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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
2012 Annual Report**

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TABLE OF CONTENTS

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Protection of the European Union's financial interests — Fight against fraud 2012 Annual Report	5
Executive summary	5
1. Introduction	7
2. Fraud and other irregularities	7
2.1. Total irregularities reported.....	7
2.2. Irregularities reported as fraudulent affecting the EU budget.....	7
2.2.1. Revenue.....	9
2.2.2. Expenditure	10
2.2.2.1. Natural Resources (Agriculture and Rural Development and Fisheries).....	12
2.2.2.2. Cohesion policy (2007-13 and 2000-06 programming periods).....	13
2.2.2.3. Pre-accession Policy (Pre-Accession Assistance (PAA) and Instrument for Pre-Accession (IPA)).....	13
2.2.2.4. Expenditure directly managed by the Commission	14
2.2.3. Results of the European Anti-Fraud Office (OLAF)	14
2.3. Irregularities not reported as fraudulent.....	14
2.3.1. Revenue.....	15
2.3.2. Expenditure	16
3. Recovery and other preventive and corrective measures.....	17
3.1. Expenditure: preventive mechanisms	17
3.1.1. Interruptions in 2012.....	17
3.1.2. Suspensions.....	18
3.2. Expenditure: financial corrections and recoveries in 2012.....	18
3.3. Recovery relating to own resources revenues.....	18
3.3.1. Traditional own resources	19
4. Anti-Fraud Policies at EU Level.....	19
4.1. Anti-fraud policy initiatives taken by the Commission in 2012	19
4.1.1. OLAF reform proposal (Regulation 1073/1999)	19
4.1.2. Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law	20
4.1.3. Preparatory work for the establishment of a European Public Prosecutor's office (EPPO)	20
4.1.4. Initiatives on fighting corruption in the EU	21
4.1.5. Anti-fraud policy in customs.....	21

4.1.5.1. Mutual Administrative Assistance (MAA)	21
4.1.5.2. Joint Customs Operations (JCOs)	21
4.1.5.3. The Anti-Fraud Information System (AFIS).....	21
4.1.6. Fight against VAT fraud	22
4.1.7. Anti-fraud provisions in international agreements.....	22
4.1.8. Fight against illicit trade in tobacco products	23
4.1.8.1. Commission Action plan to fight against smuggling of cigarettes and alcohol along the EU Eastern border	23
4.1.8.2. Framework Convention on Tobacco Control (FCTC): Protocol to Eliminate Illicit Trade in Tobacco Products.....	23
4.1.8.3. Agreements with cigarette manufacturers.....	23
4.1.9. Public procurement rules.....	24
4.1.10. Commission Anti-fraud Strategy (CAFS).....	24
4.1.11. Hercule and Pericles Programmes	24
4.1.11.1. Implementation of Hercule II and Pericles Programmes	24
4.1.11.2. Multiannual Financial Framework (MFF) 2014-20.....	25
4.2. Advisory Committee for Coordination of Fraud Prevention (COCOLAF).....	25
4.3. European Parliament Resolution of 10 May 2012 on Protection of the Communities’ financial interests — Fight against fraud — Annual report 2010.....	25
5. Measures taken by Member States to counter fraud and other illegal activities affecting the financial interests of the EU.....	26
5.1. Measures to combat fraud and other irregularities affecting the financial interests of the EU.....	27
5.2. Measures to combat fraud and other irregularities affecting the financial interests of the EU in the area of agriculture	27
5.2.1. Legislative and administrative measures	27
5.2.2. New prevention and detection strategies.....	28
5.2.3. Use of fraud indicators	28
5.2.4. Implementation of reporting provisions.....	28
5.2.5. Insufficient statistics on fraud detection and prosecution and related recoveries.....	29
5.3. Operation ‘Magna Grecia’	29
5.4. Implementation of 2011 recommendations.....	29
6. Conclusions and recommendations.....	30
6.1. Two trends in relation to policy and operational developments	30
6.2. Diverse approaches to fraud.....	31
6.3. Adoption of common rules on fraud	31
6.4. The most significant risks are confirmed.....	32

6.5.	Anti-fraud bodies and law enforcement agencies remain the most effective in detecting fraudulent irregularities... ..	33
6.6.	Protection against EU undue payments — enforced by existing preventive and corrective mechanisms laid down in EU regulations — remains adequate.....	34
6.7.	Overall conclusions.....	34
	ANNEX 1 — Irregularities reported as fraudulent.....	35
	ANNEX 2 — Irregularities not reported as fraudulent.....	36
	ANNEX 3 — 2012 financial corrections implemented under shared management (EUR million).....	37

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Protection of the European Union's financial interests — Fight against fraud 2012 Annual Report

EXECUTIVE SUMMARY

This 2012 Annual Report on Protection of the European Union's Financial Interests is presented by the Commission in cooperation with the Member States under Article 325 of the Treaty on the Functioning of the European Union. It covers Commission and Member State measures in the fight against fraud and their results. Where analysis of this information has identified problems or risks, recommendations are made to address those issues.

Recent measures to protect the financial interests of the EU

In 2012, the Commission took or proposed a number of measures to improve the legal and administrative framework for protecting the EU's financial interests, including:

- a proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law;
- preparatory work for the establishment of a European Public Prosecutor's Office (EPPO);
- adoption of a Protocol to Eliminate the Illicit Trade in Tobacco Products appended to the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC); and
- anti-fraud provisions in international agreements and administrative cooperation arrangements.

Detection and reporting of (fraudulent and non-fraudulent) irregularities affecting the EU budget

In 2012, 1 231 irregularities were reported as fraudulent (this includes both suspected and established fraud), involving EUR 392 million, broadly at the same levels as the year before. Significant differences remain in the fraudulent irregularities reported by Member States, which may point to divergent interpretations when applying the legal framework and different approaches to the detection of fraud.

Irregularities not reported as fraudulent have increased, particularly in terms of amount. The increase mainly reflects the effect of irregularities involving large amounts but is also due to systemic irregularities reported at the closure of programmes.

Preventive and corrective measures

In 2012, the Commission took several decisions to ensure that EU resources are spent according to the principle of sound financial management and that its financial interests are duly protected. 187 decisions to interrupt payment (involving over EUR 5 billion) were taken in the cohesion policy area. Of these, 70 were still open at the end of 2012 (involving about EUR 1.7 billion of interrupted payments). Also, four suspension decisions were taken (still on-going at the end of the year).

Financial corrections were made for over EUR 3.7 billion (mainly still in relation to the closure of the 2000-06 programming period) and recovery orders issued for EUR 615 million.

The measures taken in 2012 confirm that the mechanisms in place allow for effective protection of the EU's financial interests, but the ultimate risk of non-recovery of the sums unduly paid is shifted onto the Member States responsible.

Anti-fraud systems in the area of agriculture

The focus of this year's report was on measures and irregularities in the area of agriculture. The analysis shows improvements in Member States' financial control and risk management systems, as regards *inter alia* legal provisions and guidelines, national or regional strategies, use of risk indicators, administrative procedures and cooperation between national authorities.

However, the statistical data on anti-fraud checks, criminal proceedings and results, as provided by Member States, are incomplete, which makes it difficult to analyse the quality of the investigation and prosecution of fraud in the Member States and use this as a basis for future policy.

1. INTRODUCTION

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

The Treaty states that the EU and the Member States share responsibility for protecting the EU's financial interests and fighting fraud. National authorities manage 80% of EU expenditure and collect Traditional Own Resources (TOR). In these two areas, the Commission exercises overall oversight, sets standards and verifies compliance. Therefore, close cooperation between the Commission and the Member States is essential for the effective protection of the EU's financial interests. Consequently, one of the main aims of this report is to assess how effective this cooperation was in 2012 and how it could be improved.

This report describes the measures taken at EU level in 2012 and provides a summary and evaluation of the action taken by Member States to counter fraud. It also includes an analysis of the main results achieved by national and European bodies, in terms of detecting and reporting to the Commission cases of fraud and other irregularities relating to EU expenditure and revenue. The emphasis is on fraud detection, where results are indicative of the ability of the systems and anti-fraud authorities to counter fraud and illegal activities detrimental to EU funds.

The report is accompanied by five Commission Staff Working Documents¹. The 'Statistical Analysis of the Irregularities' document contains tables summarising the main results of each Member State's anti-fraud action.

2. FRAUD AND OTHER IRREGULARITIES

2.1. Total irregularities reported

In 2012, 13436 (fraudulent and non-fraudulent) irregularities were reported to the Commission, involving an overall amount of about EUR 3.4 billion, of which about EUR 2.9 billion concerns the expenditure sectors of the EU budget. The detected irregularities represent 2.3% of the payments on the expenditure side and 2.1% of gross TOR collected.

Irregularities increased as compared with 2011, by 6% in terms of number and 77% in terms of financial amount. The increase relates in particular to irregularities not reported as fraudulent because of specific circumstances (see paragraph 2.3).

2.2. Irregularities reported as fraudulent affecting the EU budget

The numbers of fraudulent irregularities reported, and the related amounts, are part of the broader definition of fraud and should not be regarded as a measure of the level of fraud.

In 2012, Member States reported as fraudulent 1194 irregularities involving an overall amount of EUR 390 million. Furthermore, 29 fraudulent irregularities concerned funds

¹ (i) Implementation of Article 325 by the Member States in 2012; (ii) Statistical evaluation of irregularities reported for 2012 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, 2011; (iv) Methodology regarding the statistical evaluation of reported irregularities for 2012; (v) Annual overview with Information on the Results of the Hercule II Programme in 2012.

managed under direct expenditure, involving EUR 2 million, and, finally, 8 fraudulent irregularities were reported by candidate countries involving about EUR 1 million.

The number of fraudulent irregularities² reported in 2012 and their impact remained at practically the same levels as the year before. Significant differences are recorded between sectors, however, as shown in Table 1 and Chart 1.

Table 1: Irregularities reported as fraudulent in 2012³

Budget sector (expenditure)	Irregularities reported as fraudulent	Variation in relation to 2011	Amounts involved	Variation in relation to 2011	As % of payments
	N	%	EUR million	%	%
Natural resources	208	49%	68.7	-7%	0.12%
<i>Agriculture market support and direct payments</i>	143	77%	59	-16%	0.13%
<i>Rural development</i>	61	3%	9	125%	0.07%
<i>Fisheries</i>	4	100%	0.7	2233%	0.14%
Cohesion Policy	279	1%	199.3	-2%	0.42%
<i>Cohesion 2007-13</i>	198	13%	159.3	-7%	0.35%
<i>Structural funds 2000-06 (Cohesion fund included)</i>	81	-16%	40	27%	1.86%
Pre accession	33	-41%	44.8	273%	39.04%
<i>Pre accession assistance (2000-06)</i>	27	-43%	44.5	305%	9809.84%
<i>Instrument for Pre-Accession (2007-13)</i>	6	-33%	0.3	-70%	0.26%
Direct expenditure	29	-19%	2	11%	0.01%
Total expenditure	549	8%	314.8	8%	0.25%

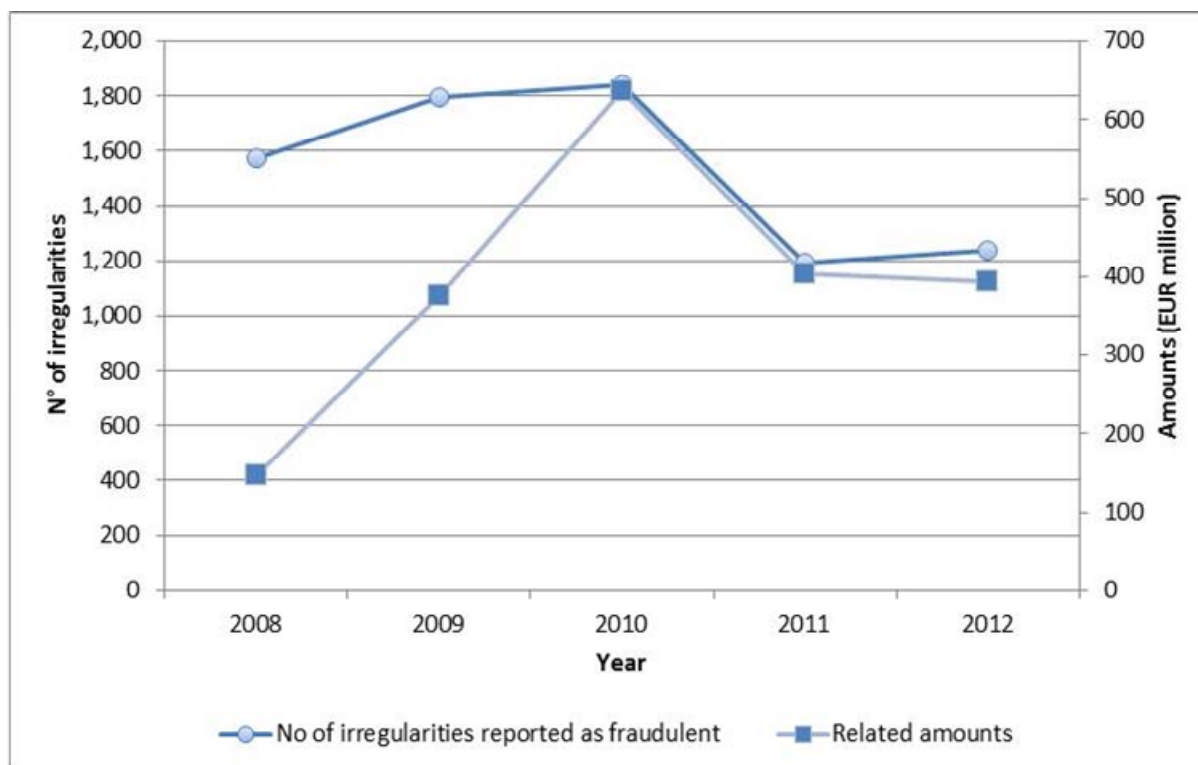
Budget sector (revenue)	Irregularities reported as fraudulent	Variation in relation to 2011	Amounts involved	Variation in relation to 2011	As % of gross amount of TOR collected for 2012
	N	%	EUR million	%	%
Revenue (traditional own resources)	682	-6%	77.6	-29%	0.42%

A breakdown of all fraudulent irregularities reported in 2012, by Member State and budget sector (revenue and expenditure) is set out in Annex 1.

² For definitions see Annex IV (Methodology).

³ The high percentage of amounts involved in irregularities reported as fraudulent relative to the total payments for Pre-Accession Assistance (last column of Table 1) is entirely due to the fact that payments in 2012 for this sector have been very limited (*i.e.* EUR 0.5 million) as the assistance programmes are almost completed. Fraudulent irregularities detected and reported in 2012 refer to operations financed under previous financial years.

Chart 1: Irregularities reported as fraudulent and related amounts — 2008-12



2.2.1. Revenue

The number of fraud cases reported on the revenue side for 2012 (682) is 20% lower than the average for the years 2008-12 (851). The total established amount of TOR affected for 2012 (EUR 77.6 million) is 22% lower than the 2008-12 average (EUR 100 million)⁴.

Customs controls carried out at the time of clearance of goods result in cases being classified as fraud more often than those carried out after clearance. In 2012, a significant proportion of the fraud cases (32%) were detected during customs controls carried out at the time of clearance. 51% of all TOR amounts linked to cases of fraud were established during inspections by anti-fraud services.

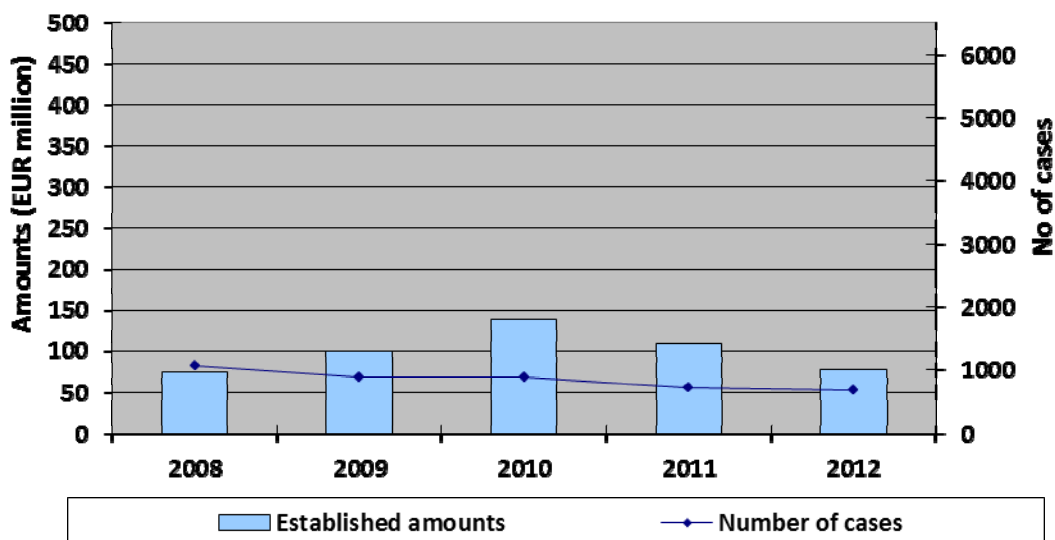
Analysis shows a decreasing trend in the number of fraud cases in 2008-12, as shown in the chart below.

The highest numbers of fraudulent irregularities were reported by Spain, Italy, Germany and Greece (between 324 and 32), while Spain is first in terms of amounts involved (between EUR 38 million and EUR 10 million)⁵ followed by Belgium and Italy.

⁴ For comparability reasons, 2008-11 figures are based on the data used for the reports for those years.

⁵ See Annex 1.

CHART 2: TOR — Cases of fraud and established amounts affected (2008-12)



2.2.2. Expenditure

As regards the expenditure budget, the increase in terms of number of irregularities reported as fraudulent is relatively small. The fluctuation in the amounts involved is also not significant as a few larger investigations may alter the results drastically (e.g. as regards pre-accession funding — see section 2.2.5).

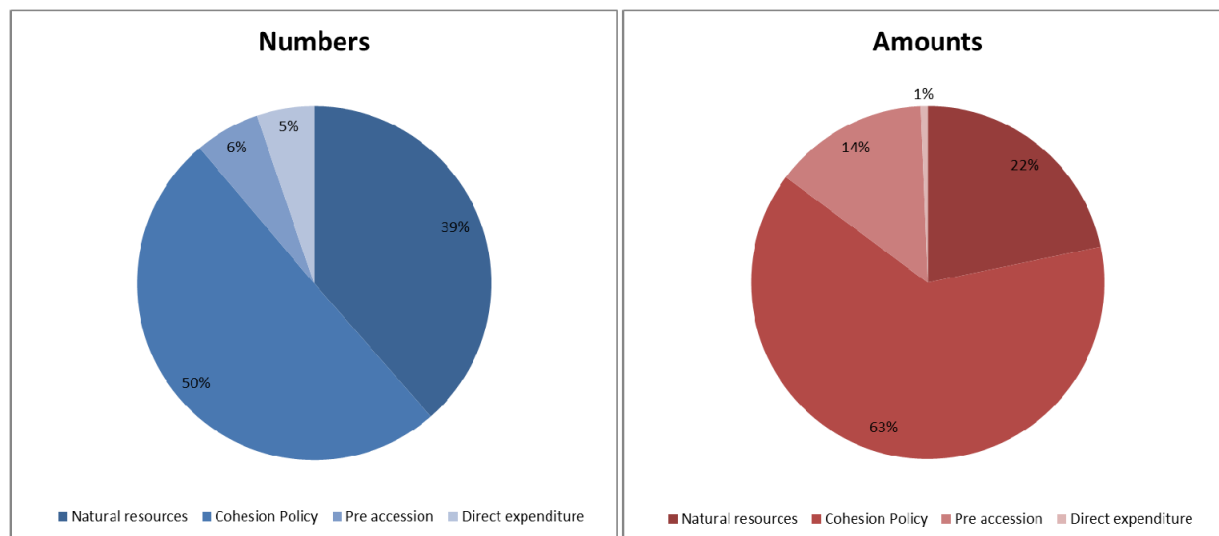
Reported irregularities often relate to transactions that took place in a financial year other than that in which they were detected or reported. With an average time lapse of about 3.5 years between when a fraud is committed and when it is reported to the Commission⁶, it is difficult to explain these developments (e.g. in terms of the possible repercussions of the economic crisis).

Charts 3 and 4 show the number of fraudulent irregularities reported and the amounts involved, respectively, in the expenditure sectors.

As in previous years, the majority of fraudulent irregularities were detected in the area of Cohesion policy: 50% of the total number and 63% of the amounts involved.

⁶ On average, two years and seven months elapse between the start of a fraudulent practice and the moment it is detected. Seven or eight months, on average, then pass before the irregularity is reported to the Commission.

Charts 3 & 4: Irregularities reported as fraudulent by budget sector (expenditure) — by number and amount



Detected *modi operandi* did not vary significantly as compared with previous years. The most recurrent schemes involve the use of false or falsified documentation or declarations and the misappropriation of funds (for a use other than that for which they were intended).

Only very few of the irregularities reported as fraudulent concern cases of corruption (9 in total), but their number is on the increase. Four Member States reported that they had detected such cases: Italy (6), Cyprus, Estonia and Spain (1). All cases identified were in the area of cohesion policy.

Half of the irregularities reported as fraudulent in 2012 were detected by anti-fraud bodies or during criminal investigations or other external controls; the other half were detected by the administrative control systems provided for in the sectoral regulations. This underlines the importance of external controls in the fight against fraud and the need for strong coordination with managing and audit authorities. It also shows that the latter has improved significantly, as detection used to be almost exclusively a matter for police bodies and judicial authorities. Anti-fraud or criminal investigations detect cases of potential fraud involving significantly higher financial amounts, which reflects the ability of the bodies concerned to target their activities, but also their greater investigative powers.

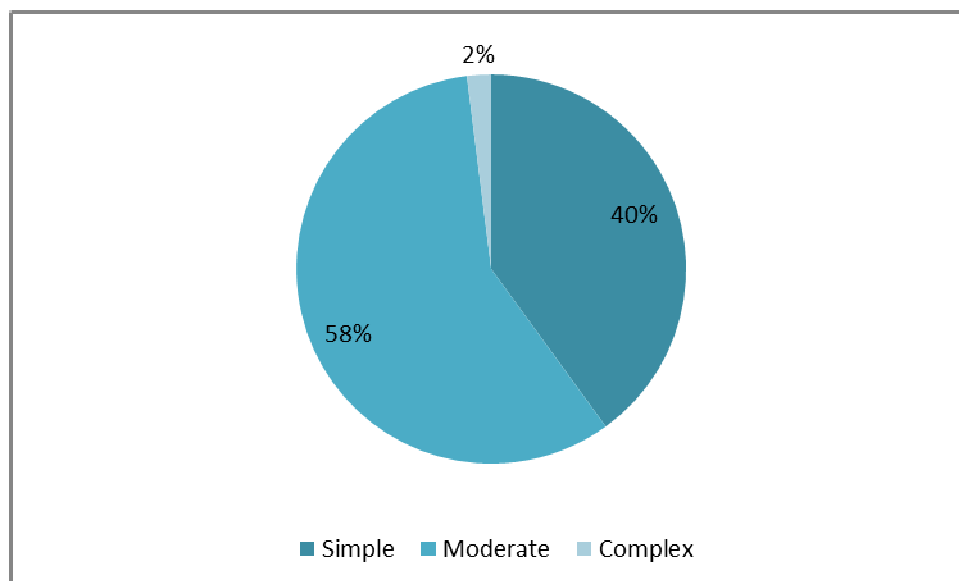
The irregularities reported as fraudulent by Member States can be broken down according to level of complexity. For 2012, 2 % of the cases reported can be regarded as complex⁷, 40 % as simple⁸ and 58 % as moderately complex⁹. While the proportion of complex cases remains unchanged as compared with previous years, national authorities have detected relatively more ‘simple’ and fewer ‘moderate’ cases. This shift towards simpler frauds may reflect fraudulent attempts in the context of the economic crisis by beneficiaries who would not have committed an offence under normal circumstances. This trend will have to be monitored in future years, given the time gap between detection and the time when the fraud was committed.

⁷ Offence lasting over a longer period of time and committed by at least three subjects.

⁸ Single event offence committed by only one person.

⁹ Single event committed by more than one person or protracted over time but committed by a single entity.

Chart 5: Irregularities reported as fraudulent — complexity



The rate of fraud detection continues to vary between Member States (see Annex 1). The Member States which detected and reported the highest number of fraudulent irregularities are Italy, Poland, Romania, Denmark and Germany (between 109 and 51). In terms of the amounts involved, the highest figures were reported by Italy, Romania and the Czech Republic (between EUR 119 and 54 million). No fraudulent irregularities were detected and reported by Greece, Luxembourg, Malta and Finland. Very few (less than three for all expenditure sectors) were reported by Belgium, France, Cyprus, the Netherlands and Austria. These differences stem from several factors and reflect very diverse approaches, not only among Member States but even among different administrations in the same country. Some Member States deploy significant resources to counter fraud; others prefer to apply financial corrections without further investigation of the potential criminal offence.

Of the irregularities reported as fraudulent in the last five years, 5% have been established as fraud (ratio of established fraud)¹⁰.

2.2.2.1. Natural Resources (Agriculture and Rural Development and Fisheries)

Irregularities reported as fraudulent in 2012 have increased by almost 50% in this sector as compared with 2011 (see Table 1). This is the result of the reporting by Denmark of 56 cases, all presenting the same *modus operandi* and linked to the same investigation.

The results reported by Denmark relate exclusively to the European Agriculture Guarantee Fund (EAGF) which, consequently, shows an increase in terms of numbers and amounts in relation to 2011, while the trend for the Rural Development Fund (EAFRD) remains stable.

Almost half of the irregularities reported as fraudulent concern the exceeding of limits, quotas or thresholds and cases of over-declaration or fictitious declaration.

The proportion of complex cases of fraud detected is smaller than in the other sectors (about 1%), while the proportion of ‘simple’ cases is larger (44%). In contrast with

¹⁰ The ratio of established fraud is the ratio of the total number of cases of established fraud over the total number of irregularities reported as fraudulent (cases of suspected or established fraud) during the five-year period.

the other sectors, the proportion of simple cases decreased in 2012 (from 59 % to 44 %).

The ratio of established fraud in agriculture is slightly higher than the overall average: about 6 % of all cases reported in the period 2008-12.

2.2.2.2. Cohesion policy (2007-13 and 2000-06 programming periods)

Cohesion policy remains the area of budget expenditure where the number of irregularities reported as fraudulent is highest, but this has remained stable in the last three years.

The European Regional Development Fund (ERDF) accounted for the largest proportion of reported fraudulent irregularities in 2012, while in the past five years the European Social Fund (ESF) had been predominant. In terms of amounts involved, the ERDF always represented the biggest proportion because of the higher value of financing for the supported projects.

As to which authorities detected the fraudulent irregularities, the largest proportion (59 %) is accounted for, for the first time, by the control system provided for in EU legislation, rather than criminal investigations or anti-fraud bodies. This represents a striking difference in comparison with the previous (2000-06) programming period, when detection occurred almost exclusively following anti-fraud or criminal investigations.

The Commission's efforts in the last few years to raise awareness of fraud in this sector seem to have borne fruit among national authorities, although this trend needs to be consolidated in the coming years¹¹. In terms of financial amounts, the most significant results still relate to criminal and anti-fraud investigations, which represent about 64 % of the total.

Another significant development is the reduction in the time taken to report fraudulent cases after detection: on average, eight and a half months. On the other hand, irregular practices were detected, on average, two years and seven months after they began.

The ratio of established fraud for cohesion policy is lower than average: about 4 % of the irregularities reported as fraudulent in the period 2008-12.

2.2.2.3. Pre-accession Policy (Pre-Accession Assistance (PAA) and Instrument for Pre-Accession (IPA))

In the area of pre-accession assistance, the number of irregularities reported as fraudulent continued to decrease in 2012, confirming the downward trend since 2009. EU-12 Member States have phased out of PAA and it is nearly complete, with the exception of a few projects and remaining payments for the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme.

This decrease in the number of irregularities reported as fraudulent was accompanied by a significant increase in the amount concerned, due to two cases notified by Romania, for a total of EUR 38.5 million. Without these two exceptional cases, the downward trend would have been confirmed for the amounts also.

¹¹ The Commission services responsible for cohesion policy, together with OLAF, have implemented a Joint Anti-Fraud Strategy since 2008. Its main objective is to strengthen Member States' capacity to prevent and detect fraud.

Rural development assistance remains the area with the highest number of irregularities reported as fraudulent.

In relation to the current programming period, reported fraudulent irregularities concerning IPA recorded a slight decrease in 2012. This may stem from the backlog in implementation.

2.2.2.4. Expenditure directly managed by the Commission

Expenditure directly managed by the Commission is analysed on the basis of data on recovery orders issued by Commission services in relation to expenditure managed under centralised management mode.

In 2012, according to the Accrual-Based Accounting system (ABAC), 26 recoveries were classified by the Commission services as suspected fraud and subsequently reported to OLAF. Another 1 648 recoveries were classified as irregularities. The financial impact of these cases is about EUR 2.7 million.

2.2.3. Results of the European Anti-Fraud Office (OLAF)

In 2012, OLAF opened 431 investigation and 287 coordination cases and closed 465 (of which 100 with recommendations).

54 recommendations for judicial action were sent to national authorities and about EUR 284 million was recommended for recovery, of which EUR 165.8 million related to revenues and EUR 118.2 million to expenditure (see Table 2).

Table 2: Amounts recommended for recovery in 2012 following OLAF investigations

Sector	Recommended amount
	EUR million
Customs Fraud	165.8
Structural Funds	63.3
Agricultural Funds	33.4
External Aid	15.6
Centralised expenditure	5.0
EU funding through International Organisations and bodies	0.8
EU staff	0.1
TOTAL	284.0

2.3. Irregularities not reported as fraudulent

In 2012, 12 137 irregularities not reported as fraudulent (non-fraudulent) were notified to the Commission (about 6% more than in 2011), with a related financial impact of about EUR 2.9 billion (more than double the figure for 2011). The sharpest increases were recorded in the areas of cohesion policy and direct expenditure (see paragraph 2.3.2), as shown in Table 3.

Table 3: Irregularities not reported as fraudulent in 2012¹²

Budget sector (expenditure)	Irregularities not reported as fraudulent	Variation in relation to 2011	Amounts involved	Variation in relation to 2011	As % of payments
	N	%	EUR million	%	%
Natural resources	2 347	9%	128	37%	0.23%
<i>Agriculture market support and direct payments</i>	1 036	-22%	63	80%	0.14%
<i>Rural development</i>	1 228	77%	51	-7%	0.42%
<i>Other / N/A</i>	9	-91%	1	-50%	N/A
<i>Fisheries</i>	74	63%	13	713%	2.67%
Cohesion Policy	4 078	13%	2 296	126%	4.79%
<i>Cohesion 2007-13</i>	3 216	150%	1 577	164%	3.45%
<i>Structural funds 2000-06 (Cohesion fund included)</i>	862	1206%	719	77%	32.34%
Pre-accession	220	6%	46	-4%	40.08%
<i>Pre-accession assistance (2000-06)</i>	204	4%	45	-5%	9809.84%
<i>Instrument for Pre-Accession (2007-13)</i>	17	89%	1	30%	1.14%
Direct expenditure	1 648	14%	119	92%	0.69%
Total expenditure	8 293	12%	2 589	112%	2.06%

Budget sector (revenue)	Irregularities reported as fraudulent	Variation in relation to 2011	Amounts involved	Variation in relation to 2011	As % of gross amount of TOR collected for 2012
	N	%	EUR million	%	%
Revenue (traditional own resources)	3 912	-2%	370	33%	1.69%

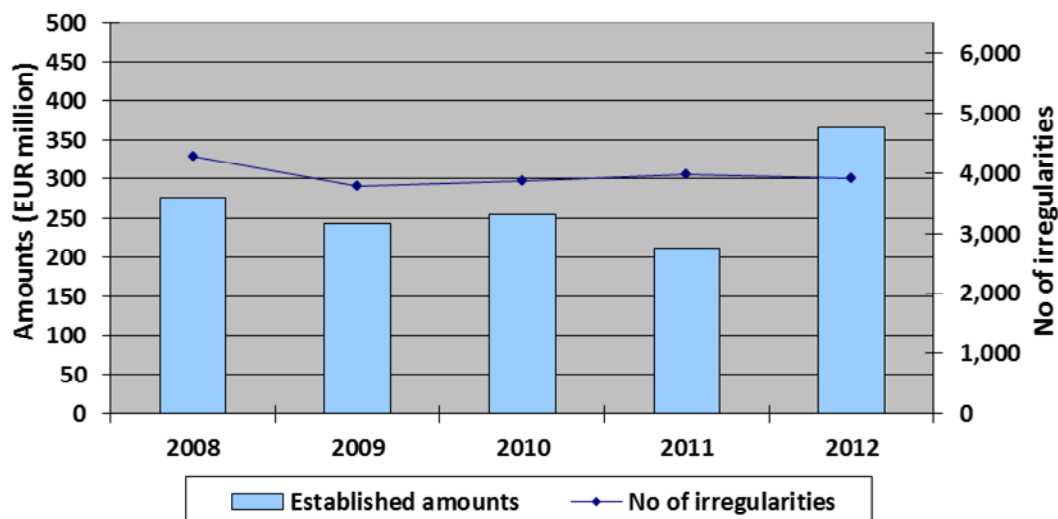
Annex 2 provides a breakdown by Member State, and according to revenue and expenditure, of all non-fraudulent irregularities reported in 2012.

2.3.1. Revenue

As regards TOR, the number of non-fraudulent irregularities reported in 2012 remained stable but the total established amount is 20 % higher than the average for the years 2008-12.

¹² See footnote 3.

CHART 6: TOR- Cases of irregularity not reported as fraudulent and amounts affected (2008-12)



In 2012, post-clearance controls were the most important method for the detection of irregularities, in terms both of the number of cases detected and the established TOR amounts.

In recent years, the Commission’s TOR inspections have focused on Member States’ customs control strategies and the close monitoring of action taken by Member States in response to observations made during the inspections. The Commission has observed a shift in Member States’ strategies from customs controls carried out at the time of clearance of goods to post-clearance controls. This is confirmed by data received from Member States. While post-clearance customs controls are an effective method for the detection of irregularities, customs controls at the time of clearance remain important for the detection of fraud cases (see paragraph 2.2.1).

2.3.2. Expenditure

In the expenditure budget areas, the increase in the number of non-fraudulent irregularities is mainly in the direct expenditure sector and is almost entirely explained by the improved use by the Commission Directorates-General of the ABAC system, which has provided more accurate information. It should be noted that, unlike in all other sectors, all irregularities in direct expenditure are recorded without any threshold applied.

Concerning the increase in amounts, two areas are significant: (i) direct expenditure, where a single irregularity of about EUR 40 million (now corrected and acted upon) accounts for the variation in relation to 2011 and (ii) cohesion policy, where the significant amount is partly explained by the increased implementation of the 2007-13 programming period but largely by some irregularities identified by the Commission audit services in past years and reported by the competent national services only in 2012. About EUR 1.5 billion are related to non-fraudulent irregularities reported by the Czech Republic and Spain (again, financial corrections and corrective measures have been agreed and acted upon). As regards the Czech Republic, almost half of these amounts stem from financial corrections applied following audits by Commission services; as regards Spain, half of the amounts are linked to notifications concerning irregularities relating to the 2000-06 programming period, requested by the Commission in relation to the closure process¹³.

¹³ These are mostly irregular amounts not included in the certification declaration and thus not representing potential loss for the EU budget.

3. RECOVERY AND OTHER PREVENTIVE AND CORRECTIVE MEASURES

An important aspect of protecting the EU's financial interests involves the use of mechanisms to prevent and correct fraud and other irregularities so as to ensure the implementation of the budget in accordance with the principles of sound financial management¹⁴.

Under shared management, the following measures may be adopted by the Commission:

- Preventive measures: **interruption** of payments (moving the payment deadline back by up to six months)¹⁵; **suspension** of all or part of the interim payments to a Member State¹⁶.
- Corrective measures: where the required measures are not taken by the Member State concerned, the Commission may decide to impose a **financial correction**¹⁷. Expenditure that is not in accordance with applicable rules is either the subject of a **recovery order** or a **deduction** from the subsequent request for payment.

Data on Member States' direct recoveries from beneficiaries are only partially available¹⁸ and are included in the Commission Staff Working Document 'Statistical evaluation of irregularities'.

Data on management types other than shared management (particularly direct expenditure) mainly concern recovery orders issued by Commission services, or deductions from cost claims.

3.1. Expenditure: preventive mechanisms

3.1.1. Interruptions in 2012

In 2012, the Commission took 187 decisions to interrupt payments (involving over EUR 5 billion) in the cohesion policy area. Of these, 70 were still open at the end of 2012 (involving over EUR 1.7 billion).

Table 4 records the interruption cases handled in 2012¹⁹ and shows the significant prevention activity undertaken, particularly in relation to the ERDF/Cohesion Fund, which represent more than 60% of the cases and about 80% of the total amounts concerned.

¹⁴ Data presented in this section reflect those published in the Commission's annual accounts, i.e. in Explanatory Note No 6 of the Accounts of the Union, pending the audit by the European Court of Auditors.

¹⁵ Cases in the 2007-13 programming period of a significant deficiency of Member State management and control systems; or if certified expenditure linked to serious irregularities.

¹⁶ Applied in three cases: (a) evidence of serious deficiency in the management and control system and no corrective measure taken; (b) certified expenditure linked to serious irregularity; or (c) a serious breach by a Member State of its management and control obligations.

¹⁷ Financial corrections follow three main steps: (a) *in progress*: subject to change not formally accepted by the Member State; (b) *confirmed/decided*: agreed by the Member State or decided via a Commission decision; (c) *implemented*: the financial correction is carried out and undue expenditure corrected.

¹⁸ Subsequent amendments to the legal framework have significantly changed the reporting rules for the current programming period.

¹⁹ For ERDF, the 116 cases handled in 2012 include 69 new interruptions decided in the course of the year.

Table 4: Interruption cases handled by the Commission services in 2012

Programming period 2007-13	ERDF/Cohesion Fund		ESF		EFF		Total	
	Number of cases	Amount (EUR million)	Number of cases	Amount (EUR million)	Number of cases	Amount (EUR million)	Number of cases	Amount (EUR million)
Closed before 31.12.2012	83	2 588	24	725	10	47	117	3 359
Open at 31.12.2012	33	1 493	13	156	24	104	70	1 753
Total in 2012	116	4 081	37	881	34	151	187	5 112

3.1.2. Suspensions

A suspension decision taken for two ERDF/Cohesion Fund programmes in Germany and Italy was still effective at the end of 2012. Two suspension decisions were adopted in 2012 relating to ESF payments to the Czech Republic (still ongoing at year's end) and Slovakia.

3.2. Expenditure: financial corrections and recoveries in 2012

In 2012, corrective measures adopted by the Commission *vis-à-vis* Member States increased significantly (+30% for 'confirmed/decided' and +137% for 'implemented'), mainly in the cohesion policy area (see Table 5).

Table 5: Financial corrections and recoveries per budget sector — 2012–11

Budget sector	Confirmed/decided (EUR million)				Implemented (EUR million)			
	Financial corrections	Recoveries	Total	Variation 2011	Financial corrections	Recoveries	Total	Variation 2011
Agriculture	551	307	858	-24%	669	327	996	14%
EAGF	475	162	637	-24%	610	161	771	24%
Rural Development	76	145	221	-24%	59	166	225	-19%
Cohesion Policy	1 619	22	1 641	127%	3 071	14	3 085	360%
ERDF	958		958	126%	2 416		2 416	477%
Cohesion Fund	203		203	1094%	207		207	80%
ESF	425		425	87%	430		430	142%
FIFG/EFF	2		2	-33%	1		1	-101%
EAGGF Guidance	31	3	34	3300%	17	3	20	1900%
Other		19	19	-62%		11	11	-79%
Internal policy areas	1	252	253	-6%	1	229	230	-14%
External policy areas		107	107	0%		99	99	29%
Administration		7	7	-13%		9	9	350%
Total in 2012	2 172	695	2 867	30%	3 741	678	4 419	137%
Total in 2011	1 406	768	2 174		1 106	733	1 839	
Variation 2012/2011	54%	-10%	32%		238%	-8%	140%	

Annex 3 shows a breakdown by Member State of financial corrections implemented in 2012 under shared management: about 58% of the EUR 3.7 billion are due to financial corrections implemented in relation to Spain²⁰.

3.3. Recovery relating to own resources revenues

As regards own resource revenues, which are the major source of funds for the EU budget, recoveries concern the follow-up of Commission's inspection reports, European Court of Auditors audits, financial responsibility cases resulting from Member States' administrative errors or lack of diligence in their recovery action, infringement proceedings, European Court of Justice rulings and amounts resulting from spontaneous payments by Member States and interest or late payments relating to own resources. These amounts are set out in Table 6.

²⁰ Of the EUR 2 172 million of financial corrections implemented in relation to Spain, 90% is linked to ERDF-financed programmes.

Table 6: Recoveries relating to own resources²¹

Own Resources	2012	2011	Variation
	EUR million	EUR million	%
Principal	133	63	111%
Interest	160	312	-49%
Total recovered	293	375	-22%

3.3.1. Traditional own resources

Traditional Own Resources (TOR) mainly consists of customs duties charged on product imports from non-EU countries and, to a lesser degree sugar levies. They account for 13 % of total EU revenue for 2012. About 98 % of all TOR established amounts are collected without particular problems. The remaining 2 % relate to cases of fraud and other irregularities. Member States are obliged to recover these amounts and register them in the OWNRES database. For 2012, the amount to be recovered²² is EUR 444 million, of which EUR 208 million has already been recovered by Member States (yearly recovery rate: 47 %). In addition, Member States continued their recovery activities regarding cases from previous years and recovered a combined total of approximately EUR 83 million in relation to cases of fraud and irregularities detected between 1989 and 2011. The historical recovery rate (1989-2009) is 77 %²³.

Recovery of amounts linked to cases of fraud is generally much less successful than in cases of irregularities. Classification of a case as fraud is, therefore, an indicator of future recovery results.

Member States' activities to recover TOR are monitored by means of TOR inspections and through the procedure requiring that all amounts exceeding EUR 50000 that are finally declared irrecoverable by Member States 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.

4. ANTI-FRAUD POLICIES AT EU LEVEL

4.1. Anti-fraud policy initiatives taken by the Commission in 2012

4.1.1. OLAF reform proposal (Regulation 1073/1999)

The Commission's amended proposal to amend Regulation (EC) No 1073/1999 concerning investigations conducted by OLAF and repeal Regulation (Euratom) No 1074/1999²⁴ focuses on clarifying the procedural rights of persons under investigation by OLAF, enhancing the efficiency of its investigations, and improving cooperation with its partners (other EU institutions and bodies, Member States and international organisations). The proposal also seeks to clarify the role of the OLAF Supervisory Committee and establish a periodical exchange of views with EU institutions to discuss OLAF's policy priorities.

Informal discussions between the European Parliament, the Council and the Commission, from October 2011 to June 2012, laid the base for a broad agreement that is reflected in the

²¹ The principal amount of own resources is a net amount.

²² Only cases involving a TOR amount of over EUR 10000.

²³ The calculation takes into account only closed cases, for which Member States completed the recovery efforts.

²⁴ COM(2011) 135 final.

Council's first reading position, formally adopted on 25 February 2013²⁵ and approved by the European Parliament on 3 July²⁶. The new Regulation is likely to enter into force on 1 October 2013.

4.1.2. *Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law*

In 2012, the Commission submitted a proposal for a Directive on the protection of the EU's financial interests by criminal law.²⁷ This aims to reinforce the legal framework to protect the EU's budget from criminal misuse.

The draft Directive aims to clarify, harmonise and strengthen criminal law in Member States as regards offences relating to the EU budget. There are considerable differences across Member States in the level of (criminal law) protection of the EU budget. One reason is that existing legislation²⁸ has not delivered sufficient harmonisation and enforcement in Member States. The proposal promotes deterrence through initiatives for further harmonisation of offences and sanction levels under substantive criminal law to protect EU financial interests. These include:

- Defining offences — fraud, corruption, money laundering — broadly on the basis of the Convention for the protection of the financial interests of the European Communities and accompanying protocols;
- Harmonising definitions of additional offences (dishonest conduct of tenderers in public procurement, misappropriation of funds contrary to authorised purposes);
- Providing rules on minimum imprisonment terms for particularly serious offences, based on thresholds to ensure the proportionality of the measure;
- Harmonising the period within which the investigation, prosecution, trial and judicial decision for an offence must take place;
- Setting out accompanying measures to protect EU financial interests by means of criminal law, including rules on jurisdiction and liability of legal persons.

The proposal has been transmitted to the European Parliament and Council. The Council has adopted a general approach in June of 2013. The opinions of the responsible Committees of the European Parliament are expected to be adopted in the second half of 2013.

4.1.3. *Preparatory work for the establishment of a European Public Prosecutor's office (EPPO)*

During 2012, OLAF and the Commission's Directorate-General for Justice carried out an extensive consultation with Member States, experts and stakeholders on the possible setting-up of a European Public Prosecutor's Office to protect EU financial interests²⁹. The legislative proposal was put forward on 17 July 2013³⁰ and is accompanied by a proposal to reform EUROJUST³¹.

OLAF's case experience demonstrates the need for a European prosecution authority to improve investigations in EU fraud cases and speed up prosecutions. A centrally placed body

²⁵ 2013/C 89 E/01, ISSN 1977-091X.

²⁶ P7_TA(2013)0308.

²⁷ COM(2012) 363 final.

²⁸ The 1995 Convention on the Protection of the Financial Interests and its Protocols of 1996 and 1997.

²⁹ Based on Article 86 of the Lisbon Treaty.

³⁰ COM(2013) 532

³¹ The EU agency for judicial cooperation in cross-border criminal matters.

can better ensure continuity and effectiveness in the investigation and prosecution process. The EPPO will be a genuine investigation and prosecution body, which at EU level will increase the efficiency of the fight against crimes affecting the EU budget. This will remedy the low levels of investigation and prosecution that currently hamper the effective protection of the Union's financial interests.

4.1.4. *Initiatives on fighting corruption in the EU*

In 2011, the Commission presented an overall EU anti-corruption policy³² and called for a sharper focus on corruption in a range of policy fields highlighting closer cooperation, updated rules on confiscation of criminal assets, revised public procurement legislation, better crime statistics and more rigorous use of conditionalities in cooperation and development policies.

The Commission has given a commitment to publish an EU Anti-corruption report every two years. The report will seek to intensify anti-corruption measures in the EU and strengthen mutual trust between Member States. It will also identify EU-wide trends, facilitate exchanges of best practice and prepare the ground for future EU policy measures. Corruption in public procurement will be the cross-cutting theme of the first report, scheduled for the second half of 2013.

4.1.5. *Anti-fraud policy in customs*

4.1.5.1. Mutual Administrative Assistance (MAA)

Mutual administrative assistance to combat customs fraud is based on Council Regulation (EC) 515/97³³. In 2012, the Commission undertook an impact assessment with a view to updating this legal framework to further improve detection and the fight against customs fraud in the EU. A proposal is expected to be adopted by the Commission in the course of 2013.

4.1.5.2. Joint Customs Operations (JCOs)

Joint Customs Operations are coordinated and targeted operational measures implemented by the customs authorities of Member States and third countries, over a limited time period, to combat illicit cross-border trafficking in goods.

In the context of mutual assistance between EU customs administrations and the Commission, OLAF provides an IT platform, IT applications and an operations room for use by Member States to carry out JCOs. In 2012, OLAF supported four³⁴ Joint Customs operations run by the Member States.

4.1.5.3. The Anti-Fraud Information System (AFIS)

The main objective of AFIS which is managed by OLAF is to improve cooperation with partners including other institutions, Member States, international organisations and third countries for the correct application of EU customs law. Member States use AFIS to report cases of fraud and irregularities, and welcomed the system at the May 2012 AFIS conference in Lisbon, where further development of the system was

³² 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.

³³ http://ec.europa.eu/anti_fraud/documents/eu-revenue/consolidated_r515_97_en.pdf.

³⁴ Three were on drugs and one on cash control.

discussed. IT projects were carried out to improve communication and ease data extraction from AFIS.

By the end of 2012, AFIS had 10 180 registered end-users on behalf of 1 750 services in Member States, third countries, international organisations, the Commission and other EU institutions, and users had exchanged 10 120 MAB mail (AFIS secure mail service) messages. A total of 8 370 cases had been published in the AFIS mutual assistance databases and modules.³⁵ The transit information database (ATIS) had received information on seven million new transit consignments, representing a total of 35 million goods movements. The irregularity management system (IMS) had received 19 800 new reports on irregularities from Member States and candidate countries in 2012 and holds a historical total of 152 000 reports.

4.1.6. *Fight against VAT fraud*

In response to the European Council request of 2 March 2012 and the European Parliament Resolution of 19 April 2012, the Commission adopted a Communication on tax fraud and tax evasion³⁶ on 6 December 2012. The Communication presented an action plan to combat tax fraud and tax evasion including in relation to third countries. Under this action plan, the Council and Member States are encouraged to make further progress on existing initiatives, including the quick reaction mechanism and the application of a reverse charge on certain categories of goods and services. The Council has recently reached a political agreement on these initiatives. In addition, the action plan led to the setting-up of an ‘EU VAT Forum’ to enhance taxpayers’ voluntary compliance, the continuation of technical and capacity-building assistance to Member States and aims at the introduction of a common risk analysis within Eurofisc (the network for quick exchange of targeted information to fight VAT fraud) and the negotiation of bilateral administrative cooperation agreements on VAT with third countries.

4.1.7. *Anti-fraud provisions in international agreements*

To safeguard the EU’s financial interests, fight against breaches and ensure proper application of customs legislation, EU international agreements — such as preferential trade agreements, cooperation agreements, non-preferential agreements and stand-alone agreements on customs matters — contain provisions on customs mutual administrative assistance (MAA) and measures on the enforcement of preferential treatment.

At the end of 2012, 44 agreements including MAA provisions for 62 third countries were in force and bilateral or regional negotiations were under way with another 88 countries (including some of the EU’s biggest trading partners)³⁷. In 2012, the EU concluded free trade agreements (FTA) with the Central American region³⁸ and the Andean countries.³⁹ FTA negotiations with Singapore were concluded in December 2012. Economic Partnership Agreements became applicable for a further four ACP countries⁴⁰. All the above-mentioned agreements contain customs MAA provisions and measures on the enforcement of preferential treatment.

³⁵ CIS, FIDE, CIGINFO, MARINFO, YACHTINFO.

³⁶ Communication from the Commission to the European Parliament and the Council *An Action Plan to strengthen the fight against tax fraud and tax evasion*, COM(2012) 722 final, 6 December 2012.

³⁷ E.g. Canada, India, Malaysia, the MERCOSUR region.

³⁸ Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

³⁹ Peru and Colombia.

⁴⁰ Madagascar, Mauritius, Seychelles, and Zimbabwe.

4.1.8. *Fight against illicit trade in tobacco products*

4.1.8.1. Commission Action plan to fight against smuggling of cigarettes and alcohol along the EU Eastern border

Cigarette smuggling causes significant losses of revenue for the EU and its Member States – these are estimated at more than EUR 10 billion in customs and tax revenues every year. The smuggling of highly taxed goods — cigarettes and alcohol — is one of the prevailing criminal phenomena on the Eastern border. In June 2011, the Commission presented an action plan to combat smuggling of cigarettes and alcohol in this region⁴¹. The Commission raised this issue with neighbouring countries on the Eastern border, coordinated action by Member States in the region and provided technical assistance through the Hercule III programme⁴².

Analysis shows, however, that cigarette smuggling is a problem throughout the Union. Therefore, on 6 June 2013, the Commission presented an overall EU strategy in a Communication on stepping up efforts to fight against cigarette smuggling⁴³. The Communication is accompanied by an Action Plan that integrates on-going actions under the Eastern border action plan.

4.1.8.2. Framework Convention on Tobacco Control (FCTC): Protocol to Eliminate Illicit Trade in Tobacco Products

The Commission strongly supports the Protocol to Eliminate the Illicit Trade in Tobacco Products to the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC), which is in line with its responsibility to protect the financial interests of the EU, including the fight against cigarette smuggling and counterfeiting.

The Commission coordinated the EU position and, together with the Council Presidency, represented the EU during the negotiations on the Protocol, which was adopted in November 2012. It is open for signature by Contracting Parties of the FCTC until January 2014. Once in force, it is expected to contribute substantially to the fight against the illicit tobacco trade.

The EU, together with the Member States, should sign and ratify the Protocol as soon as possible.

4.1.8.3. Agreements with cigarette manufacturers

In 2012, the Commission and representatives of Member States held separate meetings with four cigarette manufacturers⁴⁴ to discuss the implementation of cooperation agreements. An agreement was reached with PMI under which the manufacturer would make supplemental (seizure) payments to all Member States as soon as representatives of all Member States, the EU and the company signed a modification agreement on the matter. Not all Member States have as yet signed.

⁴¹ SEC(2011) 791.

⁴² See section 4.1.11 below.

⁴³ COM(2013) 324 final.

⁴⁴ Philip Morris International, Inc. (PMI), Japan Tobacco (JTI), British American Tobacco (BAT) and Imperial Tobacco Limited (ITL).

4.1.9. Public procurement rules

Fraud is often linked to procurement. Consequently, the Commission included new provisions in its proposals for directives on public procurement⁴⁵ adopted on 20 December 2011:

- Introduction of the notion of conflict of interests;
- Exclusion of tenderers whose managers have been convicted of corruption or other serious fraud; and
- An overall governance framework including monitoring and reporting obligations to curb procurement fraud especially when it involves EU funds.

The Commission proposals have been thoroughly discussed in the European Parliament and the Council. An earlier proposal⁴⁶ to create a national oversight body dedicated to public procurement was not agreed by the Council but has been replaced by certain monitoring and reporting obligations to the Commission, in particular in cases of corruption. These proposals, if adopted, would significantly improve governance as well as the mitigation and follow-up of breaches of public procurement rules, especially when related to conflict of interest.

4.1.10. Commission Anti-fraud Strategy (CAFS)

Adopted in June 2011, the Commission Anti-fraud Strategy (CAFS)⁴⁷, is mainly addressed to Commission departments. It aims to balance cost effectiveness and simplification with the possibility of adapting existing anti-fraud measures to counter new fraud schemes. The Commission draws on OLAF's experience of investigations into alleged fraud.

The CAFS implementation is well on track, especially for the three priorities to be achieved by the end of 2013:

- Adequate anti-fraud provisions in Commission proposals on spending programmes under the new Multiannual Financial Framework (MFF);
- Development of anti-fraud strategies at Commission service level;
- Revision of procurement directives⁴⁸.

OLAF complements the implementation of these priority actions by providing other services with an internal anti-fraud website and guidance, training and coordination.

4.1.11. Hercule and Pericles Programmes

4.1.11.1. Implementation of Hercule II and Pericles Programmes

In 2012, the Hercule II Programme supported actions to strengthen the technical and operational capacity of law enforcement agencies to combat fraud against the EU. It did this through technical assistance (EUR 7.35 million), training activities, including digital forensic training (EUR 3.25 million), legal training and studies (EUR 0.7 million), and IT support for the purchase of data and information made available to Member States' authorities (EUR 2.95 million). The indicated amounts reflect the available budget for 2012.

⁴⁵ 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.

⁴⁶ 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).

⁴⁷ COM(2011) 376 final.

⁴⁸ See paragraph 4.1.9.

In 2012, under the Pericles Programme for the protection of euro banknotes and coins against fraud and counterfeiting, the Commission (OLAF) took part in 16 activities, including conferences, seminars and staff exchanges, organised by Member States and/or the Commission (OLAF). These events focused particularly on strengthening cooperation with the responsible authorities and included discussions of programmes with applicants and experts from Member States, the European Central Bank and Europol. In 2012, 94.75 % of the Pericles Programme's EUR 1 million was committed.

4.1.11.2. Multiannual Financial Framework (MFF) 2014-20

In December 2011, in the context of the Multiannual Financial Framework, the Commission adopted proposals for continuing two programmes with a view to reinforcing fraud prevention and the fight against fraud: Hercule III⁴⁹ and Pericles 2020.⁵⁰

In 2012, the European Parliament's Committee on Budgetary Control and the Council's working group on combatting fraud (GAF) discussed both proposals. Under the Danish Presidency, the GAF was able to prepare agreement on the Commission's proposals, except for the co-funding percentages and the overall budget of the programme. The Committee on Budgetary Control adopted its reports on the proposals in November 2012. Parliament and Council started negotiations under the Irish Presidency in 2013 with a view to reaching an agreement.

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

Under Article 325 of the TFEU, Member States, together with the Commission, organise close and regular cooperation between their competent authorities. A major forum for the coordination activities is the Advisory Committee for Coordination of Fraud Prevention (COCOLAF).⁵¹

In 2012, COCOLAF was consulted twice on the main developments in legislative and policy initiatives in the fight against fraud.

COCOLAF shared its views on EU efforts to strengthen the protection of EU financial interests and in general agreed with current initiatives, in particular with regard to harmonising the legal basis for fighting fraud against the EU.

A revision of COCOLAF's structure and various existing expert groups is planned for 2013, to improve the groups' overall functioning and provide a clearer overview of activities involving the Commission (OLAF) and Member States.

4.3. European Parliament Resolution of 10 May 2012 on Protection of the Communities' financial interests — Fight against fraud — Annual report 2010

The European Parliament adopted its Resolution on the Commission's 2010 report on 10 May 2012.⁵² The Resolution contains specific requests, comments and proposals covering all sectors of the budget. It is addressed to the Commission and Member States and covers a

⁴⁹ COM(2011) 914 final.

⁵⁰ COM(2011) 913 final.

⁵¹ Established under Commission Decision 94/140/EC of 23 February 1994, as amended on 25 February 2005.

⁵² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0196+0+DOC+XML+V0//EN&language=EN>.

wide range of topics, such as losses in customs duties and VAT, irregularity reporting in all sectors by Member States and public procurement. It regrets that the Commission's report does not consider fraud in detail but deals with irregularities very broadly, and criticises the low number of irregularities reported by some Member States in particular sectors.

The European Parliament welcomed the improved recovery rate in cohesion policy funds and the great progress made by Bulgaria in strengthening its national control systems for pre-accession funds. It also welcomed the success of the joint customs operation 'Sirocco' and the effectiveness of the Hercule II Programme coordinated by OLAF.

The Commission has submitted a follow-up report outlining the measures to be taken to respond to Parliament's concerns. In particular, the Commission pointed out that there would be a greater focus in the Article 325 report on in-depth analysis of fraudulent irregularities, but emphasised that reporting on all irregularities (including non-fraudulent) is necessary to fulfil the report's mandate and to understand more fully the fraudulent irregularities. In line with Parliament's recommendation, the Commission already increased the emphasis on analysis of fraudulent irregularities in the 2011 report and has done so yet further in the present report.

With regard to Parliament's concerns that some Member States are reporting little or no fraudulent cases for some funds, the Commission made further contact with the Member States in question to address the problems of incomplete reporting. Part of the problem, however, is that fraud detection must still be improved in some Member States. A range of measures has been taken to guide and support Member States in improving their fraud detection and reporting performance.

The Commission audits Member States' recovery procedures and suspends payments when significant deficiencies are found. Recoveries were improved in the area of agriculture partly because Member States now bear half of the irrecoverable amounts if they fail to recover in due time or all the cost if they make negligent pay-outs (50% rule). For the 2014-20 MFF, the Commission has also proposed further strengthening the legal framework.

In addition, the Commission outlined actions it would take concerning cohesion policy funds as part of its Joint Fraud Prevention Strategy concerning the cohesion policy funds. The strategy involves fraud risk assessment, fraud detection, and internal and external fraud awareness actions (in the Commission departments in charge of implementing cohesion policy and in Member States).

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

Each year, Member States report to the Commission on the main measures taken on the basis of Article 325 TFEU to combat fraud and other illegal activities affecting the financial interests of the EU.

In 2012, Member States implemented various measures both general and specific that reinforce the prevention and repression of fraud affecting the EU's financial interests. However, information provided by nearly half of the Member States shows that their ability to detect and prosecute fraud and to enforce recoveries is limited. Moreover, practices for reporting fraud and irregularities differ amongst and within Member States.

5.1. Measures to combat fraud and other irregularities affecting the financial interests of the EU

Administrative measures reported by Member States mainly concern increased monitoring by managing authorities, agencies or bodies, more rigorous financial audit, and updated guidelines or methodology manuals.⁵³ Other measures are designed to improve cooperation between competent authorities, reinforce checks,⁵⁴ promote strategic cooperation with the Commission in preventing fraud and corruption,⁵⁵ provide training⁵⁶ and improve contract security⁵⁷.

More general measures address improvements in public procurement acts⁵⁸ and the recovery of undue payments⁵⁹.

5.2. Measures to combat fraud and other irregularities affecting the financial interests of the EU in the area of agriculture

The particular focus in 2012 was on agriculture. Reporting covered information about anti-fraud investigations, legislative and administrative measures and strategies, fraud indicators, amounts recovered in connection with anti-fraud investigations and data on personnel assigned to and involved in anti-fraud investigations.

5.2.1. Legislative and administrative measures

Many Member States⁶⁰ reported in 2011-12 on new legislative and administrative measures that substantially improved fraud prevention and risk management in agricultural funds. Some Member States reported measures concerning the entire administration of agricultural aid⁶¹.

These measures mainly concern eligibility of expenditure, on-the-spot checks and audits for the European Agricultural Fund for Rural Development (EAFRD), better targeted checks as a result of risk assessments on the young farmers' and Less-Favoured Areas (LFA) schemes and improvements in the certification procedure due to stricter controls. Several Member States⁶² reported measures improving their financial control following revision of national legislation and further updates in supporting schemes (rural development policy, direct supporting schemes). Some Member States⁶³ reported improvements in national legislation or harmonisation with EU law regarding procedures for handling irregularities, including definitions of irregularity, reporting procedures, financial corrections or recovery of funds, and a clearer definition of fraud offences and investigative procedures. Four Member States⁶⁴ reported making improvements in their national registries and data management to allow

⁵³ Bulgaria, Czech Republic, Germany, Estonia Greece, Spain, Lithuania, Luxembourg, Romania, Slovakia and Sweden.

⁵⁴ Germany, Ireland, United Kingdom (England and Scotland).

⁵⁵ Italy.

⁵⁶ Bulgaria.

⁵⁷ Denmark secure digital signature for all citizens and undertakings used in contacts with public authorities.

⁵⁸ Bulgaria, Czech Republic, Latvia and Poland.

⁵⁹ Belgium, Czech Republic, Slovenia and Sweden.

⁶⁰ Belgium, Bulgaria, Czech Republic, Denmark, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Hungary, Poland, Romania, Slovakia and Slovenia .

⁶¹ Belgium (Wallonia), Czech Republic and Slovakia.

⁶² Ireland, Greece, Spain, Italy and Latvia.

⁶³ Ireland, Greece, Spain, Italy and Latvia.

⁶⁴ Germany, Latvia, Hungary and Poland.

easier cross-checking. Others⁶⁵ reported improving their risk management systems through better organisational structures, internal control systems and guidelines on checks, or new risk analyses for the prevention of serious and organised tax fraud.

In terms of effectiveness and efficiency, most Member States⁶⁶ reported that the new legislative or administrative measures had led to better results, including earlier detection, fewer undue payments, more irregularities detected before payment and a higher degree of accepted eligible expenditures. Some pointed to fewer on-the-spot checks, including better use of resources due to new risk analyses. Most Member States reported that they had acted to improve the reliability and consistency of financial reporting.

5.2.2. *New prevention and detection strategies*

The majority of Member States⁶⁷ reported that they were now using one or more of the following: national strategies, regional strategies, strategies based on a particular type of operation for risk mitigation, and better prevention and detection of fraud in the spending of agriculture funds.

5.2.3. *Use of fraud indicators*

Almost all Member States⁶⁸ mentioned using general fraud indicators such as categories of irregularity, operations, *modi operandi*, economic sectors or geographical areas affected.

In addition, the majority of Member States⁶⁹ declared that they also make use of their own specific indicators, such as identity of beneficiaries, transparency in procedures, changes in the amount of aid as compared to the previous marketing year, submission of false or suspect data or attempts to conceal information.

5.2.4. *Implementation of reporting provisions*

Many Member States⁷⁰ reported that they had adopted guidelines on distinguishing between fraud and other irregularities and organised staff training to clarify the distinction. Three⁷¹ stated that they had not adopted such guidelines because existing regulations and procedures are sufficient.

Answers received regarding reporting practices under Regulation (EC) No 1848/2006 show that practices vary not only from one Member State to another, but also between bodies in the same Member State. The latter is true not only in federal countries, nor just across policy areas such as Agriculture, Fisheries or Cohesion⁷².

⁶⁵ Belgium (Wallonia), Ireland, Spain and Lithuania.

⁶⁶ Belgium, Bulgaria, Czech Republic, Greece, Spain, Italy, Cyprus, Latvia, Lithuania, Hungary, Austria, Poland, Romania, Slovakia, Slovenia, and United Kingdom.

⁶⁷ Belgium, Bulgaria, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, , Italy, Cyprus, Hungary, Netherlands, Austria, Portugal, Romania and Slovakia..

⁶⁸ All except Luxembourg.

⁶⁹ Except five (Belgium, Denmark, Netherlands, Slovenia and Sweden).

⁷⁰ Bulgaria, Estonia, Greece, Spain, France, Italy, Cyprus, Latvia, Hungary, Netherlands, Portugal, Romania, Slovenia, Slovakia, Sweden and United Kingdom.

⁷¹ Belgium (ALV), Austria and Poland.

⁷² See point 2.2.9 of the Commission Staff Working Document on Implementation of Article 325 by the Member States in 2012 accompanying this report, pp. 11-12, which summarises the information reported by the Member States.

5.2.5. *Insufficient statistics on fraud detection and prosecution and related recoveries*

Nearly half of the Member States⁷³ still provide limited information concerning the number of administrative anti-fraud checks and procedures initiated to establish cases of fraud. Bulgaria, Denmark, Italy, Poland and Romania launched the highest number of anti-fraud investigations.

Similarly, the majority of Member States did not provide enough data on the number of criminal proceedings finalised with a court decision. In addition, nearly half⁷⁴ provided incomplete data on the amounts recovered relating to fraud following administrative anti-fraud checks. The situation is even less satisfactory regarding data on the amounts recovered⁷⁵ and financial penalties in relation to criminal investigations..

This leads to the conclusion that last year's recommendation on the monitoring of results of criminal investigations in the domain of cohesion policy has been only partially addressed.

5.3. **Operation 'Magna Grecia'**

In 2011 and 2012, the Italian financial police, *Guardia di Finanza* (GDF), conducted 23 investigations into beneficiaries whose projects were financed through the 2000-06 Structural Funds in the Calabria Region of southern Italy. Each investigation would cover more than a single project. Irregularities were found in 18 cases.

During the investigations, projects worth more than EUR 23.5 million were inspected, of which almost EUR 16 million was found to be subject to irregularities. Thirty individuals, including four public officials, were prosecuted for fraud, falsification in public and private acts, misappropriation of public funds, use of false invoices, hiding or destroying accounting documents and money laundering. GDF requested seizures of goods totalling about EUR 4.5 million.

The investigations were the result of thorough analysis started by OLAF in 2010 and jointly pursued throughout 2011 in order to refine risk indicators and to integrate further data and GDF's local knowledge. The operation demonstrated the efficiency of this innovative approach, which made it possible to target specific beneficiaries matching the identified risk indicators.

5.4. **Implementation of 2011 recommendations**

In the 2011 report on the protection of the Union's financial interests, the Commission made a number of recommendations to Member States, in particular on reported fraudulent and non-fraudulent irregularities, recovery of irregular amounts, monitoring the results of criminal investigations and improving their fraud statistics. The implementation of these recommendations, presented as part of the 2012 reporting exercise, was adequate on the whole, although some concerns were not fully addressed. In the area of shared management, the majority of Member States reported that they target their fraud prevention and detection efforts on the basis of risk analysis. The Member States which were asked to explain low

⁷³ Belgium, Ireland, Greece, France, Cyprus, Latvia, Luxembourg, Malta, Portugal, Finland and United Kingdom

⁷⁴ Germany, Greece, Italy, Lithuania, Luxembourg, Hungary, Poland, Portugal, Romania, Slovenia and Slovakia.

⁷⁵ Only 8 Member States provided data (Bulgaria, Denmark, Germany, Italy, Poland, Portugal, Romania, Slovakia and United Kingdom).

levels of detected fraud in either agriculture⁷⁶ or cohesion policy⁷⁷ continue to attribute this to the quality of their fraud prevention systems and to low levels of actual fraud. Various Member States improved their control systems by targeting high-risk areas as recommended. For cohesion policy in particular, Bulgaria amended legislation to enable new financial inspections targeting high-risk public procurement contracts. Romania is now piloting a system of ex-post checks to look for fraud and conflicts of interests. Slovakia sought to incorporate public complaints and media reports into their risk analysis.

France has completed the implementation of the Irregularity Management System (IMS) for cohesion policy. Given that Croatia also fully implemented it from October 2012 in preparation for accession, IMS is now fully operational in all Member States.

Regarding revenue, many Member States⁷⁸ responded positively to the Commission's recommendation to target customs inspections on high-risk imports, often developing new IT tools to assist in this process.⁷⁹

For cohesion policy, 74% of Member States reported taking measures to improve their management and control systems in accordance with the recommendation.⁸⁰ Generally Member States have paid special attention to the areas of public procurement and eligibility following the Commission's observations that these areas were particularly error-prone.⁸¹ Latvia and Lithuania amended relevant legislation on procurement and on the identification and classification of irregularities and recoveries respectively. Finland took measures to simplify eligibility checks.

The last recommendation called on Member States to monitor the results of criminal investigations and improve their fraud statistics. Some of the follow-up reported (or not reported) this year contributes to the Commission's well-founded concern that the problem has yet to be satisfactorily resolved.

Greece, Hungary, Italy, Latvia, Lithuania, Slovakia and the United Kingdom have put in place IT or other systems to improve their fraud statistics, or are in the process of doing so. Others seemed satisfied with their existing systems.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. Two trends in relation to policy and operational developments

In relation to the fight against fraud by Member States and the Commission, the present report highlights two main trends, one concerning the adoption of new anti-fraud measures and the other relating to the operational results achieved.

⁷⁶ Germany, France, Spain and the United Kingdom.

⁷⁷ France, Cyprus, Malta and Netherlands

⁷⁸ Bulgaria, Czech Republic, Germany, Ireland, France, Hungary, Italy, Cyprus, Latvia, Malta, Netherlands, Poland, Romania, Slovenia, Slovakia, Finland, Sweden and United Kingdom.

⁷⁹ Belgium, Bulgaria, Czech Republic, France, Hungary, Ireland, Italy, Cyprus, Latvia, Malta, Netherlands and Sweden.

⁸⁰ Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Hungary, Cyprus, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Finland, and Sweden.

⁸¹ Bulgaria, Estonia, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Portugal, Poland, Romania, Slovakia and Finland. .

On the policy side, the Commission and Member States undertook a number of significant initiatives in 2012, at both legislative and administrative level. This positive momentum underlines the growing attention paid by competent authorities to fraud and other illegal activities detrimental to EU (and, in cases of co-financing, national) financial interests. While actions taken at national level are already in place, initiatives promoted at EU level, in particular the proposal for a Directive on the protection of the EU's financial interests and the package on new public procurement rules, still await the approval of the legislator, while others, such as the new package for the 2014-20 financial perspectives, are at an advanced stage of negotiation.

On the operational side, the situation as regards irregularities reported as fraudulent in 2012 appears generally stable in relation to 2011, with a significant increase only in the number of cases in the area of agriculture. This increase was due exclusively to the efforts made by a single Member State (Denmark) and was offset by a comparable decrease in the pre-accession area.

The benefit of the measures adopted in 2012 will be felt in future years.

6.2. Diverse approaches to fraud

The approaches of Member States remain very diverse, with a group of six countries (Czech Republic, Denmark, Germany, Italy, Poland and Romania⁸²) leading in terms of fraud detection capability in the expenditure area and five countries (Belgium, Germany, Greece, Italy and Spain⁸³) leading the way in relation to the revenue (traditional own resources) side.

Results for the remaining Member States are more homogeneous in the area of revenue than in the area of expenditure, where significant beneficiaries of EU resources, such as Greece, France and Spain, show a very limited capacity to detect fraud.

Member States approach and address the detection of fraud in different ways. The explanations for these divergent attitudes lie mainly in legal and organisational differences, which vary not only between Member States but also between administrations in the same country.

Recommendation 1

The identification of national coordination services for the fight against fraud would increase the consistency in approach between and within Member States.

Member States are invited, where not already done, to quickly designate or establish their Anti-Fraud Coordination Service (AFCOS).

6.3. Adoption of common rules on fraud

Currently, sanction levels for fraud are so low in some Member States that they cannot be said to have any deterrent effect at all. Many cases of fraud affecting the Union's financial interests go unpunished because the time that is allowed by law to investigate and prosecute fraud has lapsed.

⁸² Their results representing 75 % of the total number of irregularities reported as fraudulent.

⁸³ Their results representing 79 % of the total number of irregularities reported as fraudulent.

The proposal for a Directive on the protection of the EU financial interests by means of criminal law addresses these problems by providing for a minimum period of time limitation. Serious cases of fraud should be punished with a minimum penalty of at least six months and a maximum penalty of at least five years.

Recommendation: 2

Member States should ensure that sanctions for fraud have a deterrent effect and investigations and prosecutions can be pursued for a sufficient period of time. Member States should quickly adopt and implement the Directive on the protection of the EU financial interests by means of criminal law.

6.4. The most significant risks are confirmed

As in previous years, one of the main problems identified by the authorities in relation to fraudulent irregularities detected is the infringement of public procurement rules. Corruption has also been identified in a limited number of cases linked to this type of violation.

Recommendation 3

The package on the reform of public procurement directives should be approved by the legislator and rapidly implemented by Member States in order to react to the heightened risk identified in this area.

In line with previous years' analysis, cohesion policy (in particular operational programmes linked to the convergence objective) remains the area where the greatest number of fraudulent irregularities has been detected.

Recommendation 4

In view of the low reporting of fraudulent irregularities as regards some Member States in the area of Cohesion Policy, the Commission recommends in particular to Greece, France and Spain to strengthen their efforts to detect fraud.

Still on cohesion policy, considering the period 2008-2012, until 2010 the number of fraudulent irregularities detected was higher in relation to the ESF than in relation to the ERDF. Since 2011 it has been the other way around. Looking at the financial impact of these cases, the priority areas most affected are those where the greatest investments are made, transport, environment and investments in social infrastructure.

Recommendation 5

Competent authorities should take the results of the analysis included in the report and its accompanying staff working documents into account when planning their checks and controls.

The rate of fraud detection in relation to rural development remains fairly stable compared with 2011, but lower than that for similar instruments implemented in the previous programming period (under structural funds and pre-accession assistance). Authorities' attention seems still to be focused on the European Agriculture Guarantee Fund (EAGF).

Recommendation 6

Member States should step up their efforts on rural development investment projects in relation to the elements of risk highlighted by similar findings in the previous programming period.

6.5. Anti-fraud bodies and law enforcement agencies remain the most effective in detecting fraudulent irregularities...

On the revenue side, customs controls proved important for the detection of fraud cases at the time of clearance of goods.

Recommendation 7

When developing customs control strategies, in parallel with their post-clearance customs control activities, Member States should ensure that they have effective systems of risk assessment allowing them also to carry out checks targeted at high-risk imports at the time of clearance.

On the expenditure side, the successful detection of fraud (in particular, where there is a high financial impact) remains to a significant extent the result of investigations run by anti-fraud bodies or law enforcement agencies; their positive impact is particularly evident in Member States that have tried to structure cooperation between the administrations primarily responsible for the management and control of EU funds and law enforcement bodies.

... but the role of managing and audit authorities is increasing ...

Detection of fraud by administrative bodies in Member States is improving, especially as regards less complex cases. Some Member States reported introducing checks and controls based on risk analysis and the use of IT tools to enhance fraud detection. Targeting checks and controls with a specific focus on fraud is particularly important in relation to the costs connected with this type of check, in order to maximise effectiveness.

Recommendation 8

The Commission recommends that all Member States adopt and develop checks and controls, in particular, structuring and improving cooperation between managing authorities and anti-fraud bodies as well as improving risk analyses and IT tools.

... in particular in connection with fraud prevention.

In this period of budgetary constraints, the importance of fraud prevention measures should not be underestimated and the role of managing authorities, agencies and bodies should be strengthened by specific provisions in regulatory proposals for the Multiannual Financial Framework 2014-20.

Recommendation 9

The Commission recommends that the legislator adopt the MFF provisions on fraud prevention in their current formulation and that they be quickly and correctly implemented at national level.

6.6. Protection against EU undue payments — enforced by existing preventive and corrective mechanisms laid down in EU regulations — remains adequate

Analysis of recoveries and financial corrections confirms that all the preventive and corrective measures put in place provide for effective protection of EU financial interests. These mechanisms ensure that EU resources are spent on authorised projects, in particular in sectors where operations are co-financed and the risk of non-recovery is shifted onto the Member State's budget.

6.7. Overall conclusions

The most evident and significant problem still lies in the differences of approach between Member States in relation to fraud, as also highlighted by statistics gathered in response to the specific questionnaire. In relation to the monitoring of results of judicial proceedings, the situation remains unsatisfactory despite the significant overall improvement achieved. This leads the Commission to conclude that last year's recommendation on the monitoring of results of criminal investigations in relation to cohesion policy has been only partially addressed.

The establishment of the European Public Prosecutor's Office (EPPO) will significantly improve the fight against fraud. The EPPO will overcome the limited capability of national authorities to tackle fraud once it has been detected and ensure consistency and coherence. , The EPPO will systematically follow-up cases within its competence until they are brought to court. As a result, the number of convictions and amounts of money recovered will increase. Because of higher chances of conviction, potential perpetrators will be deterred and the number and amounts involved in fraud will decrease over the years.

ANNEX 1 — Irregularities reported as fraudulent

(The number of irregularities reported as fraudulent measures the results of efforts by Member States to counter fraud and other illegal activities affecting EU financial interests; it should not be interpreted as the level of fraud in their territories)⁸⁴

Member States	Agriculture		Fisheries		Cohesion Policy		Pre-Accession		TOTAL EXPENDITURE		REVENUE	
	N	EUR	N	EUR	N	EUR	N	EUR	N	EUR	N	EUR
Belgique/België	2	11 569							2	11 569	24	23 076 595
Bulgaria	5	118 895			9	5 971 077	8	3 999 800	22	10 089 772	10	1 613 618
Ceská republika	2	31 028			34	54 447 819			36	54 478 847	0	0
Danmark	56	1 310 263							56	1 310 263	8	796 759
Deutschland	9	1 758 429			43	13 658 092			52	15 416 521	72	4 048 792
Eesti	11	2 988 626			6	888 558			17	3 877 184	0	0
Éire/Ireland	4	123 343							4	123 343	5	0
Ellada									0	0	32	338 175
España	6	150 841			3	93 447			9	244 288	324	36 927 772
France	2	115 794							2	115 794	13	0
Italia	32	21 020 173	2	111 414	75	97 837 043			109	118 968 629	89	5 913 615
Kypros					1	90 724			1	90 724	0	0
Latvija	3	79 903	1	347 118	11	6 691 168			15	7 118 189	4	330 397
Lietuva	1	375 000			3	495 290			4	870 290	14	413 947
Luxembourg									0	0	0	0
Magyarország	14	2 474 121			3	727 614			17	3 201 735	3	40 946
Malta									0	0	1	0
Nederland	1	28 721 881							1	28 721 881	10	0
Österreich					2	34 805			2	34 805	10	669 369
Polska	35	5 050 518			32	9 445 830			67	14 496 348	22	737 511
Portugal			1	210 050	12	1 388 698			13	1 598 748	0	0
Romania	10	3 536 865			34	6 020 393	17	39 810 557	61	49 367 815	20	1 877 170
Slovenija	3	93 007			5	1 241 736			8	1 334 743	5	381 597
Slovensko	2	235 283			4	1 363 577			6	1 598 860	1	46 323
Suomi/Finland									0	0	11	372 132
Sverige	2	16 508			1	90 150			3	106 658	0	0
United Kingdom	4	162 633			1	39 674			5	202 307	4	0
TOTAL	204	68 374 680	4	668 581	279	200 525 694	25	43 810 357	512	313 379 312	682	77 584 718

⁸⁴ For the amounts related to the Netherlands in relation to agriculture, see paragraph 3.4.1 of the Commission Staff Working Document on ‘Statistical evaluation of irregularities’.

ANNEX 2 — Irregularities not reported as fraudulent

Member States	Agriculture		Fisheries		Cohesion Policy		Pre-Accession		TOTAL		REVENUE	
	N	EUR	N	EUR	N	EUR	N	EUR	N	EUR	N	EUR
Belgique/België	12	359 815			32	2 701 479			44	3 061 294	136	9 603 835
Bulgaria	2	22 969			65	6 885 790	15	2 573 802	82	9 482 561	5	1 397 298
Ceská republika	106	2 420 077	2	202 636	549	1 033 534 240			657	1 036 156 953	69	2 921 712
Danmark	55	2 582 650			1	10 197			56	2 592 847	52	4 252 220
Deutschland	62	2 061 725			187	25 392 463			249	27 454 189	1 140	96 580 424
Eesti	21	646 988			93	27 489 013			114	28 136 001	5	117 895
Éire/Ireland	105	3 204 462	10	136 460	14	4 046 787			129	7 387 709	28	1 631 006
Ellada	42	1 758 638			119	65 177 448			161	66 936 086	1	22 771
España	264	10 715 545	35	3 039 296	491	516 657 968			790	530 412 809	109	6 548 484
France	98	3 599 435			70	12 438 010			168	16 037 445	285	24 250 220
Italia	213	15 296 384	5	195 845	447	66 987 259			665	82 479 487	142	11 729 209
Kypros	1	81 675			3	61 899			4	143 574	4	165 473
Latvija	15	513 427			38	3 146 255			53	3 659 681	20	2 126 130
Lietuva	91	2 976 961			92	5 329 886	3	45 221	186	8 352 068	24	874 586
Luxembourg	1	8 046			1	5 687			2	13 733		
Magyarország	240	6 674 829			76	8 000 342			316	14 675 171	61	1 989 923
Malta	3	114 542			3	52 963			6	167 505		
Nederland	69	10 089 009			28	2 488 799			97	12 577 808	516	87 542 924
Österreich	5	67 383			12	269 109			17	336 492	46	2 187 964
Polska	226	11 522 524	11	330 596	800	358 946 421	2	22 229	1 039	370 821 771	110	4 698 566
Portugal	128	5 465 518	6	828 250	117	19 601 648			251	25 895 417	21	815 002
Romania	323	17 929 666	3	7 664 966	245	61 492 098	182	41 805 557	753	128 892 287	42	29 479 706
Slovenija	26	2 481 271			13	641 405			39	3 122 676	18	388 676
Slovensko	7	9 802 128	1	18 000	190	57 155 767			198	66 975 895	19	1 515 985
Suomi/Finland	7	205 016	1	94 935	10	286 817			18	586 767	24	2 359 280
Sverige	27	676 326			27	814 096			54	1 490 422	55	6 666 923
United Kingdom	124	3 627 408			355	16 921 931			479	20 549 339	980	70 235 011
TOTAL	2 273	114 904 419	74	12 510 985	4 078	2 296 535 775	202	44 446 809	6 627	2 468 397 988	3 912	370 101 223

ANNEX 3 — 2012 financial corrections implemented under shared management (EUR million)⁸⁵

Member State	EAGF	Rural development	ERDF	Cohesion Fund	ESF	Other*	Total 2012	Total 2011
Belgique/België	0	3	0		11	0	14	1
Bulgaria	15	7	0	6	1	0	30	25
Ceská republika	0		116	8	0	0	125	6
Danmark	22		0		0	0	22	0
Deutschland	-16	3	23		0	0	10	1
Eesti	0	1	0	0	0	0	1	0
Éire/Ireland	-1	10				0	9	2
Ellada	85	5	0	13	159	0	262	448
España	47	2	1 952	81	84	7	2 172	159
France	64	1	20		37	2	123	33
Italia	209	0	57		3	7	275	50
Kypros	8	0	0	0	0	0	8	3
Latvija	0		1	1	9	0	12	0
Lietuva	3	4	3	1	0	0	10	0
Luxembourg	0		0		0	0	0	0
Magyarország	6	0	0	0	0	0	6	41
Malta	0					0	0	0
Nederland	17	2	0		0	0	20	53
Österreich	1					0	1	0
Polska	12	2	45	79	23	0	162	148
Portugal	15	1	117	0	0	0	134	26
Romania	24	12	22	0	81	0	139	53
Slovenija	0	0				0	0	4
Slovensko	0		29	17	11	0	57	5
Suomi/Finland	1	0	0		0	0	1	0
Sverige	72	2	0		0	0	74	3
United Kingdom	27	4	4		12	2	50	44
Interreg/Cross-Border			24		0	0	24	1
TOTAL IMPLEMENTED	610	59	2 416	207	430	19	3 742	1 106

* Within this heading are included financial corrections implemented in relation to EAGGF - Guidance, EFF and the Refugee Fund.

⁸⁵

Row and column totals may not correspond to the sum of values displayed due to rounding.