	approx. 0.74%	204	approx. 0.40%
Pre-accession funds	101	56	41	approx. 2.53%	12	approx. 0.67%
Direct expenditure	21	34	3.6	approx. 0.02%	1.5	approx. 0.002%
Total expenditure	**1000**	**507**	**478**	**approx. 0.34 %**	**295**	**approx. 0.21 %**
Total revenue[7] (traditional own resources)	**883**	**723**	**165**	(**approx. 0.79 %** of the gross amount of TOR collected for 2010)	**109**	(**approx. 0.49 %** of the gross amount of TOR collected for 2011)

When it comes to expenditure, cohesion policy remains the sector with the highest number of irregularities reported as fraudulent (54% of the total) and the biggest financial impact (69% of the total).

5 Because of increased control activity in its latest years of implementation.

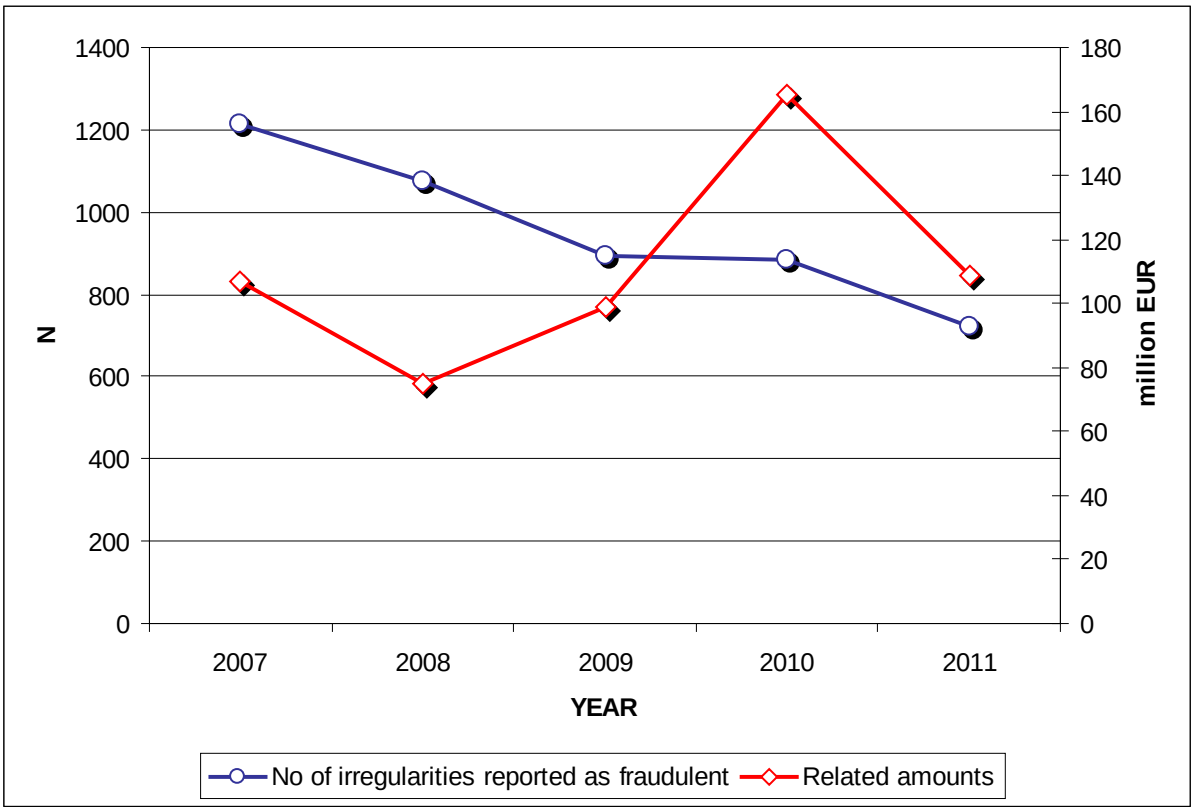
6 At present, the overall implementation rate is below 40% of the available resources. This implies that the projects to be controlled are now less than in the latest years of the previous programming period and therefore the resulting irregularities are in general less and the dissuasive effect of the controls is higher.

7 For reasons of comparability the figures of 2010 are based on the data used for the report that year. The data includes established and estimated amounts involved in irregularities reported as fraudulent.

2.1.1. Revenue (traditional own resources)

In 2011, in the area of traditional own resources (TOR), both the number of cases of irregularities reported in OWNRES as fraudulent and the amounts involved were lower than in 2010.

Chart 2: TOR: Irregularities reported as fraudulent and related amounts — 2007-2011



The fraud figures reported in relation to TOR vary significantly from one Member State to another. As mentioned above, this is the result of different interpretations of the provisions and practices between the Member States.

From the financial perspective, the variations from one year to another are attributable to reports of individual large fraudulent cases, which make a considerable impact on the annual figures, especially in Member States where lower amounts of TOR are collected. Several factors may also influence the figures on fraudulent and non-fraudulent cases detected, e.g. the type of traffic and trade, the level of compliance by the economic operators and the location of the Member State. The way in which the Member State's customs control strategy is set up to target risky imports and to detect TOR-related fraud and irregularities also affects those figures.

The Commission monitors closely the action taken by Member States in response to the observations made during Commission inspections[8].

[8] A report on Member States' customs control strategy summing up the results of the inspections carried out in 2009 and 2010 in all Member States was presented to the Advisory Committee on Own Resources on 7 July 2011.

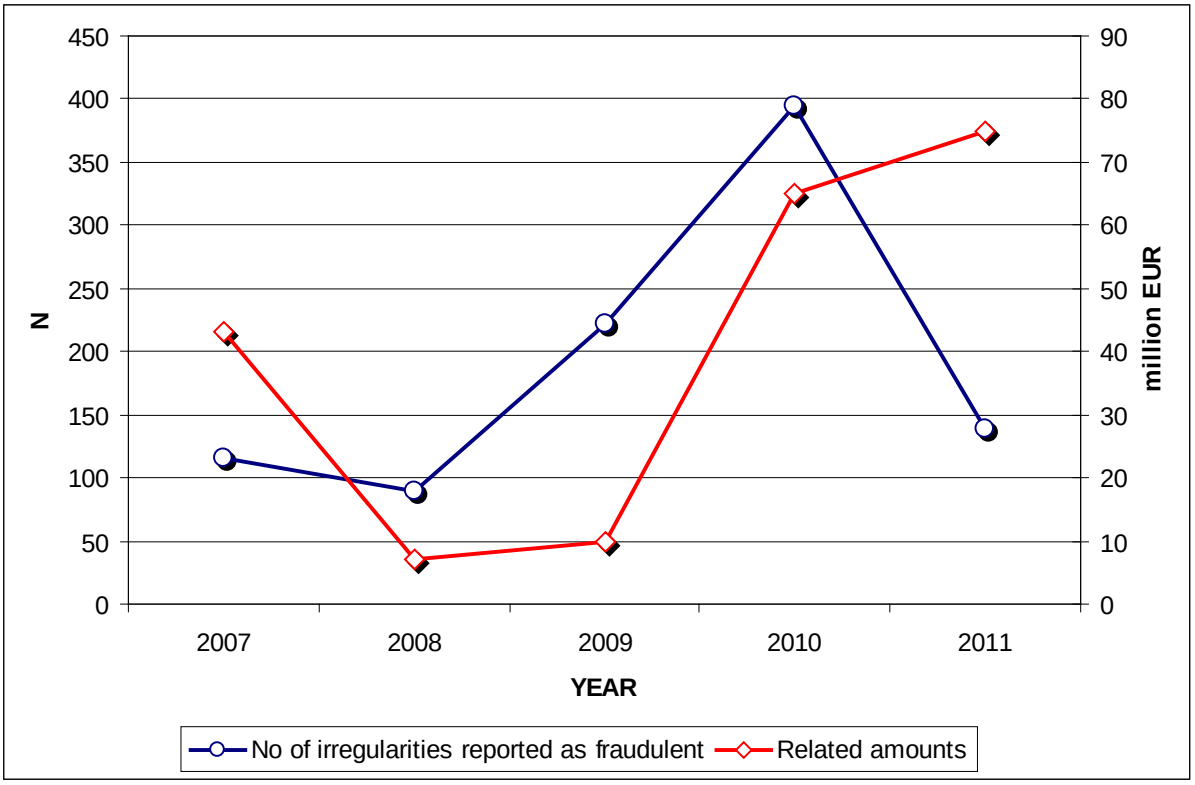
2.1.2. Expenditure — Shared management and pre-accession assistance

2.1.2.1. Natural resources (agriculture and European fisheries fund)

In agriculture, the number of irregularities reported as fraudulent and the related amounts, relative to the total amounts spent, differ substantially both between and within Member States.

Member States reported 139 irregularities as fraudulent out of a total of 2 395 in 2011. The number reported as fraudulent decreased in comparison with the 2010 reporting year whereas the financial impact increased from EUR 69 million in 2010 to EUR 77 million in 2011 (see Chart 2). This increase can be explained by two big cases reported, one worth EUR 39 million and the other EUR 26 million.

Chart 3: Agriculture: Irregularities reported as fraudulent and related amounts — 2007-2011



In 2011, Bulgaria reported the highest number of fraudulent irregularities in this area, with 37 cases followed by Romania with 25. Certain big-spending Member States such as France, Germany, Spain and the United Kingdom continue to report a very low number of irregularities as fraudulent. This raises the question whether the low number declared as fraudulent is due to non-compliance with reporting principles, including their interpretation of the terms 'suspected fraud' and 'established fraud', or to the ability of the control systems in place in these Member States to detect fraud.

In the report on 2010, the Commission called on France, Germany, Spain and the United Kingdom to explain the low number of irregularities reported as fraudulent and to report on

how their control systems are being adapted to target higher-risk areas. To date, the Commission has received no explanation.

Finland, the Netherlands and Poland were invited to report more consistently, in particular in relation to personal data on individuals who have committed irregularities (fraudulent or non-fraudulent). The Netherlands and Poland improved their compliance rate to about 83% and Finland to almost 75%. This is a big step forward but there is still room for improvement. The overall compliance rate for the EU-27 is around 93%, which is an increase in comparison with 2010 (90%).

The Commission assists Member States, performs constant quality checks in the IMS reporting system and provides the Member States with feedback on the quality of the reporting and on the data missing.

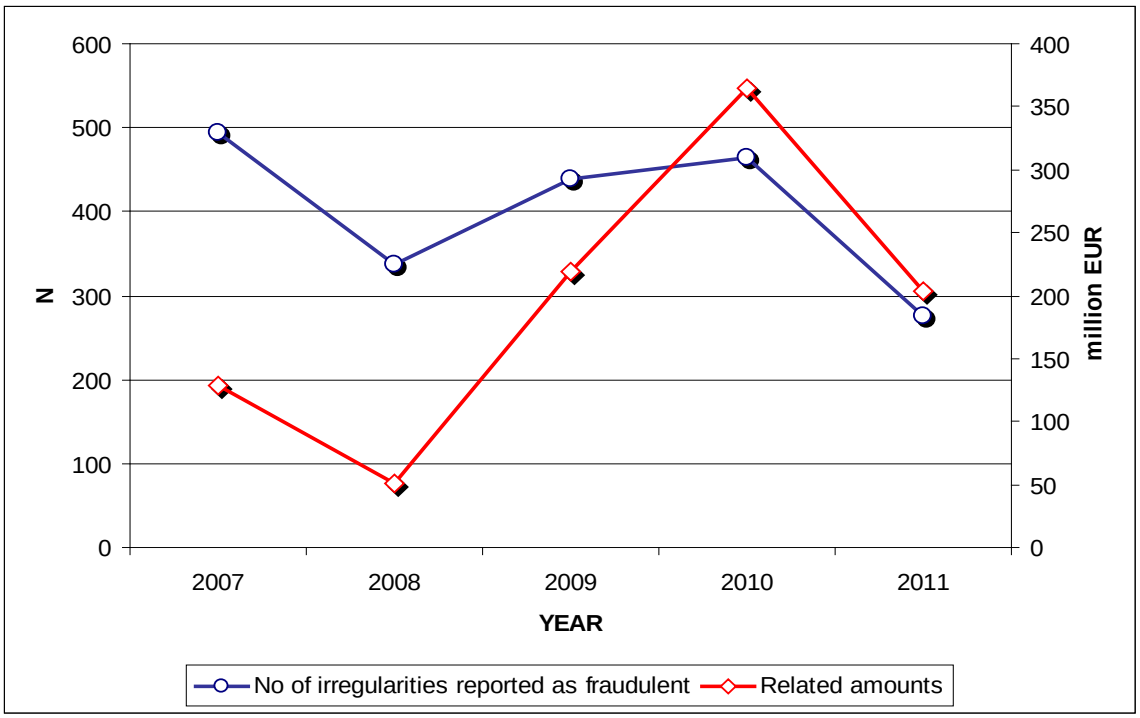
In the case of the European Fisheries Fund, two irregularities were reported as fraudulent, worth a combined total of about EUR 30 000.

2.1.2.2. Cohesion *policy*

In 2011, the number of irregularities reported as fraudulent in the area of cohesion policy and the related amounts both decreased significantly in comparison with the previous year, by 46% and 63% respectively (see Chart 3).

As with other irregularities, this significant decrease was expected as a result of neutralisation of the causes for the sharp increase observed in 2010[9].

Chart 4: Cohesion policy: Irregularities reported as fraudulent and related amounts — 2007-2011



9 I.*e.* the closure of the 2000-2006 programming period and the acceleration of the reporting of irregularities following the introduction of the IMS.

Trends highlighted in previous years were confirmed: Poland, Germany and Italy reported most of the cases (149 out of 276) and Germany remains the most successful Member State at completing criminal proceedings to establish fraud and impose penalties.

Six Member States reported no irregularity as fraudulent in the area of cohesion policy in 2011: Belgium, Cyprus, Denmark, France, Malta and the Netherlands. It is still not clear why this was so in larger Member States, like France.

Most frequently, irregularities reported as fraudulent take the form of use of false or falsified documentation (supporting documents, declarations or certificates), mainly linked to inclusion of ineligible expenditure (resulting in inflation of the cost of the project) or to the ineligibility of the beneficiary to receive the financial support. Three cases concerned corruption with an estimated financial impact of EUR 750 000.

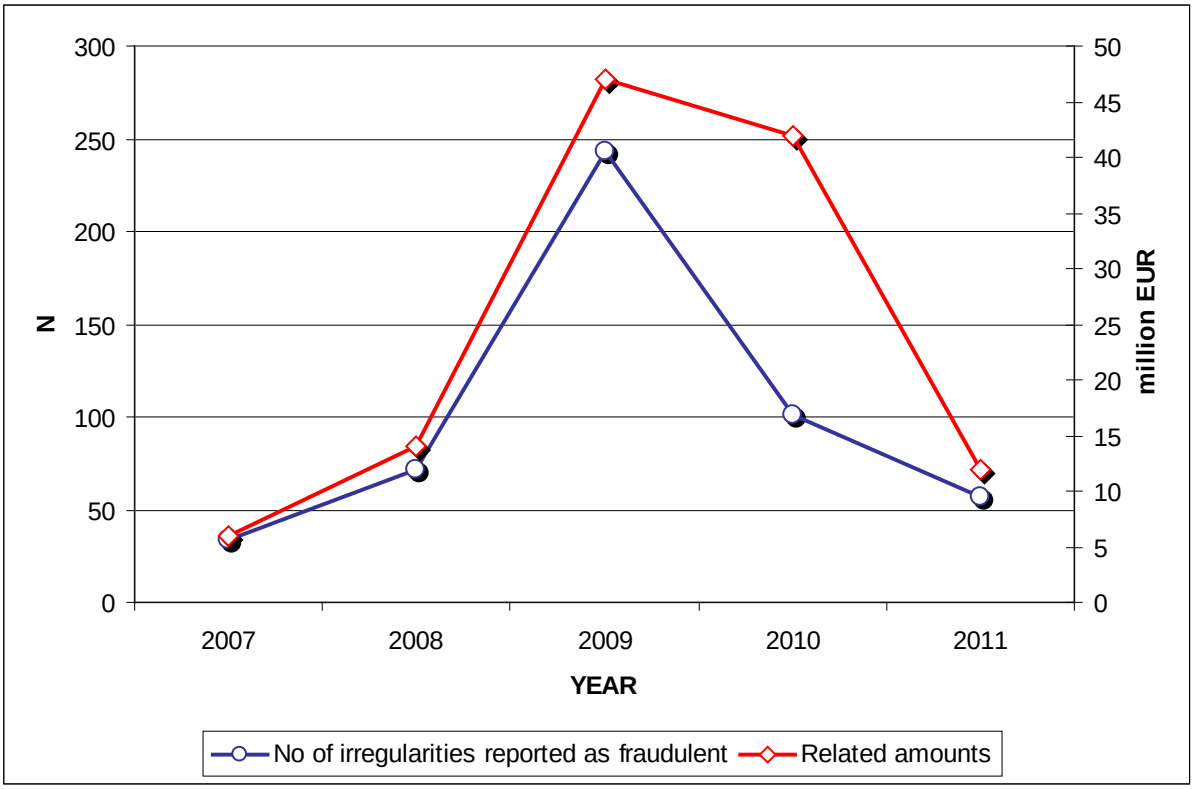
In agriculture and cohesion policy areas, Member States are invited to explain the low number of "suspected fraud" cases reported and to report on the way in which their control systems target high-risk areas to improve fraud prevention and detection.

2.1.2.3. Pre-accession assistance

In the area of pre-accession assistance, in 2011 the number of irregularities reported as fraudulent and the related amounts continued to decrease significantly, thus confirming the trend highlighted in 2010.

This is the obvious consequence of the phasing-out of the EU-10 and EU-2 countries from action financed under the pre-accession assistance programmes for the period 2000-2006.

Chart 5: Pre-accession assistance: Irregularities reported as fraudulent and related amounts — 2007-2011



As in previous years, the majority of the cases relating to pre-accession assistance (programming period 2000-2006) concerned SAPARD (the Special Accession Programme for Agriculture and Rural Development). Poland reported the highest number of cases, followed by Romania.

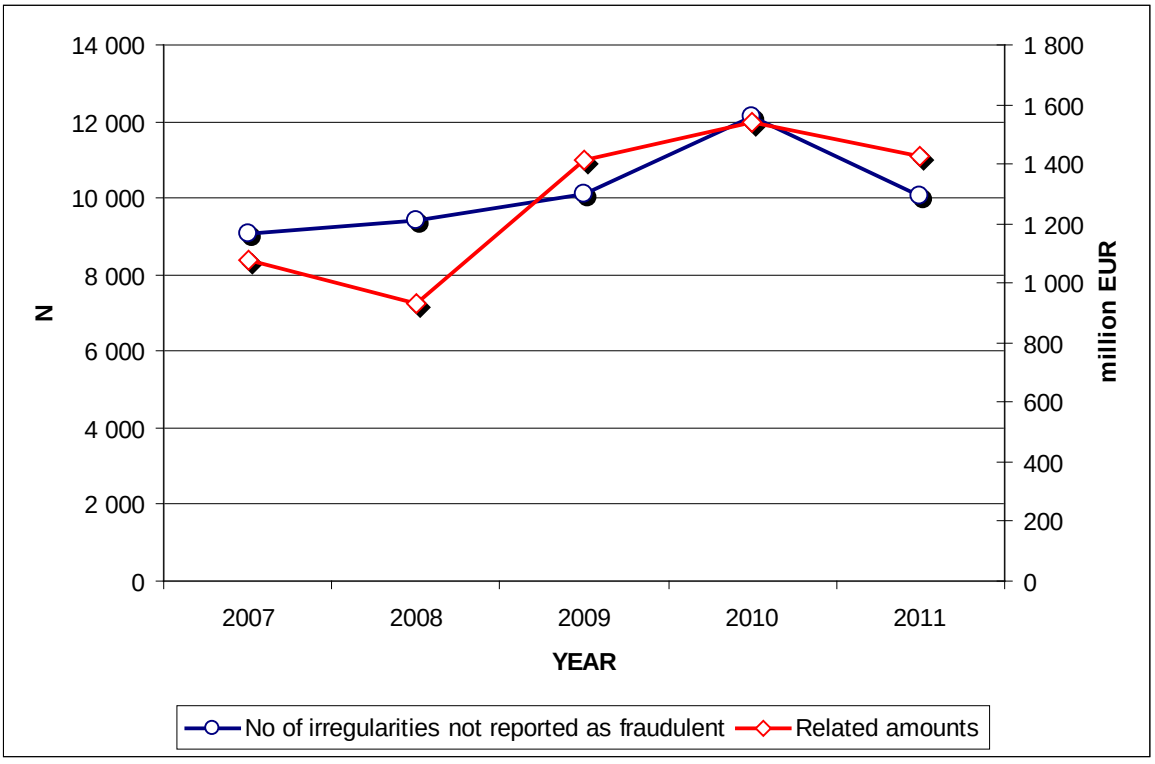
In the case of the Instrument for Pre-Accession Assistance (programming period 2007-2013), the nine irregularities reported as fraudulent were divided between the five different components[10]. Irregularities in all five were reported by Turkey, while a single case concerning the cross-border component was detected in Italy, part of the Adriatic Cross-Border Cooperation Programme. In this area, only Turkey is using IMS for the reporting of irregularities, while Croatia still does not, despite the training and support provided.

The Commission invites Croatia to complete the implementation of the IMS and to improve the reporting quality; the Commission invites FYROM to implement the system.

2.2. Analysis of irregularities not reported as fraudulent by Member States in 2011

In 2011, the number of irregularities not reported as fraudulent recorded an overall decrease (see Chart 6), which was particularly sharp in the domains of the Cohesion Policy and Pre-Accession.

Chart 6: Irregularities not reported as fraudulent and related amounts all sectors — 2007-2011



[10] Cross-border cooperation, Human resources, Rural development, Regional development and Technical assistance.

On the revenue side, the financial impact of the irregularities not reported as fraudulent shows a slight increase over 2010 (see Table 2).

Table 2: Irregularities not reported as fraudulent — 2011

Area	Number of irregularities not reported as fraudulent		Estimated financial impact of irregularities not reported as fraudulent			
			2010		2011	
	2010	2011	(€ million)	% of allocations	(€ million)	% of allocations
Agriculture	1427	2256	62	approx. 0.11 %	101	approx. 0.18 %
Fisheries	1	46	0.01	0 %	1.6	approx. 0.24 %
Cohesion policy	6598	3604	1186	approx. 2.41 %	1015	approx. 2.00 %
Pre-accession funds	323	207	42	approx. 2.59 %	48	approx. 2.63 %
Direct expenditure	1000	888	39.5	approx. 0.27 %	49.9	approx. 0.78 %
Total expenditure	**9349**	**7001**	**1325.51**	**approx. 0.94 %**	**1215.5**	**approx. 0.86 %**
Total revenue[11] (traditional own resources)	**3861**	**3973**	**253**	(**approx. 1.21 %** of the gross amount of TOR collected for 2010)	**278**	(**approx. 1.24 %** of the gross amount of TOR collected for 2011)

In 2011, in the area of traditional own resources, the irregularities not reported as fraudulent were 3 973, showing an increase from 2010, both in number and in the amounts involved.

Member States' customs control strategies should intensify targeting high-risk imports, thus further improving the detection rate of cases of irregularities and fraud in TOR.

In the area of agriculture, irregularities were 2 256 in 2011, showing an increase from 2010, both in number and in the amounts involved. The increase in the number of cases reflects the increase in expenditure and especially the extra efforts made by Member States and the Commission to improve the process for reporting irregularities[12].

[11] See footnote 7.

[12] Training sessions and documents such as 'Information Bulletins' and 'Questions and Answers' to inform and instruct users of IMS module 1848.

The financial impact of irregularities not reported as fraudulent in agriculture also increased, from EUR 62 million in 2010 to EUR 101 million in 2011. Special focus is being placed on the financial years 2004-2006, which are considered 'finalised' because control and audit plans have been completed, recovery procedures have been started and irregularities have been reported.

In the areas of cohesion policy and pre-accession assistance, the same conclusions highlighted in relation to irregularities reported as fraudulent are also valid to explain the decrease in the number of irregularities not reported as fraudulent (cyclical nature of programmes, end of the reporting acceleration following the introduction of the IMS and the improvements in the management and control systems for the cohesion policy and the phasing-out of a number of beneficiary countriesfor the pre-accession policy).

Irregularities not reported as fraudulent in cohesion policy still account for the largest share of those affecting the various areas of expenditure under the EU budget, though the prevalence of this sector is decreasing in relation to the previous year (approximately 50% of all cases reported in 2011, in comparison with 70% in 2010).

The majority of these irregularities are infringements of rules applicable to public procurement and eligibility of expenditure. This shows that management and control systems can still improve in this area.

Member States are encouraged to pursue their efforts to improve the efficiency and effectiveness of their management and control systems in the area of cohesion policy.

The overall quality of reporting has been constantly improving thanks to the introduction and successful implementation of the IMS in every Member State. France was the last country to start using the system (in the last quarter of 2011). Therefore, further improvements could still be achieved, particularly when the link between the national IT system PRESAGE and the IMS is completed in 2012.

In the area of cohesion policy, the Commission invites France to finalise implementation of the IMS system by the end of 2012.

2.3. Analysis of fraudulent and other irregularities related to expenditure directly managed by the Commission in 2011

This section concerns recovery orders[13] issued by Commission departments in relation to expenditure under 'centralised direct management'[14].

According to the accrual-based accounting system of the Commission (ABAC), in the 2011 financial year a total of 3389 recovery orders were issued for a total amount of EUR 225 million. Among these recovery orders, 922 irregularities were flagged as non-fraudulent and 24 as fraudulent; analysis shows that a further 10 recoveries can be considered as fraudulent.

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[13] According to Article 72 of the Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002), the authorisation of recovery is the act whereby the authorising officer by delegation or sub-delegation responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he or she has established.

[14] Centralised direct management includes any EU expenditure from funds managed by the EU institutions (e.g. administrative expenditure of the institutions and programmes like Leonardo, Erasmus, the 7th Framework Programme for research and technological development, etc.). Under Article 53 of the Financial Regulation, this part of the budget can be implemented on a centralised basis, directly by the Commission departments, or by delegating implementing tasks to third countries (decentralised management) or to international organisations (joint management).

The financial impact of these 34 fraudulent irregularities amounts to EUR 1.5 million. Compared to the overall budget committed under the centralised direct management in the same financial year, this fraud and irregularity rate is very low.

3. RECOVERY

The recovery data presented in this section is based, for the sectors of the expenditure budget, on those published in the annual accounts of the European Union[15]. Therefore, they differ in scope and content from those presented in previous years[16].

Table 3: Recovery rates per sector — 2010–2011

BUDGET SECTOR	CONTEXT	RECOVERY RATE	
		2010	2011
TOR	The overall recovery rate for all years (1989-2011) is 50%.	46%	52%
Agriculture and rural development[17]	The figures indicated in this row refer to the rate of implementation of financial corrections decided by the Commission[18].	85%	77%
Cohesion policy	The figures indicated in this row refer to the implementation of financial corrections made by the Commission in order to exclude from EU funding expenditure that is not in accordance with the applicable rules and regulations. Financial corrections may also be applied following detection of serious deficiencies in the management and control systems of Member States. Issuing orders to recover amounts unduly paid is just one of the means available to the Commission to implement financial corrections.	69%	93%
Other management types[19]	Concerns the recovery of amounts	92%	92%

15 Specifically those showed in explanatory note No 6 on financial corrections and recoveries. In particular, the recovery rate is calculated as the ratio between financial corrections or recovery orders decided in the given financial year and those effectively implemented.

16 Data presented in previous years was based mostly on the irregularity reports by Member States. These data are presented in the Commission Staff Working Document "Statistical Evaluation of Irregularities reported in 2011". To allow comparability with the previous year's results for each of the policy areas concerned, the recovery rate for 2010 has been recalculated in Table 3 for each sector.

17 In this category some instruments of rural development under pre-accession assistance are included.

18 In any case the amounts not reimbursed in the same year are reimbursed in the following year.

19 This category "Other management types) includes the part of the EU budget that is managed under the direct management mode. Within this category fall the pre-accession assistance (excluding rural development), whose reported irregularities are analysed under paragraphs 2.1.2.3, and the recovery orders issued by the Commission analysed in paragraph 2.2.

	unduly paid because of errors or irregularities detected by the Commission or OLAF, Member States, the European Court of Auditors, for the part of the budget which is not executed under shared management.		

3.1. Revenue (traditional own resources)

For traditional own resources, Member States are under an obligation to recover the unduly not collected and to register them in the OWNRES database. The amount to be recovered following irregularities detected in 2011 is EUR 321 million (approximately 1.43 % of the total amount of TOR collected for 2011). EUR 166 million has already been recovered by the Member States for cases detected in 2011, giving a recovery rate for 2011 of 52 %. In addition, the Member States continued their recovery activities related to cases from previous years. In 2011, all 27 Member States recovered a combined total of approximately EUR 305 million related to cases detected between 1989 and 2011.

Member States' activities to recover TOR are monitored by means of TOR inspections and through the procedure requiring that all amounts exceeding EUR 50 000 that are finally declared irrecoverable by Member States must be reported to the Commission. Member States are held financially liable for the non-recovery of TOR in cases where weaknesses are observed in their recovery activities.

Over 98 % of all amounts of TOR established are collected without any particular problem.

3.2. Expenditure managed by the Member States

3.2.1. Natural resources (agriculture and European Fisheries Fund)

In the area of agriculture, in the framework of conformity clearance procedures, audit missions were performed which resulted in financial corrections implemented by the Commission for a total of EUR 822 million on a total of EUR 1 068 million decided (77%).

In addition, in relation to the European Agricultural Guarantee Fund (EAGF) Member States recovered from beneficiaries EUR 173 million during the 2011 financial year. As a result, by the end of the 2011 financial year, 44 % [20] of the debts from the EAGF dating from 2007 onwards had already been recovered by the Member States. The financial clearance mechanism ('50/50' rule) introduced by Regulation (EC) No 1290/2005[21], provides a strong incentive for Member States to recover undue payments from the beneficiaries as quickly as possible.

Nevertheless, the outstanding accumulated EAGF amount remaining to be recovered from beneficiaries by national authorities at the end of the 2011 financial year was EUR 1.2 billion. The amount outstanding to the EU budget is, however, lower as, since 2006, Member States

[20] This percentage concerns only recoveries.

[21] If a Member State fails to recover an amount unduly paid from the beneficiary within four years of the primary administrative or judicial finding (or, in the case of proceedings before national courts, within eight years), 50 % of the non-recovered amount is charged to the budget of the Member State concerned as part of the annual financial clearance of the EAGF and EAFRD accounts.

have already paid large non-recovered sums (EUR 0.45 billion) to the EU budget by applying the 50/50 rule.

During the years 2008-2011, the Commission audited the new clearance mechanism by means of on-the-spot checks on the national authorities responsible for 18 paying agencies in 13 Member States, covering 90 % of the total outstanding debt at the end of the 2011 financial year.

3.2.2. Cohesion policy

In 2011 in the area of cohesion policy, the Commission had already completed financial corrections for EUR 624 million of the EUR 673 million decided (93 %).

The cumulative rate of implementation of financial corrections (including all years up to 2011) rose to 72 %, leaving EUR 2.5 billion outstanding.

Member States are primarily responsible for recovering, from beneficiaries, amounts unduly paid plus, where applicable, any interest for late payment. The amounts recovered by the Member States are not included in this report, which presents only the financial corrections established by the Commission.

For the period 2007-2013, Member States are obliged to provide the Commission with data on the amounts withdrawn from co-financing before the national recovery process is finalised and the amounts effectively recovered from beneficiaries at national level. These data (partial in relation to the total sums involved in recoveries and financial corrections) are presented in the Commission Staff Working Paper *'Statistical Evaluation of Irregularities reported in 2011'*.

3.2.3. Other management types

Concerning the part of the EU budget that is managed under the direct management mode, expenditure that is not in accordance with applicable rules and regulations is either the subject of a recovery order established by the Commission or deducted from the subsequent cost statement[22].

Confirmed recovery orders related to the part of the budget not executed under shared management concern EUR 377 million. Of these, EUR 346 million have been recovered (92%).

3.2.3.1. Pre-accession assistance

In the case of pre-accession assistance, the beneficiary countries are primarily responsible for recovering, from beneficiaries, amounts unduly paid plus, where applicable, any interest for late payment. The information provided in this report is based on the cases of suspected fraud and irregularities reported by the beneficiary countries.

In relation to the cases reported in 2011, the recovery rate has significantly improved compared with previous years, with a total of almost EUR 26 million recovered (46%).

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[22] If the deduction is directly made by the beneficiary in the cost statement, the information cannot be registered in the Commission's accounting system.

The overall cumulative recovery (of all amounts reported, including previous years) has also improved, with more than EUR 100 million recovered and a recovery rate of more than 60 %.

These positive results are directly linked to the closure of the pre-accession assistance programmes.

3.2.3.2. Expenditure managed by the Commission

For the recovery orders flagged both as fraudulent or non-fraudulent irregularities and issued in 2011, full or partial recovery was recorded in almost all of the 922 irregular cases. The recovery rate for recoveries qualified as 'irregularity reported as fraudulent' is 50%; the rate for other irregularities is 64%.

4. ANTI-FRAUD POLICIES AT EU LEVEL

4.1. Anti-fraud policy measures launched by the Commission in 2011

4.1.1. OLAF reform proposal

The basic Regulation defining OLAF's main role and remit for carrying out its administrative investigations[23] is currently being reviewed. Building on a reflection process carried out during 2010, in March 2011 the Commission presented an amended proposal to improve the legislative framework governing the work of OLAF to the co-legislators, the European Parliament and the Council of the European Union.

The amended proposal aims to make OLAF's investigations more efficient, while at the same time clarifying the procedural rights of the persons concerned.

The proposal has been analysed by the Council at working group level and, in June 2012, was examined in an informal trilogue between the European Parliament, the Council and the Commission.

4.1.2. Commission Anti-Fraud Strategy

To improve prevention and detection of fraud at EU level, in June 2011 the Commission adopted a Communication on the Commission Anti-Fraud Strategy[24]. The strategy is directed primarily to the Commission departments that manage EU funds and sets the following priorities:

- inclusion of adequate anti-fraud provisions in Commission proposals on spending programmes under the new multiannual financial framework;
- development and implementation of anti-fraud strategies at Commission department level with the assistance of OLAF;
- revision of the public procurement directives in order to simplify requirements and reduce the risks of procurement fraud in the Member States.

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23 Regulation 1073/1999.

24 COM(2011) 376 final.

In 2011 and early 2012, progress was made with inserting anti-fraud provisions in the financing programmes, with setting up a fraud prevention network and with creating a dedicated fraud prevention site accessible to all Commission departments. Implementation of the strategy should be completed by 2014.

4.1.3. Commission Action Plan to fight smuggling of cigarettes and alcohol along the EU's eastern border

Smuggling of highly taxed goods, mainly cigarettes and alcohol, causes significant losses of revenue to the budgets of the EU and its Member States. The direct loss in customs revenue as a result of cigarette smuggling in the EU is estimated at more than EUR 10 billion a year. To help tackle this problem, in June 2011 the Commission launched an Action Plan to step up efforts to fight smuggling of cigarettes and alcohol along the EU's eastern border[25].

The Action Plan analyses existing initiatives and problems and proposes targeted action to be carried out by 2014, with the help of the Member States, Russia and the Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine). This action includes: supporting the development of enforcement capacity and providing technical assistance and training; strengthening the deterrents and raising awareness; and stepping up operational cooperation between the competent services in the region, including sharing of intelligence and closer international cooperation.

Some of these measures have been taken in the meantime. Examples include: a targeted regional operational conference on tobacco smuggling held in Romania at the end of June 2011; the posting of an OLAF liaison officer to the EU Delegation in Kiev in order to tighten cooperation with the competent Ukrainian law enforcement services; and a joint customs operation targeting, for the first time, smuggling of tobacco products and synthetic drug precursors by rail along the EU's eastern border (see section 4.2.5.3 of this report).

Achieving the objectives of the Action Plan was one of the main priorities in 2011 and remains a key objective in 2012.

4.1.4. Commission measures to protect the financial interests of the EU by criminal law and by administrative investigations

In protecting EU finances, Member States apply national rules. As a consequence, the conviction rate in cases involving offences against the EU budget varies considerably across the EU from one Member State to another, ranging from 14 % to 80 %. At the same time, the criminal law systems of the Member States have been harmonised to only a limited extent[26], judicial cooperation is not sufficiently effective and there is a tendency to restrict prosecutions to domestic cases, ignoring the European dimension.

Overall, there are insufficient deterrents against criminal misuse of the EU budget. Consequently, the Commission announced that it intends to reinforce the legal framework to protect the EU's financial interests in a number of areas[27], including:

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25 SEC(2011) 791.

26 Second Report on implementation of the Convention on the Protection of the EU's Financial Interests (COM(2008) 77).

27 Communication from the Commission on the protection of the financial interests of the European Union by criminal law and by administrative investigations — An integrated policy to safeguard taxpayers'

- the definition of the major offences affecting the EU's financial interests (such as fraud) and of other relevant criminal offences (such as embezzlement);

- the procedural framework, where action is necessary to improve cooperation and exchanges of information between all competent authorities;

- the institutional framework for investigating, prosecuting and bringing to judgment perpetrators of offences against the EU's financial interests. This includes reinforcing the existing bodies — Eurojust and OLAF — and establishing a specialised European Public Prosecutor's Office.

On the first point, the Commission tabled a legislative proposal on 11 July 2012[28]. With a view to the other areas, the Commission is currently considering the different options for proposals.

In addition, the Commission sees a need for stronger protection of euro banknotes and coins with criminal penalties in line with the Commission work programme. This might include enabling all Member States to use the same range of investigative techniques and setting minimum penalties. The Commission is preparing a legislative proposal on this subject.

4.1.5. Multiannual financial framework (MFF) for 2014-2020 — Hercule III and Pericles 2020 Programmes

With a view to reinforcing prevention of and the fight against fraud, in December 2011 the Commission adopted proposals for financing two programmes: Hercule III[29] and Pericles 2020[30]. Both proposals were made in the context of the new multiannual financial framework for 2014-2020 and are successors to ongoing programmes that will expire at the end of 2013.

Hercule III is a financing programme specifically focusing on fighting fraud, corruption and any other illegal activities affecting the financial interests of the EU. It provides for the procurement of specialised equipment and databases to be used by national law enforcement agencies and training for anti-fraud specialists. The total budget proposed for the seven-year period is EUR 110 million.

The new additions proposed in Hercule III aim for rationalisation of the objectives and simplification of implementation, compared with the current programme. For technical assistance support to the Member States, the proposal includes an increase in the co-funding rate from 50 % to 80 %, at the request of a substantial number of stakeholders, so that Member States with more limited capacity to co-finance can also benefit from these programmes.

The Pericles Programme provides training and assistance on protection of euro banknotes and coins against fraud and counterfeiting. It supports multidisciplinary and transnational workshops, meetings and seminars, targeted placements and exchanges of staff from national authorities in the EU and worldwide and also provides technical, scientific and operational support.

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money, COM(2011) 293, 26 May 2011, and Commission Staff Working Document accompanying the Communication, SEC(2011) 621.

28 COM(2012) 363 final.

29 COM(2011) 914 final.

30 COM(2011) 913 final.

The Pericles 2020 proposal also includes new features, such as the possibility to purchase relevant equipment and an increase in the co-financing rate (up to 90% in exceptional cases). The total budget proposed for the seven-year period is EUR 7.7 million.

Both proposals are to be discussed by the European Parliament and the Council in 2012.

4.1.6. New organisation of OLAF and its investigation procedures

In March 2011, OLAF launched an internal review focusing notably on improving the organisational structure of OLAF and its investigation procedures.

Based on the review, a new OLAF organisation chart entered into force on 1 February 2012. The new structure reduced the overheads and administrative burden, increased by 30% the number of staff assigned to investigations and consolidated the role of OLAF as the Commission department in charge of overall anti-fraud policy. Investigation procedures were streamlined and a new set of investigation policy priorities was established.

4.2. Other policy measures taken by the Commission in 2011of relevance to the fight against fraud

4.2.1. Commission Communication on Fighting Corruption in the EU

Implementation of the anti-corruption legal framework remains uneven across EU Member States and unsatisfactory overall. Consequently, the Commission presented an overall EU anti-corruption policy for the next few years[31]. The Commission called for a sharper focus on corruption in a range of policy fields and pointed to a number of measures, including closer cooperation, modernised EU rules on confiscation of criminal assets, revised public procurement legislation, better crime statistics and greater use of conditions in cooperation and development policies.

The Commission will prepare an EU Anti-Corruption Report every two years, as of 2013. The report will aim to intensify the anti-corruption measures and cement mutual trust between Member States, while also identifying EU trends, facilitating exchanges of best practice and preparing the ground for future EU policy measures.

4.2.2. Modernisation of public procurement rules

Based on the results of a public consultation, on 20 December 2011, the Commission adopted proposals[32] to modernise the Public Procurement Directives. These aim to make sure that Member States put in place effective mechanisms to prevent unsound business practices and to improve transparency. The Commission considers that such measures are not only for fair competition between tenders but also to ensure efficient use of taxpayers' money by the public authorities.

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31 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 6 June 2011 on Fighting Corruption in the EU — COM(2011) 308 final.

32 Proposal for a Directive on public procurement, COM(2011) 896 final — 2011/438 (COD), and proposal for a Directive on procurement by entities operating in the water, energy, transport and postal services sectors, COM(2011)895 final 2011/439 (COD):http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals_en.htm.

In parallel, the Commission proposed basic transparency measures and procedural requirements applicable to the award of concessions provisions[33] for exclusion of candidates convicted for corruption, money-laundering and fraud, and measures to prevent conflicts of interest.

4.2.3. Cohesion policy

With regard to cohesion policy for the period after 2013, the Commission believes there is a need to strengthen the anti-fraud aspects through: introduction of a system of national accreditation; a management declaration of assurance; and an annual clearance of accounts to increase assurance. In particular, as regards the financial management and control of the programmes, the Commission proposed that the managing authority put in place effective and proportionate anti-fraud measures taking into account the risks identified[34].

4.2.4. Direct expenditure

With regard to prevention, detection and investigation of fraud related to direct expenditure and external aid, the Commission has proposed introducing a standard clause[35] on the protection of the financial interests of the Union in all new MFF proposals for the period 2014-2020, with a view to enhancing consistency across the spending programmes.

4.2.5. Customs

4.2.5.1. Anti-Fraud Transit Information System

To step up the fight against customs-related fraud, it is important to keep all authorities involved informed about the movements, within the EU, of goods in transit. For that purpose, the Commission (OLAF) has designed and put in place a central repository containing such information, called the Anti-Fraud Transit Information System — ATIS for short. Since 1 September 2011, the Commission, the Member States and EFTA countries[36] have access in real time to ATIS.

4.2.5.2. Mutual administrative assistance (MAA) and related anti-fraud provisions with third countries

In order to ensure proper application of customs legislation, various agreements, such as preferential trade and/or cooperation agreements, non-preferential agreements and customs agreements, contain provisions on mutual administrative assistance (MAA) and on preventing, investigating and combating breaches of customs legislation.

At the end of 2011, 43 agreements covering a total of 58 countries were in force; negotiations on preferential trade were under way with India, Canada, Singapore, Malaysia, the Mercosur region, Georgia, Moldova and six EPA (Economic Partnership Agreement) regions.

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33 Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts COM(2011) 897 final - 2011/0437 (COD).

34 In particular, Article 114(4)(c) of the proposal, COM(2011) 615.

35 See, for example, the proposal for a Regulation of the European Parliament and of the Council on a consumer programme for 2014-2020, COM(2011) 707 final, 9.11.2011, and the proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020), COM(2011) 809 final, 30.11.2011.

36 Except Switzerland.

4.2.5.3. Joint customs operations (JCO)

The customs authorities of EU Member States, and also of some non-EU countries, in cooperation with OLAF, carry out regular joint operations of limited duration aimed at combating smuggling of sensitive goods and fraud in certain risky areas and/or on identified trade routes. The Commission (OLAF) initiates these joint customs operations and/or provides the necessary support.

In April 2011, a joint customs operation code-named 'Fireblade' was organised by Hungary and the Commission (OLAF), in cooperation with Europol. All the EU Member States were invited to participate, plus Croatia, Ukraine and Moldova. It led to the detention of more than 28 000 pieces/pairs of counterfeit textile products and accessories attempting to enter the EU by road across the eastern border. The financial impact of these seizures adds up to at least EUR 1 million for the market value of the detained counterfeit goods plus at least EUR 1.5 million for evaded duties and taxes on the smuggled cigarettes detected during the operation.

In October 2011, the Polish Customs Service, in close cooperation with OLAF, launched a joint customs operation code-named 'Barrel'. Twenty-four EU Member States plus Croatia, Turkey, Norway and Switzerland took part. This was the first joint customs operation on rail transport, targeting smuggling of tobacco products and synthetic drug precursors along the EU's eastern border. As a result, around 1.2 million cigarettes were found on freight trains carrying wood and iron and were seized. They would have meant losses of at least EUR 205 000 in evaded customs duties and taxes.

4.2.6. VAT

Based on the outcome of a public consultation[37] but also on the discussions with Member States and the opinions expressed by the European institutions, in December 2011the Commission adopted the Communication entitled 'The future of VAT — Towards a simpler and more robust and efficient VAT system tailored to the single market'[38].

New ways of improving the fight against fraud will be explored, such as improving the administrative cooperation with third countries, a quick reaction mechanism for tackling new fraud and studies on new tax collection systems.

The Commission will also provide technical and capacity-building assistance to help Member States make their tax administrations more effective, efficient and fraud-proof. In addition, the Commission is setting up a permanent EU forum in which tax authorities, business representatives and the Commission will discuss anti-fraud issues related to management of the VAT system.

4.2.7. International conventions, instruments and administrative cooperation arrangements

In a globalised world, fraud is increasingly being committed across international borders. It is therefore important to step up cooperation with countries and international organisations all over the world that are beneficiaries of EU funds and/or donors alongside the European Union.

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37 COM(2010) 695. The public consultation ended on 31 May 2011.

38 COM(2011) 851.

A strong legal framework, with clear commitments from the partner countries, is necessary to ensure sound financial management of the funds they receive from the EU and to cooperate with the EU to fight fraud and corruption. In order to establish such a framework, the European Commission has been proposing a set of control and anti-fraud provisions in new or renegotiated bilateral agreements.

In 2011, such provisions[39] were proposed in the draft agreements with beneficiary countries such as Afghanistan and Kazakhstan and the draft Association Agreements with three Eastern Partnership countries: Armenia, Azerbaijan and Georgia. More streamlined provisions focusing on exchanges of information were also proposed with leading donor countries such as Australia. The European External Action Service and the European Commission will press for such provisions to be included in the new agreements with these countries during negotiations in 2012.

During 2011, the Commission (OLAF) launched a major campaign to step up cooperation and especially exchanges of information on the fight against fraud with international organisations such as the World Bank Integrity Vice-Presidency.

4.2.8. Fight against illicit trade in tobacco products at international level

The Commission coordinated the EU position and, with the Council Presidency, represented the EU during the negotiations on the Protocol on the Elimination of the Illicit Trade in Tobacco Products under the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC).

Five meetings of the Intergovernmental Negotiation Body (INB) have taken place, the latest (INB5) in Genevafrom 28 March to 4 April 2012. Following intensive negotiations at INB5, a Draft Protocol on the Elimination of the Illicit Trade in Tobacco Products was agreed.

The Draft Protocol will be submitted for consideration and adoption at the Conference of the Parties to the WHO FCTC) in Seoul, South Korea, in November 2012.

4.3. Implementation of anti-fraud programmes

4.3.1. Hercule II Programme

In 2011, the Hercule II Programme continued focusing on improving transnational and multidisciplinary cooperation between the Member States and the Commission in fighting and preventing fraud against the EU's financial interests.

Emphasis was placed on: detecting and preventing unlawful imports of illegal or counterfeit products, including cigarettes and tobacco (EUR 5.1 million); conferences, seminars and training (EUR 4.8 million); payments for use of external databases for investigation purposes (approximately EUR 2.9 million); and academic research (EUR 0.7 million).

4.3.2. Pericles Programme

The Pericles Programme provides training and technical assistance to national authorities responsible for protection of euro banknotes and coins against fraud and counterfeiting. In

[39] These provisions differ from the ones mentioned in section 4.2.5.2, in that the former concern EU spending and the latter customs (revenue).

2011, the Commission (OLAF) took part in 15 Pericles activities, including conferences, seminars and staff exchanges organised by Member States and/or the Commission (OLAF). The Pericles strategy focuses on EU Member States and aims to strengthen regional cooperation in critical areas. In 2011, the budget allocated under the Pericles Programme was EUR 1 million, of which 100 % was committed.

4.3.3. The Anti-Fraud Information System (AFIS)

The Anti-Fraud Information System (AFIS) is a set of anti-fraud applications aiming at timely and secure exchanges of fraud-related information between the national and EU administrations responsible. AFIS is operated by the Commission (OLAF) and encompasses two major areas: mutual assistance in customs matters (joint customs operations, secure e-mail, Anti-Fraud Transit Information System, etc.) and management of irregularity reports by Member States and beneficiary countries.

The number of AFIS users has been increasing steadily to nearly 10 000 in more than 1 200 competent authorities from Member States, partner third countries, international organisations, Commission departments and other EU institutions.

In 2011, AFIS was funded from an operational budget of EUR 6 million, used mainly for maintenance, development and production services (EUR 4.8 million) with the rest going to technical assistance, training and hardware (EUR 1.2 million). The 2011 budget for AFIS was fully implemented, with 99 % committed.

4.4. European Parliament resolution of 6 April 2011 on protection of the Communities' financial interests — Fight against fraud — Annual report 2009

The European Parliament adopted its resolution concerning the Commission's 2009 report on 6 April 2011[40]. The resolution contains specific requests, comments and proposals covering all sectors of the budget. It is addressed to the Commission and the Member States and covers a wide range of topics, such as publication of the beneficiaries of EU funds, national management declarations and public procurement. It criticises the situation regarding recovery of EU funds in all areas and the low number of irregularities reported by certain Member States in particular sectors.

The European Parliament welcomed the introduction of the Irregularity Management System and acknowledged the progress made in certain areas, such as the improvement in the overall discipline shown by Member States in reporting irregularities in agriculture. It also noted the successful outcome of the joint customs operation code-named 'Diabolo II' and coordinated by the European Commission through OLAF.

The Commission has submitted a follow-up report to the Parliament indicating the practical action it intends to take in response to the resolution. In particular, the Commission pointed out that it had adopted a number of simplifications in all areas under shared management, with the aim of easing the workload on Member States. In return, the latter are expected to improve the quality, timeliness and completeness of their irregularity reports.

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40 http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0142+0+DOC+XML+V0//EN&language=EN.

4.5. Advisory Committee for Coordination of Fraud Prevention (COCOLAF)

Under Article 325 of the Treaty on the Functioning of the European Union, Member States organise, together with the Commission, close and regular cooperation between their competent authorities. This takes place within the Advisory Committee for Coordination of Fraud Prevention[41].

The Committee met twice in 2011[42]. It was kept informed of progress with carrying out the Commission's anti-fraud programme and put forward its own suggestions. Among other issues, it discussed: effective implementation of the EU legislation on fraud prevention and its application at national level; annual reporting and exchanges of information between the Member States and the Commission, in particular with regard to suspected and established fraud cases and irregularities; and risk analysis.

In particular, the Committee explored ways to tighten up anti-fraud measures in the Member States, notably by setting up a dedicated COCOLAF subgroup for structural action. Member States emphasised the added value of such meetings, notably for exchanging best practice.

5. MEASURES TAKEN BY THE MEMBER STATES TO COUNTER FRAUD AND OTHER ILLEGAL ACTIVITIES AFFECTING THE FINANCIAL INTERESTS OF THE EU

5.1. Results of the questionnaire about the controls to combat irregularities and fraud against the financial interests of the EU in the area of cohesion policy

Each year the Commission and the Member States choose a topical issue of particular interest (for example in risk areas), which is featured in the following year's anti-fraud report, drawing on the answers to a questionnaire sent by the Commission to the Member States. This focus facilitates exchanges of information and best practices between Member States and monitoring of anti-fraud measures.

This year's special topic spotlights the controls to combat irregularities and fraud against the financial interests of the EU in the area of cohesion policy[43]. It covers information about anti-fraud investigations, the legislative and administrative measures and strategies in place, the use of fraud indicators, the amounts recovered in connection with anti-fraud investigations and data on personnel assigned to and involved in anti-fraud investigations.

All the Member States reported legislative or administrative measures that they had taken in the period 2007-2011. In the view of the Member States, these have contributed substantially to better prevention of fraud in the area of cohesion policy and/or to improvements in the risk management system.

These measures concern, among other things, the eligibility rules, on-the-spot checks and controls, reporting and processing of fraud and general irregularities, recovery procedures, cross-checks to detect and eliminate double financing of projects, public procurement

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41 COCOLAF was set up in 1994 by Commission Decision 94/140 of 23 February 1994, which was subsequently amended by the Commission Decision of 25 February 2005, OJ L 71, 17.3.2005, pp. 67–68.

42 One additional ad hoc meeting takes place during the year and one meeting of the working subgroup on risk analysis.

43 A more in-depth analysis of national practices is given in the relevant Commission Staff Working Paper.

procedures, introduction of penalties, action to counter fraud and corruption, establishment of coordination bodies to combat fraud affecting the financial interests of the EU, participation by staff in training sessions and seminars and prosecution of the beneficiaries and of anyone involved in cases of suspected fraud and corruption.

In terms of effectiveness and efficiency, almost all the Member States[44] reported a strong and proactive approach with more irregularities detected before payment as a result of the preventive measures taken and, consequently, a lower number of irregularities eventually reported. Some Member States[45] pointed to sharp reductions in the numbers of cases of suspected fraud detected, fewer errors in tenders and greater transparency throughout the whole process. In terms of reliability of financial reporting, most Member States[46] reported a higher proportion of accepted eligible amounts.

As regards compliance with the rules, some Member States[47] mentioned the preventive impact of the Commission Guidelines on public procurement[48], the Commission Note on fraud indicators[49], the national provisions on public procurement, the Irregularities Notification Manual and Guidelines and the provisions of Articles 27 to 36 (Irregularities) of Regulation (EC) No 1828/2006.

Most of the Member States[50] reported that they were using national or regional strategies or 'types of operations'[51] such as measures or plans put in place to prevent fraud and to detect cases of fraud in spending from the cohesion funds better. The rest[52] were satisfied with the existing situation and had put in place or planned no new strategies during the period surveyed to reduce the risk of fraud.

Most Member States[53] replied that they use general indicators to redirect their controls and that these contribute to detecting fraud and to improving the results of anti-fraud control activities.

All the Member States reported on anti-fraud investigations performed and criminal proceedings completed in relation to cohesion policy projects financed under the 2000-2006 and 2007-2013 programming periods. Some Member States included the obligatory 'on-the-spot checks' provided for in the EU regulations in the administrative anti-fraud investigations. Some look for possible fraud by conducting on-the-spot checks, checks on payment claims, preliminary procurement checks and sample checks of systems audits and experience. If suspicions are raised, additional checks are carried out and, where necessary, a report is lodged with the law enforcementagencies.

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44 Except Greece and France.

45 BG, CZ, EL, EE and UK.

46 DE, ES, IE, IT, CY, LV, LT, LU, HU, NL, PL, PT, RO, FI and UK.

47 BG, DE, EE, EL, ES, LT, LU, HU, MT, NL, AT, RO, SI, SK, SE and UK.

48 Guidelines for determining financial corrections to be made to expenditure co-financed by the structural funds or the cohesion fund for non-compliance with the rules on public procurement: COCOF 07/0037/03-EN.

49 Information Note on fraud indicators for the ERDF, ESF and CF (COCOF 09/0003/00-EN).

50 BG, CZ, EE, ES, FR, IT, CY, LT, LU, HU, MT, NL, AT, PT, RO, SI, SK and FI.

51 DE, EL and LV.

52 NL and UK.

53 BG, CZ, DE, EE, EL, ES, IE, HU, MT, PL, RO, SI, SK and UK.

All the Member States consider their financial control to be sufficiently targeted on detecting fraud.

Some large Member States[54] reported a very limited number of ongoing criminal investigations. Some Member States[55] provided valuable data on anti-fraud investigations performed and criminal proceedings completed, but others[56] provided no data concerning the criminal proceedings completed along with the court decisions. Finally, the information provided by the Member States concerning the amounts recovered in relation to anti-fraud investigations covering the 2000-2006 and 2007-2013 programming periods indicates that, as a minimum, the reporting of the recovery process could be considered misleading and needs to be improved. In fact, no link could be established between the reported in the Irregularity Management System and those reported under this exercise. Two Member States[57] reported large amounts and only one third[58] reported that amounts above EUR 1 million had been recovered following an anti-fraud investigation. For another third[59] the amounts reported in this exercise are of low value, while some Member States[60] reported no amountat all or indicated as" non applicable".

The Member States' responses to the questionnaire point to improvements in the financial control and risk management system to prevent fraud in the area of cohesion policy. These include legal provisions and guidelines, national or regional strategies, use of risk indicators, administrative procedures and cooperation between national authorities.

Conversely, further progress is needed on monitoring the results of the administrative and criminal anti-fraud investigations, including recovery of the amounts concerned[61].

It is also clear that better fraud statistics are necessary so that the Commission and the Member States can focus their efforts in higher-risk areas. In that respect, the Commission intends to put more emphasis in the reporting in this area.

Member States are invited to monitor the results of criminal investigations and improve their fraud statistics.

5.2. Implementation of 2010 recommendations

In the report on protection of the Union's financial interests in 2010, the Commission made a number of recommendations to the Member States, in particular on reported cases of fraud and other irregularities, on recovery of irregular amounts and on use of the Central Exclusion Database (CED) under Article 95 of the Financial Regulation.

The Commission monitored implementation of these recommendations by the Member States as part of the 2011 reporting exercise. Some small improvements were observed, especially

54 DE, FR and ES.
55 BG, CZ, EE, HU, PL, PT, SK and SE.
56 DE, EL, ES, FR, IT, LT, LU, HU, AT and RO.
57 IT and PT.
58 BG, EE, ES, IT, LV, LT, PT, SK, FI and UK.
59 BE, CZ, IE and RO.
60 DE, EL, FR, HU, MT, AT, SE and SI.
61 See Tables 1 and 2 of the relevant Commission Staff Working Paper accompanying this report, pp. 9-11, which summarise the data reported by the Member States.

with implementation of the IMS. Only one Member State[62] still has to complete implementation of the IMS. With regard to the reporting obligations[63] concerning agriculture, some progress has been made by the Member States concerned, in particular in relation to personal data on individuals who have committed irregularities (fraudulent or non-fraudulent) and their compliance rate, but there is still room for improvement judging from the low rate of reporting of suspected fraud by the big Member States.

Concerning revenue, most of the Member States confirmed that their national strategies in place consistently assess the risks across the entire sphere of customs duties and that the necessary proactive and preventive measures will be taken to combat potential fraud.

As regards the recommendation on setting up the Central Exclusion Database (CED)[64], a small number of Member States[65] are using it and provided progress reports; others have either taken preliminary measures by appointing their liaison point or are considering using the database for the next programme cycle[66]. To this date, no cases were reported to the Commission to this respect.

6. CONCLUSIONS

This report shows that in 2011 progress was made with adoption, by the Commission and the Member States, of policy measures which will provide stronger protection for the EU's financial interests. Full implementation of these measures will require close cooperation between the EU institutions and the Member States, which the Commission will continue monitoring.

The analysis of irregularities in 2011 shows an overall decrease in reported irregularities and improvements in the results of recovery of EU resources unduly paid. This decrease was expected following the acceleration in previous years which, itself, was also the result of improvements in controls and tools.

The analysis also shows that efforts are still needed in every sector covered by the budget in order to maintain progress and to address the potential adverse effects that the current financial crisis could have in the form of an increase in fraudulent acts against the EU budget. Consequently, the Commission recommends that all Member States put in place adequate anti-fraud measures aimed at both prevention and detection, especially those for which these kinds of results seem to be missing or insufficient.

It is also clear from the data received that further progress has yet to be achieved, especially in the area of recovery where procedures are still relatively long.

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62 FR.

63 The full answers from the Member States to the recommendations are included in the third Staff Working Document accompanying this report.

64 Under Article 95 of the Financial Regulation, on candidates and tenders which fall into one of the situations calling for exclusion referred to in the same Regulation.

65 BG, CZ, MT, AT and PL.

66 See table of the relevant Commission Staff Working Paper accompanying this report, p 6, which summarises the situation for all Member States.