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Implementation of the Commission Anti-Fraud Strategy (CAFS)

Accompanying the document

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

**Protection of the European Union's financial interests - Fight against fraud
2015 Annual Report**

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1. INTRODUCTION

The Commission Anti-Fraud Strategy (CAFS)¹ was adopted on 24 June 2011. Starting from that date, the Commission has worked on the implementation of the strategy to improve the entire anti-fraud cycle within the Commission: prevention, detection, investigation, sanctions and recovery.

Important milestones in the implementation of the strategy were the introduction of anti-fraud strategies at Commission service level and the adoption of the updated procurement directives.

The CAFS presented actions with a fixed end-date, such as the above mentioned actions, and actions with an on-going character, such as training and awareness raising. All actions with a fixed end date have been completed.

This does however not mean that there are no more activities to report upon. First of all, this report will give more insight in the on-going actions. And in addition it will provide a few examples of the actions implemented by the Commission services as part of the implementation of their Anti-Fraud strategies.

2. PRIORITIES

As reported in the previous implementation reports, the priority actions in the CAFS were completed in time.

The priority actions were:

- (1) Adequate anti-fraud provisions in Commission Proposals on spending programmes under the new multi-annual financial framework, in the light of impact analyses.
- (2) The development of anti-fraud strategies at Commission Service Level with the assistance of OLAF and of the central services, and their implementation.
- (3) The revision of the public procurement directives with a view to addressing the need for simplification while limiting the risks of procurement fraud in the Member States.

The fact that they have been implemented does not mean that there have not been further developments. The latest developments will be described in the paragraphs below.

2.1. Adequate anti-fraud provisions

The anti-fraud provisions have been integrated in the proposals for the MFF 2014-2020 and still serve as good practice for new legislative proposals.

In the area of shared management, the anti-fraud clause in the Common Provisions Regulation (CPR), Article 125.4.c, is now being implemented in the management and controls systems of the Managing Authorities. The Commission is closely monitoring the implementation of this key requirement. The payments to Member States have been made conditional on the fulfilment key requirements, including this key requirement, to make sure that expenditure is only granted to a Member State whose Management and Control System meets the criteria.

¹ COM(2011) 376 final

2.2. Anti-fraud strategies for Commission Services

Since every Commission service has an anti-fraud strategy, the anti-fraud approach in the Commission has entered a new phase. The emphasis has shifted from the implementation of the Commission Anti-Fraud Strategy to the anti-fraud strategies of the Commission services.

Over the past three years, all Commission services have updated or are about to work on an update of their Anti-Fraud Strategy. The fraud risk assessments that are performed for this purpose, give a good insight in the fraud risks faced by the Commission. Apart from the risks directly related to financial fraud, the Commission services also identify risks related to the reputation of the Commission and to the treatment of sensitive information (which could for example facilitate insider trading).

OLAF will keep a close eye on the identified fraud risks and tries to facilitate the exchange of good practices between Commission services, for example through the Fraud Prevention and Detection Network.

Also in 2015, the Internal Audit Service (IAS) conducted an audit on the 'Adequacy and effective implementation of DGs' anti-fraud strategies. A sample of 5 DGs were audited to see how effective the Anti-fraud strategies in the DGs were in ensuring the adequacy and effective application of their governance, risk management and relevant control processes for fraud prevention, detection and follow-up of fraud.

The IAS acknowledged the positive steps taken by OLAF and the selected DGs both in the overall management and oversight of the implementation of CAFS and in the preparation, or revision of the anti-fraud strategies.

Nevertheless, the IAS also identified areas of improvement, in particular reinforcing the integration of the DGs AFSs into the internal control system. OLAF was recommended to update the methodology and guidance for the development of Commission services' anti-fraud strategies in this regard. For more details see also the text in paragraph 2.4.

2.3. Revision of the Procurement Directives

The procurement directives, which were adopted by the legislator on 26 February 2015, need to be transposed by the Member States in national legislation by 18 April 2016. DG GROWTH is closely monitoring the transposition and requested 21 Member States on 26 May 2016 to transpose in full one or more of the three directives into national law.

By 31 May, eight Member States have transposed the procurement directives into national law:

1. Denmark
2. France
3. Germany
4. Hungary
5. Italy
6. Romania
7. Slovakia
8. United Kingdom

The transposition is very relevant in the context of the Commission Anti-Fraud Strategy because the new rules promote accountability and help combat corruption through increased transparency requirements. The rules make it easier and cheaper for small and medium enterprises (SMEs) to respect the EU's transparency rules and to bid for public contracts.

2.4. Reporting on the anti-fraud strategies in the Annual Activity Reports

One of the main principles of the CAFS was the integration of anti-fraud activities into already existing procedures and processed in order to reduce administrative burden. The audit of the Internal Audit Service (IAS) on the effective and adequate implementation of DGs' anti-fraud strategies (see paragraph 2.2) observed in general that the integration of the anti-fraud measures identified in the Commission services anti-fraud strategies into the Internal Control system could be improved.

As part of this observation, the Commission has introduced a so-called 'anti-fraud objective' in the 'Instructions for the strategic plan 2016-2020 and the Management Plan 2016'. All Commission services have to report on the implementation of this objective, which was developed in co-operation with the Fraud Prevention and Detection Network and reads as follows:

Minimisation of the risk of fraud through application of effective anti-fraud measures, integrated in all activities of the Commission service, based on the Commission service's anti-fraud strategy (AFS) aimed at the prevention, detection and reparation of fraud.

Together with this anti-fraud objective a set of indicators was introduced. The aim of the introduction of this objective and indicators is to facilitate the monitoring of anti-fraud measures in the Commission's internal control system and to facilitate monitoring of anti-fraud activities of the Commission services through the existing reporting cycles.

The reporting on the indicators is presented in the Annual management and Performance report for the 2015 budget.

http://ec.europa.eu/atwork/pdf/synthesis_report_2015_en.pdf

3. PREVENTION AND DETECTION OF FRAUD

The CAFS focused on the prevention and detection of fraud. It underlined the importance of an integrated approach by emphasising that the objectives of the CAFS should be achieved through the internal control process of the Commission, applicable at all management levels. The priority actions described in the previous paragraph are an example of this approach. In addition, the Commission has performed several other actions aimed at the improvement of prevention and detection of fraud.

3.1. Systematic controls and risk analyses

In particular the Commission services active in the area of research and innovation, where scientific studies are being supported, plagiarism can be a threat to the fulfilment of the objectives of the Commission. If a researcher provides the Commission with a report of his achievements in order to obtain financial support, it

should of course be established that the presented report results from the scientific activities performed, and not from plagiarising other sources.

After a presentation of URKUND in the FPDNet, several DGs expressed interest in using this tool for their activities too. DGs that for example order studies or hire consultants to write reports would like to be able to also perform a plagiarism check.

3.2. Awareness raising and training

The exchange of best practices between Commission services was explicitly addressed in the CAFS. The CAFS announced that the Inter-service group of Fraud Proofing Correspondents would be developed into the Fraud Prevention and Detection Network (FPDNet). The CAFS further clarified that this network would serve as a centre of expertise with regard to fraud prevention and detection. In 2015, the network met four times and representatives of all Commission services participated in the meetings.

Examples of subjects presented in the network are a guidance note on the detection of forged documents and another guidance note on the prevention of conflict of interests, an IT-tool to detect plagiarism and an update of the methodology and guidance for the development of DGs anti-fraud strategies.

The network will continue to serve the goals stipulated in the CAFS in the coming years as it is proven to be a useful forum for all participants.

4. INVESTIGATIONS

4.1. OLAF investigations

Regulation 2015/1525 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters was adopted by the co-legislators on 9 September 2015. It improves the current framework for detecting and investigating customs fraud at EU and national level. In particular, it provides for the creation of centralised databases containing information on container movements and on the goods entering, leaving and transiting the EU. This amendment is expected to significantly strengthen the analytical capabilities of both OLAF and national customs authorities in detecting fraudulent operations.

4.2. Whistleblowing

The guidelines on whistleblowing, issued in December 2012, provide ample guidance on how and when to report serious irregularities. They highlight the protection afforded to whistleblowers² acting in good faith. This protection includes confidentiality of the identity of the whistleblower. The guidelines also include provisions on the consequences of malicious denunciations.

The 2012 Commission's Guidelines on Whistleblowing , prepared by DG HR/IDOC, include a review clause, according to which the practical application and effectiveness of these whistleblowing guidelines are to be evaluated at the end of a

² A whistleblower is a member of staff, acting in good faith, who reports facts discovered in the course of or in connection with his or her duties which point to the existence of serious irregularities. The reporting should be done in writing and without delay.

period of three years following their adoption, i.e. in December 2015. DG HR is currently drafting the report on the review of the whistleblowing guidelines.

In addition, information and communication on whistleblowing forms an integral part of the ethics presentations that DG HR provide to Commission, EEAS and Agencies's staff.

5. SANCTIONS

The Commission established an improved Early Detection and Exclusion System (EDES) on 1 January 2016, following adoption of Regulation No 2015/1929 amending the Financial Regulation. EDES will be used by the Commission to ensure the following actions:

- The early detection of an economic operator representing risks threatening the European Union's financial interests.
- The imposition of administrative sanctions by exclusion of an unreliable economic operator from receiving Union's funds and or the imposition of a financial penalty.
- The publication, in the most severe cases, on the Commission's internet site of information related to the exclusion and or the financial penalty, in order to reinforce their deterrent effect.

An important difference between the Early Warning System (EWS) and Central Exclusion Database (CED) is the introduction of a Panel, making sure the rights of third parties are respected.

The Panel will be independent and composed of:

- a high-level independent chair;
- two representatives of the Commission as owner of the system;
- one representative of the requester within the Commission or other Institutions and bodies.

This Panel has been set-up to centrally assess requests for entry into the system and issue recommendations for exclusion and financial penalties referred to it by the Commission or other Institutions and bodies (Article 108 of the FR). The competent authorising officer will refer a case to the Panel for a central assessment where there are no final judgments or final administrative decisions related to the exclusion and its duration or to the financial penalty, and their publication.

Where the contracting authority decides to deviate from the recommendation of the panel, it shall justify such decision to the panel. The Panel will also be competent to ensure the rights of defence of the economic operator. It is then the competent authorising officer that takes the decision on the basis of the panel recommendation to exclude and or impose a financial penalty and possibly publish the related information on the Commission's website.

The system retains the possibility to assess the remedial measures taken by the economic operator to demonstrate its reliability. In this case, the economic operator should not be excluded (except for the most severe criminal activities).

6. RECOVERY

The CAFS underlined the responsibility of Member States' authorities (in shared management) and Commission Services in the recovery of sums unduly paid.

The competent authorities of the Member States and of European institutions have to provide information on the actions they have taken following recommendations made by OLAF (Recital 32 of Regulation No 883/2013). Following this obligation, the Commission has set up a reporting system to monitor the recovery of sums unduly paid. Based on the information provided by the competent authorities, OLAF reports the amounts recovered following investigations in its annual report.

7. OTHER CROSS-CUTTING PREVENTION INSTRUMENTS

The first EU Anti-Corruption Report was published on 3 February 2014 by the European Commission. It was one of the actions mentioned in the Commission Anti-Fraud Strategy, where reference was made to the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Fighting Corruption in the EU (COM(2011)308 final).

The Commission is following-up the first Report with the Member States. To stimulate peer learning and exchange of best practices the Commission also launched an 'Experience sharing programme' for Member States. Six workshops for anti-corruption national experts were held during 2015-2016 covering themes such as asset declarations, whistle-blower protection, corruption in healthcare, public procurement, private sector corruption and political immunities.

The second European Union Anti-Corruption Report is under preparation by Commission Services (DG HOME). In addition to assessing the situation in each of the EU Member States, the report will also cover three thematic issues:

1. Corruption in public procurement at the local level in large infrastructure projects;
2. Transparency of financial flows and beneficial ownership;
3. Corruption in healthcare.

8. CONCLUSION

The year 2015 saw the Commission enter a new phase in the implementation of the CAFS. Given that the priority actions and most other actions of the CAFS have been implemented or are being repeated each year (on-going actions), the focus has now shifted to the actions coming from the anti-fraud strategies of Commission services, which were developed under the CAFS.

This is a good development, in particular given the positive assessment by the IAS of the Commission services' anti-fraud strategies. The IAS has also given recommendations to improve the quality of the anti-fraud strategies at Commission services' level. These recommendations have been implemented in updates of methodology and guidance and in the anti-fraud strategies which will in turn lead to an improvement of the anti-fraud system of the Commission as a whole.