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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Delegations will find attached document SWD(2014) 245 final.

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Brussels, 17.7.2014  
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**COMMISSION STAFF WORKING DOCUMENT**

**Follow-up of recommendations to the Commission report on the protection of the EU's  
financial interests – fight against fraud, 2012**

*Accompanying the document*

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

**Protection of the European Union's financial interests - Fight against Fraud  
Annual Report 2013**

{ COM(2014) 474 final }  
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## 1. SUMMARY

In the 2012 Report on the protection of the European Union's financial interests, the Commission made certain recommendations to the Member States. The Commission has followed up the implementation of these recommendations by the Member States as part of the 2013 reporting exercise and to report to the European Parliament and to the Council.

### 1.1. Diverse approaches to fraud

The information provided by Member States is a key contribution to the Commission's endeavour of ensuring the best possible protection of the European Union's financial interests. The constant exchange of information between the Commission and Member States enables the former to both draw on and expand the latter's capacities, expertise and experience as a means to achieve maximum harmonisation, consistency and, as a result, maximum effectiveness in the Union's fight against fraud.

*As the 2012 Report showed, the approaches of Member States remain very diverse, with a group of six countries (Czech Republic, Denmark, Germany, Italy, Poland and Romania<sup>1</sup>) leading in terms of fraud detection capability in the expenditure area and five countries (Belgium, Germany, Greece, Italy and Spain<sup>2</sup>) 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 approaches 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).**

In response to the request to promptly establish an Anti-Fraud Coordination Service (AFCOS), the results demonstrate the recommended action was largely implemented. However, certain states are still setting up an AFCOS, debating where in their public administration to locate it, or have not taken steps to set up an AFCOS. Spain,

<sup>1</sup> Their results representing 75 % of the total number of irregularities reported as fraudulent.

<sup>2</sup> Their results representing 79 % of the total number of irregularities reported as fraudulent.

Greece, Luxembourg, Sweden and the United Kingdom are currently establishing AFCOS. Ireland outlined its intention to comply by the inaugural AFCOS meeting but has yet to identify where within its public administration to place AFCOS. Denmark has yet to make a final decision on establishment but this is under active consideration.

Germany intends to continue the national coordination of OLAF matters via the Federal Ministry of Finance, Unit EA6 and believes that the structure of a coordination service, as outlined in the OLAF guidelines, is incompatible with the separation of powers that exists between the German Federal Government and Länder administrations.

Belgium has designated its AFCOS but would like more information on what its AFCOS is expected to do.

## 1.2. 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.*

*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 statute of 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.**

Almost half of Member States<sup>3</sup> reported that they already have in place minimum penalty of at least six months of imprisonment in cases of serious fraud. In general, they highlighted that fraud against the EU budget is equated with that at domestic level and the crime is subject to the equivalent punishment.

The Czech Republic outlined its intention to increase criminal penalty for fraud involving amounts exceeding CZK 5 million to 10 years imprisonment. The duration under which prosecutions can occur in the Czech Republic has already been prolonged. In 2012, the crime of budgetary fraud was codified in Hungary. Further clarifications to the definition of its 2012 law were made in July 2013. Efforts to accelerate the pace of legal proceedings, with the aim of having these completed within a two year timeframe, have been initiated. Hungary only extends the two month window to investigate a case of fraud in exceptional circumstances. The concept of statute of limitations does not exist in Cypriot law but this should not be a

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<sup>3</sup> Bulgaria, Germany, Estonia, Greece, Spain, Croatia, Latvia, Portugal, Romania, Slovenia, Slovakia.

barrier to the initiation of proceedings against perpetrators of fraud. In Malta, the prescribed period in which a prosecution can occur does not begin to elapse until the originator of the fraud is identified.

France reiterated its objections in principle to the introduction of minimum penalties. Its support for the provision is in relation to the establishment of a European Public Prosecutor's Office (EPPO). France believes its three year window from the date of the offense to be a sufficient period of limitation.

### 1.3. 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.**

Belgium, Bulgaria, Denmark, Germany, Estonia, Greece, France, Malta, Portugal, Slovakia and Sweden outlined their commitment to implementing the package of reforms to Public Procurement Directives, as soon as it is adopted, and indicated that transposition of the Directives is advancing. Public procurement measures have not been implemented in Finland and no progress was reported in 2013.

Malta reported that it undertook policy development but has not yet enacted measures. Ireland identified the transposition of these rules as a priority but implementation has not yet occurred and no measures were taken in 2013. Sweden's objective is to transpose the directive by Spring 2016. In 2013, Spain established a Directorate-General for Streamlining and Centralising Public Procurement, which includes a Centralised Procurement Board, a body which will be procurement body for the state centralised procurement system. Spain also enacted laws promoting the use of electronic billing in the public sector and the creation of a register of invoices.

In Lithuania, following a 2013 amendment, contracting entities are now obliged to publish procurement contracts, the winning tender and any later amendments to the procurement contract in the information system. The value of electronic procurement in Lithuania in 2013 was 90% of the overall value of published procurements. As of January 2014, contracting authorities must acquire goods and services via the central contracting authority.

Slovenia stated that it amended its Public Procurement Act to reduce the risk of corruption and fraud. Some delays were reported in enacting changes at the level of contracting authorities but Slovenia envisages that 2013 will have seen a reduction in the number of negotiated procedures without prior publication of contract notices, thereby reducing the risks associated with this practice.

Romania compiled a guide to the main risks in public procurement to be used by managing authorities and intermediate bodies. Mechanisms to detect *ex ante* and *ex post* conflicts of interest were enacted by Romania to address the shortcomings of management and control systems.

*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.**

Three Member States were specifically referenced for low reporting of fraudulent irregularities in Cohesion Policy.

Greece drew attention to updates undertaken to its internal procedures resulting in substantial progress in this area as a result, significant progress has been observed.

Spain is currently examining the implementation of a more integrated approach to combatting fraud for the 2014-20 programming period, with a particular focus on risk analysis mechanisms. In reference to the 2007-2013 period, Spain outlined that it has an annual monitoring plan to verify the quality of management and control systems adopted by intermediate bodies operating projects involving ERDF and the Cohesion Fund. The quality control plan is drafted annually by the relevant actors, incorporating concerns raised by various intermediate bodies and/or the Commission, the Audit Authority or Court of Auditors.

France replied that ineligible expenses are usually incurred due to a lack of awareness of procedures or incorrect application of legislation. This usually does not involve fraudulent intent and therefore France believes there is no need to report to OLAF. In France, irregularities are classified as fraud when the act in question is deemed to be a criminal offence. France stressed that Commission and Court of Auditors' checks did not make any finding of suspicion of fraud where expenses were deemed ineligible.

*With further regard to the 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.**

Most Member States<sup>4</sup> stated they take account of analysis included in the report and the accompanying staff working documents (SWD) when planning checks and controls in Cohesion Policy.

Cyprus was the only Member State to report that its audit authorities have no formal procedures for taking the SWDs and accompanying documentation into account but outlined its intention for changes in this regard, within the framework of the Anti-fraud Strategy under development. Slovakia considers this recommendation as unreflective of risk areas in need of targeting by the Audit Authority in the Slovak Republic, Italy, Latvia, and Romania outlined changes made as a result of the report's SWDs.

Estonia reported that its Managing Authority for Cohesion Policy plans to include some of the risks highlighted by the PIF Report in its control plan. The trends and indications of new fraud patterns are analysed and incorporated into the annual training plan, legislative amendments and risk management systems.

*The rate of fraud detection in relation to rural development remains fairly stable compared to 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.**

In response to the request to step up efforts in relation to risks highlighted in rural development investment projects, Sweden reported major progress in 2013 to systems and payments, after 'serious or very serious shortcomings' were identified following a 2012 review of procedures. Improvements to the identified shortcomings, which included a lack of documentation and incomplete proof of payments, is ongoing. Spain reported advances in a number of fields including selection criteria, cost evaluations, applicant eligibility and risk criteria for on-the-spot checks, following recommendations of the Commission and Court of Auditors.

Slovenia conveyed the results of a 2013 report on infringements that found significant weaknesses in areas including public procurement documentation and beneficiaries claiming payments for work or services that were not approved. Slovenia prepared seminars aimed at improving procedural processes occurred in 2013 and are planned for 2014.

<sup>4</sup> Belgium, Bulgaria, Czech Republic, Germany, Estonia, Ireland, Spain, France, Croatia, Italy, Latvia, Luxembourg, Hungary, Malta, Poland, Romania, Slovenia, Slovakia, Sweden, United Kingdom



Germany reported the implementing of special action plans in the EAFRD since early 2013. The Netherlands reported progress in 2013 in tightening up the implementation of administrative checks and the area of monitoring, following a 2011 recommendation in the certifying audit report. Estonia undertook additional control activities of EAGF and EAFRD measures with the goal of uncovering fraud networks and detecting fraud patterns. Belgium's reply stated that there are no rural development programmes in the Brussels Capital Region but reports that a number of 'urban farms' and sustainable food projects will receive funding in the 2014-2020 programming period.

#### **1.4. 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 in place allowing them also to carry out checks targeted at high-risk imports at the time of clearance.**

In relation to revenue and customs control for high risk imports, almost all States believe themselves to have adequate risk analysis systems and no changes have occurred since 2012. Sweden is currently undertaking enhancements to its IT capability and aims to comply with the Union Customs Code. Spain uses a computerised system in processing all types of customs declarations and this system is being gradually improved. Romania believes its 2010 Risk Management Framework (RMF) application can be used for EU/national customs risk profiles for potential financial risks.

Bulgaria will employ a risk information exchange system with the ability to gather, store and exchange information for the purposes of risk analysis, to facilitate control activities and document the results of controls already undertaken. France comprehensively outlined a revamped audit policy. Germany believes it has undertaken risk management measures that far exceed EU requirements. Ireland implemented a new Customs Risk Intervention Selection Programme (CRISP) in 2013, aimed at targeting non-compliant imports for post-clearance intervention. Greece began operating a new Integrated Customs Information System (Icisnet) which permits the use of tools and data that enables detections, in the area of exports, of dangerous goods or customs offences. Spain's computerised risk analysis system is constantly updated with necessary improvements, within the parameters of the powers of its customs and excise authorities.

Hungary reported no changes to its integrated risk management system since 2012 but it developed an integrated risk assessment and network visualisation accounting instrument in 2013, in order to identify company relationships and tax risks. This enables the viewing of customs risk assessments and audits.

*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.**

A structured cooperative relationship between Managing Authorities and relevant anti-fraud bodies is in place for the most part. An outline of the cooperative arrangements and the role played by MAs was provided by many Member States<sup>5</sup>. Cyprus, Latvia, Romania and Slovenia<sup>6</sup> responded that cooperation occurs on a case-by-case basis. Finland's Audit Authority, Managing Authority and Paying Agency cooperate on the basis of an action plan drafted for 2014.

With regard to specific IT tools for analysing the risk of fraud, Belgium's ESF Flanders reported its intention to use ARACHNE in the forthcoming programming period. Denmark highlighted that the use of ARACHNE is under consideration in the area of Structural Funds and it will endeavour to utilise IT tools in Agriculture<sup>7</sup>.

Estonia is at the 'pre-preparation phase' of compiling a common strategy between relevant partners<sup>8</sup> on protecting the EU financial interest. Estonia does not have in place IT risk assessment tools but plans to develop a new system for implementing measures in the EAGF and EAFRD. Representatives of AFCOS Malta are receiving training in the use of ARACHNE to identify operations most at risk and this will be used in conjunction with existing IT tools. Slovakia is engaging in efforts to ensure its systems of collecting and evaluating data is compatible with ARACHNE for the 2014-2020 programming period. Cyprus is reviewing the ARACHNE tool and foresees the development of IT tools for the 2014-2020 programming period.

<sup>5</sup> Bulgaria, Czech Republic, Estonia, Greece, Spain, Croatia, Italy, Lithuania, Hungary, Malta, Netherlands, Poland, Portugal, Sweden, and the United Kingdom

<sup>6</sup> The exception to this is the cooperation agreement between the Slovenian Managing Authority and the Corruption Prevention Commission.

<sup>7</sup> Danish Business Authority (Structural Funds), AgriFish (Agriculture)

<sup>8</sup> Police, prosecutors, tax and customs officials, etc.

In relation to Cohesion, Ireland outlined its intention to develop checks and controls, aimed at improving the cooperation between Managing Authorities and anti-fraud bodies. The Memorandum of Understanding with Ireland's Paying Agency for agriculture was revised in the past year to assist in the quicker reporting of potentially fraudulent activity.

Germany rejects requirements outlined in the guidelines (or regulations and delegated legislation subject to implementation), such as ARACHNE, that go beyond the legal requirements of Regulation 1303/2013.

Luxembourg questioned the rationale for formalised exchanges with regards this recommendation on the basis that there is an ESF central database with project financial information, including audits and checks carried out.

***... 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.**

Preparations are advancing or underway in most Member States<sup>9</sup> for the implementation of the Multiannual Financial Framework 2014-2020. Finland noted that the Regulations covering Structural and Investment Funds were only adopted in late December 2013.

Malta underscored its awareness of the need to introduce effective and proportionate anti-fraud measures, in addition to its existing measures. Sweden identified internal outstanding issues its Government Offices must resolve before implementation. Hungary does not have an anti-fraud strategy outlined in a single document but 'anti-fraud instruments' are used to protect the financial interests of the European Union. Croatia adopted a National Anti-Fraud Strategy in the field of the Protection of EU Financial Interests for the period 2014-2016.

Lithuania stated that appropriate anti-fraud measures for the 2014-2020 programming period will be adopted when creating the relevant management and control systems. A survey among Managing Authorities is currently being conducted to assess what measures are needed to improve the management and control system for EU Structural Funds.

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<sup>9</sup> Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Ireland, Spain, Cyprus, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovenia and Slovakia.

Luxembourg stated that as the ESF Managing Authority carries out checks in 100% of cases, fraud will be detected at the first level; therefore it believes the Commission is not at risk of any fraud. Germany is unable to provide information in relation to MFF as it awaits the Commission's approval process for its partnership agreement, a condition for the granting of Structural Funds for the 2014-2020 funding period.

## 2. REPLIES OF MEMBER STATES

### 2.1. Diverse approaches to fraud

#### **Diverse approaches to fraud**

The information provided by Member States is a key contribution to the Commission's endeavour of ensuring the best possible protection of the European Union's financial interests. The constant exchange of information between the Commission and Member States enables the former to both draw on and expand the latter's capacities, expertise and experience as a means to achieve maximum harmonisation, consistency and, as a result, maximum effectiveness in the Union's fight against fraud.

As the 2012 Report showed, the approaches of Member States remain very diverse, with a group of six countries (Czech Republic, Denmark, Germany, Italy, Poland and Romania<sup>10</sup>) leading in terms of fraud detection capability in the expenditure area and five countries (Belgium, Germany, Greece, Italy and Spain<sup>11</sup>) 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 approaches 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.**

<sup>10</sup>

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

<sup>11</sup>

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

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

<b>BE</b>	<p>As stated in the letter of 18 December 2013 sent by the Permanent Representation to Mr Giovanni Kessler, Director-General of OLAF, Belgium has designated an AFCOS (Anti-fraud Coordination Service) as required by Article 3(4) of Regulation (EU, Euratom) No 883/2013 of 11 September 2013.</p> <p>It is the CICF (Commission interdépartementale pour la Lutte contre les Fraudes dans les secteurs économiques - Interdepartmental Committee for the Coordination of the Fight against Fraud in Economic Sectors), a member of the Inter-ministerial Economic Commission. It is based in the FPS Economy, SMEs, Self-Employed and Energy, Directorate-General for Economic Inspection, Directorate A, Product Quality and Safety Control, North Gate III, 3rd floor, Boulevard du Roi Albert II, 16, 1000 Brussels (Tel.: 02 277 74 82; Fax: 02 277 54 51 and e-mail: <a href="mailto:cei.iec@economie.fgov.be">cei.iec@economie.fgov.be</a>). (Please note: following the Royal Decree of 29 January 2014 amending the Royal Decree of 20 November 2003 setting out the names and powers of the Directorates General of the FPS Economy, SMEs, Self-Employed and Energy Directorate-General for SMEs, Self-Employed and Energy, the names of the Directorate-General and of Directorate A are not the same as those communicated to Mr Kessler in the letter of 18 December 2003). The AFCOS will be represented by the Director-General, Chair of the CICF (up to 28 February 2014, this was Mr De Maeseneer). We will communicate the name of the new Director-General to you as soon as he/she is appointed.</p> <p>The Belgian authorities have decided that pursuant to Article 3(4) of Regulation (EU, Euratom) No 883/2013 of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, Belgium has designated the CICF for all contacts of a residual nature, which means that cooperation with the contact points of the authorities already designated at the national level by Belgium or in the framework of the implementation of European legislation continues to apply. Should the Commission wish to amend AFCOS's tasks in the future, Belgium reserves the right to change its designation of the CIFIC as the AFCOS'.</p> <p>Furthermore, it will be necessary to get more details as to what exactly the Commission expects the AFCOS to do, and this will, in any case, need to be agreed bilaterally, particularly as regards the operational side.</p> <p>The replies to the questions relating to Part II of the 2013 Article 325 questionnaire will also provide further information on the implementation of the AFCOS in Belgium.</p>
<b>BG</b>	<p>The Bulgarian Directorate for the Coordination of the Fight against Infringements Affecting the Financial Interests of the European Union (AFCOS) is a specialised structure of the Ministry of the Interior set up to coordinate the fight against infringements through operational cooperation, reporting of irregularities and administrative checks.</p>

To this end, AFCOS:

1. assists the minister of the interior and the Council for the Coordination of the Fight against Infringements Affecting the Financial Interests of the European Union in coordinating activities to combat such infringements;
2. acts as the national point of contact with the European Anti-Fraud Office (OLAF) and the relevant agencies responsible for protecting the financial interests of the EU in Member States and elsewhere;
3. is responsible at national level for reporting irregularities and fraud involving funds, instruments and programmes co-financed by the EU to the European Commission and for issuing methodological guidelines on administering irregularities;
4. conducts administrative checks to ensure that the structures which administer EU funds, programmes and instruments comply with the administrative procedures for irregularities;
5. coordinates and collaborates operationally with OLAF in investigations and on-the-spot checks it carries out in Bulgaria;
6. receives reports of irregularities affecting the European Union's financial interests which it then evaluates, analyses and verifies;
7. conducts administrative checks to identify irregularities and fraud affecting the financial interests of the European Union on its own initiative as well as at OLAF's request;
8. develops and organises training activities on the protection of the financial interests of the EU;
9. cooperates with government authorities and structures and coordinates the fight against irregularities and fraud involving EU funds;
10. provides the organisation required for preparing the Bulgarian annual report to the European Commission under Article 325 of the Treaty on Functioning of the European Union (TFEU);
11. carries out other functions and tasks as required under primary and secondary legislation.

<b>CZ</b>	No Response.
<b>DK</b>	The final decision on establishing the Anti-Fraud Coordination Service has not yet been taken, but thought is being given to how best to organise this. The decision is expected to be taken within the next few months.
<b>DE</b>	<p>The entry into force of the new OLAF Regulation imposes an obligation on the Member States to establish a coordination service under Article 3(4). Article 3(4) of Regulation 883/2013 states:</p> <p><i>‘Member States shall, for the purposes of this Regulation, designate a service (‘the anti-fraud coordination service’) to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, in accordance with national law, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation.’</i></p> <p>National coordination of OLAF matters will continue to be administered by the Federal Ministry of Finance, Unit E A 6. A cooperation agreement was already in place between the German Government and OLAF before the new OLAF Regulation came into force and this is to be continued as before. The German Government has already confirmed this to OLAF in its letter dated 13 January 2014.</p> <p>However, according to OLAF the most important functions and competencies for an anti-fraud coordination service are in the OLAF Guidelines.</p> <p>Whereas Article 3(4) of Regulation (EU) No 883/2013 and the 2008 cooperation agreement are the result of an exchange of views and a lengthy negotiation process, the OLAF Guidelines reflects a one-sided perception of the functions of a coordination service which is detached from the division of powers between the German Government and the <i>Länder</i> which exists in Germany. It is difficult to reconcile the authority of an ‘AFCOS’ under the OLAF Guidelines with the division of powers in Germany’s federal structure. Under Article 30 of the German Constitution (GG) administration is fundamentally a matter for the <i>Länder</i>. This is particularly true where the administration affects individual rights or security. Consequently the present coordination service can fulfil its functions under Article 3(4) of Regulation (EU) No 883/2013 only on the basis of cooperation taking account of the division of powers and the responsibilities arising out of this.</p> <p>In our opinion it would have been more constructive to include all the relevant parties in the run-up to the negotiations on the OLAF Regulation to show the need to define specific functions for the coordination service and to explore the possibilities where necessary. The German Government is of the view that Article 3(4) Regulation (EU) No 883/2013 does not fully authorise the functions set out in the</p>



	Guidelines.
<b>EE</b>	<p>The administrative co-operation arrangement between OLAF and AFCOS Estonia was concluded on 2 October 2003.</p> <p>AFCOS Estonia is within the Financial Control Department of the Ministry of Finance of Estonia.</p> <p>General areas of responsibilities of AFCOS Estonia:</p> <ol style="list-style-type: none"> <li>1. Inter-institutional cooperation with OLAF, with national implementing administrations, investigation, prosecution and other connected authorities as partners. AFCOS liaises between partners and OLAF in cases of suspected fraud and/or irregularities affecting the EU's financial interests.</li> <li>2. Preventive activities such as taking the lead in formulating and co-ordinating the writing and implementation of a national strategy for the protection of EU's financial interests and training responsibilities.</li> <li>3. Co-ordinating the use of the Irregularity Management System (IMS) – the roles of the Liaison Officers. The reporting of detected irregularities, suspected and established fraud is the duty of the Managing Authority (Ministry of Finance of Estonia) since 1 January 2014.</li> </ol>
<b>IE</b>	<p>As required by Article 3(4) of the new OLAF regulation (883/2013), Ireland will establish an Anti-Fraud Coordination Service (AFCOS). At present, internal deliberations are ongoing as to where the AFCOS will be placed within the Irish administration. It is fully intended that the AFCOS will be established in time for the inaugural AFCOS meeting in October.</p>
<b>EL</b>	<p><b>Ministry of Finance –State General Accounting Office - Directorate 41 – Financial Relations with THE EU &amp; INTERNATIONAL ORGANISATIONS</b></p> <p>In the context of the High Level Meeting + Training under the title ‘THE FIGHT AGAINST FRAUD IN THE AREA OF EU COHESION POLICY FUNDS – THE CHALLENGES AHEAD’, organised by OLAF in cooperation with the Ministries of Development, Competitiveness, Infrastructure, Transport and Networks and Finance, held in Athens on 26 &amp; 27 February, shortly before the submission</p>

	<p>hereof, with the broad participation of bodies and authorities, OLAF was fully updated at a high level on the priorities and planned action in the fight against fraud in Greece. In the context of this event, the Deputy Minister for Finance Mr Chr. Staikouras announced, <i>inter alia</i>, the establishment of a very broad working group comprising officials of the Greek administration and judicial functionaries from interrelated services, auditing bodies and independent authorities, which is expected to meet shortly, in the next few days, and with an intensive schedule, the subject of which will be proposing to the political leadership the most appropriate organisational structure for the establishment of AFCOS, in accordance with regulatory requirements, the relevant OLAF instructions and real current needs. The goal is to complete the relevant legislative process and begin AFCOS operations before the summer of 2014.</p>
<b>ES</b>	AFCOS is currently being set up.
<b>FR</b>	<p>The Délégation nationale à la lutte contre la fraude (National Delegation for the fight against fraud - 'DNLF') was set up in 2008 for the purpose of coordinating and promoting the implementation of measures intended to better fight fraud against public finances. By decision of the Minister for Finance in May 2013, the DNLF was made national correspondent for OLAF, it is thus in charge of providing anti-fraud coordination in order to improve protection of the EU's financial interests.</p>
<b>HR</b>	<p>The Republic of Croatia State has an AFCOS in place; therefore the obligation laid down in Regulation 883/ 2013 has been fulfilled.</p> <p><b>I. AFCOS IN THE REPUBLIC OF CROATIA</b></p> <p>AFCOS in the Republic of Croatia is established and functions as a system. The AFCOS system is comprised of 3 main pillars:</p> <ul style="list-style-type: none"> <li>• Network of accredited bodies managing and using EU funds (<b>Irregularity Reporting System</b>);</li> <li>• Network of bodies dealing with combating fraud, corruption or some other form of illegal activities (<b>AFCOS network</b>);</li> <li>• <b>Ministry of Finance - Service for Combating Irregularities and Fraud (SCIF)</b>, carries out a coordinative role within the system and represents the European Anti-Fraud Office (OLAF) contact point.</li> </ul> <p><b>IRREGULARITY REPORTING SYSTEM</b></p> <p>The Irregularity Reporting System has continuously developed since 2005, when state administration bodies were preparing for</p>

accreditation by the European Commission concerning the use of EU assistance funds.

The main function of this system is reporting on irregularities. Bodies constituting the Irregularity Reporting System are obliged to provide quarterly reports on irregularities which occurred in their bodies, throughout the use of EU pre-accession funds (CARDS, PHARE, ISPA, SAPARD and IPA). Reporting is performed by Irregularity Officers who are appointed in each of the bodies managing and using EU pre-accession funds. **From 1 July 2014** bodies within the Irregularity Reporting System will be obliged to report quarterly on irregularities which occurred within programmes of EU structural instruments and of European Maritime and Fisheries Fund, European Agricultural Guarantee Fund and European Agricultural Fund for Rural Development, according to valid regulations of the Republic of Croatia and the EU. Procedures for prevention, detection, reporting and follow up of established irregularities, in the context of EU funds, constitute part of the internal manuals of procedures of all bodies within the Irregularity Reporting System.

Following the submitted irregularity reports, the Service for Combating Irregularities and Fraud (SCIF), as a 3<sup>rd</sup> pillar of the AFCOS system, checks the quality of those reports before being forwarded to OLAF. Reports on irregularities are submitted to OLAF via the Irregularities Management System – IMS by SCIF.

### **AFCOS NETWORK**

The AFCOS Network was established by **Government Decision (OG 151/2013)**. This Decision defines bodies of the AFCOS Network and their tasks within the AFCOS Network, as well as the purpose of the AFCOS Network.

The AFCOS Network was established in order to achieve full operability of the AFCOS system. The main role of the AFCOS Network is to provide advice and recommendations to all the bodies within the AFCOS system.

The AFCOS Network comprises representatives of:

- Ministry of Justice,
- Ministry of the Interior,
- Ministry of Finance – Tax Administration, Customs Administration, Sector for Harmonisation of Internal Audit and Financial Control, Anti-Money Laundering Office, Sector for Financial and Budget Supervision,
- Ministry of Economy – Directorate for Public Procurement System,
- State Attorney's Office of the Republic of Croatia, and

- Agency for the Audit of European Union Programmes Implementation System.

The main tasks of the AFCOS Network include: cooperation with the Service for Combating Irregularities and Fraud and OLAF regarding issues surrounding the protection of financial interests of the European Union; proposing legislative and other measures with the purpose of efficient protection of the financial interests of the European Union, and strengthening inter-institutional cooperation; communication and exchange of data with the bodies of the AFCOS system.

### **SERVICE FOR COMBATING IRREGULARITIES AND FRAUD**

The Service for Combating Irregularities and Fraud (SCIF) is established within the Ministry of Finance for which the legal basis is contained in the **Government Decree on internal organisation of the Ministry of Finance (OG 32/12, 67/12, 124/12, 78/13)**. The Decree on internal organisation sets out the organisational framework, as well as tasks and responsibilities of SCIF.

The document describing the position/role of SCIF, as regards the AFCOS system, is the **Government Regulation on the institutional framework of the system of combating irregularities and fraud (OG 144/13)**. Namely, Article 5 of the Regulation explicitly states that the Ministry of Finance, as a body competent for the protection of financial interests of the European Union in the Republic of Croatia, is responsible for the establishment and efficient functioning of the system for combating irregularities and fraud. Furthermore, **an organisational unit for combating irregularities and fraud (SCIF) within the Ministry of Finance** has a coordination role between the bodies of the Irregularity Reporting System and the bodies of the AFCOS Network. It is a main contact point for OLAF in the Republic of Croatia and ensures inspections are performed by OLAF in the Republic of Croatia. SCIF also receives checks and consolidates the reports on irregularities for the purpose of submitting them to OLAF. SCIF shall independently produce Irregularities Management Guidelines, approved by the Minister of Finance, which are binding for all bodies of the Irregularity Reporting System and internal procedures for the implementation of the competences. Together with competent bodies, SCIF shall participate in the production of rules linked with the irregularities management field.

At present, **SCIF is made up of 3 departments** (Department for Data Collection and Analysis, and Irregularities Reporting, Department for Monitoring Notified Irregularities Procedures and Co-ordination with competent bodies, Department for Training and Risk Management) and has 6 employees.

	<p style="text-align: center;"><b>II. NATIONAL LEGAL FRAMEWORK AND STRATEGIC DOCUMENTS</b></p> <p><b><u>National rules</u></b> setting the obligation to protect EU financial interests, i.e. to have in place an AFCOS include:</p> <ul style="list-style-type: none"> <li>• <b>Budget Act</b> (OG 87/2008, 136/2012) - Article 114a obliges the Republic of Croatia to set up a system for combating irregularities and fraud in order to protect the EU financial interests.</li> <li>• <b>Regulation on the institutional framework of the system of combating irregularities and fraud</b> (OG 144/2013) - lays down rules for the functioning of the AFCOS system.</li> <li>• <b>Decision on the establishment of the AFCOS Network</b> (OG 151/2013) - lays down rules on the functioning and role of the AFCOS Network in the AFCOS system. The AFCOS Network was established in order to achieve full operability of the AFCOS system.</li> </ul> <p><b><u>Strategic documents</u></b> setting goals and measures in order to enhance the protection of financial interests of the EU in the Republic of Croatia include:</p> <ul style="list-style-type: none"> <li>• <b><u>The National Anti-Fraud Strategy for the Protection of the European Union's Financial Interest for the period 2010 – 2012 and its Action plan</u></b>: the purpose of which is to ensure the effective protection of EU financial interests by strengthening the AFCOS system in the Republic of Croatia, through the implementation of previously defined measures and the accomplishment of set objectives.</li> <li>• <b><u>The National Anti-Fraud Strategy in the Field of Protection of EU Financial Interests for the period 2014-2016</u></b> and its Action plan, presents a follow-up document to the National Anti-Fraud Strategy for the Protection of the European Union's Financial Interest for the period 2010 – 2012. It sets goals and measures to be achieved in the framework of Structural instruments.</li> </ul>
<b>IT</b>	<p>The AFCOS in Italy (called COLAF - <i>Comitato per la lotta contro le frodi nei confronti dell'Unione europea</i> [Committee for combating fraud against the European Union]) was established by Article 76 of Law No 142 of 19 February 1992, and subsequently confirmed by</p>

	<p>Law No 234 of 24 December 2012.</p> <p>Article 3 of Presidential Decree of 14 May 2007 sets out its functions and composition. It has advisory and directive functions for the coordination of all action to combat fraud and other irregularities in the fields of taxation, the common agricultural policy and the structural funds. It is headed by the competent policy authority and includes top-level representatives of all the administrations concerned (Prime Minister's Office; Ministries of the Interior, Justice, Economic Affairs and Finance, Economic Development, Agricultural Policies, Infrastructure and Transport, Employment, Education; <i>Guardia di Finanza</i>; <i>Carabinieri</i>; Customs and Revenue Agencies; AGEA [Agricultural Payments Agency]; Conference of the Regions, Union of Italian Provinces and Italian National Association of Municipalities).</p>
<b>CY</b>	<p>Cyprus has designated an Anti-Fraud Coordination Service (AFCOS) in 2002. Currently the main tasks and responsibilities are the coordination between the various national authorities and the reporting of detected fraudulent activities to OLAF. However, there is the intention to strengthen the role of AFCOS on the basis of the COCOLAF Guidance Note.</p>
<b>LV</b>	<p>The Latvian system for the protection of the financial interests of the EU is based on two entities: the Coordination Council for the Protection of the European Union's financial interests (AFCOS network), chaired by the State Secretary of the Ministry of Finance, and the contact point for OLAF - AFCOS (established in the Ministry of Finance EU funds Audit department).</p> <p>AFCOS is primarily designed for the exchange of information between OLAF and national institutions and for ensuring co-operation with OLAF and the Republic of Latvia, as required by Article 325 of the TFEU.</p> <p>AFCOS evaluates information requests received from OLAF, coordinates preparation of replies and sends replies these to OLAF (Article 325 Questionnaire 2013, Follow-up Questionnaire, competent authority for OLAF investigations/on-the-spot checks, meetings organised by OLAF etc).</p> <p>The Council includes high level officials from:</p> <ul style="list-style-type: none"> <li>- State Police's Economic Crimes Department;</li> <li>- Customs Criminal Board of State Revenue Service;</li> <li>- State Revenue Service (int.al. Finance Police Board, National Tax Board);</li> </ul>

<ul style="list-style-type: none"> <li>- Office of the Prosecutor General;</li> <li>- Corruption Prevention and Combating Bureau;</li> <li>- The Managing Authority for EU Structural Funds and Cohesion Fund;</li> <li>- Ministry of Agriculture;</li> <li>- Ministry of Environmental Protection and Regional Development;</li> <li>- Ministry of Justice</li> </ul> <p>Permanent experts from:</p> <ul style="list-style-type: none"> <li>- State Treasury;</li> <li>- Rural Support Service;</li> <li>- Central Finance and Contracting Agency</li> <li>- Procurement Monitoring Bureau</li> </ul> <p>The main task of the Council is to promote the implementation and development of a single State policy for the protection of the European Union's financial interests.</p> <p>AFCOS organises Council meetings at least biannually.</p> <p>The Council has the right to initiate amendments to legislative acts, but each institution is responsible for the development and implementation of a policy in its respective field of competence.</p> <p>Members of the Council representing investigation offices (State Police, State Revenue Service, Office of the Prosecutor General and Corruption Prevention and Combating Bureau) have an investigative role and functions outside AFCOS, and cooperation occurs on a case by case level within the institutions involved. Usually OLAF communicates directly with investigation bodies regarding investigation issues, and, if necessary, AFCOS puts OLAF in contact with the relevant national authority that can provide necessary cooperation in the</p>	
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	<p>case of an investigation.</p> <p>Managing Authorities ensures the application of the Union's sectoral legislation on the reporting irregularities, suspected fraud and fraud by sending regular reports via IMS to OLAF/EC for the programming periods 2004-2006 and 2007-2013.</p> <p>AFCOS evaluates summaries on unduly paid expenditure within European Union funds, submitted by the Managing Authorities and National Authorising Officers, and reports irregularities to the Cabinet of Ministers once a year together with the draft protocol of the Cabinet of Ministers, if necessary, to give specific tasks to certain authorities for further actions.</p> <p>AFCOS has taken the initiative in formulating a national anti-fraud strategy, aimed at reinforcing the protection of EU's financial interests.</p>
<b>LT</b>	No Response.
<b>LU</b>	Luxembourg has not yet established this service. Preliminary discussions have taken place on the subject but further work is needed.
<b>HU</b>	No Response.
<b>MT</b>	Not Applicable to Malta.
<b>NL</b>	In the Netherlands, the Customs Information Centre ( <i>Douane Informatie Centrum - DIC</i> ) has been designated by law as the AFCOS, and as such the central Dutch contact body for OLAF. It is responsible for all operational action based on Regulation No 515/97 (cooperation between the authority and the Commission) and, since October 2012, also for action based on Regulation No 2185/96 (checks and inspections carried out by the Commission). The DIC is the operational unit; all judicial, legal and policy matters are dealt with by the National Customs Office ( <i>Douane Landelijk Kantoor</i> ).
<b>AT</b>	<p>The unit covering the coordination work of AFCOS is set up at Bundesministerium für Finanzen, Abteilung für Betrugsbekämpfung, Steuer und Zoll, and was established on 1.1.1995.</p> <p>As the other points (2-9) either refer to specific other MS or do not specifically mention Austria, please do not expect any further comment on this document.</p>
<b>PL</b>	Poland has had an operating AFCOS since 2002: the Department for Protection of EU Financial Interests of the Ministry of Finance.



	Information on this was sent to OLAF's Director-General on 27 January 2014, ref. DO8/9013/2/AKQ/14/7763.
<b>PT</b>	<p>The Inspectorate-General of Finances (IGF) was designated as the Anti-Fraud Coordination Service (AFCOS) by Order No 07/14/MEF of 10 January 2014 of the Minister for Finance.</p> <p>The IGF acts as the national interlocutor for the European Commission in the fields of financial control and the protection of the financial interests of the EU under Article 11(2)(d) of Decree-Law No 117 of 15 December 2011 and Article 2(2)(d) of Decree-Law No 96 of 23 April 2012, respectively an Organic Law of the Ministry of Finance and Organic Law of the IGF.</p> <p>The IGF is a central service directly administered by the Government in the form of the Ministry of Finance. Its mission is to provide strategic control of the management of public finances. Its activities include legality checks and financial and performance audits, as well as evaluation of services and bodies, activities and programmes. It also provides specialised technical support to all public sector bodies, including local authorities and equivalent entities, other local government and business organisations, as well as bodies in the private and cooperative sectors – in the latter instance where there is a financial or tax relationship with the State or the European Union, or when there is a need to exercise indirect control over entities covered by its activities.</p> <p>It should be pointed out that IGF inspectors enjoy full technical autonomy in their actions. Their positions must be technically rigorous to guarantee that their work is free and independent. Moreover, in addition to the legislative rules governing inspection and audit activity, IGF inspectors are also subject to a strict Code of Ethics embodying rules and principles of behaviour with a specific requirement that in the performance of their duties they respect the principles of legality, integrity, independence, impartiality, conferred power, cooperation, good faith, proportionality and confidentiality.</p>
<b>RO</b>	Not applicable to Romania.
<b>SI</b>	An AFCOS was established in Slovenia in 2002 and is actively operating.
<b>SK</b>	No Response.
<b>FI</b>	Finland's reply to OLAF's follow-up questionnaire is provided by the Financial Controller's function of the Ministry of Finance. According to the State Budget Act, the Financial Controller's function of the Ministry of Finance coordinates the internal and administrative control of European Union funds for which the Finnish State is responsible and draws up opinions and the report relating to

	the supervision and audit of Union funds, errors in management of these funds and irregularities involving them for European Union institutions and other bodies, unless these tasks fall to some other authority.
<b>SE</b>	Since late 2013, the Government Offices of Sweden has been working to investigate the prerequisites for creating a coordination service pursuant to Article 3(4) of the OLAF Regulation (883/2013). The next step is to locate the service in an appropriate authority, and draft proposals for any national statutory amendments. A statutory amendment requires a decision by the Government.
<b>UK</b>	The UK Government is in the process of establishing a contact point for OLAF and will communicate this to the Commission at the earliest time.

## **2.2. 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.

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 statute of 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.**

<b>BE</b>	Reply from Belgium, FPS Justice:
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	<p>Belgium welcomes the prospect of harmonisation of the minimum statute of limitations for offences affecting the Union's financial interests, although it wonders about consistency, given that the minimum harmonisation of the statute of limitations is being proposed only in the area of the protection of financial interests (PFI) and not other fields.</p> <p>There is a clear link between the proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law and the European Commission's proposal for a Regulation to set up a European Public Prosecutor's Office, given that the PFI Directive is to determine the material jurisdiction of the European Public Prosecutor's Office concerning offences affecting the financial interests of the European Union (Article 12 of the Commission proposal on the establishment of a European Public Prosecutor's Office). The PFI Directive has to be transposed into national law. There is a risk that the European Public Prosecutor's Office will have different powers depending on the Member State where the offence is brought before the national courts.</p>
<p><b>BG</b></p>	<p>Bulgaria has been party to the Convention on the protection of the European Communities' financial interests since 1995 and to its First and Second Protocols of 29 November 1996 and 19 June 1997, since its accession to the European Union on 1 January 2007.</p> <p>An analysis of the provisions of criminal law shows that the Special Part of the Criminal Code provides wide-ranging criminal law protection with regard to the unlawful distribution and use of funds from the European Union by criminalising a wide range of infringements.</p> <p><b>A. Convention on protecting the European Communities' financial interests (Arts. 1 and 2)</b></p> <p>The Criminal Code (NK) provides definitions of misappropriation by officials (Art. 202(2)(3)), documentary fraud (Art. 212(3)), the use of false information to obtain funds from the EU (Art. 248a(2) and (3)), the unlawful release of EU funds (Art. 248(4)) and the use of funds belonging to the EU for purposes other than those for which they were originally granted (Art. 254b) as criminal offences. These conform to the definitions of Art. 1(1) and (2) of the Convention.</p> <p><b>B. First protocol of 29 November 1996</b></p> <p>Active and passive bribery are crimes under Chapter Eight, Section IV of the Special Part of the Criminal Code. A comparative analysis of these offences shows that they conform to the components of passive and active corruption provided for in Arts. 2 and 3 of the Protocol. Accessories to active and passive bribery are subject to the penalties envisaged under the general provisions of the Code.</p>

## **C. Second protocol of 19 June 1997**

### **Money laundering (Art. 2 of the Protocol.)**

Under Bulgarian law, money laundering is a criminal offence addressed by NK Art. 253.

### **Liability of legal persons (Arts. 3 and 4 of the Protocol)**

Legal persons are liable for criminal offences under administrative criminal law and are subject to the Administrative Infringements and Punishments Act (ZANN). Under Art. 83a(1) of ZANN, legal entities can be held responsible if the legal entity in question has enriched itself or could enrich itself from crimes comprehensively listed in the same article. The list of crimes include criminal documentary fraud (Art. 212(3)), money laundering (NK Art. 253) and active bribery (NK Arts. 301—307) and all crimes committed at the order, or, by the decision of an organised criminal group. A legal prerequisite for liability under ZANN Art. 83a is the existence of a link between the legal entity for whose benefit the crime was committed and the natural person committing the crime. Such a link would exist in the event that the perpetrator is a person authorised to make decisions on behalf of the legal entity, represents the legal entity, has been appointed to a controlling or supervisory body of the legal entity, or is an employee whom the legal entity has charged with a particular task when the crime was committed in the course of or in relation to the fulfilment of that task.

The prerequisites for imposing a financial penalty on a legal entity under ZANN are sufficiently broad to cover the cases set out in Art. 3(2) of the Directive. In this case a legal entity can be held liable when the crime has been committed for its benefit by an employee charged by the legal entity with a particular task and the crime was committed in the course of or in relation to the fulfilment of that task. The law does not take into consideration the reasons for which the employee committed the crime, as long as it was committed in the course of or in relation to the work assigned to the employee and the legal entity benefited from the crime. In practice this means that the financial sanction under ZANN can also be imposed upon the legal entity when the crime was committed due to lack of control or supervision by the persons referred to in Art. 83a(1)(1, 2 and 3).

Financial sanctions are imposed on the legal entity regardless of whether criminal proceedings have been instituted against the natural person who committed the crime.

Under ZANN Art. 83a, legal entities are subject to a fine of up to BGN 1 000 000, but no less than the value of the proceeds if they are assets; if the proceeds are not assets or the value cannot be established, the fine is from BGN 5 000 to 100 000. This range of penalties allows the court to tailor the punishment to the nature and type of offence, as well as the nature and value of the benefit obtained by the legal entity. At the same time, the comparative severity of the penalty has a deterrent effect on infringements of this kind.

#### **Confiscation (Art. 5 of the Protocol.)**

Assets belonging to the perpetrator which have been the subject of a premeditated crime are subject to confiscation under NK Art. 53(1)(b). This possibility is explicitly provided for in respect of a wide range of crimes, including those of active and passive bribery (NK Art. 307a) and money laundering (NK Art. 253(6)). Under NK Art. 53(2)(b), the proceeds of the crime are appropriated by the State if they are not subject to repayment or recovery. Under NK Art. 53(1)(a) the means used to commit the crime is also appropriated by the State.

There is also provision in ZANN Chapter IV for the confiscation by the state of the proceeds of the crime or items of equivalent value from a legal person, if the proceeds are not subject to repayment or recovery, or confiscation under the provisions of the Criminal Code (ZANN Art. 83a(4)).

In some cases, there is also provision for the confiscation of some or all of the offender's assets as a punishment (for example, for abusing one's position to misappropriate funds under NK Art. 202(2)(3), fraud under NK Art. 212(3), (4) and (5), bribery under Art. 301(3) with reference to NK Art. 302(b) and bribery under NK Art. 302a).

#### **D. Analysis of sanctions under the Criminal Code**

Under the Criminal Code, the majority of crimes that fall within the scope of the Convention and its protocols provide for the cumulative imposition of imprisonment and fines. In the majority of cases there is no minimum sentence, except for crimes under NK Arts. 248a(2) and (3), 253(1), (4) and (5) and 302a, for which the minimum prison sentence is 1 year and the maximum 10 years. The maximum prison sentence varies from 3 years (for crimes under NK Arts. 248a(2) and 305a to 30 years for crimes under NK Art. 302a. As far as fines are concerned, the legislative approach is the same. In the majority of cases only the maximum penalty is stipulated, which can be up to BGN 200 000 (NK Art. 253(4)). The minimum statutory fine is BGN 100, and for offences where this threshold applies, it varies from BGN 1 000 to 20 000 (NK

Arts. 248a (2) and (3) and 253(1)(4) and (5).

In other cases, other penalties can be imposed in addition to imprisonment, such as a ban on holding a particular State or public office and/or a ban on exercising particular professions or activities (NK Arts. 202(2)(3), 212(3), 245b(2), 301(4) and 302a) and confiscation of some or all of the offender's assets (NK Arts. 202(2)(3), 212(3) and 302a). For passive bribery under NK Art. 301(3), the law provides for the confiscation of half of the person's assets (NK Art. 302(b)).

In some cases (NK Arts. 248(5) and 245b(1)) the offender is only punished with imprisonment (1 to 15 years).

#### **E. Limitation periods**

Under the general provisions of the Criminal Code (Arts. 80—82), the limitation period for criminal prosecutions depends on the punishment provided for by law for the offence and vary from 3 to 35 years. Limitation periods for crimes under the Convention and the protocols range from 3 to 15 years and, in the majority of cases, from 5 to 15 years. The absolute limitation period cannot exceed the limitation period for the offence in question by more than one half. For crimes under the Convention and the protocols thereto, the absolute limitation period ranges from 4 ½ years to 22 ½ years.

The Public Prosecutor's Office has the function of investigating and the criminal prosecution of all offences, including those against the EU's financial interests. In carrying out this function, it operates within the definitions of crimes provided for under the law and criminal law institutions. When cases of fraud involving EU funds are investigated, the relevant provisions of the Criminal Code are applied and the position of the Prosecutor's Office before the competent court complies with these provisions in terms of the punishment imposed. When legislative changes are initiated by authorities with legislative initiative, the Public Prosecutor's Office expresses its position on the adequacy of penalties by participating in coordination procedures and public discussions.

As far as guarantees of adequate time for investigation and criminal prosecution are concerned, the Public Prosecutor's Office observes its obligations under Arts. 22 and 234 of the Criminal Procedure Code (NPK), which in combination with the option of extending the pre-trial investigation timescales, ensures that the recommendation is implemented. It should be noted that the amendments to the NPK promulgated in State Gazette (DV) No 71 of 2013 reinstate Chapter 26, 'Consideration of cases in court at the request of the accused' (rescinded DV No 32/2010, effective from 28 May 2010, reinstated DV No 71 of 2013). This reinstates the accused's option to request a hearing before a court

	<p>after the expiry of a specified period after this status has arisen. This limits the multiple use of the option to extend the period of pre-trial investigation, including in crimes affecting the EU's financial interests.</p> <p>As an EU Member State, Bulgaria has stated its framework position supporting the proposed draft Directive on protecting the European Communities' financial interests through criminal law. If the European Parliament adopts the Directive amendments, it will have to be adopted to Bulgarian law, and in particular the Criminal Code, to accommodate the parameters of the Directive (minimum and maximum penalties for this category of crime). When the draft of the new Criminal Code is discussed, the institutions concerned will have to take Bulgaria's framework position into account.</p>
<b>CZ</b>	<p>The Czech Republic adopted legislative measures to ensure the financial interests of the EU have exactly the same level of protection as the interests of the Czech Republic and other natural and legal persons. In relation to the adoption of Act No. 418/2011 Coll., the criminal liability of legal persons has ensured the possibility of criminal prosecution, as well as companies, and acts by other legal persons which threaten the financial interests of the EU (area drawdown of EU subsidies, illegal influencing of public procurement, tax evasion and customs). It is intended to increase the criminal penalties – in cases where the damage exceeds CZK 5 mil. – the possibility of imprisonment for up to 10 years. In the case of criminal liability of legal persons – a ban on participation in public procurements or financial fines of up to CZK 1,5 billion. Changes in legislation have resulted in the duration in which prosecutions can occur being prolonged – if damage exceeds 2 000 EUR – a limitation period of 10 years; 20 000 EUR – a limitation period of 15 years. The prosecution of crimes affecting the financial interests of the EU is ensured by highly professional prosecutors at regional level.</p>
<b>DK</b>	<p>Fraud involving EU funds is punishable under Section 289a of the Criminal Code, according to which a fine or imprisonment for a term not exceeding one year and six months is imposed on any person who gives incorrect or misleading information or fails to disclose information – including by failing to comply with the duty to disclose information significant to deciding a case – for use in decisions on the payment or refund of customs duties or charges or the payment or refund of subsidies or grants from Danish authorities or the institutions of the European Communities or other community bodies, with intent to evade a payment to be made by himself or others or with intent wrongfully to obtain an amount for the benefit of himself or others.</p> <p>The same penalty is imposed on any person who wrongfully exploits a legally earned entitlement to the above-mentioned payments and on any person who wrongfully applies any such amount paid for any purpose other than the purpose for which it was originally granted. This does not, however, apply to benefits granted for personal use.</p>

Violations of a particularly serious nature are punished by imprisonment for a term not exceeding eight years; see Section 289 of the Criminal Code and, specifically, Section 289a(4).

Moreover, there are, in a number of areas, special laws containing provisions on fraud involving EU funds. This applies, for example, in the spheres of agriculture and fisheries. Section 289a of the Criminal Code is subsidiary to provisions in special laws, where the special law in question contains a corresponding regulation.

In addition, various other forms of fraudulent conduct damaging to the EU's financial interests are punishable under, for example, Section 278 of the Criminal Code on embezzlement, Section 279 on fraud and Section 280 on breach of trust. Infringement of the stated provisions is punished by imprisonment for a term not exceeding one year and six months. The term of imprisonment may be increased to up to eight years if the crime is of a particularly serious nature; see Section 286(2) of the Criminal Code.

An infringement is not punished if the limitation period has expired.

The limitation period for the above-mentioned infringements is five years, unless the crime is of a particularly serious nature, in which case the limitation period is 10 years; see Section 93(1) of the Criminal Code.

In accordance with Section 94(5) of the Criminal Code, the limitation period is interrupted if the charge is communicated to the person concerned or if the public prosecutor requests that legal action be taken, in which case the person concerned is charged with the infringement.

In Denmark, the Public Prosecutor for Serious Economic and International Crime (Danish acronym, SØIK) deals with economic crimes, including cases of fraud, if there may be cause for thinking that the infringement is particularly wide in scope, involves organised crime, was carried out using distinctive business practices or is otherwise of an unusual character.

SØIK has developed a special Investigation Guide on the handling of large-scale criminal cases. The Investigation Guide contains guidelines designed to ensure that the police's and public prosecutor's resources are used in the best ways possible and that the necessary impetus is given to dealing with the case.

It states that an investigation should be based on: a project-oriented working method, the setting of goals and sub-goals subject to constant assessment, cooperation between different personnel groups and authorities throughout the investigation, a strong focus on the essentials of the case, and on-going assessment of the need for resources and, if appropriate, the adjustment of these following discussions with the



	<p>investigator responsible for the project and the public prosecutor.</p> <p>In terms of ensuring that large-scale criminal cases are investigated, and prosecutions brought, as quickly and efficiently as possible, the Investigation Guide has proved to be a very useful tool for developing and pursuing 'best practices', as well as objectives in terms of the time taken to deal with cases.</p>			
<b>DE</b>	<p>In Germany fraud (Section 263 German Criminal Code [Strafgesetzbuch]) and subsidy fraud (Section 264 Criminal Code) are punishable by a fine or imprisonment of up to five years. In especially serious cases imprisonment of between six months and ten years is provided for (Sections 263(3) and 264(2) Criminal Code). In cases of fraud or subsidy fraud committed on a commercial basis as a member of a gang whose purpose is the continued commission of such offences imprisonment of between one to ten years may be imposed (Sections 263(5) and 264(3) Criminal Code).</p> <p>Criminal proceedings for such offences are generally subject to a limitation period of five years (Section 78(3) No 4 Criminal Code), as are cases under Section 263(2) or 264(2) Criminal Code (cf. Section 78(4) Criminal Code). Offences under Sections 263(5) and 264(3) are subject to a limitation period of ten years (Section 78(3) No 3 Criminal Code). In principle this period commences as soon as the offence is completed (Section 78a, first sentence, Criminal Code). The limitation period may, however, be interrupted — even repeatedly — by certain procedural steps (Section 78c Criminal Code). Each interruption has the effect that the limitation period commences to run anew; however prosecution is statute-barred at the latest where twice the limitation period (here five or ten years) has elapsed since the end of the offence ('final statute bar', Section 78c(3) Criminal Code). This means that generally prosecution for fraud and subsidy fraud is statute-barred at the latest after ten years and in cases under Sections 263(5) and 264(3) Criminal Code after twenty years. However, there will be no statute bar if there was a first instance decision before the end of the limitation period so long as the proceedings have not been finally resolved (Section 78b(3) Criminal Code); this applies even where this results in the period for a 'final statute bar' being exceeded.</p>			
<b>EE</b>	<b>Criminal offence</b>	<b>Offence</b>	<b>Aggravated circumstances</b>	<b>Limitation period of offence<sup>12</sup></b>
	§201. Embezzlement	punishable by a pecuniary punishment	punishable by a pecuniary punishment	five years

<sup>12</sup> The limitation period of offence is suspended for example in the case a suspect, accused or person subject to proceedings absconds from pre-trial proceedings, extra-judicial proceedings or court, until the person is detained or appears before the body conducting the proceedings

		or up to one year imprisonment	or up to 5 years' imprisonment	
§ 209. Fraud	punishable by a pecuniary punishment or up to 3 years imprisonment	punishable by 1 to 5 years' imprisonment		five years
§ 210. Benefit fraud	punishable by a pecuniary punishment or up to 5 years imprisonment	-		five years
§ 280. Submission of false information	punishable by a pecuniary punishment or up to one year imprisonment	-		five years
§ 293. Accepting of gratuities	punishable by a pecuniary punishment or up to 3 years imprisonment	punishable by up to 5 years imprisonment		five years
§ 294. Accepting bribe	punishable by up to 5 years imprisonment	punishable by 2 to 10 years imprisonment		five years /ten years
§ 295. Arranging receipt of gratuities	punishable by a pecuniary punishment or up to one year imprisonment	punishable by a pecuniary punishment or up to 3 years imprisonment.		five years
§ 296. Arranging bribe	punishable by a pecuniary punishment	punishable by a pecuniary punishment		five years

		or up to one year imprisonment.	or up to 3 years imprisonment	
§ 297. Granting of gratuities		punishable by a pecuniary punishment or up to 3 years imprisonment.	punishable by up to 5 years imprisonment.	five years
§ 298. Giving bribe		punishable by 1 to 5 years imprisonment	punishable by 2 to 10 years imprisonment	five years /ten years
§ 298 <sup>1</sup> . Influence peddling		punishable by a pecuniary punishment or up to 3 years imprisonment.	-	five years
§299. Counterfeiting or falsification of documents by officials		punishable by a pecuniary punishment or up to 3 years imprisonment.	-	five years
§ 394. Money laundering		punishable by a pecuniary punishment or up to 5 years imprisonment	is punishable by 2 to 10 years imprisonment	five years /ten years

Limitation period:

No one shall be convicted of or punished for the commission of a criminal offence, if the following terms have expired between the commission of the criminal offence and the entry into force of the corresponding court judgment: 1) ten years in the case of commission of a criminal offence in the first degree; 2) five years in the case of commission of a criminal offence in the second degree.

A criminal offence in the first degree, as prescribed in this code, is punishable by imprisonment for a term of more than five years, life imprisonment or compulsory dissolution. A criminal offence in the second degree is punishable by imprisonment for a term of up to five years

or a pecuniary punishment.

The limitation period of a criminal offence is interrupted with the performance of the following procedural act in the criminal proceeding: 1) application of a preventive measure with regard to the suspect or accused, or seizure of his or her property, or property involved in money laundering; 2) the prosecution of the accused; 3) adjournment of the hearing of a matter in the case where the accused fails to appear; 4) interrogation of the accused in the court hearing; 5) ordering of expert assessment or additional evidence in the court hearing.

The limitation period of an offence is suspended: 1) when a suspect or accused, subject to proceedings, absconds from pre-trial proceedings, extra-judicial proceedings or court, until the person is detained or appears before the body conducting proceedings; 2) upon commencement of criminal proceedings in a matter of an act with elements of a misdemeanour, until the termination of the criminal proceedings; 3) upon committing a criminal offence against the sexual self-determination against a person younger than eighteen years of age, until the victim attains 18 years of age, unless the reason for the criminal proceedings became evident before the victim attained such age.

## **Estonian Penal Code**

### **§ 4. Degrees of criminal offences**

- (1) Criminal offences are criminal offences in the first and in the second degree.
- (2) A criminal offence in the first degree is an offence the maximum punishment prescribed for which in the Code is imprisonment for a term of more than five years, life imprisonment or compulsory dissolution.
- (3) A criminal offence in the second degree is an offence the punishment prescribed for which in the Code is imprisonment for a term of up to five years or a pecuniary punishment.
- (4) The mitigation or aggravation of a punishment on the basis of the provisions of the General Part of this Code shall not alter the degree of a criminal offence.

### **§ 81. Limitation period of offence**

- (1) No one shall be convicted of or punished for the commission of a criminal offence if the following terms have expired between the commission of the criminal offence and the entry into force of the corresponding court judgment: 1) ten years in the case of commission of a criminal offence in the first degree; 2) five years in the case of commission of a criminal offence in the second degree.

(2) Offences against humanity, war crimes and offences for which life imprisonment is prescribed do not expire.

(5) The limitation period of a criminal offence is interrupted with the performance of the following procedural act in the criminal proceeding: 1) application of a preventive measure with regard to the suspect or accused, or seizure of his or her property, or property which is the object of money laundering; 2) the prosecution of the accused; 3) adjournment of the hearing of a matter in the case the accused fails to appear; 4) interrogation of the accused in the court hearing; 5) ordering of expert assessment or additional evidence in the court hearing.

(6) If the limitation period of a criminal offence is interrupted, the limitation period shall commence again with the performance of the procedural act provided in subsection (5) of this section. A person shall however not be convicted of or punished for the commission of a criminal offence if the period between the commission of the criminal offence and the entry into force of the corresponding court judgment is five years longer than the term provided for in subsection (1) of this section.

(7) The limitation period of offence is suspended: 1) in a case where the suspect, accused or person subject to proceedings absconds from pre-trial proceedings, extra-judicial proceedings or court, until the person is detained or appears before the body conducting the proceedings; 2) upon commencement of criminal proceedings in the matter of an act with elements of a misdemeanour, until the termination of the criminal proceedings; 3) upon commission of a criminal offence against the sexual self-determination of a person younger than eighteen years of age, until the victim reaches 18 years of age, unless the reason for the criminal proceedings became evident before the victim reached 18 years.

(8) In the cases provided by clauses (7) 1) and 2) of this section the limitation period shall not be resumed if more than fifteen years have passed from the commission of the criminal offence or more than three years have passed from the commission of the misdemeanour.

#### **§ 201. Embezzlement**

(1) A person who illegally converts into his or her use, or the use of a third person, movable property which is in the possession of another person or other assets belonging to another person which have been entrusted to the person shall be punished by a pecuniary punishment or up to one year imprisonment.

(2) The same act, if committed: 1) by a person who has previously committed larceny or embezzlement; 2) on a large-scale basis; 3) by an official; or 4) by a group or criminal organisation; shall be punished by a pecuniary punishment or up to 5 years of imprisonment.

#### **§ 209. Fraud**

(1) A person who receives proprietary benefits by knowingly causing a misconception of existing facts is punishable by a pecuniary

punishment or up to 3 years imprisonment.

(2) The same act, if committed: 1) by a person who has previously committed fraud, larceny or embezzlement; 1<sup>1</sup>) by an official; 2) on a large-scale basis; 3) by a group or a criminal organisation; or 4) by addressing the public, is punishable by 1 to 5 years of imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

#### **§ 210. Benefit fraud**

(1) For the purposes of this section, “benefit” means a payment made without charge or partly without charge out of the funds of the state budget or a local government or other public funds to a person engaging in economic activities, or a tax incentive for promoting economic activities.

(2) A person who receives a benefit by using fraud or uses a benefit for purposes other than its intended purpose shall be punished by a pecuniary punishment or up to 5 years of imprisonment.

(3) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

#### **§ 280. Submission of false information**

(1) Submission of false information to an administrative agency, if committed in order to obtain an official document or any other benefit or gain, is punishable by a pecuniary punishment or up to one year of imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

#### **§ 293. Accepting of gratuities**

(1) An official who consents to a promise of property or other benefits, or who accepts property or other benefits to himself/herself, or third persons, in return for a lawful act which he or she has committed or which there is reason to believe that he or she will commit, or for a lawful omission which he or she has committed or which there is reason to believe that he or she will commit and, in so doing, takes advantage of his or her official position, is punishable by a pecuniary punishment or up to 3 years' imprisonment.

(2) The same act, if committed: 1) by a person previously in receipt of gratuities or a bribe; 2) by demanding gratuities; 3) by a group; or 4) on a large-scale basis; is punishable by up to 5 years imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

#### **§ 294. Accepting bribe**

(1) An official who consents to a promise of property or other benefits or who accepts property or other benefits to themselves or third persons in return for an unlawful act which he or she has committed, or which there is reason to believe that he or she will commit, or for an unlawful omission which he or she has committed or which there is reason to believe that he or she will commit and, in so doing, takes advantage of his or her official position shall be punished by 1 to 5 years' imprisonment.

(2) The same act, if committed: 1) by a person who was previously in receipt of a bribe or gratuities; 2) by demanding a bribe; 3) by a group; 4) on a large-scale basis; or 5) with serious consequences, is punishable by 2 to 10 years' imprisonment.

(3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

(4) An act provided for in subsection (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

(5) For the criminal offence provided for in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83<sup>2</sup> of this Code.

#### **§ 295. Arranging receipt of gratuities**

(1) Arranging a receipt of gratuity is punishable by a pecuniary punishment or up to one year of imprisonment.

(2) The same act, if committed: 1) by a person who has previously committed arranging receipt of a gratuities or bribe; or 2) by taking advantage of an official position, is punishable by a pecuniary punishment or up to 3 years of imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

#### **§ 296. Arranging bribe**

(1) Arranging a bribe is punishable by a pecuniary punishment or up to one year of imprisonment.

(2) The same act, if committed: 1) by a person who has previously arranged the receipt of a bribe or gratuities; or 2) by taking advantage of an official position, is punishable by a pecuniary punishment or up to 3 years imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

### **§ 297. Granting of gratuities**

- (1) Granting or promising a gratuity is punishable by a pecuniary punishment or up to 3 years of imprisonment.
- (2) The same act, if committed: 1) by a person who has previously granted gratuities or a bribe; 2) by a group; or 3) on a large-scale basis; is punishable by up to 5 years of imprisonment.
- (3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

### **§ 298. Giving bribe**

- (1) Giving or promising a bribe is punishable by 1 to 5 years of imprisonment.
- (2) The same act, if committed: 1) by a person who was previously granted a bribe or gratuities; 2) by a group; 3) on a large-scale basis; or 4) with serious consequences, is punishable by 2 to 10 years' imprisonment.
- (3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.
- (4) An act provided for in subsection (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

### **§ 298<sup>1</sup>. Influence peddling**

- (1) A person who consents to a promise of property or other benefits, or who accepts property or other benefits in return for illegal use, by the person of his or her actual or presumed influence with the objective of achieving a situation where an official performing public administration duties commits an act or omission in the interests of the person handing over the property or giving the benefit, or a third person, shall be punished by a pecuniary punishment or up to 3 years of imprisonment.

- (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

### **§ 299. Counterfeiting or falsification of documents by officials**

- (1) An official who falsifies a document or issues a falsified document is punishable by a pecuniary punishment or up to 3 years of imprisonment.

### **§ 394. Money laundering**



	<p>(1) Money laundering shall be punished by a pecuniary punishment or up to 5 years of imprisonment.</p> <p>(2) The same act, if: 1) by a group; 2) at least twice; 3) on a large-scale basis; or 4) by a criminal organisation, is punishable by 2 to 10 years imprisonment.</p> <p>(3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.</p> <p>(4) An act provided for in subsection (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.</p> <p>(5) A court may, pursuant to the provisions of § 83 of this Code, apply confiscation of a property which was the direct object of the commission of an offence provided for in this section.</p> <p>(6) For the criminal offence provided for in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83<sup>2</sup> of this Code.</p>						
<b>IE</b>	<p>Ireland has opted into the proposed <i>Directive on the protection of the EU financial interests by means of criminal law</i>.</p> <p>In relation to the request for information on the limitation periods and deterrent effect of the sanctions currently in place, fraud offences in Ireland carry a penalty of up to 5 years imprisonment and in many cases this penalty extends to 10 years. In all cases, an unlimited fine may be imposed in addition to a penalty of imprisonment. There is no prescribed statutory limitation period for bringing a criminal prosecution on indictment.</p>						
<b>EL</b>	<table border="1"> <tr> <td colspan="2" data-bbox="1003 203 1070 1995"><b>BODY: Ministry of Justice, Transparency and Human Rights</b></td> </tr> <tr> <td colspan="2" data-bbox="1070 203 1141 1995"><b>REPLY</b></td> </tr> <tr> <td data-bbox="1141 1592 1211 1995"><b>LAW</b></td> <td data-bbox="1141 203 1211 1592"><b>LIMITATION PERIOD</b></td> </tr> </table>	<b>BODY: Ministry of Justice, Transparency and Human Rights</b>		<b>REPLY</b>		<b>LAW</b>	<b>LIMITATION PERIOD</b>
<b>BODY: Ministry of Justice, Transparency and Human Rights</b>							
<b>REPLY</b>							
<b>LAW</b>	<b>LIMITATION PERIOD</b>						

<p><b><u>1). Art. 235 of the Penal Code</u></b></p> <p><b><u>Passive Bribery</u></b><sup>13</sup></p>	<p>1. Imprisonment for 1-5 years and fine = fifty times higher than the benefit with a ceiling of EUR 150 000.</p> <p>In the case of benefits which cannot be assessed in monetary terms, the fine ranges from EUR 10 000 to EUR 150 000</p> <p>2. If the value of the benefits exceeds the amount of EUR 120 000 or the offender is an employee of the Ministry of Finance, 5-10 years' imprisonment and a mandatory fine of EUR 50 000 - EUR 500 000.</p>	<p>5 years + 3 year litigation suspension</p>
<p><b><u>(2). Art. 236 of the Penal</u></b></p>	<p>1. Imprisonment for 1-5 years and fine = fifty times higher</p>	<p>15 years + 5 year litigation suspension</p> <p>5 years + 3 year litigation suspension</p>

<sup>13</sup> Regarding Articles 235 – 263 of the Penal Code, the following general provisions also apply:

Article 262.: If, while in service or taking advantage of his/her position, an employee perpetrates an intentional felony or misdemeanor referred to in another Chapter of the Penal Code, the maximum penalty provided for by the law for this act increases by half but cannot exceed the limit generally specified for each type of penalty.

Article 263: 1. Any employee sentenced to imprisonment for any of the actions referred to in Articles 235 to 261 is temporarily deprived of his/her civil rights for one (1) to five (5) years, unless the court decides otherwise with a specific reasoned decision. In particular, as a result of this deprivation of civil rights, the perpetrator is automatically removed from the position or office held once the sentence is final and cannot be reinstated by implementing Article 64. At the same time, the court may also order the temporary deprivation of civil rights (Article 61) of the third party sentenced to imprisonment of at least three (3) months for any of the actions of Articles 235 to 261.

2. The provision of Article 238 applies mutatis mutandis to all the crimes referred to in Articles 239 to 261, provided that they have secured property benefits for the perpetrators thereof.

<p><b><u>Code</u></b></p> <p><b><u>Active Bribery</u></b></p>	<p>than the benefit with a ceiling of EUR 150 000.</p> <p>In the case of benefits which cannot be assessed in monetary terms, the fine ranges from EUR 10 000 to EUR 150 000</p> <p>2. If the value of the benefits exceeds EUR 120 000, 5-10 years' imprisonment and a mandatory fine of EUR 50 000- EUR 500 000.</p>	
<p><b><u>3). Art. 237 of the Penal Code</u></b></p> <p><b><u>Bribing a judge</u></b></p>	<p>1. Imprisonment for 1-5 years and fine = fifty times higher than the benefit with a ceiling of EUR 150 000.</p> <p>In the case of benefits which cannot be assessed in monetary terms, the fine ranges from EUR 10 000 to EUR 150 000</p> <p>2. If the value of the gifts or benefits exceeds the amount of EUR 120 000, 5-10 years' imprisonment and a mandatory fine of EUR 50 000 – EUR 500 000.</p> <p>The penalties under points (a) and (b) are also imposed on</p>	<p>15 years + 5 year litigation suspension</p> <p>5 years + 3 year litigation suspension</p>

		anyone who, for the purpose referred to Article 237(1), offers, promises, acts as intermediary for or gives such gifts or benefits to any of the persons referred to in para. 1 or to a relative thereof.	15 years + 5 year litigation suspension
<b><u>4). Art. 239 of the Penal Code</u></b> <b><u>Abuse of power</u></b>	1. 1 - 5 years' imprisonment  2. 5 - 10 years' imprisonment		5 years + 3 year litigation suspension  15 years + 5 year litigation suspension
<b><u>5). Art. 241 of the Penal Code</u></b> <b><u>Violation of domestic sanctuary</u></b>	3 months' – 2 years' imprisonment		5 years + 3 year litigation suspension
<b><u>6). Art. 242 of the Penal Code</u></b> <b><u>Fake certification, falsification, use of counterfeit document</u></b>	1. 1 - 5 years' imprisonment  2. 5-20 years' imprisonment if unfair benefit or unlawful damage to another party are intended or if the total benefit or damage exceeds EUR 120 000		1. 5 years + 3 year litigation suspension 2. 15 years + 5 year litigation suspension

<p><b><u>7). Art. 243 of the Penal Code</u></b>  <b><u>Failure to certify identity</u></b></p>	<p>10 days'-3 months' imprisonment</p>	<p>5 years + 3 year litigation suspension</p>
<p><b><u>8). Art. 244 of the Penal Code</u></b>  <b><u>Extortion or dishonest receipt of money by a public officer</u></b></p>	<p>3 months' – 5 years' imprisonment</p>	<p>5 years + 3 year litigation suspension</p>
<p><b><u>9). Art. 246 of the Penal Code</u></b></p>	<p>10 days' – 5 years' imprisonment</p>	<p>5 years + 3 year litigation suspension</p>
<p><b><u>10). Art. 247 of the Penal Code</u></b>  <b><u>Strike by civil servants</u></b></p>	<p>10 days' – 1 year's imprisonment  3 months' – 5 years' imprisonment and fine (EUR 150 -15 000)</p>	<p>5 years + 3 year litigation suspension</p>

<p><b><u>11). Art. 251 of the Penal Code</u></b>  <b><u>Violation of judicial confidentiality</u></b></p>	<p>10 days' – 2 years' imprisonment</p>	<p>5 years + 3 year litigation suspension</p>
<p><b><u>12). Art. 252 of the Penal Code</u></b>  <b><u>Violation of service confidentiality</u></b></p>	<p>1. 3 months' – 5 years' imprisonment</p> <p>2. 6 months' – 5 years' imprisonment for anyone working, in any position, in the Political Office of the Prime Minister, the Ministers or the Deputy Ministers, in particular as a special partner, special adviser, transferable administrative official, seconded or under the delegation of tasks of an official, with a works contract or as a member of working groups or committees</p> <p>3. 1-5 years' imprisonment and a fine of EUR 100 000 – EUR 500 000 if the person acts with the intention of himself/herself or another person benefiting from that action or harming the State or another party</p>	<p>5 years + 3 year litigation suspension</p>
<p><b><u>13). Art. 254 of the Penal Code</u></b>  <b><u>Concealment of reason for exemption</u></b></p>	<p>3 months – 5 years</p>	<p>5 years + 3 year litigation suspension</p>

<p><b><u>14). Art. 255 of the Penal Code</u></b> <b><u>Unfair participation</u></b></p>	<p>10 days' – 2 years' imprisonment and a fine</p>	<p>5 years + 3 year litigation suspension</p>
<p><b><u>15). Art. 256 of the Penal Code</u></b> <b><u>Misappropriation of funds</u></b></p>	<p>1. 6 months' to 5 years' imprisonment</p> <p>2. 2 to 5 years' imprisonment if the reduction in funds is particularly high</p> <p>3. 5 to 10 years' imprisonment, a) if the offender used special tactics and the reduction in funds is particularly high and exceeds EUR 30 000 in total or b) the object of the action has value greater than EUR 120 000</p>	<p>1. 5 years + 3 year litigation suspension</p> <p>2. 5 years + 3 year litigation suspension</p> <p>3. 15 years + 5 year litigation suspension</p>
<p><b><u>16). Art. 257 of the Penal Code</u></b> <b><u>Exploitation of entrusted funds or objects</u></b></p>	<p>10 days' – 1 year's imprisonment or a fine</p>	<p>5 years + 3 year litigation suspension</p>

<p><b><u>17). Art. 258 of the Penal Code</u></b>  <b><u>Embezzlement in service</u></b></p>	<p>1. 6 months' – 5 years' imprisonment</p> <p>2. 2 – 5 years' imprisonment if the object of the action is of particularly great value,</p> <p>3. 5 – 10 years' imprisonment if: a) the offender used special tricks and the object of the action is of particularly high value, exceeding, in total, EUR 30 000 or b) the object of the action has a value of more than EUR 120 000</p>	<p>1. 5 years + 3 year litigation suspension</p> <p>2. 5 years + 3 year litigation suspension</p> <p>3. 15 years + 5 year litigation suspension</p>
<p><b><u>18). Art. 259 of the Penal Code</u></b>  <b><u>Neglect of duty</u></b></p>	<p>10 days' – 2 years' imprisonment</p>	<p>5 years + 3 year litigation suspension</p>
<p><b><u>19). Art. 261 of the Penal Code</u></b>  <b><u>Inducement of subordinate employee to perpetrate crime and tolerance of any such crime</u></b></p>	<p>10 days' – 2 years' imprisonment</p>	<p>5 years + 3 year litigation suspension</p>
<p><b><u>20). Art. 159 of the Penal Code</u></b></p>	<p>1. 1 – 5 years' imprisonment</p>	<p>1. 5 years + 3 year litigation suspension</p> <p>2. 15 years + 5 year litigation suspension</p>



	<p><b><u>Code</u></b></p> <p><b><u>Bribing Members of Parliament</u></b></p>	<p>2. 5 - 10 years' imprisonment if the value of the gifts, benefits or considerations exceeds EUR 120 000 in total</p> <p>Article four 'Fraud at the expense of the European Communities' financial interests':</p> <p>1. 10 days' – 5 years' imprisonment</p> <p>2. 5 - 10 years' imprisonment if the damage under the previous provisions exceeds the amount of GRD 25 000 000 and, if the damage exceeds the amount of GRD 50 000 000, the offender is convicted to 5 - 20 years' imprisonment.</p> <p>Article five: Fraud of minor value at the expense of the European Communities' financial interests: 10 days' – 1 year's imprisonment or a fine</p>	<p>1. 5 years + 3 year litigation suspension</p> <p>2. 15 years + 5 year litigation suspension</p>
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		5 years + 3 year litigation suspension
<p><b><u>22). Art. 45 of Law 3691/2008</u></b></p> <p><b><u>‘Prevention of money laundering etc.’</u></b></p>	<p>5 to 10 years’ imprisonment and a fine ranging from EUR 20 000 to EUR 1 000 000</p> <p>5 to 20 years’ imprisonment and a fine ranging from EUR 30 000 to EUR 1 500 000 if the offender acted as an employee of a liable legal entity or the predicate offence is included in the offences referred to in points (c), (d) and (e) of Article 3 of the same Law, even if these offences are punishable by a prison sentence.</p> <p>10-20 years’ imprisonment and a fine of EUR 50 000 to EUR 2 000 000 if the person pursues such activities professionally or habitually or is a recidivist or has acted on behalf of, in the interests of or within the context of a criminal or terrorist organisation or group.</p> <p>10 days’ – 2 years’ imprisonment of the liable legal entity’s employee or any other person liable for reporting suspicious transactions, who intentionally fails to mention any suspicious or unusual transactions or activities or presents false or misleading information, thus violating the relevant legal, administrative or regulatory provisions and rules, if a stricter penalty is not provided for under other</p>	15 years + 5 year litigation suspension

		provisions. <sup>14</sup>	5 + 3 year litigation suspension
	<b><u>23). Article 7B of Law 3310/2005</u></b> <b><u>‘Measures to ensure transparency and prevent transgressions in the procedures for the award of public contracts’</u></b>	<p>1. 5 - 20 years’ imprisonment</p> <p>2. 1 - 5 years’ imprisonment, A. in case of refusal to produce evidence or submission of false information to the ESP or the Competition Commission, B. for public authority officials who knowingly award a public contract, C. for the members of the scientific staff of the ESP, who do not issue, within the prescribed period, the decision or certificate provided for under the provisions of Article 6, in order that they, or third parties, benefit from these actions or to damage to a third party</p>	<p>1. 15 years + 5 year litigation suspension</p> <p>2. 5 years + 3 year litigation suspension</p>
	<b><u>24). Law 2656/1998</u></b>	1. 1 - 5 years’ imprisonment <sup>15</sup>	1. 5 years + 3 year litigation suspension

<sup>14</sup>

Where the predicate offence is punishable with imprisonment, the money launderer shall be sentenced to at least one year’s imprisonment and payment of a fine ranging from EUR 10 000 to EUR 500 000. The same penalty shall also apply to money launderers who have not aided in the criminal activities if they are related by blood or marriage in direct or lateral linearity up to the second degree or if the perpetrator is spouse, foster parent or adopted child of the predicate offender. Where a predicate offence is punishable with imprisonment and the resulting revenues do not exceed EUR 15 000, the penalty for the offence of money laundering shall be imprisonment of up to two years. If, in this case, the circumstances laid down in point (c) apply to the perpetrator of the predicate offence or to any third party, the penalty for the offence of money laundering shall be at least two years’ imprisonment and payment of a fine ranging from EUR 30 000 to EUR 500 000.

<sup>15</sup>

These penalties shall be imposed on anyone who, during the exercise of international business activities and in order to acquire or maintain an unfair, business or other, undue advantage, pecuniary or otherwise, offers, promises or gives, directly or via a third party, gifts or other undue considerations to a foreign public official within the meaning of the OECD Convention, for the official or a third party, so that the foreign public official would make any act or omission regarding his/her service or in a manner contrary to his/her duties.

	<p><b><u>OECD ‘Convention on combating bribery of foreign public officials’ (Article 2, as replaced by Law 3666/2008)</u></b></p>	<p>2. 5 -10 years’ imprisonment if the value of the gifts or considerations exceeds EUR 73 000 in total</p>	<p>2. 15 years + 5 year litigation suspension</p>
<p>Article five Active and Passive bribery in the private sector</p>	<p><b><u>25). Law 3560/2007: Ratification-implementation of the Criminal Law Convention on Corruption</u></b></p>	<p>1 - 5 years’ imprisonment<sup>16</sup>  5 - 10 years’ imprisonment if the value of the benefits or considerations exceeds EUR 73 000.</p>	<p>5 + 3 year litigation suspension</p>

<sup>16</sup> These penalties are imposed on anyone who, when pursuing any business activity, intentionally promises, offers or gives, directly or indirectly, any undue advantage or consideration to any person who holds a managerial position in or works in any capacity for a private-sector body, for that person himself or a third party, so that the person would act or perpetrate an omission regarding his/her duties, as those are specified in the law, the contract of employment, internal regulations, the orders or instructions of superiors or as they result from the nature of the person’s position in the employer’s service. The same penalty is imposed on any director or employee in any capacity in private sector bodies, who, during the pursuit of any business activity, intentionally demands or receives directly or indirectly any undue consideration for themselves or anyone else, or who accepts the promise of such an advantage or consideration, to make any act or omission regarding his/her duties.

	<p>Article six Bid for influence</p>	<p>Three months' to 5 years' imprisonment and a fine <sup>17</sup></p> <p>10 days' to 5 years' imprisonment and a fine if the action is not punished more strictly under another penal provision <sup>18</sup></p>	<p>15 + 5 year litigation suspension</p>
	<p>Article eight Accounting offences</p>		<p>5 + 3 year litigation suspension</p>

<sup>17</sup> These penalties are imposed on anyone who promises, offers or gives, directly or indirectly, any undue financial consideration to anyone who claims, truly or falsely, or confirms that he/she can exert influence illegally and not within his/her powers in exchange for the consideration offered or promised in return for that influence, irrespective of whether the influence is exerted or not, or whether the supposed influence leads to the intended result or not.

<sup>18</sup> These penalties are imposed on anyone who issues or uses an invoice or another accounting document or file containing false or incomplete information or illegally omitting the payment entry, if these actions are committed to facilitate the perpetration, concealment or covering up of any of the actions referred to in Articles 159, 235, 236 and 237 of the Penal Code, and Articles 3 to 7 of this Law.

			5 + 3 year litigation suspension
<p><b><u>26). Law 3849/2010</u></b>  <b><u>‘amending Law 3213/2003 and the provisions of the Penal Code regarding crimes related to the Service’</u></b></p>	<p>Art. 4 of Law 3213/03: 3 - 5 years’ imprisonment and a fine ranging from EUR 20 000 to EUR 1 000 000<sup>19</sup>.</p> <p>2. 5 - 10 years’ imprisonment and a fine ranging from EUR 30 000 to EUR 1 500 000</p> <p>(a) if the unfair material benefit acquired or yielded exceeds, EUR 73 000 in total or</p> <p>(b) if the offender acts as a professional or is a recidivist.<sup>20</sup></p> <p>Art. 5 of Law 3213/03</p> <p>Bid for influence</p> <p>2-5 years’ imprisonment and a fine ranging from EUR</p>	<p>5+3 year litigation suspension</p> <p>15 + 5 year litigation suspension</p>	

<sup>19</sup>

The above penalties are imposed on any person liable to disclosure, who, taking advantage of his/her position, acquires, or procures for a third party, an unfair material advantage

<sup>20</sup>

The penalties referred to in paragraphs 1 and 2 are also imposed on third parties that, being aware of the offences referred to in paragraphs 1 and 2, profit from the unfair advantage that derives from them.

		<p>15 000 to EUR 750 000.<sup>21</sup></p> <p>2. If the total value of the considerations exceeds EUR 73 000 or the offender acts as a professional or is a recidivist, imprisonment of up to ten (10) years and a fine of EUR 30 000 to EUR 1 500 000 is imposed.’</p> <p>Article 6</p> <p>Failure to submit a statement or submission of false statement</p> <p>2-5 years’ imprisonment and a fine ranging from EUR 10 000 to EUR 500 000.</p> <p>5-10 years’ imprisonment and a fine ranging from EUR 20 000 to EUR 1 000 000, if the total value of the concealed property of the offender and of the other persons for whom he/she must submit a statement, exceeds EUR 300 000 in total, regardless of whether the concealment is attempted through the failure to submit a statement or the submission of an incomplete or inaccurate statement.</p>	<p>5+3 year litigation suspension</p>
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<sup>21</sup> These penalties shall be imposed on any person demanding, receiving or accepting a promise for financial consideration for himself/herself or a third party, so that he/she or the third party would exert influence on a person liable to disclosure to make a decision related to his professional duties. The same penalty is also imposed on anyone who promises or offers a financial consideration to another, so that the person who receives it or the third party would exert influence on a person liable to disclosure to take a decision that relates to his duties. In all cases, it is irrelevant whether the influence was exerted or not or whether the influence exerted leads to the intended result or not.

		<p>3. If the actions in paragraph 1 were committed by negligence, a fine is imposed, ranging from EUR 10 000 to EUR 100 000<sup>22</sup></p>	<p>15+5 year litigation suspension</p> <p>5+3 year litigation suspension</p>
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This Law provided for the compulsory deprivation of the civil rights of all the perpetrators of crimes of corruption and illicit enrichment in the public sector and their automatic removal from positions and offices held by them. At the same time, the objective set was to deprive perpetrators completely of the illegal benefit, by extending the penalty of confiscation to all the products of these crimes and to any benefit gained directly or indirectly therefrom or, possibly, also to the perpetrator's assets of equal value. Also, for the first time, the confiscation of assets which are not declared and of which the legal origin cannot be proved, and of public figures' shares in offshore companies were provided for. In addition, measures were taken to increase the practical effectiveness of arrangements for confiscation, by establishing the possibility to ban the movement of accounts, securities or financial products, the opening of the safety deposit boxes and the sale of property the defendant's property.

Drastic protection and leniency measures were adopted for any citizen who provides information revealing corrupt actions by senior State and political officials



			15+5 year litigation suspension
<b>ES</b>	<p>The offences covered by the Directive referred to in this Recommendation are set out in Organic Law 10/1995 of 23 November 1995 on the Criminal Code, last amended by Organic Law 7/2012 of 27 December 2012. The amendments concern transparency and the fight against tax</p>		

**27). Law 3961/2011 The existing Law 3126/2003 on the responsibility of Ministers.** This Law contains measures to eliminate certain disproportionate privileges of the Ministers and Deputy Ministers involved in criminal cases and to enhance public confidence in the integrity of the political system. *Inter alia*, there were provisions for the following:

- Extension, to the extent permitted by the Constitution, of the limitation period for the crimes of Ministers, to correspond with those that apply to ordinary citizens.
- Introduction of the possibility to impose restrictive conditions on Ministers, such as a prohibition on leaving the country.
- Mandatory seizure of the financial benefits associated with the offence under investigation, by decision of the Parliamentary Committee which is conducting the preliminary examination.
- Intervention by a three-member Advisory Council composed of judicial officers, before the establishment of the pre-investigatory Parliamentary Committee, responsible for expressing an opinion, after examining the evidence, as to whether a Minister's possible criminal liability should be investigated.
- Possibility to freeze accounts, securities and financial products after the criminal prosecution of a Minister or Deputy Minister by decision of the examining magistrate, if the prosecution relates to a felony.

and social security fraud.

The offences that can affect the EU budget and the penalties for each one can be found (in synthesis and possibly not exhaustive) in the following paragraphs and articles of the Criminal Code:

Swindling (Articles 248 to 251 bis)

Misappropriation (Articles 252-254)

Corruption involving private individuals (Article 286 bis)

Crime of receiving and laundering money (Articles 298 to 304)

Offences against the Public Treasury and the social security system (Articles 305 to 310 bis)

Falsification of documents:

a) Falsification of public, official and commercial documents and of correspondence sent by means of telecommunications systems (Articles 390 to 394)

b) Falsification of private documents (Articles 395 and 396)

Offences against public administration:

a) Breach of official duty by public officials and other wrongful behaviour (Articles 404 to 406)

b) Corruption (Articles 419 to 427)

c) Exercise of undue influence (Articles 428 to 431)

d) Misappropriation (Articles 432 to 435)

e) Fraud and illegal levies or fees (Articles 436 to 438)

f) Negotiations and activities which public officials are prohibited from engaging in, and abuse of their position (Articles 439 to 444)

	<p>g) Corruption in international commercial transactions (Article 445). The limitation periods for legal action concerning the offences are set out in Article 131 of the Criminal Code. The limitation periods for the sentences handed down in final judgments are set out in Article 133 of the Criminal Code.</p>
<p><b>FR</b></p>	<p>French legislation already very much complies with the text of the proposal for a directive on the protection of the EU's financial interests as per the general approach agreed by the Council on 6 June 2013.</p> <p>France was a staunch supporter of this proposal for a directive during the negotiations at the Council and sought for the text to be ambitious:</p> <ul style="list-style-type: none"> <li>- as regards the legal basis (Article 325 TFEU proposed by the Commission);</li> <li>- as regards behaviour to be criminalised: France argued in favour of the objective of having the proposal for a directive go further than existing European legislation (i.e. the 1995 Convention) and criminalise all offending behaviour regardless of the amount of damage suffered, by also including behaviour not criminalised under the 1995 Convention (fraud against funds other than Community funds or grants);</li> <li>- as regards the scale of possible penalties;</li> <li>- as regards the territorial scope of the proposal for a directive: France has agreed to extend its extraterritorial authority in respect of offences committed by French nationals outside the European Union, without submitting it to the conditions of double criminality or prior complaint by the victim or official denunciation by the State in which the offence was committed.</li> </ul> <p>France intends to continue to support this text actively and to ensure its level of ambition within the framework of the trialogue with the European Parliament. Furthermore, France would reiterate that it opposes in principle the introduction of minimum penalties, as only the maximum penalties need to be set.</p> <p>France reiterates that, beyond the need for approximation of criminal legislation, its support for the directive is linked to the establishment of a European Public Prosecutor's Office pursuant to Article 86 TFEU.</p> <p>Finally, as regards periods of limitation, the period of limitation for offences in France is three years from the date of the offence or from the</p>

	last act suspending limitation.
<b>HR</b>	<p>Since Recommendation 2 determines that Member States should ensure that sanctions for fraud have a deterrent effect (severe cases of fraud should be sanctioned with imprisonment - min 6 months, max 5 years) and that investigations and prosecutions can be pursued for a sufficient period of time (i.e. statute of limitations for prosecution, trial and execution of criminal sanctions should not be less than 5 years from the date of the offense). The Republic of Croatia, with its legislative framework, fulfils requirements set in this recommendation.</p> <p><b><u>Specifically, the Criminal Code (OJ 125/11, 144/12) defines the criminal offence of SUBSIDY FRAUD in Article 258 and sets sanctions. Therefore, Article 258 lays down:</u></b></p> <p>(1) <b><u>Whoever, with the aim that he/she or another person receive a state subsidy, provides a state subsidy provider with false or incomplete information concerning the facts on which the decision on the granting of a state subsidy depends, or fails to inform a state subsidy provider of changes important for making the decision on the granting of a state subsidy, shall be punished by imprisonment from six months to five years.</u></b></p> <p>(2) The same punishment, referred to in paragraph 1 of this Article, shall be inflicted on whoever uses the granted state subsidy funds in a manner contrary to its intended use.</p> <p>(3) If, in the case referred to in paragraph 1 of this Article, the perpetrator acts with the aim of receiving a <b>significant amount</b> of state subsidies or if, in the case referred to in paragraph 2 of this Article, he/she uses a significant amount of state subsidies, shall be punished by imprisonment <b><u>from one to ten years.</u></b></p> <p>(4) Whoever, in cases referred to in paragraph 1 of this Article, voluntarily prevents the making of a decision on the granting of a state subsidy may have his/her punishment remitted.</p> <p>(5) <b><u>State subsidies within the meaning of this Article shall be equated with subsidies and aid granted from European Union funds.</u></b></p> <p>As regards the statute of limitations for prosecution, trial and execution of criminal sanctions Criminal Code (OJ 125/11, 144/12) sets the time</p>

frame in Articles 81 and 83 .

**SUBSIDY FRAUD**

Whoever, with the aim that he/she or another person will receive a state subsidy, provides the state subsidy provider with false or incomplete information concerning the facts on which the decision of granting a state subsidy depends, or fails to inform a state subsidy provider of relevant information, shall be punished.

State subsidies within the meaning of this Article shall be equated with subsidies and aid granted from European Union funds.

general sanction:

- imprisonment from six months to five years

perpetrator acts with the aim of receiving a significant amount of state subsidies:  
- imprisonment from one to ten years

Up to 20 years

Statute of limitations for prosecution (Article 81)

Bar to the Execution of a Sentence Due to the Statute of Limitations (Article 83)

An imposed sentence cannot be executed due to the statute of limitations after the expiry of the following period since a

Up to 20 years

	<p><b>judgment becomes <i>res judicata</i></b></p>	
<p><b>IT</b></p>	<p>Italy's legislative bodies have been aware for some time of the need to provide effective protection under criminal law and an adequate system of penalties in respect of unlawful behaviour aimed at embezzlement, retention, or misapplication for other purposes of public funding, in the broad sense of the term.</p> <p>The current Union-level legal basis for action to effectively combat fraud is Article 325 TFEU; Article 325(2) provides that the Member States must take the same measures to combat fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests. This provision introduces the 'assimilation principle' whereby equal importance is attached to national and EU interests, meaning that Member States are required to act using the same means and adopting the same measures in both cases.</p> <p>Italian criminal provisions relating to fraud therefore fall within this Community legislative framework, which also includes the various Conventions on the subject.</p> <p>The most important of these is definitely the Convention on the protection of the European Communities' financial interests of 26 July 1995, which entered into force on 17 October 2002. This Convention first and foremost defines the scope of the term 'fraud' as any act or omission relating to: the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect (in terms of expenditure) the misappropriation or wrongful retention of funds from the general budget or (in terms of revenue) the illegal diminution of the resources of the general budget; non-disclosure of information in violation of a specific obligation, with the same effect; the misapplication of such funds for purposes other than those for which they were originally granted.</p> <p>The specialist literature has for a long time emphasised the need for Italian criminal-law measures to control the abuse of public grants, given the vast scale of public financing and the enormous amounts of funding involved.</p> <p>This kind of crime has taken on a supranational dimension as fraud has continued to spread in connection with grants awarded by the EEC in the past, particularly in the sphere of agricultural policy.</p>	

The first provisions to this end in Italian criminal law were Article 9 of Legislative Decree No 1051 of 21 November 1967, concerning the misappropriation of olive oil price supplements, and then, more generally, Article 2 of Law No 898 of 23 December 1986 (as amended) concerning the fraudulent appropriation of grants from the European Agricultural Guidance and Guarantee Fund.

On the subject of Community fraud, offences are provided for in the Criminal Code [hereinafter 'CC'] under Articles 316 *bis* (Embezzlement of national public funds), 316 *ter* (Misappropriation of national public funds) and 640 *bis* (Aggravated fraud [*truffa*] with intent to obtain public funds).

This national system for combating the fraudulent appropriation of public or Community funds applies both in cases in which the European institutions act directly in Italy and in those in which they act through national authorities or other institutions.

In addition to these provisions, there is also provision for the 'administrative' liability of the bodies perpetrating offences involving embezzlement under Article 316 *bis* CC, misappropriation of funds under Article 316 *ter* CC, and aggravated fraud [*truffa*] under Article 640 *bis* CC (Article 24 of Legislative Decree No 231 of 8 June 2001), which provides for the application to those bodies of monetary penalties and penalties prohibiting the conclusion of contracts with public authorities, or excluding them from benefits, financing, grants or subsidies, revoking those already granted, and prohibiting the advertising of goods or services.

Moreover, other more general, or different, provisions of criminal law are also applicable to offences against goods or interests that can be classified as financial interests of the European Union.

Individual provisions of criminal law protecting the financial interests of the European Union –

Article 2 of Law No 898 of 23 December 1986 (as amended) provides that:

*1. Where the act does not constitute the more serious offence provided for in Article 640-bis CC, any person who, by providing false data or information, improperly obtains, for himself or for others, aids, premiums, allowances, rebates, subsidies or other funds wholly or partly at the expense of the European Agricultural Guarantee Fund and European Rural Development Fund shall be liable to a term of imprisonment of six months to three years. When the amount improperly obtained is EUR 5 000 or less, the offence shall be punishable only by an administrative penalty as provided for in the Articles below.*

*2. For the purposes of paragraph (1) of this Article and of Article 3(1), funds obtained at the expense of the European Agricultural Guarantee*

*Fund and European Rural Development Fund shall include the national contributions provided for by Community law to complement the amounts paid by the Funds, as well as the funds obtained entirely at the expense of the national budget on the basis of Community law.*

*3. In its judgment, the court shall also determine the amount improperly obtained and shall sentence the guilty party to repay this amount to the authority which paid the funds referred to in paragraph (1)*

The provisions on this offence are subsidiary to those on the crime of aggravated fraud [*truffa*] with intent to obtain public funds, and apply in cases in which the perpetrator has only provided false data and information, whereas acts involving other and more serious elements of fraud, such as creating and using false documents, fall under the heading of fraud [*truffa*] (see judgment No 49086 of Chamber 1 of 24 May 2012, Rv. 253960: '*Forging and using forged shipping documents for the delivery of surplus agricultural products to collection centres managed by AIMA (the Agricultural Payments Agency) to obtain Community agricultural support payments constitutes aggravated fraud with intent to obtain public funds and not the offence provided for in Article 2 of Law No 898/1986*').

Article 316 *bis* of the Criminal Code provides that: '*Any person not belonging to the public administration who obtains from the State or another public body or from the European Community grants, subsidies or financing to support initiatives to carry out works or perform activities of public interest and does not use them for those purposes shall be liable to a term of imprisonment of six months to four years*'. This provision protects the proper functioning of the public administration and the European Union in the implementation of public interest initiatives (national or EU) and addresses the requirement to prevent abuses and misapplication of funds by beneficiaries.

Regarding the relationship between embezzlement at the expense of the State and aggravated fraud [*truffa*] with intent to obtain public funds under Article 640 *bis* CC, it is held that the latter provision is designed to combat improper appropriation of public funds in the period prior to payment of such funds, while Article 316 *bis* CC is designed to protect public funds after the payment is made.

Therefore, in the abstract, there should be no conflict between the two provisions, since the conditions of their application are different. The predominant view in the specialist literature holds that under Article 640 *bis* CC, the funding is the objective of the conduct and is seen as unfair profit, while in Article 316 *bis* CC the funding is a condition of the conduct, and as such never unlawful, whereas what is unlawful is the subsequent conduct of the perpetrator, who does not use the funds for public purposes. This means that if the perpetrator obtains the funding using fraudulent means and subsequently uses it for purposes other than those for which it was granted, his offence will be punishable only under Article 640 *bis* CC, since the subsequent behaviour will be *post factum*, and so not liable to punishment.

This interpretation has not been universally endorsed in case law.



An initial ruling is that ‘*Embezzlement at the expense of the State has subsidiary and residual status in relation to Article 640 bis, which lays down the penalties for aggravated fraud with intent to obtain public funds*’ (Cassation Chamber 6, Judgment 23063 of 12.5.2009; Cassation Chamber 2, Judgment 39644 of 9.7.2004).

However, a second ruling asserts that ‘*Embezzlement at the expense of the State (Article 316-bis CC) may have a cumulative effect combined with fraud with intent to obtain public funds (Article 640 bis CC)*.’ (Cassation Chamber 2, Judgment 43349 of 27.10.2011; Cassation Chamber 6, Judgment 4313 of 2.12.2003).

Article 316 *ter* of the Criminal Code provides that: *Unless the act constitutes an offence under Article 640 bis, any person who unduly obtains, for himself or for others, grants, funding, subsidised loans or other payments of the same type, however they are designated, granted or awarded by the State, by other public bodies or by the European Communities, by using or presenting false statements or documents or attesting to facts that are not true, or by omitting required information, shall be liable to a term of imprisonment of six months to three years.*

*When the amount unduly obtained is EUR 3 999.96 or less, only the administrative penalty, namely payment of a sum of money between EUR 5 164 and EUR 25 822, shall be applied. That penalty shall not in any case exceed threefold the benefit obtained.*

This provision was introduced by Article 4 of Law No 300 of 29 September 2000 ratifying and implementing the Convention on the Protection of the European Communities' Financial Interests, concluded in Brussels on 26 July 1995, the associated Dublin Protocol of 27 September 1996 and Brussels Protocol of 29 November 1996, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, concluded in Brussels on 26 May 1997, and the OECD Convention on combating bribery of foreign public officials in international business transactions.

The introduction of the criminal offence of the misappropriation of Community funds (Article 316 *ter* CC) created problems of interpretation in relation to the criminal offence of aggravated fraud with intent to obtain public funds (Article 640 *bis* CC).

When the Constitutional Court was called upon for a ruling on the relationship between the offences provided for in Articles 640 *bis* and 316 *ter* CC, it issued Order No 95 of 2004 in which, after pointing out the similarity of the question with that raised in the past by the criminal offence provided for in Article 2 of Law No 898 of 23 December 1986, it found that ‘the subsidiary and residual nature of Article 316 *ter* CC in relation to Article 640 *bis* CC, whereby the former is designed to cover offences that do not fall within the scope of the second, is an absolutely unequivocal legislative fact.’ It thereby ruled out the automatic interchangeability of the conduct described in Article 316 *ter* CC (false statements or documents or attesting to facts that are not true) with that described in Article 640 CC, namely using devious and

deceptive means. However, it expressly stated that it was up to the courts to perform their 'normal interpretative task ... of determining whether, specific conduct corresponding to the offence described by Article 316 *ter* CC also corresponded to the profile described by Article 640 *bis* CC, in which case it should apply only the penalties under the latter provision'.

This was because the Constitutional Court considered that it was clear, partly from the concerns expressed during Parliament's work on the legislation, that Article 316 *ter* was intended to ensure that the interests to which it referred received 'complementary' protection in addition to that provided by Article 640 *bis* CC, to cover, in particular, any divergences - by failure to meet all the criteria - from the Criminal Code's definition of fraud [*truffa*] in relation to the offence of fraud [*frode*] 'in respect of expenditure'.

On the basis of these interpretations, the Court of Cassation was convinced that when evaluating a specific case, it is up to the court to establish, according to the context of the statement and taking account of the specific reference legal framework of the action, whether the conduct resulting in a false statement involved the 'devious means' (*artificio*) referred to in Article 640 CC, and, if so, whether this constituted misleading (*induzione in errore*) the person responsible for deciding whether to grant the funds requested. The conduct described by Article 316 *ter* CC can thus be distinguished from that described by Article 640 *bis* on the basis of the methods used, since the presentation of false statements or documents attesting to facts that are not true must be an 'act' structurally different from the use of devious and deceptive means; and is also distinguished by the absence of misleading conduct.

Thus, where misleading conduct and fraudulent conduct are combined, these must be examined on a case-by-case basis, as must all the specific circumstances of the particular case.

The Joined Chambers of the Court of Cassation ruled along these lines in judgment No 16568/2007, stating that '(...) the scope of Article 316 *ter* CC is thus confined to entirely marginal situations, such as mere undue silence, or conduct which does not actually mislead the person taking the funding decision.'

In short, as the specialist literature, in line with the above case law, has stressed, Article 316 *ter* CC 'is satisfied with less, relieving the prosecution of the need to provide further findings, applying where the other more serious offence has not been committed or cannot be proven, thereby making up for less intense protection with a wider range, partly by simplifying the evidential requirements.'

The second paragraph of Article 316 *ter* provides for a simple administrative penalty when the amount unduly obtained is EUR 3 999.96 or less.

The provision is linked to Article 2(2) of the Convention on the protection of the European Communities' financial interests, which authorises Member States to impose milder or non-criminal penalties in cases of 'minor fraud involving a total amount of less than ECU 4000...'

Article 640 *bis* of the Criminal Code provides that: 'The perpetrator shall be liable to a term of imprisonment of one to six years and shall be prosecuted automatically if the offence under Article 640 concerns grants, funding, subsidised loans or other payments of the same type, however they are designated, granted or awarded by the State, by other public bodies or by the European Communities'.

It has been said that this provision (introduced by Article 22 of Law No 55/90), together with Article 316 *bis*, introduced at almost the same time (by Article 3 of Law No 86/90) and the subsequent Article 316 *ter*, constitutes the Italian system for combating the fraudulent appropriation of public or Community funding. The legal interest protected is thus the integrity of public and Community property.

According to established case law, the offence under Article 640 *bis* CC constitutes an aggravating circumstance for the offence of fraud (*truffa*) under Article 640, and not an autonomous offence.

Article 640 *quater* of the Criminal Code.

Protection of the financial interests of the European Union is further reinforced by Article 640 *quater* CC, which was introduced by Article 3(2) of Law No 300/2000.

This Article provides that Article 322 *ter* CC (confiscation) applies to offences under point (1) of the second paragraph of Article 640 CC (attempt to defraud the State or another public body or to fraudulently have someone exempted from military service), Article 640 *bis* CC (aggravated fraud with intent to obtain public funds) and Article 640 *ter* CC (computer fraud).

Confiscation 'of the value or its equivalent' serves to restore the economic situation prior to the offence and remove from the assets of the perpetrator assets of a value corresponding to the profit or price of the offence.

Article 322 *bis* of the Criminal Code.

Article 322 *bis* CC also serves to protect the financial interests of the European Union. It was introduced by Article 3 of Law No 300 of 29 September 2000 ratifying and implementing the Conventions and associated Protocols referred to above, in order, firstly, to extend the scope of the offences of peculation, extortion, corruption and instigation to corruption to persons operating in different capacities in the sphere of the European Community, and secondly to strengthen the fight against international corruption by extending the application of Articles 321

	<p>and 322 to offences committed by private persons in respect of persons operating in the sphere of the European Community and officials of foreign countries and international organisations.</p> <p>Statutes of limitation</p> <p>The provisions listed above all treat the offences they cover as among the most serious offences, as compared to summary offences, and therefore impose prison sentences.</p> <p>This is obviously intended to provide an effective system of sanctions with a real deterrent effect on the fraudulent acquisition of public funds and fraud to obtain Community subsidies and grants.</p> <p>Since the offences concerned are criminal offences, the limitation periods are longer (provided for in Article 157 CC) than those for summary offences.</p> <p>Therefore, under Article 157 all the criminal offences referred to above are subject to the ordinary limitation period of six years, running from the time of the offence or, in other cases, from the time indicated in Article 158 CC.</p> <p>The limitation period is suspended in the cases provided for in Article 159 CC, and is interrupted by a number of judicial acts prior to the final judgment (Article 160 CC).</p> <p>In the last case, the interrupted limitation period starts to run again.</p> <p>However, the last paragraph of Article 159 CC provides that <u>the duration of the ordinary limitation period may not exceed seven years and six months for accused persons without prior convictions or 'simple' recidivism; nine years in the case of 'aggravated recidivism' (second paragraph of Article 99); ten years in the case of 'reiterated recidivism' (fourth paragraph of Article 99); or twelve years in the case of accused persons who have been declared habitual or professional criminals (Articles 102, 103 and 105).</u></p>
<p><b>CY</b></p>	<p>The concept/regime of “statute of limitation” – “prescription” does not exist in the criminal law context in Cyprus. Consequently, there is no legal provision concerning the statute of limitations for any offence. However, in accordance with established case law, the time of the commission of an offence and that of the prosecution for the offence may have an impact on the outcome of the trial. Delays and/or a long period of time which has elapsed from the commission of an offence until the prosecution may not prevent the instigation of proceedings; however, such a factor may be taken into account in the final judgment concerning the sanctions.</p>

	<p>Article 300 of the Criminal Code:</p> <p><i>“Any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen or induces any other person to deliver to any person money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, is guilty of a misdemeanour and is liable of imprisonment for five years”.</i></p> <p>Article 5 of the Convention on the Protection of the European Communities’ Financial Interests and its Protocols (Ratification) Law of 2003 [L.37(III)/2003].</p> <p>The sanction provided for the commitment of any of the offences provided in Article 5 (including this of fraud) is an imprisonment of a maximum of three years or a financial penalty of three thousand pounds or both these sanctions.</p> <p><b><u>With regards to the Agricultural Sector:</u></b></p> <p>Direct Payments Unit: We share the view that sanctions for fraud have a deterrent effect and investigations and prosecutions can be pursued for a sufficient period of time. This results from the Council Regulation 73/2009 and from the Law of the Cyprus Agricultural Payments Organisation.</p> <p>Regarding the Common Market Organisations Unit, all payments made are from European Union’s funds and thus the sanctions applied are the ones determined in the European Commission’s regulations. So far the Unit had only recoveries and no sanctions.</p> <p>Regarding the Rural Development Unit, the sanctions are determined only by the European Union’s regulations.</p>
<p><b>LV</b></p>	<p>Information on the limitation periods and deterrent effect of sanctions currently in place:</p> <p>Criminal Law of the Republic of Latvia</p> <p>Section 177. Fraud</p> <p>(1) For a person who commits acquiring property of another, or of rights to such property, by the use, in bad faith, of trust, or by deceit (fraud), the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine.</p>

(2) For a person who commits fraud, if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, community service, a fine, with or without confiscation of property,

(3) For a person who commits fraud, if it has been committed on a large scale, or committed in an organised group, or committed, acquiring narcotic, psychotropic, powerfully acting, poisonous or radioactive substances or explosive substances, firearms or ammunition, the applicable punishment is deprivation of liberty for a term of not less than two years and not exceeding ten years, with or without confiscation of property and with or without probationary supervision for a term not exceeding three years.

[12 February 2004; 13 December 2007/2; 8 July 2011; 13 December 2012]

#### Section 177.1 Fraud in an Automated Data Processing System

(1) For a person who knowingly enters false data into an automated data processing system for the acquisition of the property of another person or the rights to such property, or the acquisition of other material benefits, in order to influence the operation of the resources thereof (computer fraud), the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits computer fraud, if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, community service, a fine, with or without confiscation of property.

(3) For a person who commits computer fraud, if it has been committed on a large scale, or if it has been committed in an organised group, the applicable punishment is deprivation of liberty for a term of not less than two years and not exceeding ten years, or a fine, with or without confiscation of property and with or without probationary supervision for a term not exceeding three years.

[28 April 2005; 13 December 2007/2; 8 July 2011; 13 December 2012]

#### Section 7. Classification of Criminal Offences

(1) Criminal offences shall be divided into criminal violations and crimes according to the nature and harm of the threat to the interests of

a person or the society. Crimes are sub-divided as follows: less serious crimes, serious crimes and especially serious crimes.

- (2) A criminal violation is an offence for which this Law provides for deprivation of liberty for a term exceeding fifteen days, but not exceeding three months (temporary deprivation of liberty), or a type of lesser punishment.
- (3) A less serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding three months but not exceeding three years, as well as an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term not exceeding eight years.
- (4) A serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding three years but not exceeding eight years, as well as an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term exceeding eight years.
- (5) An especially serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding eight years or life imprisonment.
- (6) If this Law provides for deprivation of liberty for a term not exceeding five years for an offence, also a type of lesser punishment may be provided for therein for the relevant offence.

[21 May 2009; 1 December 2011; 13 December 2012]

#### Section 56. Criminal Liability Limitation Period

- (1) A person may not be held criminally liable if from the day when he or she committed the criminal offence, the following time period has elapsed:
  - 1) [21 October 2010];
  - 2) two years after the day of commission of a criminal violation;
  - 3) five years after the day of commission of a less serious crime;
  - 4) ten years after the day of commission of a serious crime;

- 5) fifteen years after the day of commission of an especially serious crime, except for a crime for which, in accordance with law, life imprisonment may be adjudged;
- 6) twenty years after the day of commission of a serious crime or especially serious crime if the crime was against morality and sexual inviolability of a minor, except a crime for which life imprisonment may be adjudged according to the law.
- (2) The limitation period shall be calculated from the day when the criminal offence has been committed until when charges are brought or the accused has been issued an official extradition request if the accused resides in another state and a search warrant has been issued for him or her.
- (3) The running of the limitation period is interrupted if, before the date of termination of the period prescribed in Paragraph One of this Section, the person who has committed the criminal offence commits a new criminal offence. In such case, the limitation period provided for the more serious of the committed criminal offences shall be calculated from the time of the commission of the new criminal offence.
- (4) The issue of the applicability of a limitation period, in respect of a person who has committed a crime for which life imprisonment may be imposed, shall be decided by a court if thirty years have passed since the day of commission of the crime.
- [20 May 2004; 28 September 2005; 12 October 2006; 21 October 2010; 1 December 2011; 13 December 2012]
- Section 62. Limitation Period on the Execution of a Judgment of Conviction
- (1) A judgment of conviction and an injunction of a public prosecutor regarding punishment may not be executed, if from the day when it comes into legal effect, it has not been executed within the following time periods:
- 1) within two years, if temporary deprivation of liberty, community service or a fine has been adjudged;
  - 2) within two years after serving of the punishment of deprivation of liberty, if the punishment - community service - is to be executed independently in the cases provided for in Section 52, Paragraph 2.1 of this Law;
  - 3) within three years, if deprivation of liberty has been adjudged for a term not exceeding two years;
  - 4) within five years, if deprivation of liberty has been adjudged for a term not exceeding five years;



	<p>5) within ten years, if deprivation of liberty has been adjudged for a term not exceeding ten years; and</p> <p>6) within fifteen years, if a more severe punishment has been adjudged than deprivation of liberty for ten years.</p> <p>(2) A limitation period is interrupted if a convicted person evades serving the punishment or before the time of expiration of the limitation period commits a new criminal offence for which a court has adjudged deprivation of liberty for a term of not less than one year. If a new criminal offence has been committed, the limitation period shall be calculated from the time of its commission, but if the convicted person has avoided serving the punishment, from the time he or she arrives to serve the punishment or from the time when a convicted person who has been in hiding, is detained. However, the judgment of conviction shall not be carried out if from the time it is rendered fifteen years have elapsed and a new criminal offence has not interrupted the limitation period.</p> <p>(3) The issue of a limitation period in respect of a person for whom life imprisonment has been imposed shall be decided by a court.</p> <p>[12 February 2004; 13 December 2007; 1 December 2011; 13 December 2012; 14 March 2013]</p>
<b>LT</b>	<p>In the Republic of Lithuania, fraud is defined by Article 182 of the Criminal Code entitled 'Fraud'. The following penalties are laid down for this crime: Community service or a fine, or restriction of liberty, or arrest, or imprisonment for a term of up to 3 years or, in the event of a serious crime, imprisonment for a term of up to 8 years. Both natural and legal persons are liable to prosecution for fraud.</p> <p>This issue directly relates to the Ministry of Justice.</p>
<b>LU</b>	
<b>HU</b>	<p>The definition of <i>the crime of budgetary fraud</i> entered into force on 1 January 2012. Act LXIII of 2011 introduced the new crime into Act IV of 1978 on the Criminal Code. The aim of the legislation was to make the regulation of crimes affecting the budget more consistent and usable. With the entry into force of Act C of 2012 on the Criminal Code (the new Criminal Code) on 1 July 2013 the above definition was taken across with some clarifications. Compared with the earlier Criminal Code, the making of false declarations in connection with budgetary payment obligations or with funds deriving from the budget is introduced as a form of criminal conduct. The intention is to make it clear that deception through the provision of false data when completing tax returns or reporting requirements electronically is included within the definition of this offence so that any form of false statement counts as a criminal offence. Budgetary fraud results in financial loss, and the penalties applicable reflect the extent of that loss.</p> <p>In order to make subsidies more transparent, the new definition ensures protection under criminal law against failure to comply or to comply</p>

fully with the obligation to provide information in respect of funds derived from the budget and against the provision of false information. The purpose of this is to ensure that funds derived from the central budget are used appropriately for their intended purpose, and that this is demonstrated by reliable documentation.

### **Budgetary fraud**

Section 396(1) of the new Criminal Code states that: "Those who

a) induce another person to act in error or to continue to do so, to make false declarations or to conceal the true facts regarding the obligation to pay into the central budget or regarding funds derived from the central budget,

b) gain unlawful advantage in respect of payment obligations to the national budget, or

c) divert funds derived from the central budget from their intended use,

and thereby cause financial losses to one or more budgets, shall be sentenced to up to two years' imprisonment for a misdemeanour.

(2) The offence shall be punished by up to three years' imprisonment, if

a) the budgetary fraud causes serious financial loss, or

b) the budgetary fraud specified in paragraph (1) is committed as part of conspiracy to commit unlawful acts or on a commercial scale.

(3) The punishment shall be between one and five years' imprisonment, if

a) the budgetary fraud causes significant financial loss, or

b) the budgetary fraud causing major financial loss is committed as part of conspiracy to commit unlawful acts or on a commercial scale.

(4) The punishment shall be between 2 and 8 years' imprisonment, if

a) the budgetary fraud causes particularly heavy financial loss, or

b) the budgetary fraud causing significant financial loss is committed as part of conspiracy to commit unlawful acts or on a commercial scale.

(5) The punishment shall be between five and ten years' imprisonment, if

- a) the budgetary fraud causes particularly significant financial loss, or
- b) budgetary fraud causing particularly great financial loss is committed as part of conspiracy to commit unlawful acts or on a commercial scale.
- (6) Persons who manufacture, purchase, keep, place on the market or trade in products subject to excise duty in violation of the conditions laid down in the Act on Excise Duty, special rules for the distribution of excisable products and in delegated legislation or who do so without valid permission and thereby cause financial loss to the budget shall be punished in accordance with paragraphs (1)-(5).
- (7) Persons who fail to comply with, or incorrectly comply with the above clearance, accountability or duty of disclosure obligations in connection with funds derived from the central budget, make false declarations, or use false or falsified documents shall be punished for the offence by up to 3 years' imprisonment.
- (8) The punishment may be reduced without limitation for persons who reimburse the financial loss caused by the budgetary fraud specified in paragraphs (1)-(6) by the submission of the indictment. This provision shall not apply to crimes committed as part of conspiracy to commit unlawful acts or on a commercial scale.
- (9) For the purposes of this Section:
- (a) 'budget' shall mean the budget of the subsystems of public finances (including the budget of social security funds and separate state funds), the budget administered on behalf of an international organisation, and the budget and funds administered by or on behalf of the European Union. In the case of a crime committed regarding funds derived from the central budget other than those listed above, budgetary shall also mean the budget and funds administered by or for a foreign state;
- b) 'financial loss' shall mean a revenue shortfall as a result of a failure to comply with obligations to pay into the national budget, or of funds being drawn illegally from the budget or diverted from their intended use."
- Section 26 of the new Criminal Code increased the severity of the rules on **limitation** as compared with the provisions previously in force. Under the Act, criminal liability is limited to the maximum punishment period for a given offence, but to no more than five years. When the criminal liability lapses, the perpetrator of the crime can no longer be held accountable or be punished.
- The Government has also made significant steps to speed up the justice process, given that the perpetrators of crimes cannot stay unpunished for years, and an final **judgment should be reached on each case within two years**.

	<p>This aim is laid down in the section of Act XIX of 1998 on criminal proceedings (Section 176), pursuant to which the investigation must take place in the shortest time possible and must be concluded within two months of ordering the investigation and the commencement thereof. This time limit of two months for investigating a case may be extended only where the case is complex or involves insurmountable obstacles. Only the head of the Public Prosecutor's Office or the Director-General of Public Prosecutions shall be authorised to grant further extension orders (providing strict conditions are met).</p>
<b>MT</b>	<p>Our prescriptive time limits (Art. 688 criminal code) vary according to the punishment attributed to the offence. Punishment for fraud can result in up to seven years imprisonment which translates into a prescriptive time period of ten years (when amount exceeds €2,329.37). In cases of amounts varying between (€32.94) and (€2,329.37), the punishment shall be imprisonment from five months to three years, thus bringing the period of prescription to five years. In cases where the amount does not exceed €2,329 the prescriptive period is of two years. It is also worth noting that the period of prescription in respect of crimes shall not commence to run when the offender is unknown.</p>
<b>NL</b>	<p>Forgery is punishable under Article 225 of the Dutch Criminal Code. This will generally also cover fraud involving EU funds and provides an adequate basis for criminal prosecution. Article 225 imposes a maximum penalty of 6 years' imprisonment, and the statute of limitation, laid down in Article 70 of the Criminal Code, is 12 years. This penalty and the statute of limitation appear to be sufficient in practice. When the European Directive referred to above has been adopted it will be duly implemented.</p>
<b>AT</b>	<p>No Response.</p>
<b>PL</b>	<p>Criminal sanctions for fraud and subsidy fraud as provided for in Polish law are sufficiently strict to have a deterrent effect. Fraud is punishable by imprisonment for a period of six months to eight years. Subsidy fraud is punishable by imprisonment for a period of three months to five years. If an offender's action results in the transfer of funds from the EU budget using false or inaccurate documents or statements, any offences committed are treated cumulatively under both provisions, with punishment determined based on the provision for fraud. Polish law thus complies with the Directive on the protection of the EU's financial interests by means of criminal law. The period of limitation for both types of offence is 15 years, one of the longest in the EU.</p>
<b>PT</b>	<p>The national authorities are committed to implementing Community directives in force from when the time-limit for doing so starts to run. In addition, it should be pointed out that the penalty provided for in the proposal for a Directive for the offence of fraud (6 months to 5 years) has been applicable in Portugal since 1984, pursuant to Decree-Law No 28 of 20 January 1984, Articles 36 and 37 of which make it an</p>

	<p>offence to fraudulently obtain grants or subsidies, punishable by imprisonment of between 1 and 5 years, and in particularly serious cases between 2 and 8 years, and to divert a grant, subsidy or subsidised loan, punishable by imprisonment of up to 2 years, or between 6 months and 6 years when the amounts or losses involved are very high.</p> <p><b>RO</b> Fraud against the financial interests of the European Union, as defined in the PIF Convention, is addressed in the national legislation in <b>Law No 78/2000 on preventing, detecting and punishing corruption, as amended.</b></p> <p><b>Article 18<sup>1</sup></b></p> <p>(1) The act of using or presenting false, inaccurate or incomplete documents or statements in bad faith, where this has resulted in the granting of undue funds from the general budget of the European Union or the budgets administered by it or on its behalf, shall be punishable by <b>imprisonment for 2 to 7 years and withdrawal of certain rights.</b></p> <p>(2) The punishment referred to in paragraph (1) shall apply to intentional omission to provide the information required by the law in order to receive funds from the general budget of the European Union or the budgets administered by it or on its behalf, if that omission results in the undue granting of such funds.</p> <p><i>Time limit for prosecution: 8 years</i></p> <p>(3) Where the acts referred to in paragraphs (1) and (2) have had particularly serious consequences, <b>the special limits applying to the punishment shall be increased by half.</b></p> <p><i>Time limit for prosecution: 10 years</i></p> <p><b>Article 18<sup>2</sup></b></p> <p>(1) Unlawfully changing the intended use of funds from the general budget of the European Union or the budgets administered by it or on its</p>
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behalf, shall be punishable by **imprisonment for 1 to 5 five years and withdrawal of certain rights**.

(2) Unlawfully changing the intended use of a lawfully obtained benefit, where this results in an unlawful reduction in the resources of the general budget of the European Union of the budgets administered by it or on its behalf, shall be sanctioned by applying **the punishment referred to in paragraph (1)**.

*Time limit for prosecution: 5 years*

(3) Where the acts referred to in paragraphs (1) and (2) have had particularly serious consequences, **the special limits applying to the punishment shall be increased by half**.

*Time limit for prosecution: 8 years*

### **Article 18<sup>3</sup>**

(1) The act of using or presenting false, inaccurate or incomplete documents or statements in bad faith, where this has resulted in an unlawful reduction in the resources to be transferred to the general budget of the European Union or the budgets administered by it or on its behalf, shall be punishable by **imprisonment for 2 to 7 years and withdrawal of certain rights**.

(2) The punishment referred to in paragraph (1) shall apply to intentional omission to provide the information required by the law, where this has resulted in an unlawful reduction in the resources to be transferred to the general budget of the European Union or the budgets administered by it or on its behalf.

*Time limit for prosecution: 8 years*

	<p>(3) Where the acts referred to in paragraphs (1) and (2) have had particularly serious consequences, <b>the special limits applying to the punishment shall be increased by half.</b></p> <p><i>Time limit for prosecution: 10 years</i></p> <p><b>Article 18<sup>4</sup></b></p> <p>Attempts to commit the criminal offences referred to in Sections 18<sup>1</sup>-18<sup>3</sup> shall be punishable.</p> <p><b>Article 18<sup>5</sup></b></p> <p>Culpable breach of an official duty by a director, administrator or a person with decision-making or control tasks within an economic operator in the form of non-fulfilment or failure to discharge said duty properly, if the breach causes a subordinate acting on behalf of the economic operator concerned to commit one of the criminal offences referred to in Sections 18<sup>1</sup>-18<sup>3</sup> or an offence consisting in corruption or money laundering involving EU funds, shall be punishable by <b>imprisonment for 6 months to 3 years or a fine.</b></p> <p><i>Time limit for prosecution: 5 years</i></p> <p><b>The above shows that the punishments are sufficiently severe to act as a deterrent, and the risk of time limits expiring is extremely low.</b></p>
<p><b>SI</b></p>	<p>In its role as an AFCOS, the Ministry of Finance's Budget Supervision Office (UNP) supports the proposal for a Directive of the Parliament and the Council on the fight against fraud to the Union's financial interests by means of criminal law.</p> <p>It is our opinion that there is a need to support and facilitate procedures at the EU level to make protection in the fight against irregularities that are detrimental to the Union's financial interests more uniform, equivalent and effective. We are aware that protecting the EU's financial interests – despite the emphasis and concern focused on this area – is regulated differently across the Member States, with different levels of</p>

intensity and strictness being applied in individual Member States towards perpetrators, who can therefore act to the detriment of the EU's financial interests and taxpayers' money. We are also aware that this area is particularly sensitive in terms of state sovereignty over criminal law and legislation.

Unfortunately in practice the EU's financial interests are not equally protected at the EU level. Perpetrators of irregularities and fraud can therefore significantly exploit weaknesses in national systems of protection against fraud and irregularities in Member States, moving their activities to areas in which they face the fewest obstacles. It is vital therefore to do everything necessary to standardise protection at the EU level and to reduce the risk of differing practices and create a deterrence effect. In that light, we support steps and measures to standardise criminal law and the minimum criminal law rules protecting the EU's financial interests.

Fraud in Slovenia is addressed by Article 211 of the Criminal Code (Kazenski zakonik (KZ-1), Uradni list RS (UL RS – Official Gazette of the Republic of Slovenia), Nos 55/2008, 66/2008 - correction, 39/2009, 55/2009 – Const. Court Decision, 91/2011):

- (1) Any person who, with the intention of making an unlawful gain for himself or a third party by false representation or by the failure to disclose facts leads another person into error or keeps him in error, thereby inducing him to perform an act or to omit performance of an act that causes him or another person a loss, shall be sentenced to imprisonment for not more than three years.
- (2) Any person who, with the intention referred to in the preceding paragraph of this Article, when concluding an insurance contract provides false information or fails to disclose any important information, concludes a prohibited form of double insurance, concludes an insurance contract after an insurance or loss event has already occurred, or misrepresents a loss event, shall be sentenced to imprisonment for not more than one year.
- (3) If fraud was committed by at least two persons who colluded with the intention of fraud, or if the perpetrator committing the offence referred to in paragraph 1 of this Article caused a large loss, the perpetrator shall be sentenced to imprisonment for not less than one, and not more than eight years.
- (4) If the offence referred to in paragraph 1 or 3 of this Article is committed within a criminal association, the perpetrator shall be sentenced to imprisonment for not less than one and not more than ten years.



	<p>(5) If a minor loss results from the committing of the offence under paragraph 1 of this Article and if the perpetrator's intention was to acquire a minor gain, he shall be punished by a fine or sentenced to imprisonment for not more than one year.</p> <p>(6) Any person who, with the intention of causing a loss to another person by false representation or the failure to disclose facts, leads a person into error or keeps him in error, thereby inducing him to perform an act or to omit performance of an act that causes him or another person a loss shall be punished by a fine or sentenced to imprisonment for not more than one year.</p> <p>(7) The prosecution of the offences referred to in paragraphs 5 and 6 of this Article shall be initiated in response to a complaint.'</p>
<p><b>SK</b></p>	<p>Provisions relating to fraud within the meaning of the Convention on the Protection of the Financial Interests of the European Communities have been implemented within the Slovak Republic's legal order as an offence adversely affecting the financial interests of the European Communities (§ 261 to 263 of the Penal Code). That offence is punishable by a penalty of six months to three years imprisonment. In case of the existence of classified constituent elements of the offence (e.g., if damage exceeds EUR 133,000), the offenders shall be liable to a term of up to 12 years imprisonment.</p> <p>Within the implementation of projects financed from the EU budget, this also applies, in some cases, e.g., the crime resulting from deceitful practices in public procurement and public auction, within the meaning of § 266 to 267 of the Penal Code, is punishable by a penalty of six months to three years imprisonment, and in the case of the existence of classified constituent elements of the offence, the offenders can be sentenced to up to 12 years imprisonment.</p> <p>The punishability of those offences becomes extinguished by the expiry of the limitation period. The limitation period ranges from five to twenty years, depending on the seriousness of the offence.</p>
<p><b>FI</b></p>	<p>Penalties for fraud and irregularities relating to subsidies are laid down in the Finnish Criminal Code.</p> <p>The scale of penalties is graded according to the seriousness of the irregularity. Fraud involving a subsidy granted from the general budget of the European Communities or from budgets managed by or on behalf of the European Communities is treated by the Criminal Code in the same way as fraud involving a subsidy granted by the State, local government or any other public body.</p> <p>At the top end of the penalty scale, serious subsidy fraud is punishable by imprisonment for a minimum of four months and a maximum of</p>

	<p>four years. Subsidy fraud is punishable by fines or a maximum of two years in prison.</p> <p>The deterrent effect of the penalties is the same for fraud affecting national public resources as for fraud affecting EU resources.</p> <p>The statute of limitations for serious subsidy fraud is ten years and for subsidy fraud five years.</p>
<p><b>SE</b></p>	<p>The Swedish crime of fraud carries a maximum penalty of imprisonment for two years or, if the crime is gross, for six years. Other criminal offences corresponding to conduct described in the PIF Convention include subsidies fraud, dishonest conduct and embezzlement (all carrying a maximum penalty of imprisonment for two years), gross embezzlement (carrying a maximum penalty of imprisonment for six years), untrue affirmation, false certification or using a false document (all carrying a maximum penalty of imprisonment for six months or, if the crime is gross, for two years) and customs offence (carrying a maximum penalty of imprisonment for two years or, if the crime is cross, for six years).</p> <p>The limitation periods for the above-mentioned offences are two years (when the maximum penalty is imprisonment for six months), five years (when the maximum penalty is imprisonment for two years) or ten years (when the maximum penalty is imprisonment for six years).</p>
<p><b>UK</b></p>	<p>The UK welcomes efforts to protect EU funds and reduce fraud against the Budget and already has robust measures in place to tackle fraud. The General Approach on the PIF directive, agreed by Council in June 2013, is the subject of on-going negotiations in Brussels and we await the outcome of the European Parliament's discussions</p> <p><b>Department for Agriculture and Rural development (DEFRA):</b> DEFRA and the paying agencies have dedicated counter fraud resources of specialised trained staff whose primary function is to investigate case referrals in accordance with, and within the bounds of, legislation and procedures relevant to the undertaking of a criminal investigation. The aim is to provide evidence enabling the successful prosecution of, or withholding of payments to, persons who are suspected of fraud or have defrauded the relevant Department or contravened relevant legislation.</p> <p><b>Department for Works and Pensions (DWP):</b> The DWP treats any allegations of fraud by contractors very seriously. Any fraud is completely unacceptable. Where we identify or are notified of an allegation of contractor fraud, these cases are investigated thoroughly by DWP's professionally trained and experienced internal investigators. Investigations are conducted to a standard required to support reference to the Police whenever evidence of criminal offences is discovered.</p> <p>There are established procedures in place in DWP to deal with cases of suspected fraud arising from ESF activity. An agreed protocol is in</p>

	place to handle all cases identified by the Managing Authority during the course of its work (Article 13) or through a 'whistleblower' line. The <b>Welsh Government (WG)</b> has a zero tolerance approach to fraud and corruption and is committed to the delivery of an effective Counter Fraud and Corruption Strategy.
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**2.3. The most significant risks are confirmed – public procurement**

The Member States' responses to the questionnaire show that further progress is needed on monitoring the results of the administrative and criminal 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.**

<b>BE</b>	<p><u>Reply from Belgium, Chancellery of the Prime Minister, Public Procurement Department:</u></p> <ul style="list-style-type: none"> <li>- As the Commission is aware, the package of three new Directives on public procurement and concessions has now been approved by the European Parliament (15 January 2014). The new Directives will apparently be published in the Official Journal of the European Union on 28 March 2014 and will enter into force on 17 April 2014. Member States then have two years in which to transpose the directives into national law.</li> <li>Belgium agrees that it is necessary to have the above-mentioned Directives transposed as quickly as possible in the light of this recommendation. The new Directives contain a number of additional specific measures for dealing with fraudulent breaches of the public procurement legislation that do not feature in the current public procurement Directives (2004/17/EC, 2004/18/EC and 2009/81/EC). This is especially true of the following points: <ul style="list-style-type: none"> <li>- the general rule that Member States must ensure that contracting authorities take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators;</li> <li>- a series of (new and tougher) discretionary grounds for exclusion on the basis of which a contracting authority can deny an</li> </ul> </li> </ul>
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	<p>economic operator access to a public contract on the basis of elements/misconduct which damage integrity, give rise to a conflict of interest, are fraudulent or distort competition. (More specifically in cases where:</p> <ul style="list-style-type: none"> <li>o it can reasonably be established by any appropriate means that an economic operator is guilty of grave professional misconduct, which renders its integrity questionable;</li> <li>o the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;</li> <li>o a conflict of interest cannot effectively be remedied by other less intrusive measures;</li> <li>o a distortion of competition from the priori involvement of the economic operator in the preparation of the procurement procedure cannot be remedied by other less intrusive measures;</li> <li>o the economic operator has attempted to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.)</li> </ul> <p>- several (new and tougher) measures in the framework of a new 'administrative' component (enforcement policy via monitoring and supervision and the reporting thereof, support for contracting authorities and companies, and archiving of documents; requirements on reports and statistics; administrative cooperation between Member States).</p> <p>It should also be pointed out that the current Directives and the national legislation transposing them, already contain a whole series of provisions on the basis of which action can be taken against breaches of the regulations on conflicts of interest, competition distortion, fraud, etc.</p> <p>Moreover, in connection with the above, we would also stress the importance of the measures in the Act of 17 June 2013 on the grounds, information and means of redress in respect of public contracts and certain works contracts, supply contracts and service contracts, transposing the 'review directives' (Directives 89/665/EEC and 92/13/EEC, as amended by Directive 2007/66/EC). These Directives were not the subject of the above-mentioned reform of the European legislation on public contracts, nor indeed was Directive 2009/81/EC on public contracts and certain contracts in the fields of defence and security. □</p>
<b>BG</b>	The current Directives in public procurement field (Directives 2004/18/EC, 2004/17/EC, Directives 89/665/EEC, 92/13/EEC and

2007/66/EC and 2009/81/EC) are fully implemented in the Bulgarian Public Procurement Law, according to the terms, referred to therein. The undertakings to synchronise legislation in this area are within the remit of the Ministry of the Economy and Energy through the Public Procurement Agency.

The Managing Authorities of the various SCF-funded operational programmes have incorporated a requirement for preliminary controls of documentation and of the evaluation process in order to prevent infringements of public procurement procedures. On-going and follow-up controls of completed procedures and expenditure have also been incorporated and are automatically assigned within the context of on-the-spot checks and the expenditure verification process. This limits the possibility of certifying expenditure which has been affected by irregularities when the contracts are awarded.

In February 2014 a working group to implement the new European public procurement directives was set up. The initial draft of the Public Procurement Act is expected to be ready for public consultation by the end of September 2014, after which it will be sent for approval to the other relevant departments.

The Public Financial Inspection Agency (ADFI) is part of Bulgaria's internal State financial control system and plays an important part in monitoring public procurement contracts. The Agency's aims, objectives, principles, operational scope and functions are set out under the Public Financial Inspection Act (ZDFI), promulgated in DV No 33 of 21 April 2006, last amended in No 15 of 15 February 2013. Its bodies are responsible for follow-up controls of the legality of the budgetary, financial, economic and accounting activities of the organisations and persons defined in Article 4 of the Act, and of the award and execution of public contracts; their purpose is to detect infringements and signs of fraud, to establish the extent of losses incurred, to enforce financial and administrative penalties and to detect fraud and infringements affecting the European Union's financial interests. ADFI bodies are also assigned with assisting the European Commission's inspectors in the course of inspections or on-the-spot checks when an organisation refuses to voluntarily grant access to its premises and/or documents verification purposes, as specified in Council Regulation (EURATOM, EC) No 2185/96 of 11 November 1996.

In 2011 the State Financial Inspectorate Act (ZDFI) was amended (DV No 60 of 5.08.2011) in response to the findings and recommendations of the fourth annual report of July 2010 on Progress in Bulgaria under the Co-operation and Verification Mechanism. Due to shortcomings in checks of public contracts continuous risk assessment was recommended, as was a pro-active and result-oriented approach towards prevention and control, *inter alia* by increasing the capacity of the ADFI.

	<p>These legislative amendments create a new function allowing financial inspections of the award and performance of public contracts to be conducted on the basis of an approved and mandatory annual plan. The frequency of the financial inspections and the specific contracting authorities to be inspected in any given year will depend on an analysis of those authorities' activities and an assessment of the risk factors, allowing for the Agency's administrative capacity. This planned approach aims to prevent and reduce the risk of unmonitored spending of public funds, to impose greater discipline on contracting authorities and to give ADFI bodies greater legal authority to extend the scope of controls and to target the highest-risk contracting authorities. This approach has been in place since the start of 2012.</p>
<b>CZ</b>	<p>The Chamber of Deputies of the Czech Republic approved on November 28, 2013 the legislative measure of the Senate of the Parliament of the Czech Republic No. 341/2013 Coll., which amends the Act No. 137/2006 Coll. about public procurements with effect from 1.1.2014. The most significant change is retroactive increase limits for below limit and above limit of the public procurements. The public procurements for services or supplies with estimated value of up to 2 mil. CZK are considered to be small – scale procurements and does not need to be specified in the Act No. 137/2006 Coll.. For the public procurements on the structural works – the limit is 6 mil. CZK.</p>
<b>DK</b>	<p>The applicable public procurement directive, Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, was transposed by Order No 712 of 15 June 2011.</p> <p>To ensure the best possible implementation of the new, fully negotiated Public Procurement Directive, the Danish Government has established a public procurement committee whose task is to draw up a draft Danish Public Procurement Act. The committee is composed of interested parties with relevant experience and expertise. The committee members represent both public contracting authorities and tenderers. The committee became operational in September 2013, and its work is well underway. A draft Danish Public Procurement Act is expected to be ready by the end of 2014.</p> <p>The Concessions and Utilities Directives will be transposed in the form of Orders.</p>
<b>DE</b>	<p>The new EU public procurement directives of 26 February 2014, which enter into force on 17 April 2014, must be transposed into national law within three years of entry into force. The German Government was closely involved in the development of the new public procurement directives in 2013. It has already begun work on how to adjust national law so that transposition of this complex package of reforms can be completed within the two years provided for.</p> <p>The problem of susceptibility to error in the area of public procurement is well known and is being taken seriously. The complexity of the</p>

	<p>applicable legal provisions seems to be a cause of the many errors in this field. So simplifying the regulations might help decrease the risk of error. In addition, the competent authorities help to prevent errors in applying the law by means of training, advice, codes of practice or check lists.</p>
<p><b>EE</b></p>	<p>The Public Procurement Act, effective since 1 January 2013, states that the contracting authority shall enable the electronic submission of tenders and requests at least to the extent of no less than 50 percent of the financial capacity of public procurement planned by the contracting authority for the budgetary year. This legislative measure increases transparency in the public procurement procedure.</p> <p>The IT application update (commenced in 2013) that enables all procurement documents and all questions and answers during the course of public procurement to be accessed without limitations to all interested persons and without the need to log into the database. The update is live from 1 February 2014.</p> <p>In the Structural Funds national regulations there have not been any amendments concerning procurements in 2013. However, in 2013, the Managing Authority updated national guidance notes for Intermediate Bodies. The update included improving the procurement checklist which is obligatory for the Intermediate Bodies.</p> <p>Estonia is updating the Government Decree in 2014 to bring it into conformity with the Commission's updated guidelines for determining financial corrections to be made to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement.</p>
<p><b>IE</b></p>	<p>The transposition of these new rules is a priority for the Irish Government as it will make it easier for businesses to tender for procurement contracts. However, it is important to ensure that the transposition is carried out in a manner that maximises the aforementioned benefits. <u>This point has also been made by the Commission.</u> Ireland is keen to avail of the flexibility afforded by these Directives and with this in mind officials are prioritising this area of work with a view to completion by early next year.</p> <p>Although there are no significant national measures that were taken in this field during 2013, the Office of Government Procurement regularly publishes policy, circulars and guidance on the application of the Procurement Directives in specific circumstances. The most recent examples of such guidance would include <i>the Capital Works Management Framework</i> which provides a suite of best practice guidance.</p>

	<p>In addition, Ireland has rules and procedures, designed to reduce/mitigate corruption, that go beyond what is required under EU law. For example, the Ethics in Public Office Acts 1995 and 2001 which require Public Servants to disclose information which could have a material interest in a matter to which the function relates (e.g. a procurement function). In this regard, the person is prohibited from carrying out such a function unless there are compelling reasons requiring them to do so.</p>
<p><b>EL</b></p>	<p><b>BODY: Ministry of Development and Competitiveness</b></p> <p>In this field, since the new Directives on public procurement have not been published yet, we would like to state that the new EU Directives on public procurement will be transposed into Greek national law, in order to be implemented by the contracting authorities, by the competent bodies and will be approved by the country's competent legislative institutions, within the time limits provided for in these Directives.</p> <p>Please note that both Directives 2004/17/EC and 2004/18/EC and Directive 2007/66/EC on Judicial Protection have already been transposed into Greek national law under Presidential Decrees 59/2007 (Government Gazette, Series I, No 63), 60/2007 (Government Gazette, Series I, No 64) and Law 3886/2010 (Government Gazette, Series I, No 173), respectively.</p> <p>Under Law 4013/2011 (Government Gazette, Series I, No 204/15.9.2011), the Single Public Procurement Independent Authority (E.A.A.DI.SY.) was established in order to develop and promote the national strategy, policy and action in the area of public procurement, to ensure transparency, efficiency, coherence and the harmonisation of procurement and execution procedures for public procurement with national and European law, to continuously improve the legal framework for public procurement and check that it is respected by public institutions and contracting authorities.</p> <p>As the authority responsible for public procurement, among its other responsibilities, E.A.A.DI.SY is responsible for:</p> <ul style="list-style-type: none"> <li>• compliance with the rules and principles of European laws on public procurement,</li> <li>• harmonising national laws with EU laws,</li> <li>• supervising and coordinating the activity of central government bodies in the field of public procurement and can participate in</li> </ul>



	<p>collective bodies with powers regarding public procurement,</p> <ul style="list-style-type: none"> <li>• ensuring compliance with the rules and principles of European and national public procurement legislation and, in particular, suggesting adjustments to the competent national bodies for the proper harmonisation of national law with European laws,</li> <li>• providing an expert opinion on the legitimacy of any provision of the law or regulatory act related to public procurement and participating in the relevant legislative committees,</li> <li>• providing an expert opinion on the provisions of draft laws on public procurement before those are submitted to the Parliament,</li> <li>• providing an opinion, before a decree is issued, as to the part thereof which regulates public procurement issues.</li> </ul> <p>This Authority has been fully operational since the second half of 2012. During 2013, E.A.A.DI.SY, in accordance with the country's obligations as they arise from the financial assistance programme and are set out in the updated Memorandum of Understanding on Specific Economic Policy Conditionality, has taken the following actions to reform public procurement laws in Greece:</p> <ol style="list-style-type: none"> <li>1. It has established working groups with all the public sector bodies involved and which participate in drafting the legislative proposal to reform public procurement laws in Greece (April 2013).</li> <li>2. The legislative proposal was completed in December 2013 and is currently under public consultation. After public consultation, it will be submitted to the Greek Parliament for enactment. The legislative proposal already includes most of the new adjustments introduced under the new Directives, such as special provisions on the conflict of interests and the prevention of fraud.</li> </ol> <p>Standard issues on public procurement of works have already been updated and issued and the standard issues on public procurement of supplies, the use of which is mandatory for the Contracting Authorities, are to be finalised.</p>
<b>ES</b>	<p>Law 25/2013 of 27 December 2013 on the promotion of electronic billing and creation of a register of invoices in the public sector (Final Provision 3<sup>a</sup>) amends the Amended Law on Public Procurement (TRLCSF), approved by Royal Legislative Decree 3/2011 of 14 November 2011, in relation to the classification of contracting parties, evidence of solvency, procurement arrangements for State constitutional bodies</p>

	<p>and Autonomous Community legislative and monitoring bodies, and authentication of contracting documents by means of electronic signatures.</p> <p>Royal Decree-Law 8/2013 of 28 June 2013 on urgent measures to combat late payment by public authorities and support for local entities with financial problems (Final Provision 5<sup>a</sup>) amends the Amended Law on Public Procurement (TRLCSF) in order to grant powers with a view to acting as procurement entity for the centralised State procurement system governed by Articles 206 and 207.</p> <p>Royal Decree 696/2013 of 20 September 2013 amending Royal Decree 256/2012 of 27 January 2012 (development of the basic organic structure of the Ministry of Finance and Public Administration) establishes the Directorate-General for streamlining and centralising public procurement, the main mission of which is to promote, manage and monitor centralised procurement in the State public sector. Under this Directorate-General is the Centralised Procurement Board, a collegiate body which will be the procurement body for the state centralised procurement system in accordance with Article 316.3 of the TRLCSF and Article 22.3 of Royal Decree 256/2012 of 27 January 2012.</p> <p>Law 19/2013 of 9 December 2013 on transparency, access to public information and good government: this concerns several aspects, including public procurement.</p>
<p><b>FR</b></p>	<p>The French authorities consider that progress made in the negotiations for the future public procurement and concessions directives are likely to strengthen the instruments available to public purchasers and the authorities in general in the fight against corruption and irregularities when concluding public tender contracts.</p> <p>Many provisions of these future directives aim to enhance cooperation between Member States, increase professionalisation of public purchasers and intensify action taken by the authorities responsible for monitoring and controls. Furthermore, by making procedures simpler, by improving their transparency, by making clearer the impact of participation by an economic operator in consultations or in research prior to the launch of procedures, and by reducing the burden on companies, these future directives also address one of the main identified causes of abuse and breaches of public procurement law, i.e. the complexity of the legislation.</p> <p>Finally, they also allow for improved dissemination of best practice in these areas.</p> <p>The French authorities therefore fully subscribe to the objective of having these directives adopted quickly.</p>

<p><b>HR</b></p>	<p>Legal framework (measures) regarding public procurement are aligned with EU provisions and was twice amended (during 2013) according to needs and changes at the EU level.</p> <p>In order to set up and regulate public procurement in an appropriate manner and at the same time satisfy EU legislation, the Republic of Croatia adopted the <b>Public Procurement Act</b> (OG 90/11, 83/13, 143/13), which regulates procedures for the award of public contracts and framework agreements for the procurement of supplies, works or services, legal protection in relation to those procedures and the competences of the central state administration body competent for the public procurement system. Furthermore, the adoption of the Public Procurement Act brought about the enhancement of the implementation of public procurement by the elimination of administrative barriers (e.g. submission of documents in copy not in originals speeded up the process; obligatory announcement of documentation in open procedure enhanced transparency).</p> <p>This Act contains the <b>provisions which comply with the acts of the European Union</b><sup>23</sup>.</p> <p>Also, in order to have efficient and stronger control over public procurement procedures, the Act in <b>Article 197</b> lays down that control over the implementation of the Act is under the jurisdiction of the <b>central state administration body</b> responsible for the public</p>
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- Directive 2004/17/EC** of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004.),
- 2. **Directive 2004/18/EC** of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004.),
- 3. **Directive 2005/75/EC** of the European Parliament and of the Council of 16 November 2005 correcting Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 323, 9.12.2005.),
- 4. **Commission Directive 2005/51/EC** of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (OJ L 257, 1.10.2005.),
- 5. **Directive 2007/66/EC** of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ L 335, 20.12.2007.),
- 6. **Articles 2, 12 and 13 of Directive 2009/81/EC** of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence

procurement system. This central state administration body **carries out the control** with the aim of **preventing or remedying any irregularities** which could result or have resulted from the violations of the Act and subordinate regulations in the field of public procurement. **After** the carried out **control**, the central state administration body **issues to the contracting authority/entity and the proponent of control an opinion concerning the irregularities observed** and a recommendation on how to prevent or rectify such irregularities. **If**, during the control, the central state administration body **establishes one or more irregularities** with the features of a misdemeanour offence, **it shall instigate a misdemeanour procedure** against the contracting authority/entity before the competent misdemeanour court. Also, **control shall not be implemented if an economic operator seeking control in the procurement procedure concerned lodges an appeal** with the State Commission for Supervision of Public Procurement Procedures, or they failed to do so in the set out time limit.

Regarding the alignment procedure with EU legislation in the field of public procurement it has to be stressed that during 2013, there were 2 amendments to the Public Procurement Act, one in July and another in December 2013.

**As regards the first amendments to the Public Procurement Act (July 2013) one should bear in mind** that the implementation of the Act is influenced by laws in other areas, such as Criminal Code and Law on the legal consequences, criminal records and rehabilitation. **The main goal of amending the Act was the adjustment with the new Criminal act** (e.g. changes of criminal acts, new criminal acts), **amended the Law on legal consequences, criminal records and rehabilitation** (e.g. issuance of a special certificate that contains restricted information from criminal records i.e. enabling clients to test circumstances for which a particular economic operator shall be excluded from the procurement procedure) **and new EU provisions** (e.g. electronic public procurement). Other changes included matters such as electronic submission of offers, an obligation to provide clarification of the bidding documents (lowering the risk of irregularities) and to speed up procurement procedures including appeals.

**As regards the second amendments to the Public Procurement Act (December 2013), changes included the following:**

- **increasing the threshold** for the estimated value of procurement to which there is no obligation to adhere to the Public Procurement Act to 200,000.00 HRK for goods and services and 500,000.00 HRK for works;
- appropriately allowing **the possibility of joint procurement** by central public procurement bodies established in another Member State;
- public works contracts for the construction of facilities for culture, that contracting authorities subsidize or co-finance with more

	<p>than 50% are exempted from the application of the Act, as these facilities are not covered by Article 8 of the Directive 2004/18/EC;</p> <ul style="list-style-type: none"> <li>• tenderers or candidates in the process of pre-bankruptcy settlement may participate in public procurement procedures, if they settled their tax and other prescribed charges after the opening of pre-bankruptcy settlement;</li> <li>• the fees for initiating appeal proceedings are redefined;</li> <li>• statute of limitations is harmonized with the Misdemeanour Act.</li> </ul> <p>Furthermore, another important implementing measure, regarding the central state administration body responsible for the public procurement system, is <b>Regulation on control over the implementation of the public procurement act (OG 10/2012)</b>. This Regulation governs authorisations of the central state administration body responsible for the public procurement system (Ministry of the Economy), the procedure and other important issues related to control of the implementation of the Public Procurement Act and subordinate legislation in the field of public procurement.</p> <p><b>Act on the State Commission for Supervision of Public Procurement Procedures (OG 18/2013, 127/13)</b> contains provisions that have been <b>aligned with Directive 2007/66/EC</b> of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC, <b>with regard to improving the effectiveness of review procedures concerning the award of public contracts</b>. The <b>State Commission</b> is an <b>autonomous and independent government</b> body responsible for considering appeals in connection with public procurement. <b>In an appeal procedure</b>, the State Commission decides on the legality of procedures, actions, failure to act and decisions taken in public procurement procedures, concession award procedures and procedures for selection of private partners in public private partnership projects and on the legality of public procurement contracts and framework agreements concluded without prior implementation of public procurement procedures. The State Commission shall submit accusatory motions in relation to misdemeanours set forth in this Act and other regulations in the field of public procurement. The State Commission is <b>accountable</b> for its operation <b>to the Croatian Parliament</b>. Any attempt to exert <b>influence on the State Commission</b> and its decision-making is <b>prohibited</b>.</p>
<b>IT</b>	As reported in the PIF questionnaire, Law No 190 of 6 November 2012 laying down provisions on the prevention and punishment of corruption and unlawful conduct in the public administration came into force in 2013.
<b>CY</b>	Commission's Decision C(2013) 9527 of 19/12/2013 for setting out guidelines for determining financial corrections to be made for non-compliance with the rules on public procurement, has begun to be used as a guideline in 2013 for cases of detected irregularities.

<b>LV</b>	<p>The Law of 20 June 2013 amending the Public Procurement Law entered into force on 1 August 2013, 20 September 2013, 18 October 2013 and 1 January 2014. It imposes an obligation on the Procurement Monitoring Bureau to impose administrative penalties for violations in the field of public procurement. The amendments also provide higher thresholds for procurement procedures below the EU thresholds, currency exchange from the lats to the euro on grounds of Latvia's accession to the euro zone, obligation for local governments and their institutions to carry out procurement procedures in the central purchasing system, as well as the application of the electronic information system for the purpose of verifying the exclusion criteria.</p> <p>The Law of 12 September 2013, amending Law on the Procurement of Public Service Providers, entered into force on 27 September 2013. It provides the right for public service providers to conclude the contract for the period longer than five years in special cases (thus equating the regulation to Public Procurement Law). The amendments also provide currency exchange from the lats to the euro, on the grounds of Latvia's accession to the euro zone.</p>
<b>LT</b>	<p>The current Public Procurement Act of the Republic of Lithuania (hereinafter - 'the Act') and relevant secondary legislation lay down measures aimed at preventing fraud and corruption in the area of public procurement. The Act requires the contracting authority to reject a supplier's tender if the supplier who is a natural person or the manager of a supplier that is a legal person or a partner of a partnership authorized to enter into a contract on behalf of the legal person, or a financial officer or another person authorized to draw up and sign the accounting documents of the supplier has been the subject of a conviction which has not yet expired or has not yet been revoked or the supplier (a legal person) has, within the last five years, been the subject of a binding judgment of conviction for participation in and establishment or leadership of a criminal organisation, bribery, bribery of an intermediary, corruption, fraud, misuse of a credit, loan or targeted assistance or failure to use the same in accordance with the established procedure, credit fraud, non-payment of taxes, provision of incorrect information on income, profit or assets, failure to submit tax returns, reports or any other documents, illegal acquisition or sale of assets or legalisation of illegally acquired cash or assets, or the suppliers of other Member States have been the subject of a binding judgment of conviction for offences defined in Community legislation referred to in Article 45(1) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.</p> <p>The Act requires it to be ensured that, when implementing procurement procedures and determining the winning bidder, the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency are complied with. Accordingly, no public procurement committee member and expert may take part in the committee's deliberations unless they have signed a declaration of</p>

	<p>impartiality.</p> <p>The measures provided for in the Act ensure the transparency of the public procurement process from as early as the planning phase: information is publicly available free of charge in the central public procurement information system on the annual public procurement plans of the contracting entity, draft technical specifications, procurement documents and information on the progress of the procurement procedure, the winning bidder and the contract which it is intended to conclude or which has been concluded, etc.</p> <p>With a view to stepping up the fight against corruption in public procurement and preventing infringements of the public procurement rules, the Act as amended in 2013 requires the contracting entity to publish the procurement contract, the winning bidder's tender and latest amendments to the procurement contract in the central public procurement information system. This measure will help to ensure compliance with the principle of equal treatment of suppliers when implementing the procurement contract and prevent infringements of the public procurement rules when drawing up and implementing the procurement contract so that the conditions specified in the winning bidder's tender are not amended.</p> <p>Electronic and centralised procurement increase the transparency and effectiveness of public procurement and reduce the opportunities for abuse. It should be pointed out that the value of electronic procurement in Lithuania in 2013 was 90% of the overall value of published procurement, and the number of electronic procurement operations accounted for 87.1% of the total number of procurement operations.</p> <p>With a view to expanding centralised public procurement, the public agency CPO LT was established on 9 November 2012. On 1 January 2013, it was granted the right to perform the functions of central contracting authority at national level.</p> <p>The Public Procurement Act was accordingly amended in 2013 to require contracting authorities (with the exception of diplomatic missions of the Republic of Lithuania, consular offices abroad and representations of the Republic of Lithuania to international organisations), with effect from 1 January 2014, to acquire goods, services and works from or via the central contracting authority where the goods, services or goods offered in the latter's catalogue meet the requirements of the contracting authority concerned and it is unable to acquire them more effectively through the rational use of the funds allocated for them.</p>
<b>LU</b>	This issue is essentially covered by the public procurement legislation, which is the responsibility of the Ministry of Sustainable Development and Infrastructure.
<b>HU</b>	When drafting <b>Act CVIII of 2011 on Public Procurement (the new Public Procurement Act)</b> and the amendments which entered into

	<p>force on 1 July 2013, the legislators took into account the European directives which underpin the budget reform package, and therefore several provisions relating to the reform package in the new Criminal Code are expressly forward-looking. For example, it refers to the simplification and the reduction in the administrative burden (e.g. under the new directives attestation of the data obtained from electronic databases cannot be requested from tenderers), the codification of terms and conditions for amendments to contracts developed by the European Commission, the regulation of the responsibilities of external bodies in examining eligibility and the prohibition on breaking apart a "single" public procurement service construed using a functional approach.</p> <p>The new Public Procurement Act may also serve in future to bring about a decrease in the high rate of fraud observed in the field of public procurement, particularly given that the inspection of public procurement is bound by strict conditions and orders.</p>
<b>MT</b>	<p>The Department of Contracts was heavily involved in the drafting of these Directives, so much so that the department represented Malta at numerous technical meetings of the Working Party on Public Procurement of the European Commission held regularly during 2013.</p> <p>The department also formulated a policy document on the transposition and implementation of these Directives entitled:</p> <p><b>BRIEFING PAPER – THE INTRODUCTION OF THE NEW EU DIRECTIVES ON PUBLIC PROCUREMENT – THE CHALLENGE AHEAD</b></p> <p>Currently the department is in the initial stages of preparation in order to start the transposition of these Directives.</p>
<b>NL</b>	<p>The new Procurement Act (2012) came into force in April 2013. It complies with European regulations and contains the legal framework of principles underlying public procurement. Both the ESF and the ERDF have adequate procedures to ensure that procurement is lawful. For example, a meeting is held with the tenderers before the project to draw their attention to the procedures, and the procurement procedure is checked at the request of the body or the applicant. In addition, the Social Affairs and Employment Agency (<i>Agentschap SZW</i>), part of the Ministry of that name, checks each procurement procedure after the final report has been submitted.</p>
<b>AT</b>	No Response
<b>PL</b>	Public procurement is the largest market involving EU funds. To protect these funds adequately, Polish law has recognised them as public



	<p>resources. Consequently, their disbursement is subject to adequate conditions and procedures laid down in the correspondent legal acts related to public procurement rules.</p> <p>The number of identified cases of irregularity or fraud in public procurement is proportional to the number of projects co-financed from public (including EU) funds, where beneficiaries must comply with public procurement law. The number of breaches of public procurement law stands out from statistics on breaches in other areas. One reason for the high rate of breaches of public procurement law has been the complex nature of the subject, which is problematic for all beneficiaries implementing additional projects, especially those with limited experience in public procurement rules. Irregularities in public procurement, although frequent, rarely constitute fraud, instead generally involving failure to meet deadlines, using incorrect procedures for awarding a contract or other procedural oversights by beneficiaries.</p> <p>The fact that so many irregularities in public procurement are detected attests mainly to the effectiveness of current controls at various stages of project implementation.</p>
<b>PT</b>	<p>The national authorities are committed to implementing Community directives in force from when the time-limit for doing so starts to run.</p>
<b>RO</b>	<p>The following measures have been taken in order to speed up procurement procedures with a view to increasing the effectiveness of the public sector:</p> <p><b>I. Legislative measures:</b></p> <ol style="list-style-type: none"> <li>1. Government Decision No 183/2013 amending Government Decision No 925/2006 approving implementing rules for the provisions on awarding public procurement contracts laid down by Government Emergency Order No 34/2006 on awarding public procurement contracts or concession contracts for public works or services; <ul style="list-style-type: none"> <li>- <i>new ex ante prevention mechanisms for conflicts of interest have been introduced.</i></li> </ul> </li> <li>2. Government Emergency Order No 35/2013 amending Government Emergency Order No 34/2006 on awarding public procurement contracts or concession contracts for public works or services;</li> </ol>

- time limits have been introduced for each stage of the main procurement procedures, which previously depended exclusively on the will and actions of the contracting authority concerned; provisions on penalties for exceeding these limits have also been added.

3. Law No 193/2013 approving Government Emergency Order No 77/2012 amending Government Emergency Order No 34/2006 on awarding public procurement contracts or concession contracts for public works or services;

- the thresholds for mandatory advertisement at EU level have been adjusted, to bring them in line with the new EU provisions; an obligation to notify via the electronic public procurement system has been imposed on the contracting authorities, in respect of direct procurement exceeding the RON equivalent of EUR 5 000 excluding VAT; the deadline for checks on the award documentation by the National Regulatory and Monitoring Authority for Public Procurement ('ANRMAP') has been reduced from 14 to 10 days; the deadline for the evaluation of award documentation resubmitted following a rejection by the ANRMAP has been shortened to 3 days, and the deadline for checking corrigenda to calls to tender/notices of tender has been shortened to 2 days.

## II. Other measures:

- To provide real assistance for the contracting authorities, the Ministry of European Funds has drawn up a **Guide on the main risks detected in the area of public procurement** and the European Commission's recommendations to be followed by the managing authorities and the intermediate bodies when verifying public procurement procedures, **with a view to ensuring a coherent approach and uniform interpretation of the legal provisions by all the bodies involved in public procurement**. The Guide was published in Official Gazette of Romania Part I No 481 of 1 August 2013.

- The National Regulatory and Monitoring Authority for Public Procurement has drawn up a draft **Guide on best practices in the area of public procurement for projects funded from structural instruments**, intended mainly for contracting authorities involved in managing structural instruments in Romania, as a useful tool in **ensuring uniform practices in the area of public procurement**.

To raise awareness of the shortcomings of the management and control systems in the area of public procurement and to mitigate the difficulties affecting the process of preventing and detecting conflicts of interest/fraud in the context of public procurement procedures, **the following two mechanisms have been implemented:**

	<ul style="list-style-type: none"> <li>• <b>Ex ante mechanism for detecting potential conflicts of interest in the context of public procurement procedures</b>(approved by the Romanian Government, by Memorandum, on 5 April 2013) <ul style="list-style-type: none"> <li>- this is a new, horizontal measure which applies to all public procurement procedures, not just to those financed from structural and cohesion instruments, and provides that, where following an examination the observers find potential breaches of the applicable legal provisions, they are to make remarks in the documents drawn up by the contracting authority in the course of the evaluation process.</li> <li>• <b>Ex post mechanism for checking cases of conflicts of interest/fraud in the context of public procurement procedures</b> <ul style="list-style-type: none"> <li>- this is a new, sector-based measure applying to contracts under public procurement procedures financed from structural and cohesion instruments. Under this mechanism, the managing authorities carry out ex post checks on bids and contracts under public procurement procedures, including conflicts of interest, both at the time of the signing of the contract and during the implementation phase, and the presence of suspicions of fraud.</li> </ul> </li> </ul> </li> </ul>
<b>SI</b>	<p>The Public Procurement Act (UL RS, No 12/13 – official consolidated version; hereinafter: ZJN-2), adopted in November 2012, was amended to reduce the risk of corruption and fraud in public procurement. Two important measures were added to the act:</p> <ul style="list-style-type: none"> <li>• All parties involved in a public procurement procedure or the preparation of technical specifications and selection criteria must be informed of the intent to award a public contract to a specific supplier so that the contracting authority may be notified of the existence of any conflict of interest relating to that supplier – Article 79(7)-(10) ZJN-2;</li> <li>• Additions (annexes) may only be concluded, if the supervisory authority informs the contracting authority in advance that it may do so – Article 29(7) ZJN-2.</li> </ul> <p>The amendments entered into force on 30 December 2012 and the implementation of the provisions began in 2013. To date the Ministry of Finance, which is responsible for the public procurement system, has not found any obstacles arising from the new provisions on notifying conflicts of interest. Some contracting authorities have reported delays in concluding annexes for additional services and construction. Nevertheless, the Ministry of Finance assesses that the number of negotiated procedures without prior publication of a contract notice will drop in 2013. This would be of benefit, because these procedures are associated with a significant risk of corruption, due to their low level of transparency.</p>

Information is provided below on measures to increase transparency and improve the fight against corruption that have already been included in public procurement procedures in Slovenia and already implemented:

- Low national thresholds for the publication of notices on the public procurement platform (procurement portal) – Article 12(2) ZJN-2 (UL RS, Nos 128/06, 16/08, 19/10, 18/11, 43/12 – Constitutional Court decision and 90/12)
- Mandatory public opening of tenders – Articles 75-76 ZJN-2
- Mandatory publication of a notice for prior contract [*translator's note: the cited Article refers to a 'voluntary notice for prior transparency'*] in a negotiated procedure without prior publication of a contract notice – Article 63b ZJN-2;
- Tenderers must be notified in advance of the final round of negotiations in a negotiated procedure (with or without prior publication of a contract notice) to ensure equal treatment – Article 28 (3) and 29(6) ZJN-2
- Tighter rules for public procurement contracts in the private ownership of a legal person, if they are financed or subsidised by public funds – Article 13 ZJN-2
- Mandatory annual publication of individual contracts awarded on the basis of the Framework Agreement – Article 32(11) ZJN-2
- Possibility of viewing tenders received and all documentation relating to public procurement contracts referred to in Articles 22(7) and 22(6) ZJN-2
- Introduction of many minor infringements that are punishable by a fine (EUR 7 500-300 000 for legal persons and EUR 500-6 000 for officials in public procurement and their supervisors) – Articles 109 and 109c ZJN-2
- Contracts must include an anti-corruption clause that makes it easier to enforce nullity of contract – Article 14 of the Integrity and Prevention of Corruption Act (ZIntPK; UL RS, No 69/ 11 – official consolidated text)
- Persons responsible for public procurement must communicate information on their financial situation to the Commission for Prevention of Corruption once a year – Articles 41-46 ZIntPK
- Contracting authorities must adopt an integrity and corruption risk assessment plan – Article 47 ZIntPK.

In 2013, as the managing authority (MA) for implementation of the Cohesion Policy in Slovenia, the Ministry of Economic Development and Technology (MGRT) organised nine well attended training sessions and workshops on public procurement for employees of institutions involved in implementing cohesion policy (managing authority, intermediate bodies and agents). By mid-February 2014 another five similar sessions had been organised. The MA also prepared an impact assessment of the public procurement system's effect on the drawing down of Cohesion funds, primarily in terms of delays resulting from legal remedy proceedings (numerous reviews). As part of

	<p>its core function, the MA's control unit regularly tests the correctness of public procurement procedures, if the beneficiary is a direct budget user. Additionally, as part of its on-the-spot checks, the MA's control unit also verifies beneficiaries' implementation of public procurement contracts, as well as the type and level of costs occurring in co-financed operations.</p>
<p><b>SK</b></p>	<p>In the field of legislation, all EU Directives on public procurement in force have been transposed into the current Slovakia's public procurement act.</p> <p>Following the amendments to the Public Procurement Act of 2013, a number of procedures and institutes to strengthen competition and transparency principles in public procurement processes have been or will be introduced, e.g., the introduction of the central register of references regarding the technical and professional capacity of individual tenders; limitations for concluding the riders rising the price of the contract performance; the introduction of a contractual term for the adjustment of prices in repeated contractual performance due to the market changes; possibility to annul a tendering procedure if not more than 2 bids are submitted; the contracting authorities obligation to publish, on its profile, relevant information and tender documentation; the introduction of the electronic marketplace; setting up the Public Procurement Authority Council to address appeals by tenderers against the Public Procurement Authority's decisions on the objections; the introduction of mandatory certification of devices and e-auction systems; the introduction of the option for ex-ante controls of documentation prior to its publication by the contracting authority; the introduction of a register of persons debarred from the participation in the procurement procedure.</p> <p>General measures to address shortcomings detected by the controls are:</p> <ul style="list-style-type: none"> <li>- enhanced assistance from the Public Procurement Authority, through Cooperation Agreement (ex-ante control, opinions, consultation, methodological assistance, cooperation in treating the audit findings), for the entities conducting controls of the public procurement;</li> <li>- introduction of risk analysis carried out at the public procurement control conducted by the managing authority, which, in case of occurred risk, implies a necessity to cooperate with the Public Procurement Authority;</li> <li>- development of model documents used in the process of public procurement (e.g., tender specifications, proposals for calls used in the public procurement processes);</li> <li>- introduction of mandatory ex-ante control of documentation by the managing authority (checking the draft of tender specifications and publication of contract notice prior to its publication);</li> </ul>

	<p>- setting up cooperation with the Anti-monopoly Office of the Slovak Republic to set out measures for increasing the protection of competition.</p>
<b>FI</b>	<p>The package on the reform of public procurement directives was not completed in 2013. No significant national measures were taken in this field in 2013.</p>
<b>SE</b>	<p>Implementation of the new public procurement directives is major legislative project. To enable implementation to take place in time, the legislative work was launched in autumn 2012 with the appointment of a commission of inquiry. The objective is that the directives will be transposed into Swedish law in spring 2016, i.e. before the implementation deadline (two years from entry into force).</p> <p>In 2013, the Government produced a proposal on the introduction of an express obligation for municipalities and county councils to monitor and follow up activities conducted by private-sector providers. A private-sector provider is defined as a legal person or individual which/who is in charge of a municipal matter. Municipally-owned companies are not "private-sector providers". The proposal will be examined by the Council on Legislation and submitted to the Riksdag in 2014. It is proposed that it will mainly come into force on 1 January 2015.</p>
<b>UK</b>	<p><b>DWP:</b> The DWP has deployed an IT system automating the interface between the department and its contractors. This has enabled automated controls via the interface validating contractor claims prior to payment and facilitating additional targeted controls therefore intercepting / preventing potentially irregular / fraudulent claims. This system is being rolled out and the aim is to have all contractors on the system.</p> <p><b>DWP:</b> A general point here is that there are several levels of compliance for ESF programmes in England so it is not just the Audit Authority, Managing Authority, the EC, European Court of Auditors but other bodies such as the National Audit Office and the European Social Fund providers' own compliance teams are all involved in checking of providers and claimed activity.</p> <p><b>WG:</b> Welsh European Funding Office's (WEFO) Article 71 Report on Management and Control Systems outlines the procedures and systems in place for ensuring that Structural Funds paid out and declared to the Commission comply with Community and National rules. These procedures include a combination of robust due diligence checks during appraisal, external project audits, administrative verification</p>

<p>checks by the Payments Team and on the spot verifications by the Project Inspection and Verification Team.</p> <p>Procedures are constantly under scrutiny by the Certifying Authority and subject to a rolling programme of examination by the Audit Authority. Enhancements are introduced to procedures as opportunities for improvement are identified. In 2013 a series of training events was run by the Welsh Government's Head of Counter Fraud for WEFO staff.</p> <p><b>DEFRA:</b> In the UK, the main schemes that involve procurement are financed under European Agricultural Fund for Rural Development (EAFRD) and primarily involve capital-build projects. Scheme rules require the work to be tendered on national procurement websites and the Official Journal of the European Union where contract value is of sufficient level. The monitoring by Managing Authority and Paying Agency officials of project applications, focus on procurement as being a key control.</p> <p><b>Department for Communities and Local Government (DCLG)</b> has been working to strengthen first level controls and have kept DG Regio fully informed of progress in this area.</p>	
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**2.4. The most significant risks are confirmed – cohesion policy**

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.**

<p><b>BE</b></p>	<p>No Response.</p>
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<b>BG</b>	No Response.
<b>CZ</b>	No Response.
<b>DK</b>	The Danish Business Authority is of the view that in Denmark there is a low level of fraud involving the Structural Funds. All irregularities are assessed specifically for evidence of fraud, and any identified cases of fraud will be reported to OLAF as such. Efforts to detect fraud are subject to constant assessment, and consideration is being given to testing ARACHNE with a view to determining whether this tool should be introduced and, if so, to what extent.
<b>DE</b>	DE not affected.
<b>EE</b>	No Response.
<b>IE</b>	While Ireland is not specifically highlighted, the detail in relation to effective and proportionate anti-fraud measures in the new programme round is being finalised by the Irish authorities in the context of the development of the Partnership Agreement and Operational Programmes.
<b>EL</b>	<p><b>BODY: Ministry of Finance – General Accounting Office of the State – Fiscal Control Committee (EDEL) - Directorate: 52-Planning and Evaluation of Audits</b></p> <p>Regarding the measures taken to date to detect fraud, EDEL, as the Supervisory Authority of OP Objectives 1, 2 and 3 of the NSRF and the OP Fisheries 2007-2013, has drawn up an Audit Manual, which has been updated three (3) times since the issuing of the original version and which refers to its actions to prevent and combat fraud, which can be summarised as follows:</p> <ol style="list-style-type: none"> <li>1) The questionnaire of the audit system has been enriched with specific questions so that the auditors may verify, during the system audits, whether the system's bodies implement any procedures to prevent and combat fraud. Moreover, during the EDEL system audits, information is requested on the cases for which the management bodies have expressed suspicions of fraud, as well as the relevant measures they have taken, and EDEL auditors take into account the relevant results for the evaluation of the audited body.</li> <li>2) When preparing the audits on the system and actions, fraud indicators - as referred to both in audit standards and the EU guidance</li> </ol>



note - are taken into account to assess the risks of certain questions or audit points, whereas, during EDEL audits, fraud indicators are taken into account to verify the documents or evidence of each audit. If suspected fraud is suggested, EDEL decides on communicating this report to every competent national authority for further investigation. In particular, under the protocol of cooperation between (the Inspectors-Controllers Body for Public Administration) SEEDD and EDEL, the report of the final audit results is communicated to SEEDD when the audit relates to bodies which are of interest to both EDEL and SEEDD and an essential finding or suspicion of fraud is included therein. SEEDD, takes into account these risks when planning its auditing schedule and conducts inspections to investigate any fraud/corruption or mismanagement phenomena. Subsequently, SEEDD sends EDEL its conclusions on each audit it conducted, either following an EDEL audit or in accordance with its own plans, on bodies that manage or implement co-financed programmes and where the audit pertains to the actions of the body which are associated with these projects. EDEL takes these conclusions into account and, for the cases related to 'fraud', makes a relevant announcement to OLAF. Please note that:

- when a SEEDD audit has been conducted following an EDEL audit, EDEL takes the conclusions of the audit into account in the follow-up procedure regarding its own audit,
- when the SEEDD audit has not been conducted following an EDEL audit, EDEL takes the conclusions of the audit into account in the risk analysis regarding the planning of its own audits and monitors the necessary measures taken in the NSRF Management Systems as a result of SEEDD's conclusions.

Finally, on suspicion of fraud, the Certifying Authority is also notified, so that it exempts the expenditure related to the action until the completion of the relevant investigation.

- 3) When a complaint is submitted to EDEL (either by OLAF, a national body or a natural person), and it is deemed to be founded, EDEL conducts either an exceptional audit, included in the supplementary sample, on this action, or an audit on the relevant action in the context of the audit system of the competent managing authority (i.e. included in the audit system's sample file). If fraud is suspected during the audit, EDEL sends the report with the final audit results to the competent management service and to the competent authority (SEEDD) to investigate the fraud. It also notifies OLAF of the results.

Following the above, of the irregularities forward electronically by EDEL to OLAF by the third quarter of 2013, twenty (20) cases

	<p>involved fraud and were identified as a result of audits by the Financial and Economic Crime Unit (SDOE) and two (2) involved suspected fraud and were identified as a result of EDEL audits. Under the Protocol of Cooperation between EDEL and SEEDD for combating fraud and corruption, EDEL sent SEEDD the two (2) relevant reports of final audit results which produced concrete findings regarding suspected fraud. Subsequently, SEEDD, after taking these risks into account in planning its auditing schedule, inspected the relevant actions to investigate any fraud/corruption or mismanagement phenomena. SEEDD's conclusions on the above cases were communicated to EDEL which took them into account for the follow-up of its audits and presented them in its Annual Audit Report for 2013.</p>
<p><b>ES</b></p>	<p>With regard to the operational programmes approved in the 2007-2013 programming period, coming under the three objectives set out in Article 3 of Regulation 1083/2006: convergence, competitiveness and territorial cooperation, this Directorate-General has an annual monitoring plan consisting of checking the quality of the management and control systems adopted by the intermediate bodies in the operations co-financed by the ERDF and the Cohesion Fund, in accordance with Council Regulation 1083/2006 of 11 July 2006.</p> <p>The quality control plan is drawn up each year, based on the know-how of the various actors involved (control unit, managing authority and certifying authority), and concerns the specific risks of the various intermediate bodies detected both by them and by the Audit Authority, the Commission and the Court of Auditors. The objective is to ensure that the systems of all the relevant intermediate bodies are checked within a time frame of two years.</p> <p>In developing these checks, the various key elements are reviewed, with special emphasis on project selection criteria, separation of functions, audit trail and control systems implemented, areas in which incorrect functioning might make detection difficult, and penalisation of fraudulent behaviour.</p> <p>Lastly, a more integrated approach to combating fraud is currently being examined for the period 2014-20 in which risk analysis mechanisms can be underpinned with other types of tools and cooperation increased between different units.</p>
<p><b>FR</b></p>	<p>Checks provided for by European legislation (in particular Regulation (EC) No 1828/2006 of 8 December 2006) falling to, among others, the Inter-ministerial Commission for the Coordination of Inspections (CICC) are administrative checks for the purpose of ensuring that procedures in line with national and European legislation have been set up and to ensure that the Community budget does not suffer any loss. Where ineligible expenses are found, they are usually due to lack of awareness of procedures or incorrect application of the legislation without revealing any fraudulent intent which would warrant informing OLAF of a suspicion of fraud. In France, irregularities are classed in the 'fraud' category where the acts committed may be deemed to be a criminal offence (Article 40 of the Code of Criminal Procedure).</p>

	<p>It should be pointed out that checks carried out again by the Commission (on more than 100 operations) and the 30 or so DAS (Statement of Insurance) checks carried out by the Court of Auditors did not lead to any finding of a suspicion of fraud where expenses had been declared ineligible.</p> <p>To increase efforts in detecting fraud, the CICC ensures on a regular basis that the various parties involved are made aware of the issue of fraudulent intent where irregularities are detected. As regards more particularly the controllers under the functional authority of the CICC, point 9.3 of the 2013 version of the Vademecum sent to them at the beginning of the year (letter of 18 January 2013) stated the expectations of the national audit authority. Point 9.3 reads as follows: ‘You are also required to notify OLAF of any suspicion of fraud. Such a suspicion arises wherever the irregularity cannot be explained solely by negligence or lack of awareness of the rules but appears intentional, i.e. it denotes a deliberate intent to circumvent applicable legislation. In principle, such notification should also be accompanied by a referral to the judicial authorities under Article 40 of the Code of Criminal Procedure. Should you have any difficulty in deciding, please contact your correspondent at the CICC’.</p>
<b>HR</b>	Since the 1 July 2013, The Republic of Croatia became an EU Member State and therefore, has the opportunity to use EU funds. In order to use EU Structural instruments, the Republic of Croatia set up the institutional framework for the management of the EU funds. Since the date of the accession, there were no irregularity reports regarding the area of Cohesion Policy. It has to be stressed that IMS in the Republic of Croatia is fully operational regarding future reporting on irregularities in the area of Cohesion Policy.
<b>IT</b>	No Response.
<b>CY</b>	No Response.
<b>LV</b>	No Response.
<b>LT</b>	No Response.
<b>LU</b>	This does not apply to Luxembourg.
<b>HU</b>	No Response.
<b>MT</b>	Not applicable to Malta.

<b>NL</b>	No Response.
<b>AT</b>	No Response.
<b>PL</b>	Not applicable to Poland.
<b>PT</b>	Not applicable to Portugal.
<b>RO</b>	Not applicable to Romania.
<b>SI</b>	<p>Slovenia regularly reports on irregularities linked to a suspicion of fraud. This practice has been applied in agriculture as well as in relation to cohesion policy each year since it was made possible to report such cases via the Irregularity Management System (IMS).</p> <p>Internal auditors are aware of the risks and threat of fraud and therefore carefully verify internal control systems. One of the roles of the Slovenian Budget Supervision Office (UNP) is on-going awareness-raising of the potential presence of fraud. UNP supports, promotes and informs all users of European and public funds – through conferences and other means – that there are corruption risk indicators available and manuals to facilitate fraud detection. UNP supervises reporting on irregularities and on the basis of evidence and documentation may also require an amendment to a notice of irregularity in a declaration of suspected fraud, as and when appropriate.</p>
<b>SK</b>	No Response.
<b>FI</b>	In the policy area of cohesion, Finland's control procedures are fairly comprehensive. In addition, cohesion aid payments are generally rather small and there is no significant risk of fraud. The majority of irregularities detected can be classed as something other than fraud (such as lack of knowledge of the legislative requirements concerning public procurement or aid eligibility).
<b>SE</b>	N/A for SE
<b>UK</b>	DWP: The level and scale of compliance in operation for ESF may explain why there are so few fraudulent cases. In addition, 95% of ESF spend is through established public bodies that are subject to high levels of scrutiny and accountability.

## 2.5. The most significant risks are confirmed – ERDF / ESF

With further regard to the 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.**

<b>BE</b>	ESF Flanders: It is being applied.
<b>BG</b>	<p>The 'National Fund' Directorate of the Ministry of Finance, which is the Certifying Authority for all operational programmes and the Executive Agency 'Audit of EU Funds', which is the Audit Authority, play a key role in checks of operational programmes financed through the SCF.</p> <p>They carry out continuous and follow-up verifications of projects under the operational programmes. Their recommendations are implemented in a timely manner and followed up on to prevent subsequent omissions and errors from occurring.</p> <p>As the Certifying Authority, the National Fund Directorate also takes preventive measures aiming to increase the absorption of EU funds and to prevent irregular expenditure from being included in certificates submitted to the European Commission.</p> <p>Under the current management and control systems for structural funds and in accordance with the principle of separation of responsibilities, the Certifying Authority is responsible for monitoring the Managing Authorities' expenditure verification and approval activities. The aim of this is to prevent irregular expenditure from being included in the certificates sent to the Commission. Before a certificate is prepared and submitted to the Commission, a documentary check which includes a review of audit findings and recommendations is carried out, as are on-the-spot checks of projects selected on a random basis using a risk-assessment-based</p>

methodology. The factors considered when selecting projects for on-the-spot checks include the managing structure, the type of beneficiary, the concentration or lack of errors/irregularities under the priority axis, the extent of verified expenditure and other ways in which the project may have been verified.

Where an irregularity is suspected or has been reported, or in the event of press publications or financial or other risks, the Certifying Authority may initiate unscheduled inspections. The aim of this additional control mechanism is to prevent and limit errors in the technical and financial implementation of European projects.

The Certifying Authority also carries out on-the-spot checks of beneficiaries jointly with the Managing Authority/Intermediate Body. These checks also ensure that beneficiaries are subject to uniform requirements when certifying the eligibility of project expenditure.

An additional preventive mechanism is to optimise and simplify rules and procedures and giving Managing Authorities methodological support in the form of guidelines and instructions on the basic processes of managing EU funds. In 2013 the Certifying Authority distributed two sets of instructions to the Managing Authorities: Instructions on the exchange of information between Managing Authorities/Intermediate Bodies and beneficiaries when applying for funds and reporting on projects co-financed by the EU structural and cohesion funds and Instructions on carrying out commitments on agreed procedures relating to projects co-financed by the structural and cohesion funds at beneficiary level.

The aim of the Instructions on the Exchange of Information is to cut red tape for beneficiaries and to optimise the information they have to submit when accounting for expenditure under contracts or orders for grant aid co-financed by the SCF and to prepare the groundwork for active electronic information exchange using electronic signatures.

The Instructions on Commitments incorporate all the experience accumulated to date to optimise the quality of the service, to ensure a unified approach for all public contracts co-financed by the SCF and to provide beneficiaries with clarity regarding the scope of their activities and choosing a contractor for analogous services by providing an adequate framework for evaluating technical proposals of bidders including scoring indicators. They came about after varying requirements were found for verification commitments under the different Operational Programmes and recurring deficiencies noted in the implementation of public contracts by beneficiaries; these impacted on the quality of the final product, the so-called audit check and its added value in the overall process of approval/verification/certification of expenditure before the Commission.

<p>Based on the Guidelines on the closure of operational programmes approved for assistance from the European Regional Development Fund, the European Social Fund and the Cohesion Fund (2007-2013) approved by Commission Decision of 20 March 2013, and in order to standardise the approach, synchronise the process and prevent eventual errors and deficiencies in 2013, the minister of finance issued the Managing Authorities with instructions on the closure of operational programmes co-financed by the SCF for the 2007—2013 programme period.</p> <p>In 2013 the EU Funds Audit Manual (version of March 2013) and the checklists for tendering procedures by beneficiaries were updated. The checklists now include detailed instructions to auditors on the procedures and methods of conducting audits, such as guidelines for determining the financial implications of discrepancies established during audits. In order to popularise audit practices, the updated checklists were published on the agency's website and are available to all Managing Authorities. Every year on completing its audits of operations, the Audit Authority issues an analytical review of the most common irregularities relating to public procurement procedures under operational programmes co-financed by the European Union. The analytical review summarises all the audit findings relating to legal infringements in public procurement procedures where the Audit Authority has found the error to have financial implications and where it has proposed financial corrections to the Managing Authority. In order to standardise Audit Authority practice, the review is forwarded to all auditors for use in risk assessments for subsequent audit engagements under the relevant programme. It is also published on the website of the Executive Agency Audit of EU Funds.</p> <p>As regards checks and inspections for projects funded under the Operational Programmes and in order to ensure an adequate level of traceability, accountability and objectivity, the Managing Authorities update and supplement their rules and procedural manuals. Concrete verifications take into account the level of risk of the relevant project, the presence or absence of previous irregularities or reports of irregularities, the stage of completion and the auditor's recommendations and conclusions. The process takes into account the results of the analysis included in the report to the Commission insofar as they are applicable as regards the specifics of the Operational Programmes and the projects carried out under them.</p>	
<p><b>CZ</b></p> <p>The control authorities in the Czech Republic have studied the PIF report and during planning its control activities our control authorities coming out on the conclusions of this report.</p> <p>The conclusions of this PIF report are also used in the preparation of the risk analysis as the basis for the compilation of the plan of controls.</p>	

<b>DK</b>	<p>Structural Funds</p> <p>The Performance Improvement Framework report recommends that account be taken of projects involving large investments in transport, the environment and social infrastructure. Given the size of the Danish programmes, we in Denmark have chosen not to invest in transport, and no approval has been given for large environmental and social infrastructure projects. In planning checks on projects, care is taken, however, to ensure that both 'large' and small projects are selected for checking.</p> <p>Agriculture</p> <p>The Danish AgriFish Agency – the payment body responsible for administering the rural development programme – is in the process of implementing a range of initiatives to combat known risks of fraud in this area.</p> <p>These initiatives include the Agency's anti-fraud strategy, designed to identify the main risks associated with individual aid schemes. Administrative checks on fraud in connection with investment projects will focus on these risk areas, particularly in connection with the tendering process.</p>
<b>DE</b>	<p>The competent authorities in the field of agriculture intend to take the findings and recommendations of the analyses included in the report and working documents into account where relevant in planning their checks and controls.</p> <p>As indicated by the report, in the area of structural funds, both the bulk of reported fraudulent irregularities and of the financial volume at risk relates to the European Regional Development Fund. The European Social Fund (ESF) managing authorities in Germany take note of this analysis and will further intensify their efforts either to avoid fraudulent activities completely in the ESF area or to uncover them as soon as possible.</p> <p>The competent authorities in the area of ERDF analyse the annual fraud reports and recommendations from the Commission and take them into account so far as necessary and appropriate when considering and assessing management and control systems. Fundamentally many tools for investigating, combating and avoiding fraud and corruption exist within the authorities.</p> <p>It should be noted, however, that the Commission's annual report includes the findings in this area for all EU Member States. So it is very general. Specific guidance and information about fraudulent practices in the individual intervention areas (e.g. transport, environment, investments in social infrastructure, etc.) could be helpful to the competent authorities so that inclusion of specific examples and</p>



	descriptions could be considered in future reports.
<b>EE</b>	<p>The Managing Authority of the Cohesion Policy plans to include some of the risks highlighted in the PIF report in the control plan.</p> <p>Also, the rural development agencies use the sampling methodology to take into account data of irregularities and frauds as a risk criterion. The general trends and indications of new fraud patterns are analysed and the results of analyses are the input to the annual training plan, amendments to legal acts and risk management system</p>
<b>IE</b>	<ul style="list-style-type: none"> <li>• <b>Cohesion</b> - Account will be taken of the results of the analysis in developing the financial and management control systems for the new round. (See appendices 1&amp;2 for further details).</li> <li>• <b>Agriculture</b> - The Paying Agency i.e. the Department of Agriculture, Food and the Marine (DAFM) operates EU funded schemes which are governed and controlled by EU Regulation under the Common Agricultural Policy. All checks and controls and the planning of same comply with these governing regulations.</li> </ul>
<b>EL</b>	<p><b>Ministry of Finance – General Accounting Office of the State –Fiscal Control Committee (FCC)- Directorate: 52-Planning and Evaluation of Audits</b></p> <p>As mentioned above (Recommendation 4), until today, EDEL has disclosed two (2) cases of suspected fraud as a result of its audits, for which the actions it has taken were presented in Recommendation 4. The above SEEDD conclusions were taken into account in the monitoring of the relevant EDEL conclusions and the corresponding recommendations made to the audited bodies.</p> <p>Also, regarding the complaints submitted to EDEL to date, in the context of Programming Period D, EDEL has decided to conduct an exceptional audit on three (3) of them, in order to investigate the truth of the matters referred to in the report. For one (1) of those, EDEL conducted an audit in 2013 which, however, did not confirm the content of the complaints.</p> <p><b>Ministry of Finance – The Financial and Economic Crime Unit (SDOE)</b></p> <p>SDOE conducts preventive audits for all the stages of Community funding and after these stages, as well as repressive audits on cases relating to EU co-financed investment projects.</p> <p>In the context of its audit work, SDOE incorporates, at all times and systematically, the areas of particular interest - data - information -</p>

fraud risk areas (EU Funds such as Agricultural and Structural Funds) which are included in the Annual Report of Article 325, together with national priorities of high economic interest, in order to further enhance the protection of national and EU financial interests against fraud.

This takes place during the planning and implementation of the SDOE annual regular on-the-spot checks, and also in the planning and conducting of on-the-spot audits following the development of specialised Risk Analysis Systems, and also while conducting exceptional on-the-spot audits from any source, i.e. following the submission of:

- prosecution orders from the competent prosecution services,
- requests from Directorates-General of the European Commission,
- OLAF requests,
- requests for international legal assistance,
- requests for international mutual administrative assistance from foreign authorities in the EU,
- requests for the assistance of Bodies / Organisations and Services of the entire Greek State and
- anonymous and signed complaints.

Also, after its relevant auditing procedures are completed, SDOE evaluates the area and/or Community areas which it selects and in which it intervenes by conducting audits, in order to assess in quantitative and qualitative terms the recommendations of the EU, as reflected in EU budget expenditure, public revenue at national level and the reinforcement of the results and actions through the synergy of other co-competent national authorities.

### **Ministry of Development and Competitiveness**

Under the Management and Audit System of the co-financed actions for the period 2007-2013, the Managing Authorities draw up an annual schedule of on-the-spot verifications on the basis of all its actions which were in progress during the year prior to the elaboration of the schedule.

The schedule of the on-the-spot verifications specifies:

- the actions which should always be verified during the reference year (e.g. actions with a significant budget, problematic actions for which on-the-spot verification is required, actions which are to be completed within the year of implementation of the schedule and for

which no on-the-spot verifications were conducted in previous years, and

- the sample of the population of the actions/subprojects selected to be verified on the spot based on a sampling method and sample selection operations.

The sampling method for selecting operations for on-the-spot verification is structured, non-statistical sampling and is based on the mathematical background of a statistical plan (Monetary Unit Sampling – MUS) for the determination of sample size and the evaluation of the results of on-the-spot verifications.

Before implementing the sampling method, the population is stratified in order to reduce variance or isolate the population subgroups for which a high frequency of errors is expected. As a result of the stratification of the population, all the projects costing in excess of a specific amount and all the operations which, according to the Managing Authority, have an increased risk of errors (high-risk operations) are audited.

The records describing and justifying the method for selecting operations and determining the operations or subprojects selected to be verified are kept by the Managing Authorities of the Operational Programmes.

The sampling method and the parameters thereof are reviewed on an annual basis, taking into account:

- the reassessment of the level of risk depending on the type of beneficiaries and operations and on the basis of the results of the on-the-spot audits and the results of audits by other auditing entities (e.g. EDEL, Certification Authority, European Commission, etc.) which may have been identified in the previous year, and
- any corrective interventions to the management and auditing system to address the identified problems

Please note that the on-the-spot verifications on Operational Programme operations supplement the administrative verifications carried out by the Managing Authorities before the finalisation of the statement of expenditure of the beneficiary for the total expenditure they declare.

At this point, we would like to mention that Managing Authorities also carry out preventive audits on declarations and amendments to contracts, to ensure the early detection of failures to comply with Community and national rules during the tender procedure, at the phase of awarding public contracts and the phase of amending public contracts for each co-financed project, respectively, to ensure compliance with the principles of equal treatment, non-discrimination, transparency and competition.

The stages of development of public contracts are examined for all the categories of sub-projects implemented under public procurement (for infrastructure, supplies and services). This examination is a preventive measure in order to detect on time and address, when awarding contracts, any problems related to Community and national rules.

### **Ministry of Rural Development and Food**

#### **Point (a)**

**The Directorate of EAGGF Expenditure Audit-Guarantees**, which conducts *a posteriori* on-the-spot accounting audits on beneficiaries or debtors related directly or indirectly to the system of financing by the European Agricultural Guarantee Fund (EAGGF), in the context of drawing up and implementing the auditing schedule, takes into account the results of the Reports, any comments and/or recommendations addressed by the competent EU services and bodies to Member States, including the results and recommendations contained in the Report of the Commission for the Protection of the European Union financial interests and the supporting documents thereof.

Please note that the above Report of the European Commission for combatting fraud, under the questionnaire of Article 325(5) of the TFEU, states for 2012 that 'the attention of the authorities still seems to focus on the European Agricultural Guarantee Fund'. This task is undertaken by the Directorate of EAGGF Expenditure Audit-Guarantees, pursuant to Regulation (EU) No 1306/2013 of the European Parliament and the Council, former Council Regulation (EC) No 485/2008, by conducting *a posteriori* on-the-spot audits.

**The Directorate of Planning and Agricultural Structures**, within its competence as implementing body of Measures 2.1 'Processing and Marketing of Agricultural Products' of ESDP & Rural Regeneration 2000-2006 and 123A 'Increasing the value of the agricultural products of axis I of the RDP 2007-2013', took into account, during the elaboration of the institutional framework of the Measure, the comments and recommendations of the European Commission, especially in relation to avoiding the overpricing of investment plans.

**The Paying Agency - Opekepe**, when planning the on-the-spot audits based on risk analysis, takes into account, as a criterion, the confirmed irregularities which have arisen from previous years' audits conducted by Community or national audit services.

#### **Point (b)**

**The Directorate of EAGGF Expenditure Audit-Guarantees** updated all auditing procedures and provided relevant updates and guidance to all auditors, through in-house meetings and briefings, and takes every possible measure to ensure that irregularities are

	<p>detected.</p> <p><b>The Directorate of Planning and Agricultural Structures</b> has adopted a number of measures aiming to prevent cases of fraud and detect them on time and demands that the invoices of the company that manufactures the machinery and the corresponding delivery notes be submitted along with the other documents submitted by the body for the payment of the aid, in order to avoid cases of overpricing. Under the 3<sup>th</sup> Call of Measure 123A (Processing and marketing of agricultural products) the investor must include in the application file at least two bids for the requested mechanical equipment, in order to determine the reasonable cost thereof and avoid overpricing.</p> <p><b><u>Point (c)</u></b></p> <p><b>The Directorate of EAGGF Expenditure Audit-Guarantees</b> verifies the accuracy of the main data audited through cross-checks. Cross-checking has been expanded in recent years, for both the number of checks and operations audited, so as to minimise the number of cases of undetectable irregularities and ensure the prompt, more efficient and more effective detection of irregularities, in order to protect the financial interests of the European Union.</p>
<b>ES</b>	<p>Yes [They have examined the PIF report before planning their checks and control.]</p> <p>Yes [Their plan already included checks based on the risks and sectors highlighted in the documents have proven useful in the planning of checks and controls.]</p>
<b>FR</b>	<p>In line with Community legislation on the CAP, a beneficiary convicted of fraud is stripped of his/her entitlements for the current year, possibly even for the following years.</p> <p>Furthermore, in general (ERDF, ESF, EAFRD, EFF, etc.), findings of audits carried out in previous years (any audit, including audits not related to a fraud case) are taken into account to determine the audit rates and the beneficiaries to be audited in a given year.</p>
<b>HR</b>	<p>When planning their checks and controls and developing the Annual plan for on the spot checks, competent authorities take into account certain selection criteria mentioned in their working documents (e.g. manuals of procedures). The working documents contain useful information and selection criteria in order to ensure checks and controls are executed in a proper manner. Working documents are continuously being amended according to needs, necessities, risks and sectors highlighted with the purpose of enhancing and improving the process of planning the execution of checks and controls.</p>

	<p><u>For example</u>, some of selection criteria when planning on the spot checks include:</p> <ul style="list-style-type: none"> <li>- when <b>risk assessment indicates a high level of risk for a project</b>;</li> <li>- when the <b>project's report</b> raises doubt in the successful project management of the Beneficiary or indicates other signs of problems, which need to be addressed (e.g. inconsistencies in project reports, poor quality of project reports);</li> <li>- in case of <b>complex secondary procurement</b>;</li> <li>- when <b>audit reports</b> (e.g. Agency for the Audit of European Union Programmes Implementation System) of projects <b>indicate significant problems</b> during implementation;</li> <li>- when there is <b>any case of doubt that an irregularity or fraud has been committed</b>, which has, or would have, <b>the effect of prejudicing the general budget</b> of the communities by an unjustified item of expenditure;</li> <li>- <b>in case of irregularities detected during previous on-the-spot checks</b> and when there is a need for follow up checks before the verification on-the-spot check.</li> </ul> <p>To conclude, it has to be stressed that competent authorities in the process of planning their checks and controls use a range of criteria contained in their working documents. These criteria show in which direction checks should be carried out. Furthermore, according to particular risks and sectors, working documents from time to time are being adjusted.</p>
<b>IT</b>	<p>The Customs Agency, when drawing up the annual guidelines on checks and controls, duly took account of the results of the analyses contained in COM(2013) 548, inter alia drawing the attention of customs offices to the need to correctly apply and monitor the provisions on local clearance procedures and the transit procedure with particular reference to the recovery of duties, to the legislative amendments introduced by Regulation (EC) No 1192/2008, to the need promptly to enter guaranteed amounts in the accounts upon expiry of the periods indicated in the authorisation for the procedure or expiry of the period provided for in Article 94 CCIP.</p>
<b>CY</b>	<p>Currently there is no formal procedure in place that requires the audit authorities to take into account the above documents. However, within the framework of the Anti-Fraud strategy that is being developed by the Managing Authority, formalised procedures will be included so as the analysis included in the above documents will be taken into consideration when planning the checks.</p>
<b>LV</b>	<p>The Managing Authority for EU Structural Funds and Cohesion Fund updates quarterly the intermediate body's risk register and has performed several other actions in order to control, evaluate and prevent risks of irregularities including fraud risk. Furthermore, the questions related to the possible risks are discussed within the risk workgroups and other meetings. The Managing Authority for EU</p>

	<p>Structural Funds and Cohesion Fund regularly updates internal procedures of the Managing Authority and provides methodological and interpretative materials for the institutions involved in the management of EU funds, thus reducing the possibility of systemic errors and prevent possible irregularities.</p> <p>The Managing Authorities for EU Structural Funds and Cohesion Fund controls and supervision over qualitative control of implementation of delegated functions were updated in 2013 (the evaluation of procedures of institutions, project evaluation process, the verification of project implementation process etc.). In order to reduce fraud risk, the Managing Authority for EU Structural Funds and Cohesion Funds updated internal procedure for the on-spot checks with stronger mechanisms to ensure the absence of double-financing and conflict of interest. Based on the results of quarterly risk assessment, every year the Managing Authority for EU Structural Funds and Cohesion Fund develops a plan for the verification of delegated functions and monitoring the implementation of recommendations. It is planned that verifications and audits will be conducted more often in institutions with higher risks, as well as if the error rate is zero, institutions shall be evaluated as high risk. By now essential deficiencies in the implementation of delegated functions have not been identified. In the results of the checks, recommendations are stated and the implementation of these is monitored by the Managing Authority for EU Structural Funds and Cohesion Fund.</p> <p>Since 2012 ex-ante procurement checks have been performed. The ex-ante procurement checks are very effective as the irregularity management tool reduces the risk of irregularities in the construction.</p> <p>The results of the analysis included in the report are also taken into account by Rural Support Service when planning checks and controls. One of Rural Support Service internal audit priorities in 2013 is the prevention of conflict of interests.</p>
<p><b>LT</b></p>	<p>The Lithuanian authorities responsible for the coordination and administration of EU financial assistance have opted for variant b – plans have been changed in the light of the information provided in the OLAF report. For example, in view of the fact that the majority of infringements identified both in Lithuania and in the other EU Member States (as also shown by the OLAF report) are linked to a failure to comply with the public procurement procedure, and in order to ensure and standardise the monitoring of public procurement, in 2013 the Ministry of Finance drew up a public procurement checklist aimed at those contracting authorities that monitor projects on an ex-ante and ex-post basis.</p> <p>The Ministry of Finance, as managing authority, also checks for public procurement infringements with regard to projects identified by awarding authorities in the context of the monitoring tasks assigned to it and in the light of plans drawn up for the implementation of risk-</p>

	<p>management measures.</p> <p>The Ministry of Finance, in implementing the European Commission's recommendations on projects jointly funded from EU funds and implemented under the Human Resources Development Action programme, as approved by the European Commission by Decision No C(2007)4475 of 24 September 2007, and the comments contained in European Court of Auditors audit No PF-4890 (on a clear price including VAT and without a VAT assessment, the assessment of written errors in tenders, and information on providing the winning bidder's price to other bidders), has amended the description of the procedure applicable to legal persons which are not contracting entities pursuant to the Lithuanian Public Procurement Act approved by Order No 1K-212 of the Minister for Finance of the Republic of Lithuania.</p> <p>Moreover, all authorities that administer EU financial aid take account of the OLAF report and the risk areas highlighted by it before carrying out project and systematic risk analyses.</p>
<b>LU</b>	<p>The ESF control system is based on checklists. These are regularly updated on the basis of recommendations and internal controls. Any recommendation for improving the control system will obviously be taken into account by the ESF Managing Authority.</p>
<b>HU</b>	<p>The Commission's annual report for 2012 and the working documents relating to it have been used by the Agricultural and Rural Development Agency (MVH) as they provide relevant information which will help in planning on-the-spot checks, in addition to the information held by the MVH. Experience so far has shown that plans for on-the-spot checks have not had to be altered on the basis of the report and the related working documents.</p> <p>Under Section 109 of Government Decree No 4/2011 of 28 January 2011 on the use of aid from the European Regional Development Fund, the European Social Fund and the EU Cohesion Fund in the programme period of 2007-2013 ('the Decree'), the Directorate-General for Audit of European Funds ('the Directorate-General') will select subjects for audit on the basis of a risk assessment in accordance with Article 62 of Council Regulation (EC) No 1083/2006. The basis of the risk assessment reflects the results of previous audits (systems audits and project audits) and the findings of audits carried out by other bodies. Moreover, when selecting the subjects for systems audit and when drawing up the audit plan, the Directorate-General also uses all the available data and working documents, including the contents of the inspection report.</p> <p>Under Section 110(1) of the Decree, the Directorate-General must also make project sample checks, which in the case of the operational programmes means the sample check on disbursements reported in the previous year. The basis of the sample for checking by the</p>



	<p>certifying authority is expenditure reported to the European Commission in the previous year.</p> <p>This shows that the preparation of plans for sample checks (in comparison to systems audits) is carried out on the basis of the guidelines issued by the European Commission and statistical samples taken in accordance with international audit standards.</p>
<b>MT</b>	<p>The Managing Authority already plans and performs 100% checks of expenditure through administrative verifications, irrespective of whether the PIF report states some funds are more prone to fraud/irregularities. The Managing Authority still refers to the PIF report and its contents serve as a reassurance to the work performed by it (i.e. by the Managing Authority), rather than lead it to focus its attention onto a specific fund.</p>
<b>NL</b>	<p>In the period 2008-2010 the ESF reported no 'fraudulent irregularities' to OLAF, only 'irregularities'. The number of these has fallen since 2010, largely because of the amendment of Regulation No 2006/1828 by Regulation No 2009/846 (to change the methods), rather than as a result of a reduction in the irregularities detected. Both the SZW Agency, which is responsible for the ESF, and the Ministry of Economic Affairs (responsible for ERDF) rely mainly on their own analyses, but they do of course look to see whether the PIF analysis can provide added value. The ESF control and management system is satisfactory, and cooperation between first and second-level controls works properly. It is indicative that in 2013 the European Commission issued a 'letter of confidence' for the Audit Authority. The Ministry of Economic Affairs reports that the Management Authorities (MA), the Certifying Authority (CA) and the Audit Authority (AA) base their checks and inspection planning on risks.</p>
<b>AT</b>	<p>No Response.</p>
<b>PL</b>	<p>Ever since OPs began, Polish competent authorities have relied on findings, suggestions, analyses and recommendations by external audit and inspection authorities, including documents from the European Commission. Risk indicators for auditing projects are also identified based on findings in Commission Reports. Risk analysis includes an assessment of the type of irregularity, the effectiveness of security procedures and the likelihood and financial consequences of future problems.</p> <p>In addition to the above sources, annual control plans rely on information relating to areas presenting a risk of financial fraud as highlighted in meetings of competent working groups and committees and in summary reports of national audits by external institutions, such as the Supreme Audit Office or the Central Anti-Corruption Bureau; such information is similar to that contained in Commission</p>

	<p>documents. If the planned control system does not require checks on all applications and activities, checks are prepared according to Commission rules and recommendations, based on a risk analysis for the procedure in question.</p> <p>National control and audit reports and the analysis of Commission reports are also considered in preparing guidelines and recommendations for authorities involved in managing and auditing EU programmes at various levels and for beneficiaries of those programmes, as well as in drawing up check lists used by competent authorities in their control activities.</p>
<p><b>PT</b></p>	<p>The <i>Agência para o Desenvolvimento e Coesão</i> (Agency for Development and Cohesion – ‘the Agency’), established by Decree-Law No 140 of 18 October 2013, is taking over the tasks of the former <i>Instituto Financieiro para o Desenvolvimento</i> (Financial Institute for Regional Development – IFDR) and the <i>Instituto de Gestão do Fundo Social Europeu</i> (European Social Fund Management Institute – IGFSE) responsible for the overall coordination of, respectively, the ERDF/CF and the ESF, and it also acts as the certifying authority for those funds. In connection with the ESF, the Agency reported on the promotion of awareness-raising activities, the provision of information and the strengthening of administrative checks to discourage fraudulent behaviour. In particular, several public seminars were held on the public procurement system and the management of projects co-financed by the ESF, and the self-audit tool was implemented to reduce the rate of errors by training project promoters in self-auditing. This contributes to careful and preventive management of error by enabling corrective measures to be made when project promoters identify a procedure that does not comply with Community or national rules.</p> <p>In this context, the Agency considers that to prevent fraud a robust management and control system (management and audits focused on risk assessment and fraud prevention) must be combined with awareness-raising activities to discourage fraudulent behaviour.</p>
<p><b>RO</b></p>	<p>The Romanian anti-fraud coordination service (Fight Against Fraud Department - DLAF), the audit authority and the managing authorities examined the conclusions of the PIF Report before planning the checks.</p> <p>DLAF's investigation policy was brought in line with the conclusions in the PIF Report.</p> <p>The process of planning audit actions for 2014 is under way at the Romanian audit authority.</p> <p>Some Romanian managing authorities have reviewed their internal procedures and guidelines on checking conflicts of interest and public procurements.</p>

	<p>DLAF's investigation policy covers the risks and vulnerable sectors highlighted in the PIF Report.</p> <p>For 2014, the Romanian audit authority has planned audit missions relating to the Sector Operational Programme for the Environment, the Sector Operational Programme for Transport, the Regional Operational Programme, the Sector Operational Programme for Increasing Economic Competitiveness and the Sector Operational Programme for Technical Assistance.</p> <p>Most managing authorities have reviewed their sampling methodology by re-examining the risk factors used.</p>
<b>SI</b>	<p>Even before the 'Follow-up Recommendations', control mechanisms and strategies already existed within the Control Sector for Objective 1 at the MA (Ministry of Economic Development and Technology – MGRT) that permitted risk identification and the follow-up of cases as defined in the Recommendations. Controls were already carried out in the second half of 2013 that were aimed at identifying corruption risk indicators within operations. The results of the verification were submitted to the review body (UNP), which then carried out interviews with individual controllers on the course of operational controls and the completion of check-lists on fraud risk assessment. The check-lists are designed to indicate whether a specific operation has a higher or lower level of risk of corruption. If a case is found to have a higher risk of corruption, it is passed on to the competent authorities.</p> <p>The controls also make use of guidelines and recommendations defined in the European Commission document COCOF 09/0003/00-EN: Information Note on Fraud Indicators for ERDF, ESF and CF.</p>
<b>SK</b>	<p>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, contains statistical data of a general nature, which is, in light of the information provided, is useful for the Slovakian audit authority. The report only identifies the status for the year 2012. However, the report does not reflect the risk areas that should be targeted by the audit authority in the Slovak Republic when planning its audits.</p>
<b>FI</b>	<p>A risk-based approach is used in on-the-spot checks that are the responsibility of the Managing Authority for ERDF programmes and the ESF programme. All large projects (&gt; EUR 500 000) and high-risk projects are selected for on-the-spot checks. Thanks to this approach, checks cover the large investment projects highlighted in the annual report on the fight against fraud.</p>
<b>SE</b>	<p>Responsible authorities must take into account all relevant information in their work. When the Swedish Board of Agriculture plans its</p>

	inspections for the year in question, it takes into account all existing available information.
<b>UK</b>	<p><b>DWP:</b> The report was taken into account when controls and checks were reviewed.</p> <p><b>WG:</b> WEFO will take the results of the analysis included in the report and its accompanying staff working documents into account when planning their checks and controls.</p> <p><b>DCLG:</b> Work on strengthening first level controls started before the report was published; however the analysis was found to be useful.</p>

## 2.6. The most significant risks are confirmed - agriculture

The rate of fraud detection in relation to rural development remains fairly stable compared to 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.**

<b>BE</b>	<p>ERDF Brussels Capital Region: There are no rural development programmes subsidised by the ERDF in the Brussels Capital Region in the current programming period 2007-2013. In the 2014-2020 programming period, sustainable food will be one of the sectors supported and it is possible that projects for 'urban farms' will be submitted during the call for projects.</p>
<b>BG</b>	<p>Specialised software is used to carry out risk analysis. IACS allows analyses to be carried out on the basis of various risk criteria and for samples to be generated from projects, grant aid applications and payment declarations for the purpose of follow-up checks by the Fraud Prevention Directorate of the State Agriculture Fund.</p> <p>On the basis of the infringements found in the SAPARD programme additional controls have been added for the paying agency to help</p>

detect and prevent fraud and abuse. Prevention has been intensified in various ways, including by creating controls based on the most common infringements and various scenarios. They take into account the manner in which infringements are committed and how they were detected. The risk analysis method has also been updated and improved. To safeguard the financial interests of the Community and of the national budget, preventive action has been taken against the unjustified use of European Funds and to implement the aims of the State Agriculture Fund.

Examples of good practice in combating fraud are:

- the introduction of reference prices for machinery, equipment and services;
- mandatory application of the principle of checking all bids: to prevent the use of fraudulent bids all of the three bids submitted are checked. When bids are rejected, queries are sent to the bidders to confirm that they did indeed make the bids.
- imposing requirements to ensure there is no association between the supplier and the bidder/beneficiary;
- defining signs which indicate that artificial conditions are being employed to circumvent the conditions of the measure and to obtain a larger amount of aid.

Other good practice in counteracting fraud includes: risk analysis, orders to suspend processing, collection of all evidence using on-the-spot checks if necessary, joint investigations (verification assistance) with AFCOS, the national security agency and the criminal police, developing fraud indicators incorporating the relevant threat levels for all programmes, measures and schemes, joint inspections by the Anti-Fraud Directorate (PI) and the Technical Inspectorate: all of these result in synergies which allow the staff of both directorates pool their specific knowledge, skills and competencies.

These indicators have been developed using the experience gained under the SAPARD programme and from reports/letters from OLAF investigations carried out on the basis of reports of irregularities under the SAPARD programme and the Rural Development Programme and the verification experience obtained by the PI Directorate and the other bodies of the State Agriculture Fund. The findings and recommendations of the Bulgarian National Audit Office, the Audit of European Funds agency, the European Court of Auditors, GD Agriculture and the Internal Audit directorate of the State Agriculture Fund have all been incorporated.

The aim is to implement the method 'Results-based fraud prevention: a dynamic approach to counteracting fraud'.

Account has been taken of the experience accumulated with different types of infringements and varieties of cases, how the infringements were committed, how they were detected and the practice accumulated from concluded civil and criminal cases and the experience of monitoring. The judicial practice created under the SAPARD programme is also used to resolve cases by the paying agency. Paying agency staff and the staff of all responsible institutions all have a heightened awareness of the need to counteract irregularities. An institutional memory has been built up and continuity created among staff through the experience gained in SAPARD audits, which is now being used in the paying agency. Measures have been taken to close the legislative gaps around the SAPARD programme, resulting in amendments to the Criminal Code, orders and regulations.

The most common irregularities recorded were based on false supporting bids; bidder-bidder/bidder-beneficiary association; unrealistic inflation of prices by beneficiaries manipulating tendering procedures for expenditure over EUR 10 000; lack of separation of functions and artificial conditions set to gain an advantage counter to the purpose of the measures.

The paying agency, the State Agriculture Fund, has taken the following measures to ensure that the weaknesses found in the SAPARD programme will not be repeated in the Rural Development Programme:

1. To prevent fraudulent bids, the three bids submitted will be checked by the Contracting under Rural Development Measures Directorate using the method set out in Article 24 of Commission Regulation (EU) No 65/2011. When bids are rejected, the expert sends enquiries to the bidders to confirm that they did indeed make the bids.

If the applicant failed to choose the lowest-priced bid and gave no reason for selecting a higher one, a first expert and a second expert will determine the value eligible for assistance on the basis of the lowest priced bid.

The candidate will then have to give his reasons for deciding to choose the higher bid. Reasons for choosing a higher bid can include the physical vicinity of a supplier to the project; the fact that the supplier will install machinery and provide staff training; more economical machinery due to lower consumption of fuel, energy, water, etc., the use of better materials in the case of construction works, experience of building contractors, shorter completion times, better payment conditions and other objective reasons which the candidate has to set out.

If the choice of bidder is justified, the cost eligible for aid is based on the bid selected.

2. If no assessment has been made of the reasonableness of costs, this is assessed on the basis of the three possible methods allowed by Article 26 of Regulation (EC) 1975/2006: comparison of reference costs, comparison of comparable and independent bids, or an evaluation committee.

3. As regards the ineligibility for funding of companies set up immediately prior to submission of an aid application whose only purpose is to benefit fraudulently (artificial division, lack of functional separation):

- when aid applications are processed, checks are made to ensure no conditions for obtaining support have been artificially created contrary to the aims of the measure. Some of the control questions incorporated relate to: identical or similar trading names surnames of applicants and residential addresses of natural persons applying; use of the same land, buildings, machinery, equipment, staff, or technology as another applicant under the measure by sub-dividing a single technical process into two or more projects;

- when on-the-spot checks are carried out, a mandatory check of functional independence and for artificially created conditions must be carried out. The relevant control questions relate to: whether another project has been completed by the programme user in the vicinity of the investment; artificial division of production and technical processes into separate projects to increase the limits under the Rural Development Programme; overlapping of production and technical processes with those of a different project; the combined use of infrastructure funded under the Rural Development Programme, etc. Depending on the nature of the investment, technical inspectors must also ask for relevant documentation to support the findings of the on-the-spot checks.

- at the payment authorisation level there is now a requirement to check for investments where lack of functional independence and/or artificial conditions have been found for receiving aid for the purpose of obtaining a benefit contrary to the aims of the measure. The experts carrying out the authorisation use worksheet TIC 02, 'Table of ineligible expenditure' to specifically note the compliance or otherwise of the assets declared for payment under the conditions stated after all relevant data for the application – both documentary and obtained from visits/on-the-spot checks have been processed.

Each Rural Development Programme measure specifies maximum levels of financial assistance for each applicant. In order to get around this restriction and obtain more than the permissible level of funding, some candidates or beneficiaries create conditions that comply with

the current legislative framework on paper only. All beneficiaries are given the opportunity to find out the conditions under which the State Agriculture Fund may refuse to pay subsidies in under the control system set out in Article 4 of Regulation (EC) No 65/2011 and in particular Article 4(8), for candidates or beneficiaries who are found to have artificially created the conditions necessary to obtain a benefit contrary to the objectives of the support scheme.

To ensure compliance with these provisions, and in the light of past experience, a number of scenarios have been identified as falling within the applicability of the cited regulation. The most commonly used scenarios are as follows:

A candidate transfers ownership of some of his assets (livestock or arable land) to another person, most often a relative, before the date of application only to increase the size of his agricultural holding again by returning them at a later stage (this scenario was found in measure 112 and measure 141);

Candidates with no association between them in the meaning of the Small and Medium Sized Enterprises Act (ZMSP) operate on adjoining parcels/buildings or in the same building. The parcels have been bought by the same person and the undertakings are housed in the same or adjoining properties which have been acquired, building permission obtained, etc. All persons operate on the same or within a vertical market – in other words, one large project is divided into several parts which are likely to be merged when the monitoring period is over.

The division of one farm into two smaller ones with two new owners, or the transfer of shares and/or the ownership of the farm (the object of the investment) just before the date of application in order to formally meet the funding requirements. In most of these cases the former owner will continue to manage operations under a power of attorney issued by the new owners.

Division of a supply into identical investments under several different contracts so that the cost is less than EUR 15 000 in order to avoid the supplier selection procedure and to avoid the need to present three comparable, independent bids.

The same owner setting up a new firm and transferring work in progress from one firm to another, taking in the harvest and proving that 50% of his income is from agriculture.

Presenting a contract and/or notarised deed to prove that the condition of the minimum eligible arable land has been met, when in reality the land is worked by and appears in IACS as belonging to another person.



	<p>Providing evidence of a minimum number of economic units at the time of application with the intent of creating a permanent plantation under the project in cases where this is technically impossible during the same financial year.</p>
<b>CZ</b>	<p>For the purposes of fraud prevention in the provision of subsidies for investment measures in the Rural Development Programme, a number of procedures, particularly in the area of controls, are followed, in order to minimise the risk of undetected fraud. Key to this is the control of possible double funding for all submitted Payment claims, that are being carried out at the central register of aids, administered by the Ministry of Finance. All subsidies of an applicant are verified in the accounts of the beneficiary during the on-the-spot checks, in accordance with Article 24 of Commission Regulation (EU) No. 65/2011. Control of acquired machineries and technologies, where there is a higher risk of a subsidy fraud, has been intensified. Simultaneously, control procedures were modified to ensure these checks have been entirely conclusive.</p>
<b>DK</b>	<p>The Danish AgriFish Agency – the payment body responsible for administering the rural development programme – is in the process of implementing a range of initiatives to combat known risks of fraud in this area. These initiatives include the Agency's anti-fraud strategy, designed to identify the main risks associated with individual aid schemes. Administrative checks on fraud in connection with investment projects will focus on these risk areas, particularly in connection with the tendering process.</p>
<b>DE</b>	<p>Special action plans have been implemented in the EAFRD since the beginning of 2013. These action plans and corresponding reports on progress are available to the Commission.</p>
<b>EE</b>	<p>Since 2013 additional control activities of EAGF and EAFRD measures have been carried out by the Estonian Registers and Information Board (ARIB). The additional control activities are part of administrative investigations focused on potential fraud cases which are committed by the groups. The goals of the additional checks are to detect networks of fraudsters and discover new fraud patterns.</p>
<b>IE</b>	<p>All projects receiving capital assistance from the Paying Agency (DAFM) under the Targeted Agricultural Modernisation Scheme are now subject to a pre-payment inspection prior to the issuance of the grant aid involved.</p> <p>All controls and checks required under the EU regulatory framework are consistently carried out on all EU funded schemes. The level of inspections by the delegated body for Leader funding i.e. the Department of Environment, Community and Local Government has been increased in the past year.</p>

**Ministry of Rural Development and Food**

**The Special Management Service for the Programme 'Rural Development in Greece 2007-2013'** during the extraction of the sample of audited investment projects of RDP 2007-2013 with risk analysis for 2013 took into account, among other things, the results of audits on corresponding Measures of the previous programming period, the analysis of which helped to identify risk factors.

The use of these elements in planning audit sampling helps to reduce the risk resulting from the non-detection of significant findings, as risk analysis sampling selects projects with a higher error probability. Especially for Measures 112 and 121, in particular regarding the commitments of these Measures during risk analysis sampling for the classification of the audited projects, the results of the audits in Measures 3.1 and 1.1 of ESDP & Rural Regeneration are examined and the following are considered as weighted risk factors: a) the percentage error of the total audited expenditure and b) the percentage of sub-projects with an error.

**The Directorate of Spatial Planning and Environmental Protection** has been designated as a body for the enforcement of the actions of Measure 2.1.4 'Agri-environment Aid' of the Rural Development Programme (RDP) 2007-2013. Under the regulatory framework (JMD 079833/24-10-2011) for the actions, administrative and on-the-spot audits are carried out in a highly efficient manner to ensure compliance with the conditions for granting aid, both at the approval stage and the payment stage. This is achieved mainly by supporting the work of the auditors of the implementing bodies and of the implementing entity, the paying entity and the competent bodies for laboratory checks, with a computer application for certain agri-environmental actions (which, for each action, covers the entire environment from the time of the submission of applications for aid to interested parties, the conducting of the necessary administrative audits and cross-checking to the integration and payment of beneficiaries). All the processes and audits that the bodies are required to implement so that the beneficiaries of the co-financed projects receive the approved aid are registered in this application.

The computerised environment facilitates the cross-checks required Under Article 18 of the above JMD on the information declared against the information of the beneficiary registered in the databases of the Ministry of Rural Development and Food, such as the Single Aid Application (A.E.E.) database, the geospatial data database (LPIS), the M.A.E.E. database (Register of Farmers and Agricultural Exploitation), the database of Veterinary records, and in the electronic data files from various public or private entities such as the following: bank accounts/early retirement beneficiaries/early retirement successors with ten-year foreclosure/findings from A.E.E. audits etc. In particular, the Single Aid information, which shapes the final 'picture' of each producer's agricultural holding, provides the basis

	<p>for the initial request and the subsequent audits provided for.</p> <p>Therefore, many of the procedures established for the auditing and inspection of the systems supported by these databases are also incorporated indirectly as safeguards in the programmes of agri-environmental actions. In this way, the stages which involve the human factor are reduced, eligibility for aid to producers and the declared areas and/or animals is ensured, double funding of parcels or producers is avoided and, in general, the chances of fraud, which would negatively affect the financial interests of the EU, are reduced.</p> <p><b>The Directorate of Planning and Agricultural Structures</b> conducts, in the current programming period, strict audits on documents that investors submit to receive a grant, taking into account the findings communicated to it, in particular by SDOE, regarding fictitious invoices, counterfeit checks, etc.</p>
<p><b>ES</b></p>	<p>The units responsible for checks have followed the recommendations of the Commission and the Court of Auditors. In particular, they have improved inspection procedures and increased training for inspectors.</p> <p>This resulted in particular in the following advances:</p> <p><u>Selection criteria:</u></p> <ul style="list-style-type: none"> <li>- Establishment of clear rules for granting assessment points, and objective, measurable and realistic criteria.</li> <li>- The decisions of the assessment committee must be properly documented and refer to each of the subsidised projects.</li> </ul> <p><u>Evaluation of reasonableness of costs</u></p> <ul style="list-style-type: none"> <li>- Application, at least, of the current Laws on procurement and subsidies.</li> <li>- In the event that modules are established, a record must be kept of the calculations carried out to arrive at each limit, with explanations for the reasons why they differ for each sector.</li> <li>- Revision of the pricing modules and data bases: when the beneficiary is authorised to select bids on the basis of the quality of the</li> </ul>

goods, justification must be requested for this choice and the prices must be checked to ensure that they are reasonable. The cost proposed by the beneficiary must not be accepted only on the basis of eligibility.

Eligibility of the applicant

- Improvement in control procedures by establishing clear rules on how to check the eligibility requirements and apply them transparently.

Eligibility of investments

- Improvement in control procedures to ensure that investments comply with the objective of the measure.

Failure to comply with public procurement procedures

- Improvement in application of procurement procedures.

Delimitation with regard to other measures or Funds – risk of double financing

- More exhaustive checks covering inspection of accounting documents at the beneficiary's premises.

- Improved cross-checking with all data bases relating to assistance/aid.

Risk criteria when selecting samples for on-the-spot checks

- Analysis of risk criteria and modification of them in line with results.

Exclude financing of investments prior to the application date

- Improvement in control procedures.

Documentation covering administrative and on-the-spot checks

	<p>- Drafting of more detailed documents that include a description of the checks carried out, not simply the results, with a view to guaranteeing a sufficient audit trail.</p> <p><u>Control statistics</u></p> <p>- Improvement in filling in tables by drafting annual FEGA circulars on 'Instructions for filling in statistical tables on rural development checks' and 'Checks of statistical tables', with explanations given in coordination meetings and resolving of any doubts.</p> <p><u>LEADER: overheads</u></p> <p>- Improvement in information and control procedures.</p>
<p><b>FR</b></p>	<p>The Agency for Services and Payment (ASP) is a State operator working in very diversified fields but mostly directed towards administrative and financial management of public aid, technical and administrative assistance for the implementation of public policies, and monitoring and assessing public policies.</p> <p>Its role as regards EAGF and EAFRD Community aid controls is to check compliance with eligibility requirements for aid by means of a process set out in Community legislation through administrative and on-the-spot checks.</p> <p>The purpose of these checks is thus to detect irregularities that render ineligible the requests for payment submitted by beneficiaries.</p> <p>Where checks carried out bring to light evidence giving rise to a suspicion of potential fraud (for instance, a deliberately made false declaration), the ASP refers the case to the Public Prosecutor's Office in order for it to launch criminal proceedings. Cases are classed by the DDT (Directorate for territories oriented policies on department level) by virtue of the instructions of the Ministry responsible for agriculture to its decentralised departments. This is also the case where applications are artificially created in order to obtain a payment (bogus claims).</p> <p>These provisions apply to both funds.</p>

<p><b>HR</b></p>	<p><b>Measures</b> taken by the Paying Agency for Agriculture, Fisheries and Rural Development to <b>mitigate</b> risk in the area of rural development in 2013 include:</p> <ol style="list-style-type: none"> <li>1. <b>Education of employees</b> according to the Annual Plan.</li> <li>2. <b>Education of beneficiaries</b> – campaigns conducted by the Ministry of Agriculture and the Paying Agency for Agriculture, Fisheries and Rural Development, as well as providing answers to the questions posed by beneficiaries (e.g. 25.2.2013. – 8.3.2013, seminars on irregularities in rural development projects were presented to beneficiaries in all the regions in Croatia – Zagreb, Osijek, Vinkovci, Čakovec, Slavonski brod, Virovitica, Krapina,, Pazin, Sisak, Koprivnica, Karlovac, Otočac, Dubrovnik, Split, Šibenik, Zadar, Rijeka, Bjelovar, Požega, Varaždin).</li> <li>3. <b>Procedures</b> of the Paying Agency were amended in order to enhance approvals in rural development projects. According to the instructions by the SCIF, the Guidelines on irregularities for IPARD were amended in part with regard to irregularity reporting.</li> <li>4. <b>Efficient institutional framework</b> for protecting EU financial interests: <ul style="list-style-type: none"> <li>• <b>Government Regulation on the institutional framework of the system for combating irregularities and fraud (OJ 144/2013)</b></li> <li>• <b>Government Decision on establishing AFCOS Network (OJ 151/2013)</b></li> </ul> <p>Continuous coordination of administrative and operative activities are undertaken, as well as direct cooperation with SCIF.</p> </li> <li>5. <b>Code of ethics (since 9.3.2012.)</b> – determines rules of good behaviour of employees, based on the Constitution and international agreements, acts and other national rules. Regarding irregularities, the Code was amended on 9.10.2012. in Article 9 (2) which lays down rules on reporting of irregularities and therefore stresses the importance of protecting financial interests of the EU in Croatia: <p style="text-align: center;"><i>Employees are obliged to report any irregularity to the Irregularity Officer</i></p> <p>The Code is available on notice boards in the premises of the Agency and on internal and official web pages of the Agency.</p> </li> </ol>
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	<p>6. <b>Declaration of confidentiality and impartiality</b> – signed by all employees and therefore obliges employees to protect all official and confidential information, as well as information about irregularities.</p> <p>7. <b>Example of exchange of experience</b> – 14-15.10. 2013. the seminar „<i>How to prevent and fight against fraud in rural development</i>” was conducted in OLAF’s organisation and with competent representatives of BiH, Albania, Macedonia, Monte Negro, Serbia, Turkey, EU Court of Auditors, EU Commission DG Agri.</p>
<b>IT</b>	<p>Italy appreciates the Commission's invitation to the Member States and, for the purposes of increasing the rate of fraud detection in rural development investment projects, it recognises the importance of planning anti-fraud work in a way that takes account of acquired experience, as well as the information and risk factors obtained through that work over previous programming periods.</p> <p>The soundness of the recommendation is substantiated by the positive results obtained in contexts related to the fight against fraud, for instance, in the action plan for reducing the error rate in rural development, which also uses the risk factors and problems identified during investigation work carried out during previous programming periods for rural development by different institutional bodies involved in various capacities.</p>
<b>CY</b>	<p>The points below are the ones that, among others, Cyprus has recently prepared and sent to the DG for Agriculture and Rural Development and which describe the actions made or to be made:</p> <ul style="list-style-type: none"> <li>• Through the letter of preliminary approval sent to the beneficiaries of Scheme 1.5.1, the beneficiaries have been informed about the details and the strict obligatory rules regarding the supporting documents that have to be submitted with the applications for payment following the implementation of the projects</li> <li>• Publication of examples of correct and wrong submission of applications for payment, through the website of Agriculture Department, aiming at informing the beneficiaries and avoiding any sanctions</li> <li>• The officers responsible for collecting applications for payment have been informed about the correct completion of the applications and the requested supporting documents in order to avoid any irregularities.</li> </ul>

<b>LV</b>	The Rural Support Service has internal audit recommendations for control improvements for the year 2012 – 2013.
<b>LT</b>	When assessing project risks, account is taken of experience and the information accumulated in the previous programming period.
<b>LU</b>	<i>The aid for rural development investment projects are calculated within the limits of standard costs, on the basis of real costs (without the VAT) established following invoices with proof of payment. This simplified option in cost matters enables us to reduce the error rates/fraud detection and assure that the costs stay reasonable.</i>  <i>Moreover, the LU Paying Agency does not pay deposits but only payments in advance following invoices with proof of payment. The final payment is exclusively made on the basis of a validated acceptance protocol from our control unit.</i>
<b>HU</b>	In accordance with the relevant legislation, and in line with practice in previous years, the MVH obtains preliminary information on the <b>client's reliability</b> through administrative checks of aid requests for EAFRD investment schemes; the information shows whether the operation or investment which forms the basis for the request can be used as the basis for a more thorough and systematic audit in justified cases.
<b>MT</b>	In order to protect both EAFRD and EAGF funding, the Paying Agency incorporates the following measures throughout its control structure in order to mitigate the risk of processing fraudulent payment claims/activities: <ol style="list-style-type: none"> <li>1. Liaising with other Government departments to verify authenticity and validity of information submitted;</li> <li>2. Inter-ministerial coordination in order to eliminate possible overlapping of funds for the same projects/investments;</li> <li>3. Requesting original and authentic invoices and proof of payments in relation to investment projects;</li> <li>4. Verification that procurement procedures were adhered to by beneficiaries</li> <li>5. Checking of veracity of VAT numbers from the VAT Information Exchange System (VIES) portal;</li> <li>6. Stricter adherence to established types of proof of payment. The types of proof of payment which will be accepted depend</li> </ol>



	<p>on the payment method used by the beneficiary such as:</p> <ul style="list-style-type: none"> <li>• Payments in cash – VAT receipt OR supplier declaration confirming that the payment has been settled by cash in case of TAX Invoices. Given that farmers submit payment claims containing TAX Invoices as the latter are in fact business to business transactions, then in such instances the VAT receipt cannot be submitted;</li> <li>• Payments by cheque – Encashed cheque image; and</li> <li>• Payments by bank transfer – Bank draft.</li> </ul> <p>7. Cross-checking the validity of expenditure claimed with other similar expenditure claimed or with available market prices in order to ensure consistency and help in identifying inflation of amounts claimed;</p> <p>8. Checking for similar formats between the three quotations presented by beneficiaries. From experience we have noticed that quotations with the same format, i.e. same font type used, positioning of wording in the quotations as well as same descriptions raise suspicion as to the authenticity of the quotations submitted. Fraudulent quotations are submitted to avoid procurement of the cheapest offer on the market. This is mostly related to administrative checks on applications submitted rather than on payment claims;</p> <p>9. Liaising directly with AFCOS Malta in cases of identification of suspected fraud; and</p> <p>10. Ad-hoc inspections carried out by technical people.</p>
<p><b>NL</b></p>	<p>Following an important recommendation in the certifying audit report for 2011, further progress was made in 2013 to implement the improvements that had already been started.</p> <p>These involve measures to tighten up the implementation of administrative checks so as to focus on the quality and intensity of the monitoring by the paying agency.</p>

	<p>The improvements introduced in 2012 have had a clear effect on the requests for payment which resulted in payment in 2013.</p> <p>Improvements were also made in the area of monitoring, particularly in order to gather and analyse the results of checks more systematically.</p> <p>The paying agency did this for two periods in 2013, and the results produced a relatively large number of findings. These are consistent with the Audit Service's findings from substantive testing and relate in particular to errors in the calculation of the EU contribution and regarding the eligibility of expenditure.</p> <p>For the rest, the errors detected were below the tolerance threshold so there were no grounds for issuing new recommendations. Nevertheless, the findings arising from the improvements that were introduced are a starting point for further improvements which will of course also be useful for detecting irregularities.</p>
<b>AT</b>	No Response.
<b>PL</b>	<p>While analysing the risk factors for various types of aid, the competent national authority takes into account the risks identified during national and EU checks. Thus, risk factors for various types of activity are not created from scratch, but are subject to modifications based on previously gathered experience. The risk factors for the 2004-2006 programming period have been analysed and, where found likely to recur and have an impact, taken as criteria for selecting projects for on-the-spot checks during the 2007-2013 period.</p>
<b>PT</b>	<p>In this regard it should be pointed out that the <i>Instituto de Financiamento da Agricultura e Pescas</i> (Agriculture and Fisheries Financing Institute – IFAP), in compliance with the Community rules and principles governing the areas in question, has (i) implemented control, prevention and action mechanisms capable and appropriate for the protection of the financial interests of the EU and the prevention and combating of fraud; (ii) promoted, in close cooperation with other supervisory, management and certification authorities as well as with the legal, judicial and tax authorities involved, the appropriate procedures for the detection of irregularities and, if appropriate, their referral to the competent judicial authorities to establish whether criminal offences have been committed; (iii) efficiently developed the recovery of unduly paid aid, making use of all legal means at its disposal of an administrative nature (offsetting of aid, enforcement of guarantees, instalments, etc.) or of legal/coercive nature (lodging claims in insolvency process, deducting a civil claim in criminal proceedings or initiating tax enforcement proceedings), just as in the case of a national loan, and (iv) monitored and intervened in any proceedings of a</p>

	<p>judicial nature, either as plaintiff or as defendant, always with the ultimate goal of safeguarding EU and national financial interests and, often, to assist in the effective enforcement of the material justice and truth appropriate to the cases.</p> <p>In addition, in February 2013 the <i>Inspeção-Geral da Agricultura, do Mar, do Ambiente e do Ordenamento do Território</i> (Inspectorate-General for Agriculture, Maritime Affairs, the Environment and Regional Planning.– IGAMAOT) revised the control methodologies by adopting a guide to checking the compliance of public procurement procedures, applicable to audits and checks carried out under the EAFRD.</p>
<p><b>RO</b></p>	<ul style="list-style-type: none"> <li>• The website of the Paying Agency for Rural Development and Fisheries ('APDRP') contains a portal for publishing procurement notices and calls for tenders (including specifications), for private beneficiaries; they can publish on-line invitations to tender and award notices for tender procedures under projects financed through the National Rural Development Programme (NRDP).</li> <li>• The checks included in the working procedures have been detailed, clarified and improved, for all stages of a project, from evaluation to ex post checks;</li> <li>• The risk factors have been adjusted by adding new factors (including 'red flags' for checking the risk of artificial conditions) allowing for proper verification of a project in the evaluation, selection, contract, procurement and payment authorisation stages.</li> <li>• APDRP's regional and county offices have been monitored with a view to ensuring a uniform approach by checking samples at the central office, depending on the new risk factors identified;</li> <li>• APDRP's procedures have been amended in order to strengthen the checks in respect of verifying both the status of SME and any links between beneficiaries and tenderers, by consulting with the National Trade Register Office;</li> <li>• Regular training has been provided to the staff of the APDRP;</li> <li>• Beneficiaries have been regularly informed of how to prevent irregularities in public and private procurement procedures and protect the financial interests of the European Union (the APDRP's audit division has drawn up a guide on this subject);</li> <li>• To avoid double financing of projects under NRDP 2007-2013 and other EU funds, the APDRP works with other institutions administering EU funds, on the basis of cooperation protocols;</li> <li>• The APDRP's specialised legal department closely monitors the introduction of new regulatory acts concerning fraud/corruption, and contributes to incorporating/adapting such provisions into its own regulations and working procedures.</li> <li>• There have been training courses in the area of control and the fight against corruption - covering the applicable regulatory acts, the integration of rules into human resources documents, prompt punishment in accordance with the law (administrative, financial, disciplinary, criminal) and the publication of such sanctions via APDRP's internal information flow.</li> </ul>

In 2013 the Slovenian Agency for Agricultural Markets and Rural Development (ARSKTRP) prepared a document: Report on infringements found in 2012 in measures under Axes 1 and 3 of the RDP 2007-2013. The analysis indicated some significant weaknesses within measures 322 (Renewal and development of villages) and 323 (Preservation and improvement of rural heritage), which are summarised below.

The most common discrepancies for measure 322 (Renewal and development of villages) were largely found in construction and were as follows:

- brand names being mentioned in public procurement documentation
- adding additional items that were not anticipated when tenders were submitted and which did not have ARSKTRP approval
- beneficiaries claiming payment for work and services that were not approved by a decision
- incorrectly applying relative shares
- payment claims not taking into account deductions applied by ARSKTRP when approving a tender
- quantitative discrepancies found on the spot (volume of works or supplies lower than stated in invoice breakdown).

The most common discrepancies for measure 323 (Preservation and improvement of rural heritage) were as follows:

- beneficiaries' claiming payment for work and services that were not approved by a decision
- brand names being mentioned in public procurement documentation
- quantitative discrepancies found on-the-spot (volume of works or supplies lower than stated in invoice breakdown).

The error rate for measures 322 and 323 under Axis 3 of the RDP 2007-2013 was rather high as a result of these discrepancies.

The measures to reduce the error rate that ARSKTRP has already introduced in tandem with the Ministry of Agriculture and the Environment (MKO) are primarily aimed at improving supervision and procedures and respect for public procurement rules. The National Rural Network organised a seminar on 26 September 2013 entitled Legal Regulations on Public Procurement with Examples from Practice, which was presented by the Academy of Public Administration (part of the Ministry of the Interior) and which was aimed at all municipalities that have had projects approved within the latest (eighth) public tender for measure 322. The seminar addressed the main points that beneficiaries should focus on in implementing public procurement contracts and how to reduce or eliminate procedural errors.

	<p>In 2014 we are continuing with similar seminars on improving the quality of claim preparation for other beneficiaries that had RDP funds approved under the Axes 1, 3 and 4 of the RDP 2007-2013 (taking place by summer 2014 at the latest), as follows:</p> <ul style="list-style-type: none"> <li>• measure 322 seminar for municipalities</li> <li>• seminars for measures under Axes 1 and 3 (other), with the aid of agricultural and forestry institutes around Slovenia.</li> </ul> <p>Informal meetings and direct communications are on-going between ARSKTRP, MKO and the Slovenian Chamber of Agriculture and Forestry relating to activities to improve cooperation between institutions and improve the flow of information to final recipients of EAFRD funds.</p> <p>The brochure Guidelines for Implementing Investments on Farms, featuring the most common errors as well as penalties, in line with the latest amendment to the Decree on measures under Axes 1, 3 and 4 of the Rural Development Programme of the Republic of Slovenia 2007-2013 to be implemented in the period 2011-2013 (UL RS No 63/2013) was published in February 2014.</p> <p>Guidelines on the correct and high-quality preparation and submission of claims will also be published on the ARSKTRP, MKO and rural network websites.</p>
<p><b>SK</b></p>	<p>In connection with the mitigation of risk in the field of rural development, the following measures have been adopted in the form of new rules, documentation updates and organising of trainings:</p> <ol style="list-style-type: none"> <li>1. Government Regulation No. 230/2013 Coll. of 14 August 2013, amending Regulation of the Government of the SR Nr. 499/2008 Coll. on the criteria for providing assistance under the Programme for Rural Development, as amended;</li> <li>2. Government Regulation No. 151/2013 Coll. of 30 May 2013, amending Regulation of the Government of the SR No. 488/2010 Coll. on the criteria for providing assistance in the form of direct payments in agriculture, as amended;</li> <li>3. Act Nr. 211/2013 Coll. of 21 June 2013, amending Act No. 543/2007 Coll. on the state authorities' competencies as regards providing assistance for agriculture and rural development;</li> <li>4. Update of Manual of the Section for Financing Assistance, Unit for Irregularities Management of the Agricultural Payment Agency, Participation in training in the field of the protection of the EU's financial interests and fight against fraud.</li> </ol>

	<p>To this end, the Agricultural Payment Agency (APA) carries out, under Art. 24 of Commission Regulation (EU) No 65/2011, a 100 % administrative check of all applications for assistance, payments or other applications submitted by the applicants to the APA. It shall carry out, under Art. 25 of Regulation (EU) No 65/2011, checks on the spot, while, in the case of investment projects for rural development 100% of the projects are checked, i.e., each project shall be physically checked at least once prior to making the final payment. In 2013, 75.72 % of expenditure was subjected to verification by on-the-spot checks. The carrying out on-the-spot checks exceeds the minimum threshold of 4 % of expenditures financed by the EAFRD.</p> <p>In 2013, on the basis of a risk analysis and random selection, the ex-post checks verified, under Art. 29 of the Commission Regulation (EU) No 65/2011, 3.4 % of the EAFRD's expenditures on investment operations, which are still subject to commitments, in respect of the final payment from the EAFRD fund (45 investment operations of 2,949, completed during the period after 1 January 2007 until 31 December 2012, were subject to commitments by 31 December 2012; additionally, eligible expenditures of EUR 20,217,005.47 from the EAFRD of the total amount of the contributions from the EAFRD paid by 31 December 2012 in the amount of EUR 602,398,960.60 on investment operations that were the subject of commitments by 31 December 2012). In addition, 13 follow-up special financial controls were carried out to verify the expenditure from EAFRD in the amount of EUR 2,477,117.51.</p>
<b>FI</b>	<p>The Agency for Rural Affairs has updated its instructions on assessing whether costs are reasonable and documenting this assessment. Video training has been organised for those handling aid and payment requests in which the new instructions are discussed.</p>
<b>SE</b>	<p>In 2012, the Board of Agriculture carried out a wider review of the procedures, systems and payments of all decision-making authorities (the Board of Agriculture, the Sami Parliament, the Forest Agency and the 21 county administrative boards) concerning rural development support. In 2013, a follow-up took place of the 15 authorities in which serious or very serious shortcomings were found in 2012. The 2013 review points to significant improvements, but some work remains. Common shortcomings are lack of documentation, which means, for example, that it is not shown whether or not costs are eligible, or whether specific decision-making conditions were fulfilled at the time of payment. It is also common for proof of payment to lack certain information, such as the recipient's account number or the date when payment took place. The Board of Agriculture is now working to improve the system, and is taking into account these experiences in the new programme period.</p>
<b>UK</b>	<p><b>DEFRA:</b> In the UK, the established IT systems already undertake numerous processes which involve the cross checking of validated data already held against claim data submitted by beneficiaries. This data is regularly audited by both EC and European Court of Auditors'</p>

	<p>missions. Increased levels of on-the-spot checks by Managing Authorities and Paying Authorities are carried out where investment projects are involved, with additional input from relevant industry experts as appropriate.</p> <p>In addition, each scheme under the rural development programme may be subject to a fraud risk assessment before grant money is paid out. This can include details of the controls in place including those to prevent fraud and is reviewed by both internally and the counter fraud resources that will make recommendations to improve controls if required.</p>
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**2.7. 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 the their post-clearance customs control activities, Member States should ensure that they have effective systems of risk assessment in place allowing them also to carry out checks targeted at high-risk imports at the time of clearance.**

<p><b>BE</b></p>	<p><u>BE SPF Finance Response:</u></p> <p>The Belgian Customs administration does use an automatic selection tool to select validated import and export declarations on the basis of risk analysis. This gives the administration the opportunity to select high-risk consignments for control (physical or documentary) at the time of clearance, at the border or at the premises of the consignee. The risk analysis is not only based on the financial aspect of the consignment but also on the security, safety or environmental aspects.</p>
<p><b>BG</b></p>	<p>The Customs Agency has updated its existing risk analysis module by creating a centralised version of the module and building up its functionality. An option has been created for defining a wide range of risk criteria and recommending actions under specific risk profiles which allows high-risk practices to be selected at the time of customs clearance.</p>

	<p>The current risk management manual was updated as part of OLAF's Hercule II project.</p> <p>A joint analytical information centre (AIC) for exchanging information and for analysis and cooperation between the National Revenue Agency, the Customs Agency, the National Police Directorate, the Border Police Directorate and the National Security Agency is being set up.</p> <p>A risk information exchange system will be implemented to gather, store and exchange information for the purpose of risk analysis, to facilitate control activities and to document the results of controls carried out.</p>
<b>CZ</b>	<p>The Czech Customs Administration have established standards of risk analysis, meaning all customs declarations are subject to electronic risk analysis without exemption. Electronic risk analysis is based on red/yellow/green channels.</p> <p>Red channel – high risk, certain risk, activated risk profile set the scale of control (physical check on goods or documentary checks, or both, or specific target of control).</p> <p>Yellow channel – medium risk, possible risk, activated risk profile set the scope of control (physical checks on goods or documentary checks, or both, or specific target of control).</p> <p>Green channel – no risk, automated release is following.</p> <p>In addition to electronic risk analysis, is for all customs declaration possible to carry out manual risk analysis based on experiences of releasing customs office.</p>
<b>DK</b>	<p>The Danish Central Customs and Tax Administration (SKAT) has incorporated the recommendation into both its import and export controls. The risk analysis work is undertaken by a national risk analysis team. The actual risk analysis begins on an electronic basis with the help of IT tools.</p>
<b>DE</b>	<p>The German customs authorities run two risk analysis centres. One, in Münster, has since 1999 been dealing with goods associated with fiscal risks on import and also on export and with risks in connection with the involvement of the customs authorities in the prohibitions and limitations. The monitoring activities of the German customs service are largely governed by the risk profiles of this unit.</p>



<p>The customs authorities in Weiden have been operating a second risk analysis centre since 2011 to comply with EU requirements for the protection and security of the population and of the animal and plant world when goods are imported. This centre also contributes to the effective management of customs controls.</p> <p>Both risk analysis centres work under the common risk management framework adopted in 2003 by the Commission's customs policy group, which represents the essential basis of their activities. Based on the risk management framework both centres are in close contact with other EU customs authorities through the CRMS and RIF systems. The two centres are to be merged in the foreseeable future in order to achieve further efficiency savings.</p> <p>The German customs authorities have also taken further measures in the area of risk management which far exceed EU requirements or which are only at the conception stage there.</p> <p>The European Commission has been aware of these matters for many years; they have been made clear on visits by Commission staff from DG Budget and DG TAXUD and by OLAF. The ECA has also dealt with the German risk management system many times and has not found any appreciable problems.</p> <p>Moreover the organisational structures and working methods of risk management systems in the Member States have become sufficiently well-known in the meetings of the Customs Code Committee — customs controls and risk management section — under the chairmanship of DG TAXUD. So the question raised by OLAF is surprising and contributes to the impression given here of a lack of communication and consultation between the Directorates General.</p>	
<p><b>EE</b></p> <p>All customs procedures in Estonia, related to importation, are subject to electronic risk analysis (selection criteria) and different automatic controls (to control completion of customs formalities pursuant to law), both carried out at the moment of placing of goods under the customs procedure. Such a process has been in use since 2006, when a new system for the customs data complex, together with its support systems, were implemented. In addition, entry and / or transit formalities prior to importation are covered by electronic risk analysis. Selection by random choice also occurs.</p> <p>All units exercising supervision within the Estonian Tax and Customs Board participate in risk criteria introduction / creation. Risk criteria can be either on individual-, operation- or goods-based. The officials of the Intelligence Department are dealing with data analysis software SAS Enterprise Guide and various departmental, national and international databases.</p>	

<b>IE</b>	<p>The Irish Revenue Commissioners are constantly striving to improve its targeting of high risk imports. In 2013, Revenue launched the Customs Risk Intervention Selection Programme (CRISP). Using risk analysis, this new system targets non-compliant imports for post-clearance intervention (primarily audit).</p>
<b>EL</b>	<p><b>Ministry of Finance - General Directorate of Customs &amp; Excise Duties Directorate: 33 - Customs Audit</b></p> <p>On 3 April 2012, the new subsystem of Risk Analysis started operating for exports in the context of the new Integrated Customs Information System 'Icisnet'.</p> <p>Due its strengths, the new Risk Analysis subsystem permits the use of new tools and data so that dangerous goods and customs offences can be detected more easily during the export process.</p>
<b>ES</b>	<p>In relation to European Union revenue managed by the Customs and Excise authorities via the Department of Customs and Excise, there is a risk analysis system that can be applied to carry out checks at the time of release.</p> <p>This system is fully computerised and is efficient in dealing with all types of customs declarations, making it possible to select the ones involving previously defined risk parameters. The system is also constantly updated, with the necessary improvements being made gradually.</p> <p>As a result, this recommendation is being followed within the limits of the powers of the customs and excise authorities.</p>
<b>FR</b>	<p><b><u>I. Organisation chart of the decentralised departments of the Directorate-General for Customs and Excise – DGDDI: a revamped audit policy:</u></b></p> <p>Regulatory and technical developments in recent years have enabled the implementation of a new customs check policy which we would here set out in detail in order to provide complete understanding of its outlines and impact.</p> <p>The updated control policy initiated by the DGDDI aims to establish a services administration based on the relationship between customs and enterprises. Priority is given to a form of partnership with those that are considered to be the most reliable on the basis of harmonised, objective criteria. The purpose of this strategy is to implement controls appropriate for the operator's risk profile, i.e. better</p>

targeted – and therefore more efficient – while improving the fluidity of trade.

The degree of confidence in an operator is reflected by its classification on an accreditation scale. In some cases this leads to a quantitative reduction in customs controls as a result of the reliability shown on the scale and the risk level attributed, based on the score obtained in the national risk analysis chart (GRINAR). Unlike the accreditation level, the import and export risk levels are not in any circumstances notified to operators. The risk analyses (RA) are internal and are solely for the purposes of the French customs authorities.

The aim is to establish a relation of trust with operators. However, this does not preclude customs surveillance and an appropriate response vis-à-vis operators who fail to obey the rules.

#### **A. Description of the new control approach**

##### **1. Selectivity of controls**

The selectivity of the controls is based on widespread use of targeting, optimised by systematic carrying out of RAs. These are conducted by the units for information and planning of inspections (CROC) which generate information enabling the services, by concentrating the checks on high-risk areas, to make the controls more efficient while maintaining the fluidity of trade. It is also a useful aid to decisions on the planning and targeting of controls, both ex ante and ex post.

Each operator is currently subjected to an RA which (1) measures the real risks of fraud, particularly by examining previous disputes with the operators, who are pre-identified as 'at risk' when an irregularity or fraud has been detected during a previous customs check and (2) measures the potential risks of fraud based on examination of the customs and economic environment of the operators' activity and of the nature of the products subjected to customs clearance formalities and the related regulations. The financial risk of the operators is also assessed by the CROC together with the regional audit services (SRA) in the same territorial jurisdiction, based on the audits conducted by these services and the expertise of the customs offices' procedure management and control units, in particular that of the officials in charge of supervising the controls.

In order to carry out an identical RA for each operator nationwide, the CROC have the GRINAR, which enables a global assessment to be made of the risk relating to an operator and its traffic. However, the CROC are also required to draw up, at local level, RA and studies carried out nationally by the Customs Information Directorate (DRD) of the National Directorate for Customs Information and

Investigations (DNRED) – or the services of the Directorate-General. They also conduct regional or local RA in order to obtain information on the economy of the region and determine how sensitive the traffic is to fraud. They carry out sectoral RA based on the specific characteristics of the traffic at the regional directorate (DR) to which they report. All these RA are then circulated to the other inter-regional CROC to complete the information on the environment relevant to the inter-regional area, and can be accessed by all the CROC through networking and pooling best practices used in the DGDDI.

The French customs authorities also have a growing set of tools using new information and communication technologies to facilitate their tasks. These include the computerised targeting module RMS (Risk Management System – formerly Delt@-R[isque]), which helps to make the checks carried out by the French customs authorities better targeted and more efficient, and speeds up the release of the flows of goods that do not need prior verification. The selection profiles in the RMS are fine-tuned to ensure relevant targeting in respect of the risk assessment while not impeding the flow of traffic.

## 2. *Adjustment of controls*

The controls are adjusted to the reliability of the operator, based in particular on the conclusions of the audits carried out by the SRA, the level of risk of the operator/product and the sensitivity of the traffic established on the basis of the RA (in particular, use of the GRINAR).

It should be noted that the audit technique is aimed at certifying compliance, by operators who so require, with the conditions for being granted customs procedures facilities. It consists of an objective examination of the information gathered on the activity of the requesting operator, which is then cross-checked by a visit to the operator's premises to verify the veracity of the information and the existence of the operational processes and procedures referred to in the documentation supplied or made available by the operator. The information needed for examination of the criteria used for the audit can be obtained internally by consulting databases and customs services and supplemented externally by consulting other administrations.

Following the audit, the SRA officials must draw up a detailed report identifying the weaknesses and strengths, in particular those that are akin to best practices. However, the officials must verify that the conditions for the authorisation granted are complied with at all times. In particular, they must ensure that no infringements are committed by the operator and check whether there are elements giving reasonable grounds to believe that operators availing themselves of simplified procedures no longer fulfil the conditions laid down in the

regulations.

Thanks to this on-going surveillance by all the customs departments involved in the operations of the authorisation holder, the SRA should be able to decide when it is necessary to conduct a follow-up audit. In all cases, even in the absence of information alerting an SRA, a follow-up audit must be held within three years of the granting of the authorisation in order to ensure compliance with the procedures within the period for recovery of duties and taxes.

The follow-up audit must be conducted by the service that carried out the audit for authorisation for the simplified procedure. This audit focuses mainly on the criteria most likely to be no longer fulfilled.

Lastly, although the purpose of the audit is not to inspect, if a failing is discovered in the implementation of customs procedures during an audit the required action will be taken, whether this involves simply issuing a supplementary assessment in a case of non-fraudulent error or initiating an in-depth 2nd level ex-post check together with notification of the infringement and of penalties in a case of manifest fraud.

In this case too, adjusting the controls therefore results in better targeting and optimal quality of controls.

### 3. *Reduced level of ex ante controls*

As far as possible, the French authorities reduce the level of ex ante controls (consisting mainly of compliance checks) by postponing this type of check until after the release of the goods for free circulation (obtainment of the warrant for removal).

This is possible thanks to the assessment of the operators' reliability and the reformatting of the first-level ex post controls.

Computerisation of the accompanying documents and the introduction of automated documentary checks will also reduce ex ante controls. This is currently being implemented and has already resulted in the entry into force of the TRACES-FR application ((TRAdE Control and Expert System), which computerises the common veterinary entry documents (DVCE), and the platform for sharing information between the French customs authorities and the veterinary units at border inspection posts (PIF). The TRACES application, which is used by all the French customs authorities, has been in operation since 15 September 2010.

### 4. *Improved coordination between the actions of the different players in the control chain*

Steering by the inspection planning unit (POC) and the role of the CROC have been reinforced. Networking has been developed between the CROC and the other services involved in the control chain (the supervisory service, the office inspection unit, the regional investigation service (SRE) and the customs operations directorate (DOD) and customs investigation directorate (DED) of the DNRED).

The development of networking and the pooling of information improves coordination between first-level ex ante and ex post controls and between these controls and the second-level controls. They also make it possible to optimise the programming and quality of controls.

The national inspection database (BANACO) was set up and deployed to meet the need for a computer tool to enable information to be pooled, in particular between the different players in the control chain described above.

## **B. Ex-post controls**

### *1. First-level ex-post control*

The first-level ex-post control, which is a documentary and, exceptionally, a physical inspection, is aimed at verifying that the customs operations are being carried out correctly by the operators and that the legislation in force is being complied with, usually in the absence of the goods. This control is limited to verifying that the documents declared are present, the statements in the customs declaration and the attached documents are correct and the accompanying documents are in order. It also makes it possible to monitor the self-management of the credit relating to sundry operations (COD) and to customs procedures with economic impact. Deferred inspection of customs clearance declarations, which was formerly carried out by the Deferred Inspection Services (SCD), is now integrated into this type of control.

As part of the local clearance procedures, the inspection services must examine the regularisation declarations and the corresponding entries in the commercial accounts.

These controls are aimed at reducing the level of ex-ante controls and deferring them so that goods can be released more quickly at

clearance, particularly in view of the waiver of the need to present documents. They can of course supplement ex-ante controls.

This control is carried out exclusively by the control offices and the control unit of the main offices. However, as part of the one-stop clearance procedures (national and Community), the control units of each office involved (local clearance office and area inspection offices) carry out the first-level ex-post controls in coordination.

The first-level ex-post control is programmed and expedited within four months of the warrant for removal. This period is sufficient to ensure that operators comply with the requirements, particularly the documentary requirements, and to check recent operations.

However, if the office detects an irregularity during a first-level ex-post control, it is asked to continue these controls and to perform more in-depth controls beyond the four-month period from issuance of the warrant for removal, provided the irregularities relate to a limited number of declarations. Otherwise, by a decision of the head of the inspection planning unit (POC) following a study of the case by the unit for information and planning of inspections (CROC) responsible for laying down the general guidelines for first-level ex-post controls, the regional investigation service (SRE) is responsible for continuing the controls, in particular if technical expertise is needed on the part of the investigators.

Any irregularity detected in ex-ante controls or first-level ex-post controls may give rise to an investigation of the background to the case by the supervision unit together with the CROC with a view to an ex-post control. Depending on the potential or complexity of the case in question, this control can be first-or second-level. The information is systematically circulated to the SRE.

In addition, on the basis of the general guidelines laid down by the CROC, the supervision unit programmes the controls. The head of the customs office, in coordination with the supervision unit, draws up a timetable for performance of the controls. The undertakings deemed to be the least reliable, i.e. which are shown by the prior risk analysis to have the most sensitive traffic and/or procedures, are programmed for control as a priority. However, the decentralised services are asked to inspect, at least once a year, operators in their geographical jurisdiction who have not been subject to other checks during the year.

In so far as the programmed controls are based on Risk Analyses, the decentralised services are instructed to give priority to these controls. The officials at the control offices are, however, free to carry out controls on their own initiative if they suspect the existence of

a customs fraud, provided they give prior notice to the CROC to prevent the risk of unnecessary controls that could damage the business activities of the operator in question.

The controls carried out by the customs services in a given customs district are listed in a programming follow-up table – which is used, in particular, by the CROC, the SRA and the SRE – showing the reasons why a control has been carried out and the results and follow-up actions taken when the controls have given rise to findings.

Lastly, the central French customs administration recommends its services to record the performance of the control in the appropriate module of the Delt@ automated online customs clearance computer platform (Delt@-C6 or Delt@-D8), so that the second-level ex-post control services can, by consulting the declarations, be informed that a first-level ex-post control has already been carried out.

## 2. *Second-level ex-post control*

Second-level ex-post controls are aimed at combating fraud. They take the form of in-depth controls of undertakings' foreign trade operations or investigations of any kind concerning the regulations applied by the customs authorities.

Second-level ex-post controls are the same as post-clearance controls with the exception of two aspects: the introduction of the four-month period mentioned above after which the service can take action, and enhancement of networking with the other services of the regional directorate (DR) involved in the control.

Thus, the control is carried out after the four-month period reckoned from issuance of the warrant for removal, up to the limitation period of three years (four years for EAGF checks).

The second-level ex-post control is the exclusive responsibility of the customs investigation directorate (DED) and regional investigation service (SRE), but if irregularities that may affect a limited number of declarations are detected by the office during a first-level ex-post control, this office may continue these controls after authorisation by the inspection planning unit (POC), which informs the SRE, as described earlier for first-level ex-post controls.

When selecting the declarations to be checked, priority is given to those presenting a significant customs or fiscal challenge.



As indicated earlier with regard to the presentation of first-level ex-post controls, when a declaration has already been subject to an ex-ante control or a first-level ex-post control, this is indicated in Delt@. In the absence of any new reason for checking this declaration again, the investigator should turn his attention to another declaration.

### 3. Optimising controls by pooling information

If anomalies are detected during first- or second-level ex-post controls, the information concerning these findings is circulated in the following:

- the unit for information and planning of inspections (CROC), which uses it to fine-tune its Risk Analysis. Thus, the first- or second-level ex-post controls make it possible to confirm or invalidate the operator risk analyses and, consequently, to adjust their risk level. It should be noted that the CROC is informed of the results of all the controls carried out in its district, whether these are positive or negative;
- the unit for management of procedures, which analyses any shortcomings detected, sets the conditions for compliance or, if applicable, starts the procedure for suspending authorisation if the shortcomings persist;
- the supervision service, which provides feedback to the ex-ante control services and gives them guidance as to the action to take. Like the CROC, this service is informed of all controls carried out, whatever the results;
- the SRA, as part of the programming of the follow-up audits.

The French customs authorities therefore consider that their new control procedures enable regular checks to be performed on operators within the limitation periods, whether or not they hold authorisations.

## II. Automated targeting

*The DELT@ project*

The purpose of the electronic clearance system (DELT@), which has several modules - DELT@ C, DELT@ D, DELT@ X, etc. - is to computerise the whole clearance procedure. It allows implementation of a more efficient control policy and offers operators faster and simpler clearance.

Obviously, controls are necessary, but they should not impede the fluidity of traffic unnecessarily. Import and export operations must be

duly controlled. However, goods that are not of any concern in terms of fraud (e.g. goods subject to specific regulations, zero duties, etc.) should not be held up unnecessarily. The customs authorities should instead concentrate on traffic that presents a risk and ensure an optimum combination of highly selective targeting and the effective performance of the relevant controls.

To make controls more selective and strengthen the control policy, DELT@ makes available to officials an automated targeting tool, RMS (Risk Management System), which can be used to integrate the selection profiles at national, regional and local level and ensures as far as possible that the declarations to be checked are those that relate to the operations presenting a risk of fraud.

### ***Selection profiles***

To this end, RMS provides for the following different types of selection profiles:

- National (PRONAT). These cover a risk of fraud extending to the whole country. PRONAT are created in response to a need for control arising from regulatory requirements (mandatory approval of certain documents or certificates needed for admission of customs documents) and risk management. They may be of Community or national origin;
- Regional (PROREG), created by the regional services (CROC) in cases of risk of specific fraud at regional level. The PROREG may follow a regional risk analysis or an instruction from the Directorate-General. They apply to all the offices in the district;
- Local (CRILOC), created by the customs offices in cases of risk of local fraud;
- There is a fourth category, the PROPDO, which are selection profiles specific to the single clearance procedures, introduced by the local clearance customs office in coordination with the area inspection offices.

These selection profiles are based on analyses of the regulations, risk analyses or studies of traffic. They also take into account the reliability of the operators. On the basis of local traffic and of any instructions concerning the risk of fraud, the services must therefore focus on the most sensitive flows and define selection profiles allowing declarations that present a significant risk to be targeted as precisely as possible.

When creating a selection profile, the service decides which features it wishes to attribute to it. It can make the profile blocking or non-blocking, depending on the risk level.

### ***Different control circuits associated with a 'timer' system to process customs declarations***

### The control circuits

The features (blocking or non-blocking) attributed to the selection profiles when they are created in the targeting module allow declarations to be channelled in different control circuits depending on the risk level of the clearance operation and the control required by it. The services responsible for controls thus carry out different types of control depending on the circuit assigned - green, red or black.

Furthermore, processing of declarations, in particular those assigned to the red circuit, is based on a timer system.

### *Green circuit*

The purpose of the green circuit is to release declarations rapidly. Declarations assigned to this circuit are those that are not selected by a profile. They are systematically issued with a BAE (Bon à enlever - warrant for removal). These are declarations for which no risk has been established.

Declarations assigned to the green circuit no longer appear on the screen. However, the official in charge of monitoring the screen can always search for a declaration assigned to the green circuit that will give a full view of the traffic in his office.

When the declaration is selected in the green circuit, it is immediately indicated as 'released'. The concept of green timer is no longer used in Delt@.

The 'released' status can be attributed to a declaration selected in the green circuit whatever the tele-procedure, whether or not the office is open.

Advance declarations assigned to the green circuit are released automatically without any delay as soon as they are validated. These declarations do not appear on the screen saver. The official in charge of the screen saver cannot take any action concerning these declarations. The actions 'notice of control' and 'advance notice of release' no longer exist for advance declarations assigned to the green circuit.

### ***Red circuit***

The aim of the red circuit is to address potential risks (regulatory controls). The profiles are non-blocking during office opening hours. This circuit gives rise to an ex-ante control or issuance of a BAE.

The declarations selected by a non-blocking profile are assigned to the red circuit and start a timer running. Once the timer ends, declarations that have not been subject to control are automatically released.

To prevent declarations being subject to control for the sole purpose of preventing their release rather than controlling them, the official in charge of the screen saver is given the option of extending the timer. The official now has an additional period before deciding whether or not to subject the declaration to a control. However, the customs declaration can no longer be blocked.

The red timer is extended subject to the following conditions:

- The timer can only be extended once, for the same period as the initial duration of the timer. Thus, the duration of the timer can be doubled. The official in charge of the screen saver can shorten the duration of the timer by subjecting the declaration to control or releasing it;
- The timer can be extended only after the declaration has been opened and can apply only to the declarations the official wishes to verify;
- Extension of the timer is not 'suspensive'. It does not take account of office closing hours.

The red timer must also take into account the reliability of the operator. In percentage terms, it applies to the value of the red validation timer of the clearance office, even if this clearance office is different from the office authorising the procedure.

When establishing these different time periods, the efficiency of the controls is reconciled as far as possible with the necessary fluidity and rapidity of the clearance operations. To this end, the services must take into account the types of flow concerned and also the degree of reliability of the operators. To take account of changes in traffic and keep the operator in a state of relative uncertainty, services are advised to modify the red timers regularly in order to monitor traffic developments.

At the end of the period, the validated declarations are automatically released, unless the service in question takes action within this

period and subjects the declaration to a control or releases it manually before the timer times out.

With regard to targeted declarations, in order to give the services sufficient time to react in the event of a prior control of all the declarations, the red timers run only during office opening hours.

### ***Black circuit***

The aim of the black circuit is to block goods whose export or import is prohibited or restricted and to distinguish real risks from potential risks. Since July 2012 this circuit has applied to both DELT@ C and Delt@ D (before this, the blocking profiles existed only in Delt@ C). Its purpose is to address real risks (embargos, obligatory controls of the public order documents – Documents d'ordre publique – DOP to clear goods, fight against fraud, etc.).

The declarations selected by a blocking profile (PRONAT, PROREG, CRILOC or PROPDU) by RMS and 'non-tariff engine' declarations (code E) and/or 'non value engine' declarations (code I) are automatically assigned to the black circuit.

The declarations are blocked until action is taken by the official in charge of the screen saver.

The official has two options:

1. He decides that the declaration must be verified: he chooses the action 'control' and a case file opens automatically in BANACO (PUSH mode described in point II-b above). This control is obligatory and the declaration is blocked while waiting to be 'released' following the control.
2. He decides that the declaration does not need to be verified:

The official in charge of the screensaver must choose between 'Release' or 'Control' the declaration. The automatic 'Placed under system control' no longer exists.

A user cannot place a declaration in the black circuit. This is an exclusively automatic action that results in the selection of a declaration

by a blocking profile.

### **III. Presence of a random element in the automated selection of declarations to be controlled**

In compliance with the Commission's requirement (Article 4f(2) of Regulation (EC) No 1875/2006), an automated random selection has been introduced in Delt@ and is now fully operational.

The objectives of this automated random selection are to detect emerging risks, identify infringements that might have escaped the RA and prevent certain operations from never being controlled.

The declarations are selected randomly by the system from the total advance and validated declarations assigned to the green circuit<sup>24</sup>, whatever the particulars contained in the declaration and whatever the criteria specified.

The declarations targeted by the random element introduced in the RMS are processed in the same way as those targeted by one or more profiles in automated selection. The profiles are blocking in Delt@-C and Delt@-D.

The declarations selected randomly are assigned to the black circuit.

The random control rate is 0.02 % for both import and export.

The instructions given to services are that declarations selected randomly must obligatorily be subject to an ex-ante physical control. The physical control rate for these declarations is therefore 100 %.

However, the service can try to reduce the control pressure by carrying out a documentary check as soon as possible instead of a physical control. This should be done only when a physical control does not appear to be justified.

Automated random selection has thus been integrated in the French automated clearance system in order to meet the Commission's

<sup>24</sup>

See point II above.

	<p>requirements.</p> <p><i>Analysis of performance of selection profiles</i></p> <p>The officials can analyse the relevance of the selection profiles put in place by verifying that the number of declarations selected is not too high in view of the efficiency of these profiles.</p> <p>They can also verify how far the declarations selected by a profile have been controlled and thus ensure that the profiles are relevant. The necessary adjustments are made on the basis of these analyses.</p> <p>The services in charge of the controls thus use the system of automated targeting of declarations to focus on operations that need to be controlled. Those not held are quickly issued with a BAE.</p> <p>Furthermore, the introduction of the timers obliges the services to react quickly. They must therefore constantly monitor the arrival of declarations on the screen. Operations assigned to a control circuit must thus be handled as quickly as possible.</p>
<p><b>HR</b></p>	<p><b><u>Croatian Customs established the Risk Analysis System through which control of high-risk imports and medium-risk imports are performed at the time of clearance.</u></b></p> <p><b><u>The Risk Management System is set according to the Customs provisions in the following way:</u></b></p> <ul style="list-style-type: none"> <li>• <b><u>Definition of risk</u></b></li> </ul> <p>Risk is the likelihood of events that may arise in connection with the entry, amount, transit, transfer and end-use of goods moving between the customs territory of the Community and third countries, as well as the presence of goods that does not have the status of Community goods, which:</p> <ul style="list-style-type: none"> <li>- prevents proper implementation of the EU or national measures; or</li> </ul>

<p>- threatens the financial interests of the EU and its Member States; or</p> <p>- poses a threat to EU safety, a risk to the health or lives of people, the environment or consumers.</p> <ul style="list-style-type: none"> <li>• <b><u>Risk management</u></b> is a systematic identification of risks and implementation of all necessary measures for limiting exposure to risk.</li> </ul> <p>Risk management includes:</p> <ul style="list-style-type: none"> <li>Information and data collection</li> <li>Risk analysis and rating</li> <li>Regulating and undertaking of measures</li> <li>Regularly Reviewing procedures and their results, based on EU and international sources and strategies</li> </ul> <ul style="list-style-type: none"> <li>• <b><u>Categories where risk management is performed:</u></b></li> </ul> <p><b>Natural persons and legal entities</b></p> <p><b>Goods</b></p> <p><b>Transit</b></p> <p><b>Customs subjects</b></p> <p>Namely, a <b>natural person or legal entity</b> imports/exports/transits <b>goods</b> via some form of <b>transit</b>, while customs formalities are</p>	
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	<p>conducted by <b>customs subjects</b> (customs officials at customs offices).</p> <p>Based on the analysis of data collected under the above categories, <b>risk assessment</b> is performed, and accordingly, in the System of risk analysis (at central level) risk profiles are implemented which, for controlling purposes, allocates a customs declaration in the process of <b>customs clearance</b>.</p> <p><b><u>When the entrepreneur submits an import / export / transit declaration, profiles that meet the criteria defined in the profile are activated, so the declarations are allocated to control any document (medium risk) or document and goods (high risk).</u></b></p> <p>Upon the performed control, the customs officer completes the result form.</p> <p><b><u>By analysing the feedback from the control results an updating of the profile is conducted, according to whether the irregularity was found in the control or not.</u></b></p>
<p><b>IT</b></p>	<p><u>The checks</u> are carried out on the basis of information provided by the Customs Control Circuit (CDC), which performs automated centralised selection of the declarations to be checked, distinguishing between 'document checks' and 'physical inspections of goods', allowing immediate release of the declarations, which, once they have passed the admissibility check (CA), need not be subjected to further checks later on. The same system can also be used on the latter operations to select 'post-clearance checks', which are notified to the offices 10 days after release of the goods.</p> <p>All the above selections are made with due regard for specific risk indicators and profiles, both objective and subjective (e.g. customs heading, origin, anti-dumping duties, additional duties, agricultural products, value, declarant, importer's activities, structure of the firm) and for the 'randomness' factor, according to the customs procedure and arrangements concerned ('random checks').</p> <p>The risk profiles devised in accordance with the criteria referred to above may be targeted (on the basis of the risk analysis carried out) or mandatory (in so far as the relevant inspections are provided for under Italian and EU law or are based on the need for a comprehensive inspection).</p>

So as not to compromise the offices' operational capacity, and hence to ensure that operations proceed smoothly, the Customs Control Circuit imposes a percentage-based ceiling on the number of 'on-line' checks that may be carried out.

Within that percentage the relative proportions of document checks, scanner checks, physical checks and post-clearance checks on goods are determined by the system, according to the probability of risk, the seriousness of the potential damage to the EU budget, the impact which inspections have on offices' operational capacity, the outcome of the checks themselves (feedback) and the human resources available.

For each individual risk profile, instructions on the methods to use and the purpose of the inspection itself are supplied electronically to the officials carrying out the checks.

With a view to improving the quality of inspections, the operational offices have also been instructed to take whatever action is called for in order to:

- ensure that inspection activities are allocated a suitable proportion of the human resources available, which are to be deployed on a rota basis for checks and inspections, carried out partly with a view to ensuring optimum cooperation with bodies operating in the sphere of taxation, the impact of whose work is relevant for customs;
- improve the quality of inspections by ensuring that the expected results when one and the same product is presented for inspection are homogeneous and consistent.

Another channel for checks and inspections is called *Canale Blu*. It is used for the dynamic management of certain specific risks relating to, for example, temporary measures or particular goods. It can be used to focus review of the amounts of duties established on customs declarations which passed the customs admissibility check at the time of import, and operates using specific selected and temporary risk criteria specifically related to temporary measures on certain goods profiles and to information acquired through national and international cooperation.

In 2013 the Manual for Review of Amounts Established for customs offices was updated and distributed, with new specimens for

	operational guidance to assist with consolidating the results of checks and ensuring the compliance/lawfulness of the related documents.
<b>CY</b>	<p>The Department of Customs and Excise of the Republic of Cyprus has an effective system of risk assessment in place which allows carrying out checks targeted at high – risk imports at the time of clearance.</p> <p>More specifically computerized Risk Analysis on imported goods at the time of clearance is performed in three ways:</p> <ol style="list-style-type: none"> <li>1. Weight based.</li> <li>2. Specific profiles.</li> <li>3. Random selection.</li> </ol> <p>Additionally, there are five (5) standard criteria used, namely, the importer, the clearing agent, the country of origin, the commodity code, and the procedure code. Moreover local criteria are used as well, established and fed into the system by the Intelligence Unit Based at Customs Headquarters.</p> <p>Also all incoming intelligence is evaluated and utilized:</p> <ol style="list-style-type: none"> <li>1. For the mapping out of the Departments policy and priorities</li> <li>2. To modulate the active risk profiles or to create new risk profiles in the electronic risk analysis system</li> <li>3. To disseminate alert messages to the customs officers and other competent authorities local and foreign.</li> </ol> <p>There is a process in which information is continuously updated, analyzed, acted upon and reviewed according to the feedback.</p>
<b>LV</b>	<p>The process of Risk Management at the National Customs Board of the State Revenue Service of the Republic of Latvia is defined since 6 October, 2010. Risk analysis is made in five levels: 1) identification and classification of risk; 2) risk analysis and evaluation of the risk; 3) development of risk reducing control measures; 4) monitoring the risk, 5) reporting and exchange of information.</p> <p>The Risk Management Division of National Customs Board of State Revenue Service executes and supervises all five levels of the Risk Management process and this allows the carrying out of customs checks targeted at high-risk imports at the time of clearance.</p>

	<p>Since 2012 no new developments have occurred.</p> <p>In relation to the audit carried by the Tax Control Department of the State Revenue Service of the Republic of Latvia, the fiscal risks in customs area have been defined in the taxpayer evaluation system „Eskort”. Their purpose is the identification of tax evaders are they are applied in audits of customs duties or in audits of other taxes carried out by other customs authorities.</p>
<b>LT</b>	<p>In the context of the tariff measures implemented in regional customs offices, checks are carried out on customs declarations after customs clearance and, in accordance with the rules on risk management prior to and during customs clearance, when coordinating and initiating the creation of risk profiles operating at the time of customs clearance.</p>
<b>LU</b>	<p>Recommendations 7 and 8 of Point 1.4 apparently apply to the Customs and Excise Administration. The Administration has improved its risk analysis systems in order to prevent fraud. Improvements are also constantly being made to the IT system that is used.</p>
<b>HU</b>	<p>There have been no changes to the integrated risk management system since 2012. In Hungary the risk management and audit procedures established in the field of customs are:</p> <ol style="list-style-type: none"> <li>1. checks built in to customs procedures,</li> <li>2. post-clearance checks,</li> <li>3. checks relating to authorised activities by the customs authority.</li> </ol> <p>However, there have been developments in risk assessments which allow any benefits from the organisational integration in the field of tax and customs to be spread as widely as possible. As an initial step, in 2013 an integrated risk assessment and network visualisation accounting instrument was designed which performs searches for company relationships and tax risks in the data warehouse and also displays customs risk assessments and audits. Risk profiles are already established in the system on this basis.</p>
<b>MT</b>	<p>The regular updating and refining of risk profiles by the Customs Department is an on-going process, which addresses the above recommendation of further improving the detection rate in cases of irregularities and fraud in Traditional Own Resources.</p>

<b>NL</b>	<p>In the Netherlands the customs authorities use post-clearance checks in combination with checks at the time of import and have done so for several years. Post-clearance checks have proved very effective, with an average score of 50% in the past five years. They are based on risk analyses using IT tools, and targeted checks/inspections are carried out by a central team.</p> <p>In the Netherlands these checks are sometimes based on various types of risk indicator (such as the results of a physical check at the time of clearance, or the result of an EU investigation) and sometimes carried out randomly.</p> <p>There has been no change in the situation regarding these control activities since 2012.</p>
<b>AT</b>	<p>No Response.</p>
<b>PL</b>	<p>Under EU rules and the Customs Act, all clearance and post clearance control activities (with the exception of random and statutory checks) are based on a prior risk analysis identifying and assessing the level of risk and recommending appropriate action. The EU Customs Codex and the Customs Act provide for checks to be based to a greater extent on risk analysis. This allows checks to target areas and activity with a high risk of irregularity, ensuring effective control and striking the right balance between control and clearance of lawfully traded goods.</p> <p>The Head of the Customs Service approves an annual Strategic Control Plan outlining the main areas for control in view of the priorities identified in the Central Risk Register and the priorities of national policy. The Central Risk Register, which is the basis for priority risk areas in the Strategic Control Plan, classifies areas of activity according to their level of risk. The Central Risk Register is based on regional risk registers compiled by regional customs offices.</p> <p>The Customs Service also takes advantage of improving technology to develop and perfect its own IT systems for combating irregularity and fraud involving trade with third countries and within the EU.</p>
<b>PT</b>	<p>Portugal has an effective risk assessment system. In fact, the Tax and Customs Authority (TA) stated that in 2013 the number of checks carried out (<i>ex-ante</i> and <i>ex-post</i>) increased, and it highlighted the administrative cooperation between Member States, which provides instruments capable of ensuring more effective action against the phenomena of tax evasion and fraud in the international context, thus avoiding significant losses of tax revenues. The following were noted: (i) the substantial extension of the scope of administrative</p>

	<p>cooperation in tax matters and methods of cooperation; (ii) the inclusion of information held by banks and financial institutions; (iii) the introduction of mandatory and automatic exchange in certain areas; (iv) the setting of deadlines for the transmission of data and (v) giving feedback and the use of standardised communication channels.</p> <p>In the context of operational cooperation with other services and entities with inspection or criminal investigation powers, the TA emphasises the importance of this cooperation, given the complexity of the fraud schemes, which are generally jointly investigated by other criminal police bodies and which, given their nature, involve numerous searches and a significant number of indictments. It also attaches importance to providing technical assistance to the courts as well as cooperating with the Criminal Investigation Police in accessing and processing tax and customs information using computer audit and digital evidence gathering techniques.</p> <p>With regard to determination of the tax status of taxpayers, the TA highlights the operational cooperation with law enforcement authorities and other agencies responsible for crime investigation, in particular following complaints or reports and in obtaining evidence of possible tax offences where there is evidence of tax evasion and fraud due to omitting statements, absence/falsification/concealment of accounts, documents or other supporting elements of taxable events that have presumably occurred.</p> <p>Finally, it is important to highlight the entry into force on 1 January 2013 of Decree-Law No 198 of 24 August 2012, which requires electronic transmission to the TA of any invoices and other tax-relevant documents to strengthen the fight against fraud and tax evasion. This system promotes the need for an invoice for each transaction, reducing situations of avoidance associated with omission of the duty to issue proof of the transaction.</p>
<p><b>RO</b></p>	<p>The Directorate-General for Customs, the Regional Customs Directorates and the customs offices use a risk management system based on the application 'Risk Management Framework - RMF', part of the integrated customs computer system, which is interconnected, on-line, with the customs declarations and the summary declarations.</p> <p>The RMF application was deployed on 1 August 2010, and it is continuously developed depending on the requirements of the risk management activities. The application can be used to set up EU/national customs risk profiles for the safety and security risk assessment (common risk criteria applied to entry and/or exit summary declarations) and national/regional/local customs risk profiles for potential financial risks (risk criteria applied to import, export and transit customs declarations). The application can be used to set up targeted criteria for indicators entered in the boxes on the customs declarations: goods (tariff code), companies, containers, vehicles, country of</p>

	<p>consignment, country of origin, etc.</p> <p>These risk profiles set up in the computer application provide a basis for the selection process for customs checks and the decisions to initiate customs checks (documentary checks or physical checks). For example, in 2013 the risk profiles were used to select the import customs declarations on each customs channel as follows: recommendation 'documentary and physical check' - 15%; recommendation 'documentary check' - 5%; recommendation 'no check' - 80% (86% of which submitted under the standard procedure).</p> <p>The application can also be used to set up general risk criteria, such as 'first customs clearance' or 'random selection'.</p> <p>In 2013, the application was further developed so as to ensure smooth and effective risk management activities, as follows:</p> <ul style="list-style-type: none"> <li>- setting up EU/national customs risk profiles for safety and security risk assessment (common risk criteria) applied to exit summary declarations;</li> <li>- setting up customs risk criteria/profiles specific to the simplified import customs procedure, and customs risk profiles applied to import entry notifications;</li> <li>- setting up customs risk criteria/profiles specific to transit declarations issued at departure offices on entry to EU territory;</li> <li>- reporting: reports on declarations marked by a risk profile, reports on customs declarations being processed.</li> </ul>
<b>SI</b>	<p>The Customs Administration reports to ARSKTRP on a regular basis the results of export controls and post clearance controls on imports for goods that come under the Common Agricultural Policy.</p> <p>The Customs Administration analyses and assesses risk and implements appropriate measures for the import and export of goods that have been harmonised with EU guidelines.</p>
<b>SK</b>	<p>The Financial Administration of the Slovak Republic carries out targeted controls through automated national risk profiling. The controls shall be carried out at the same time as customs clearance, in order to entirely prevent/eliminate the risk of importation of goods into the EU, and through a separate system module (since 2006).</p> <p>All suggestions from both internal and external actors, in addition to the Financial Administration's analytical findings, are incorporated into the risk profiling and existing risk profiles are continuously evaluated and, where necessary, updated/changed. On the basis of risk profiling at the time of placing goods under a custom procedure, a document-based, partial or complete physical controls or, where appropriate, sampling of goods are ordered with regard to the nature of the risk.</p>

	<p>Customs controls, on the basis of national risk profiling, are carried out, in accordance with the applicable Union and national legislation, and they depend on the personnel and material capacities of individual branches of customs authorities.</p>
<b>FI</b>	<p>In Finland, customs control is based on risk analysis. The EU common priority control areas and the Community risk management system database are used in risk-based monitoring for the exchange of information. Finnish Customs' National Risk Analysis Centre analyses the risks and sets national or EU-level risk criteria for the electronic customs system. Clearance cases selected for processing will be processed at an electronic service centre, which orders the inspection of goods if necessary.</p>
<b>SE</b>	<p>Swedish Customs' current customs data system has an electronic blocking system which enables initial checks, both physical and documentary, when goods are allocated to a customs procedure/declared to Customs.</p> <p>A project called "selection in the goods flow" is currently under way. This project is part of the IT development programme "e-Customs", which includes developing IT capacity and complying with the requirements of the Union Customs Code. The project will produce a requirement profile and introduce a basis for the IT support which is to manage selection of all information supplied to Customs at the various stages of the goods flow. This means, for example, selection in manifests before arrival and on arrival, summary import declarations, customs declarations and information supplied during ship reporting. The project is intended to give Customs the ability to risk-assess different types of information and, in the end, provide it with new IT support which enables risk management in the entire goods flow.</p>
<b>UK</b>	<p><b>HM Revenue and Customs (HMRC):</b> Since 2012, HMRC has centralised risk assessment of authorised temporary storage operators to target inland assurance resources to identified risks and has also instigated national risk campaigns. In addition, we have agreed a statement of service with the UK's offices of departure and destination for the administration and control of the transit procedures. The UK has introduced a national targeting and selection centre, within its Border Force, that will drive the centralised risk selection and control of movements across the UK border.</p>



## 2.8. Anti-fraud services and administrative bodies – fraud detection

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.**

<b>BE</b>	ESF Flanders: ESF Flanders will start to apply the 'ARACHNE' tool in the 2014-2020 programme.
<b>BG</b>	The Bulgarian Public Prosecutor's Office as an anti-fraud body has been carrying out the cooperation described in the recommendation in accordance with Instruction No I-103 of 22 April 2003 on interaction and cooperation between the Council for the coordination of the fight against legal infringements affecting the financial interests of the European Union and the Public Prosecutor of the Republic of Bulgaria issued on the basis of Council of Ministers' Decree No 18 of 4 February 2003. This regulates communication and cooperation in relation to checks and investigations in cases relating to abuse of the European Union's financial interests. This regulation on communication and interaction between the Public Prosecutor and the other fraud prevention authorities is implemented in relation to investigations and checks

carried out by or under the supervision of the Public Prosecutor.

In view of its function, the Directorate for the coordination of the fight against infringements affecting the financial interest of the European Union is the main recipient of information, and it is the intermediary for collaborating with the Managing Authorities of the various operational programmes. This does not, however, rule out the possibility of direct communication and collaboration between the Public Prosecutor's Office and the Managing Authorities.

The AFCOS Directorate provides timely and competent support in the resolution of particular cases and in respect of particulars through electronic reporting within OLAF's IMS system. Regular inter-departmental staff meetings with AFCOS representatives on irregularities under various operational programmes provide a forum for exchanging experience and discussing current issues and cases.

The Managing Authorities for the various SCF-funded operational programmes communicate constantly with one another and with the control and investigation bodies on matters relating to protection of the EU's financial interests and guaranteeing the eligibility of expenditure under the programme.

Every Managing Authority has developed an Implementation and Management Manual for the relevant operational programme, including a section on irregularities containing preventive measures and follow-up actions that need to be taken in case of suspected or actual irregularities or suspicion of fraud. They incorporate a system for preventing and identifying irregularities over the entire scope of the relevant programme which consists of preliminary, on-going and follow-up control of monitoring in the process of verifying funds.

The internal rules on administration and management of irregularities are wholly compliant with the applicable European and national legislation. The internal procedures contain detailed rules on interacting and cooperating with the European anti-fraud office, the Bulgarian AFCOS Directorate and other law enforcement authorities when processing reports of irregularities and fraud and when carrying out the obligation to report irregularities.

The Managing Authorities keep logs of all reports of irregularities and fraud concerning operational programmes and of detected irregularities. Extracts from these logs are sent to the AFCOS Directorate on a quarterly basis. Authorised Managing Authority staff report irregularities on the required quarterly basis by entering data into the electronic Irregularity Management System.

Staff of the Managing Authorities dealing with irregularities are members of the Interdepartmental Group on Irregularities of the Council for the coordination of the fight against legal infringements affecting the financial interests of the European Union and participate effectively in reviewing irregularity administration cases within the Managing Authorities.

The Permanent interdepartmental group on irregularities was set up in 2011 to assist staff dealing with irregularities and to function as an additional tool to prevent and combat irregularities and fraud affecting EU's financial interests.

The Permanent Group is managed by the AFCOS Directorate and includes representatives of the institutions in the Council for the coordination of the fight against legal infringements affecting the financial interests of the European Union. It was set up to identify and review particular problematic issues of factual complexities or disputed cases and to exchange experience, good practice and to provide information about new fraudulent practices. This has created a wide network of staff working on irregularities relating to pre-accession, operational, agricultural and other programmes co-financed by the EU.

The Managing Authorities regularly include in their staff training programmes specialised modules to identify and prevent irregularities in the administration of grant aid contracts. Beneficiary training programmes also now include a specialised module to prevent irregularities on the part of beneficiaries in the performance of contracts.

The State Agriculture Fund, which plays a key role in implementing agricultural programmes in Bulgaria, has developed and adopted a Policy on counteracting fraud and handling irregularities and a Policy on preventing and counteracting corruption. A risk management programme has been set up to implement the State Agriculture Fund's mission and objectives. One element of the risk management process is a periodical risk analysis based on an established methodology. This involves preparing a list of risks and describing the aims of the State Agriculture Fund and the external and internal risks relevant to each aim, which is then forwarded to the executive director of the State Fund for approval.

Verifications based on an analysis of the risk criteria for fraud involving European and national funds are carried out according to the Methodology for risk evaluation in planning verifications, which is Annex No 8 of the Anti-Fraud Directorate's Rules on Counteracting Fraud.

Specialised software is used to carry out risk analysis. IACS allows analyses to be carried out on the basis of various risk criteria and for

	<p>samples to be generated from projects, grant aid applications and payment declarations for the purpose of follow-up checks by the Fraud Prevention Directorate.</p>
<b>CZ</b>	<p>The managing authorities of all operational programmes in the Czech Republic have a responsibility and obligation to report to the Police and other law enforcement authorities, suspected fraud in criminal proceedings.</p> <p>The managing authorities are required to report all information regarding suspected fraud (and other types of irregularities) to the IS MSC 2007 or MSSF Central. These ARE part of both internal and external levels of reporting of irregularities to OLAF.</p>
<b>DK</b>	<p><u>Structural Funds</u></p> <p>Any systemic errors detected and observations made in controls carried out by the Court of Auditors, the European Commission, the Danish National Audit Office or the General Accounting Office, or during own checks, will lead to changes to the Danish Business Authority's administrative checks and controls on projects. The method of selecting sample projects for own checks is thus subject to constant assessment. For the forthcoming period, the Danish Business Authority is considering using ARACHNE and updating its fraud strategy.</p> <p><u>Agriculture</u></p> <p>The Danish AgriFish Agency will try to employ IT tools, but this is difficult where investment projects are concerned since every project is unique, and in many cases applicants submit applications only once. It is therefore difficult to identify patterns based on risk analyses in relation to applicants. We will therefore consider how implementation can occur most effectively. See also our replies to recommendations 5 and 6, relating to risk assessment.</p> <p><u>Customs</u></p> <p>Through police and customs cooperation in Scandinavia and the Nordic Customs Administration Council, the Nordic countries have established formal cooperation in assessing threats and analysing risks. Formal cooperation has also been established between Danish Customs and the police and German Customs and police authorities concerning, for example, risk analysis in the border area. SKAT also</p>

	has a customs official attached to the Danish police's National Centre of Investigation.
<b>DE</b>	<p>In Germany cooperation in the area of agriculture between the managing authorities/paying agencies and the anti-fraud services revolves around a number of different legal provisions. The competent investigatory authorities are engaged as soon as the managing authorities/paying agencies detect deliberate fraudulent activity. In the context of this cooperation, IT systems are also used to exchange information. No special IT tool developed for this area is currently being used.</p> <p>The German ESF managing authorities have set up management and control systems which discourage fraudulent activity and are intended to prevent it before the event where possible. To detect cases of fraud which nevertheless get through, the ESF managing authorities incorporate risk analyses in planning their checks and controls in order to concentrate their efforts on high-risk projects, such as projects with more than one implementation level or a complex cost structure.</p> <p>The ESF managing authorities will intensify these efforts still further in the funding period 2014-2020. In accordance with Article 125 of the General Structural Fund Regulation, the managing authorities, in cooperation with the anti-fraud services, will carry out a risk analysis of the management and control systems established and set up suitable preventive measures on the basis of this analysis. The possibility of using an IT tool is currently being examined by the ESF managing authorities in Germany.</p> <p>The competent authorities in the ERDF field are working closely together to combat fraud and corruption in the context of the management and control systems. Where available, external services outside the management and control system will also participate, e.g. anti-corruption staff. Moreover there are statutory provisions for protection against corruption and fraud such as for example the Act against Improper Subsidy Claims [Subventionsgesetz], the Administrative Procedure Code [Verwaltungsverfahrensgesetz], Federal and Land Budget Regulations [Bundes-und Landeshaushaltsordnung], the Criminal Code, etc.</p> <p>In the area of structural fund subsidies, however, in principle all applications for payment by beneficiaries are subjected to a desk check before EU subsidies are paid out. In addition, risk-based, on-site inspections are carried out on a random basis. The authorities have incorporated proven methods and procedures into the management and control system for this purpose.</p> <p>The existing regulations and measures will therefore be continued in the funding period 2014-2020. Under the relevant legal provisions in Regulation (EU) No 1303/2013 the competent authorities will take account of the statutory requirements in developing the management and control systems and adapt the systems accordingly. Requirements contained in guidelines and check lists such as IT systems (ARACHNE) which go beyond the legal requirements in Regulation (EU) No 1303/2013 and the implementing regulations and delegated</p>

	legislation yet to be adopted are inadmissible and are rejected.
<b>EE</b>	<p>AFCOS Estonia is acting in the Ministry of Finance, the Financial Control Department since 2003, together with the Auditing Authority. In the same ministry, but in different departments, there are the Managing and Certifying Authorities for Cohesion Policy, which means we have prompt information exchange and close co-operation with the implementers. Since 2014, the irregularity reporting obligation was moved from AFCOS Estonia to the Managing Authority,</p> <p>Co-operation with other Managing Authorities (AGRI, EFF) and with all Implementing Bodies is constructive, especially in the area of irregularity and fraud information and experience exchange.</p> <p>Co-operation with our partners, like the police, prosecutors, tax and customs officials and connected ministries and other institutions, is currently sufficient but we improve it year by year. We undertake joint training courses, share information and plan to involve our partners in risk assessment and preparation of legislation in the next programming period. We plan to support this co-operation with a common strategy on protecting the EU financial interests. The Strategy is at the pre-preparation phase.</p> <p>The Intermediate Bodies may ask for advice from the police or Estonian Tax and Customs Board concerning “specific” irregularity cases and together decide if the case relates to intentional or criminal behaviour. When a criminal investigation is initiated, the Intermediate Bodies may form part of the case as experts or as a complainant. Intermediate Bodies have parallel independent procedures to solve the administrative portion of the case.</p> <p>The Managing Authority and Intermediate Bodies usually undertake analysis once a year and on the basis of this analysis the authorities make control plans and samples.</p> <p>A certain number of police officers have special access to fund databases at present and the police plans to make regular mass inquiries in the system for the purposes of the analyses in the near future (2014), but we do not have specific IT risk assessment tools.</p> <p>The new IT system for implementing EAGF and EAFRD measures will be developed. The need for fraud prevention and detection is analysed in detail. Different risks may appear throughout the whole implementation process. Each stage is unique and needs to be reviewed, taking into account the specific needs of a particular implementation stage. The new implementation system will set up a series of automatic controls, in order to be cost-effective and successful.</p>

<b>IE</b>	<ul style="list-style-type: none"> <li>• <b>Cohesion</b> - In the context of the ongoing development of the Partnership Agreement and Operational Programmes, the detail in relation to effective and proportionate anti-fraud measures in the new programme round is being considered. This will include adopting and developing 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.</li> <li>• <b>Agriculture</b> - The Memorandum of Understanding, circulars and procedures between the Paying Agency (DAFM) and its delegated body for LEADER funding i.e. the Department of Environment, Community and Local Government have been revised in the last year. This is to assist in the quicker reporting of possible fraudulent activity to the Paying Agency.</li> </ul>
<b>EL</b>	<p><b>Ministry of Finance – General Accounting Office of the State –Fiscal Control Committee (FCC)- Directorate: 52-Planning and Evaluation of Audits</b></p> <p>Apart from as mentioned in Recommendation 4 hereof and Recommendation 1 of the corresponding document for 2011, EDEL does not use a specific IT tool to analyse fraud risks when planning its audits.</p> <p><b>Ministry of Finance – Financial and Economic Crime Unit</b></p> <p>In relation to national and Community interest relating to defending EU public revenue and expenditure, SDOE focuses on specific cases of high economic priority and fraud risks relating to co-financed entities and/or cases of special nature audits on EU investment projects, under its Annual Targeted Audit Actions, and/or cases of emergency audits.</p> <p>In each case, similar Fraud Risk Analysis Systems are developed and sophisticated computer tools are used extensively to perform targeted on-the-spot audits which are spread out across the country.</p> <p>SDOE also collaborates with all the Managing Authorities of the Greek government and all the co-competent National Authorities and Anti-Fraud Institutions on a national and EU level, as it deems that this cooperation is crucial for strengthening its supervisory results, both</p>

in the prevention phase and the phase of suppression of fraud and irregularities, to enhance the security of EU budgetary allocations and the national budgetary allocations for development and social cohesion purposes.

### **Ministry of Development and Competitiveness**

Please note that JMD 701/0052 (Government Gazette, Series II, No 803/05.04.2013) for the period 2000-2006 and JMD 5058/EYTHY 138 (Government Gazette, No 292/13.02.2013) for the period 2007-2013 introduced the disclosure of the audit reports of the Financial and Economic Crime Unit on projects co-financed by the Structural Funds to the Paying Authority, to be taken into account for the recovery of improperly or illegally paid amounts.

Refunds to the Community budget are made by updating the Services of the European Commission and implementing the appropriate provisions of the regulations on funding while returns to the National Budget are made by decision of the competent Minister.

Within the current Management and Audit System (MAS), the verifications are a tool for preventing and detecting fraud.

Audit points cover part of the cases of fraud suspected to date, as classified and described in the 'Information note on fraud indicators for ERDF, ESF and CF' (COCOF 09/003/00-EL).

The generally recognised, common and repeatedly occurring forms of fraud in the public procurement of works, supplies and services, as referred to in document COCOF 09/003/00-EL, have been incorporated in the Implementation Guide of the Management and Control System for co-financed operations, with the aim of providing clarification to the Managing Authorities on the cases which may be suspected of fraud and which they may encounter during the performance of their duties.

As to the specialised information systems, please note that, in 2013, the Information System Accumulating Public Aid created to monitor aid *de minimis*, was expanded to include all the information regarding the payments made to a national and co-financed independent system and to any business by any State authority.

The system aims to provide an information system for recording all State aids, which will ensure that: (a) the rules, as defined in the EU institutional documents, and (b) the maximum amounts of State aid which may be granted in each case, are complied with.



The system audits of financing ceilings is carried out at the level of business unit, shareholders, CEO, pair of shareholders and associated enterprises. This audit prevents the granting of State aid that exceeds the set limits and functions as a deterrent for fraud.

### **Ministry of Rural Development and Food**

#### **Point (a)**

**The Directorate of EAGGF Expenditure Audit-Guarantees** has established a structured cooperation with other bodies. Specifically, Article 83 of Regulation (EU) No 1306/2013 provides for mutual assistance among Member States in cases where a company or a third party is established in a Member State other than that where: i) the related amount was collected or should have been collected and/or was paid or should have been paid, and ii) the documents and information necessary for the audit are. In implementation of the above Article, it is provided for that Member States should send to the Commission a list of businesses established in a third country, for which the amount in question has or should have been paid or collected in the said Member State.

Moreover, in the context of Regulation (EC) No 1276/2008, the Directorate of EAGGF Expenditure Audit-Guarantees has entered the Memorandum of Cooperation dated 12-7-2010 with the Ministry of Finance-General Directorate of Customs and Excise Duties and the Payment and Control Agency for Guidance and Guarantee Community Aid (O.P.E.K.E.P.E), within the cooperation and coordination thereof in the field of exports, for all agricultural refund products.

#### **Point (b)**

**The Directorate of EAGGF Expenditure Audit-Guarantees** cooperates with the Member States as appropriate. In accordance with Article 83 of Regulation (EU) No 1306/2013 on mutual assistance, if it requires additional information for auditing a company from another Member State, especially to carry out cross-checks, it submits special, duly justified audit requests to the Member States.

In addition, the Directorate acquires information and data, as appropriate, if requested by any competent national authority, such as the Financial and Economic Crime Unit and other competent economic and/or tax authorities.

**The Special Management Service for the Programme 'Rural Development in Greece 2007-2013'** cooperates as appropriate with other audit bodies, such as the Financial and Economic Crime Unit (SDOE). Specifically, in the cases where the on-the-spot audits of the RDP Special Management Service/Special Implementation Service Audit Units show some indication of suspected fraud, the report of the audit results is published and administrative assistance is requested from the competent SDOE department for further investigation and actions

to be undertaken in accordance with its competences under the law. Also, if the above audits indicate possible crimes related to the protection of EU financial interests, a copy of the audit report is also sent to the competent prosecuting authority which takes legal action, as appropriate.

During the current programming period, **the Directorate of Planning and Agricultural Structures** crosschecks the data in investment plans submitted for aid to the Ministry of Development and Competitiveness - Development Law - in Manufacturing, and those submitted under Measure 123A, in order to avoid the same investment object being financed by different sources (exchange of electronic records).

**Point (d)**

**The Directorate of EAGGF Expenditure Audit-Guarantees** selects the businesses of the annual auditing programme to be audited by implementing a risk analysis methodology.

(1) In particular, the selection of the businesses to be audited is based on previously determined risk criteria for which severity factors on a scale from 0 (zero risk) to 3 (highest risk) are implemented. The Risk Analysis methodology consists of calculating the Risk Amount for each business as the product of the criteria grade multiplied by the amount of the financial aid. The companies with the highest Risk Amount are those selected first. The process of implementing the risk analysis takes into account all available sources of information related to the beneficiary, audited actions etc.

The proposals for the use of risk analysis are presented each November to the competent Service of the European Commission and include the assessment of the risk analysis of the previous financial year, the balance of risk factors and all relevant information regarding the approach to be followed, the techniques, the criteria and the method of implementation, under Regulation (EU) No 1306/2013 and the implementing acts thereof.

(2) On-the-spot auditing includes the phase of selecting the transactions to be audited through risk analysis. As part of this selection, the accuracy of the main data submitted for auditing is verified through cross-checks. The number of cross-checks aims to detect and combat incidents of fraud (such as counterfeit documents, etc.) to protect the financial interests of the European Union.

(3) In addition, the Directorate communicates with other Member States regarding payments or debts related to businesses with a registered office in Greece and sends information to all Member States, as appropriate, informing them if Greece receives financial aid or not, in order to avoid double subsidies.

(4) The Directorate makes use of the provisions of the Regulation on mutual assistance among Member States by sending requests

for inspection in the context of the audits.

**The Special Management Service for the Programme 'Rural Development in Greece 2007-2013'** takes into account in the audit system of the cases of non-eligibility of expenditure/ error, as well as irregularities with evidence of fraud, in the identification of risk factors for the sampling of audits based on risk analysis.

In order to optimise the efficiency, and reduces the cost, of the on-the-spot audits provided for in Article 18(1b), (2b) and (3b) of JMD 079833/25.10.2011 (Government Gazette, Series II, No 2366), **the Directorate of Spatial Planning and Environmental Protection** selects the sample in a targeted manner by using a computerised system. The sample is arrived at by using a combination of random sampling techniques (25%) and sampling based on risk analysis (75%) For example, the parameters of the risk analysis are: the amount of the aid, the size of the agricultural holding, the number of parcels and the sanctions imposed in the past. Moreover, it is possible to increase the sample of on-the-spot audits in case of discrepancies in a significant number of applications between the data reported and the data which has been confirmed, as well as in special cases such as complaints and suspected fraud.

The amendment of the aforementioned JMD with JMD No 1683/109963/17.11.2013 (Government Gazette, Series II, No 2333) strengthens the audit objectives specified in the original JMD by providing for the updating of other competent authorities (e.g. of the licence issuing body in the case of irregularities relating to the licence for livestock facilities) and the classification of penalties in case of irregularities and infringements by the beneficiaries of the programmes.

**Point (e)**

**The Directorate of EAGGF Expenditure Audit-Guarantees** uses a computerised information system which has been presented to the auditing groups of the European Commission and has been designed on the basis of risk analysis for the elaboration of audit programmes, in order to grade and visualise as many risk parameters as possible which leads to the audit programmes of the Directorate being better constructed and reduces the likelihood of errors in the process of selecting the beneficiaries to be audited and in the monitoring of audit programmes.

During the implementation of the actions under its competence and to comply with the recommendations of the European Commission on the reduction of irregularities and combatting fraud, **the Directorate of Spatial Planning and Environmental Protection** developed a computerised application which covers, for each action, the entire process from the time of the submission of applications for aid by the

	interested parties and the performance of the required administrative audits and cross-checks, to the integration and payment to beneficiaries.
<b>ES</b>	<p>The tasks entrusted to the Managing Authority in the period 2007-13 focused on the development and strengthening of management and control activities which, in addition to fraud prevention, contribute to improving the implementation of Cohesion Policy and ensuring more efficient use of public resources, which is the main responsibility of the Managing Authority, while at the same time ensuring the detection of potential irregularities, including the ones that could be a result of allegedly fraudulent behaviour.</p> <p>In recent years, an effort has been made to step up assessment and analysis of situations that come under the management of co-financed projects by drafting written guidelines for intermediate bodies and beneficiaries, circulars explaining rules, and systematic annual training plans covering the biggest risks. The aim is to provide guidelines for the staff of intermediate bodies and of the Managing and Certifying Authorities on the interpretation and application of rules. The activities carried out by the Spanish authorities in this field comply with Article 325 of the TFEU, which states: 'Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests'.</p> <p>The Managing Authority also has control systems the check the quality of the control tasks carried out by the intermediate bodies, based on annual control plans that take account of the risks detected.</p> <p>In terms of statistics and monitoring the results of anti-fraud investigations, the Directorate-General provides all the support needed for OLAF's investigations, as well as, in some cases, staff to take part in the investigations and inspections. It also cooperates with OLAF whenever required by the latter, carrying out checks with its own resources at the request of OLAF, the results of which are communicated conscientiously. <b>The intention is to continue with such activities in future.</b></p>
<b>FR</b>	<p>Since May 2013, one of the priorities of the new French anti-fraud coordination service (Service coordination anti-fraude - SCAF) is to increase prevention of fraud against the EU's financial interests by making it easier to exchange good practice and by organising dedicated training seminars in cooperation with OLAF.</p>
<b>HR</b>	<p><b>STRUCTURED COOPERATION</b></p> <p>Since the AFCOS system in the Republic of Croatia includes 3 pillars (Irregularity Reporting System, AFCOS network and Service for Combating Irregularities and Fraud within the Ministry of Finance), it has to be stressed that the <b>Service for Combating Irregularities</b></p>

and Fraud has, among other functions, 3 important functions: coordination, cooperation and exchange of data.

Namely, **Service for Combating Irregularities and Fraud is a coordinative body** between the Irregularity Reporting System (which is also consisted of managing authorities) and the AFCOS network. It is also a **main contact point for OLAF** in the Republic of Croatia and therefore **ensures the performance of inspections by OLAF** in the territory of the Republic of Croatia. Furthermore, it also **receives, checks and consolidates reports on irregularities** for the purpose of submitting them to OLAF.

#### LEGAL BASIS

The legal base for cooperation between AFCOS bodies is the **Government Regulation on the institutional framework of the system for combating irregularities and fraud** (OJ 144/2013).

Article 7 of the Regulation establishes cooperation between the bodies of the AFCOS system. Namely, all bodies of the AFCOS system are obliged to mutually cooperate and exchange data and information.

The way of cooperating and exchanging data and information among the bodies of the AFCOS system may be arranged by protocols on cooperation. Moreover, separate protocols on cooperation (at this moment between 4 bodies) are prepared and drafted in order to enhance cooperation between bodies. It is expected to sign them in 2014.

Article 8 also lays down the obligation of all bodies in the AFCOS system to cooperate with OLAF.

Another document that specifies cooperation between the Service for Combating Irregularities and Fraud and AFCOS Network bodies<sup>25</sup> is the **Government Decision on establishing AFCOS Network** (OJ 151/2103), which lays down rules on the functioning and role of the AFCOS Network in the AFCOS system. The AFCOS Network is established in order to **achieve full operability of the AFCOS system** and it has an **advisory role within the AFCOS system**.

To conclude, as Croatia has an AFCOS system comprised of 3 pillars, one of which is the Service for Combating Irregularities and Fraud, the **Government Regulation on the institutional framework of the system for combating irregularities and fraud sets up the**

<sup>25</sup> AFCOS Network bodies are: Ministry of Justice, Ministry of Interior, Ministry of Economy, State Attorney, Agency for the audit of EU programmes implementation system and competent organisational units within the Ministry of Finance.

**obligation of cooperation between all the bodies in the AFCOS system, thus establishes the foundation for cooperation between Service for Combating Irregularities and Fraud and managing authorities<sup>26</sup>.**

#### **FRAUD RISK ANALYSIS**

**With the aim of detecting weaknesses in the AFCOS system, the Service for Combating Irregularities and Fraud has drafted a Risk Management Methodology in the field of irregularities and fraud. Accordingly, all bodies within AFCOS system are obliged to draft risk assessment analyses.**

**On the basis of risk assessment analyses conducted by AFCOS system bodies, the Service for Combating Irregularities and Fraud drafts General Risk Assessments, regarding irregularities and fraud in the AFCOS system.**

The risk management regarding irregularities and fraud includes:

- Risk assessment
- Remedy and prevention of negative influence of identified risks
- Monitoring and reporting on risk assessment conducted

**.In IRS bodies, risk assessment is performed by Irregularity officers and in AFCOS Network bodies, representatives of those bodies. Irregularity officers and AFCOS Network representatives have to identify risk areas in which there is a possibility irregularities and fraud could occur. The procedure and methods have to be in line with the Risk Management Methodology drafted by Service for Combating Irregularities and Fraud.**

#### **IT TOOLS**

**Regarding IT tools, the Service for Combating Irregularities and Fraud, as a coordinative body, authorises managing authorities and other bodies in the AFCOS system to use IMS as observes, except the bodies in the AFCOS system which have an obligation to notify irregularly cases (IRS), therefore to create the irregularity report (CREATORS).**

<sup>26</sup>

Article 5(4) of the Regulation lays down that the Service for Combating Irregularities and Fraud shall, together with competent bodies, participate in the production of rules linked with the irregularities management field which also includes managing authority.

<b>IT</b>	<p>1) The Committee for the prevention of fraud against the European Union (CO.L.A.F.), as AFCOS (Anti-Fraud Coordination Service) for Italy, is supporting the project for the realisation of an IT platform of <i>business intelligence</i> by the Guardia di Finanza. Such a system increases the effectiveness of the activity of repression of irregularities and frauds against the EU budget. Thanks to the development of specific risk indicators relating to the beneficiaries of EU funds, it is also possible to implement the prevention system from such offenses, through the constant exchange of information between the Management Authorities and the Guardia di Finanza itself.</p> <p>2) In this respect too, it is the Customs Agency's annual guidelines on checks and controls that identify the 'Cabina di Regia' ['Control Booth'], a panel set up with the Revenue Agency and the <i>Guardia di Finanza</i>, as the operational instrument for cooperation between the different parts of the financial administration on combating fraud. It allows controls to be programmed on the basis of information made available by the central offices (e.g. selective lists, specific projects like those concerning the Cabina di Regia, controls to be carried out in cooperation with other national and Community authorities). To support the local offices carrying out inspections on the premises of traders, coordination is arranged with the central offices making up the Cabina di Regia to overcome any operational problems hindering prompt performance of checks programmed and signalled as priorities by the Central Directorate for Investigations and Inspections and the Central Anti-Fraud Office, using solutions to enable the planned measures to be carried out efficiently.</p>
<b>CY</b>	<p>[b) <i>Cooperation happens on a case by case level and with which bodies</i>]</p> <p>cooperation with VAT authority, Inland Revenue Authority, Social Security Authority, Police and Legal Service on a case by case basis. In addition, when certain cases require the involvement of more national authorities e.g. cases of double financing, the cooperation amongst authorities is facilitated by the Managing Authority.</p> <p>[e) Have specific IT tools been reviewed and designed on the basis of fraud risk analyses. If yes which tools.]</p> <p>The ARACHNE tool will be reviewed and in view of the e-cohesion, IT systems are foreseen to be developed in preparation for the Programming Period 2014-2020. Also the self-assessment tool for risk assessment issued by the Commission under paper Ref. Ares(2013)3769073 of 19/12/2013.</p>
<b>LV</b>	<p>The Managing Authorities and anti-fraud bodies participate in a national AFCOS in which the questions related to fraud prevention and risk detection are discussed. Accordingly these meetings have established a good practice of organising seminars and workshops for prosecutors, judges and intermediate bodies to strengthen cooperation. Within these workshops participants have discussed several case</p>

	<p>studies related to suspected fraud.</p> <p>The national AFCOS created the anti-fraud strategy of the Ministry of Finance for 2014 – 2020 (approved in August 2, 2013). The target of this strategy is to provide a common understanding of issues related to suspected fraud. Furthermore, in order to make projects more effective the strategy provides measures to improve the exchange of essential information between different bodies.</p> <p>In order to control the double-financing risk between EU Structural funds, Cohesion fund and agriculture funds, the Managing Authority for EU Structural Funds and Cohesion Fund has a specific IT tool in the management information system. Also the Managing Authority for EU Structural Funds and Cohesion Fund in 2013 has created a double-financing matrix in which it has included all funding types in Latvia and essential and risky points. The matrix is published on the nation EU funds webpage: <a href="http://www.esfondi.lv/page.php?id=1170">http://www.esfondi.lv/page.php?id=1170</a> (1.15) and has been used in fraud risk analysis.</p> <p>Cooperation is on a case by case basis between the State Police, the Corruption Prevention and Combating Bureau, State Revenue Service Finance Police Department.</p>
<p><b>LT</b></p>	<p>The Lithuanian legislation regulating project administration stipulates that, if the implementing authority suspects an infringement (e.g. when checking project documents or during an on-the-spot check) and/or receives information from other authorities concerning a suspected infringement, it must launch an investigation on the basis of the procedure laid down and must, on completing its assessment of the nature of the suspected infringement and suspected criminal offence, immediately inform the Financial Crime Investigation Service under the Ministry of Internal Affairs (hereinafter – FNTT) thereof, the latter being authorised to investigate financial crime. This cooperation with the FNTT operates on a case by case basis.</p> <p>It should also be pointed out that the FNTT <i>organises anti-fraud training</i> on an annual basis for employees of public institutions involved in the administration and control of EU structural assistance, during which it presents examples of the most prevalent fraud schemes and engages in discussions of topical issues relating to, and prospects for, the investigation, prevention and detection of cases of suspected fraud and cooperation between the FNTT and bodies involved in the administration of EU structural assistance.</p> <p>The managing authority and other authorities responsible for administering EU structural assistance also regularly organise <i>meetings</i> of representatives of the managing authority and other authorities responsible for administering EU structural assistance and/or project promoters, during which problems relating to project implementation and amendments to legislation regulating the administration of EU structural funds are discussed, with emphasis on the administration of infringements, whereby information is discussed and shared between</p>



	<p>authorities with a view to ensuring that infringements are dealt with uniformly and that uniform remedies are applied to them.</p> <p>In addition, the information systems of some implementing authorities now offer <i>improved monitoring of high-risk projects</i>: in addition to information concerning a project and its implementation, information is also provided on the risks which the project entails and the risk management measures that may be applied.</p> <p>Also when performing customs procedures, it is stipulated by legislation that information on the nature of post-clearance checks carried out on customs declarations, the results of those checks and any infringements identified must be entered and stored in customs information systems. The rules on simplified tax auditing carried out by regional tariff and customs valuation control divisions, which regulate the post-clearance checking of customs declarations, lay down that, after the risk has been assessed, information on the infringements identified during simplified auditing must be transmitted in writing to the Customs Criminal Department, the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania, the FNNT, and other State law-enforcement and inspection authorities. When carrying out post-clearance checks for the risk assessment, selection and tracking the checking process of customs declarations, officers are now required to start using the updated and improved operator checking component of the Risk Assessment and Control System.</p> <p>The FNNT, which is the main law-enforcement agency and is responsible for detecting and investigating criminal activities and other infringements of the law relating to the receipt and use of EU financial assistance, <i>has access</i> to the computerised information management and control system for EU structural funds (SFMIS) of the Ministry of Finance and to the computer portal of the National Payment Agency under the Ministry of Agriculture.</p> <p>In addition, the <i>infringement inspectors working group</i> approved by Order No 1K-396 of 13-12-2012 of the Minister for Finance of the Republic of Lithuania, includes among its members representatives of the Lithuanian authorities responsible for the administration and monitoring of and investigations concerning EU financial assistance. The purpose of this working group is to exchange experience and best practices in respect of the investigation, identification and elimination of infringements relating to the use of EU funds, to examine matters relating to the investigation, identification, elimination and prevention of infringements, and to coordinate activities linked to the investigation, identification, elimination and prevention of infringements.</p>
<p><b>LU</b></p>	<p>The ESF has used a centralised database for years. It contains all the financial information about projects, including audits and checks carried out. Cooperation is already assured via the various meetings that are held quite regularly. Is it necessary to extend or formalise these exchanges?</p>

<p><b>HU</b></p>	<p>In 2011 the OLAF Coordination Unit of the Central Office of the National Tax and Customs Authority signed <b>cooperation agreements</b> (which are still in force) with the MVH (as one of the most important support bodies) and with the Directorate-General (as one of the audit bodies). The purpose of the agreements was to prevent illegal activity in procedures relating to the use of support paid from Union funds, and to make the use of Union funds more legitimate and effective by continuously developing administrative procedures. The agreements further aimed to identify joint preparation strategies for tasks arising from legislative changes, reciprocal and continuous information for changes to technical requirements and tasks to be developed regarding irregularities, and to raise awareness of the conditions of use for electronic schemes for recording and reporting irregularities (IMS).</p> <p>Crimes within the scope of criminal investigations by the National Tax and Customs Authority are detected and investigated in accordance with national law. In criminal procedure, the relationships, possibilities for cooperation and obligations between Member States' authorities that have jurisdiction over, and whose tasks involve, the fight against exhaustive "fraud" crimes and other parties can be defined by means of a coherent regulation determining the rights and obligations of the parties. In this way cooperation between counterparts, irrespective of the intermediary channels used for this (whether using written records or supported by information schemes), can be carried out correctly.</p> <p>In the field of on-the-spot checks the MVH has for several years operated and established a methodology with IT support based on a data mining procedure which is effective in predicting potentially risky clients on the basis of the findings of previous on-the-spot checks. It can be seen from the individual support provisions that the procedure is effective, since the error rate in the sample selected for risk assessment is significantly lower than in the reference sample taken without using this procedure.</p>
<p><b>MT</b></p>	<p>The MA fully cooperates with AFCOS Malta in the fight against irregularities and fraud in a structured and coordinated manner. This cooperation is based to a large extent on the National Anti-Fraud and Corruption Strategy drawn up by AFCOS (Malta).</p> <p>With regard to risk analysis and IT tools, representatives of AFCOS (Malta) and of the MA are receiving training on a new risk analysis tool called ARACHNE which aims at providing Authorities of Member States involved in the management of Cohesion Policy with an operational tool to identify the operations most at risk. Another IT tool being used provides access to the records of companies which are held by the Malta Financial Services Authority. The MA also has indirect access to other systems owned by national authorities which operate in the field of combating fraud (such as the VAT system, registers of the Employment and Training Corporation, etc). In addition, in order to substantiate its checks, the MA carries out searches on the internet through VIES.</p>

<p>NL</p>	<p>Within Customs there is highly structured cooperation between the managing authorities and the operational bodies, based on internal rules and procedures. The Dutch Customs' control system certainly uses fraud risk analysis, which comprises IT tools such as SAS and Tableau.</p> <p>The national and regional services carry out their own risk analysis in various policy areas. A distinction is also made between strategic, tactical and operational risk management, in line with European directives.</p> <p>The risk analyses are used to identify signals, on the basis of which a follow up investigation is conducted. Depending on the outcome of this investigation, a proper fraud investigation may be carried out.</p> <p>The Ministry of Social Affairs and Employment has its own investigation service, the SIOD. There are no forms of cooperation other than that with the SIOD for combating fraud. If the Agency identifies or suspects a case of fraud it will bring in the SIOD. In the period 2007-2013 legal persons governed by private law were also eligible for ESF subsidies. In the next programming period (2014-2020) ESF subsidies will mainly be open to public law organisations. This reduces the risk of fraud.</p> <p>The SZW Agency has formulated and implemented a policy on combating misuse and improper use for years now. As part of this, checks on implementation and misuse are carried out. As a way of further improving fraud prevention ('improving risk analyses and IT tools'), the Agency is looking at whether ARACHNE will be used/updated and how the Guidance Note on fraud is going to be used to confirm the structure of the current anti-fraud policy.</p> <p>In the ERDF programme the checks on MAs, the CA and the AA are risk-oriented. In addition, the authorities are constantly looking at whether the management and control system can be further improved. The inspections by the CA and AA are important elements in this process. As in the Ministry of Social Affairs and Employment, the tools which the Commission has developed, such as ARACHNE and some anti-fraud guidelines will be examined to see if they are usable.</p> <p>When Customs (DIC) receives an OLAF request the DIC gets in touch with the contact person in the relevant Ministry to which the request is addressed. OLAF is then informed of the receipt of its request and of the name of the contact person who will lead the investigation. The investigation is carried out in cooperation with OLAF. It is the responsibility of the contact person to ensure that the inspection is carried out in accordance with Dutch regulations. The Ministry concerned receives feedback on the findings of the investigation. An evaluation is</p>
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	then carried out and DIC keeps a record of all requests for assistance addressed to the Netherlands and how they are finalised.
<b>AT</b>	No Response.
<b>PL</b>	<p>Cooperation as recommended mainly takes the form of operational contacts, depending on needs resulting from control reports or information on irregularities received by institutions of the management and control system. Regional managing authorities sign agreements with law enforcement and treasury control authorities on cooperation to protect the EU's financial interests, better transmission of information and sharing of best practice.</p> <p>Working groups on irregularities involving EU funds are an effective way to establish and promote cooperation between regional authorities fighting financial fraud. Their tasks include the regular exchange of best practice in detecting, reporting, preventing and combating irregularities and fraud involving EU funds. This cooperation also includes organising and participating in national and international conferences organised by competent authorities, including law enforcement authorities, on control activities, irregularities and the fight against crime involving EU funds.</p> <p>To detect irregularities more effectively, cooperation began in 2013 between the Minister for Infrastructure and Development and the Prosecutor General in the transmission of information concerning judicial proceedings. This includes information on judicial proceedings with respect to criminal activity involving 'significant amounts' of expenditure from EU funds (i.e. amounts equal to or exceeding 'property of great value', defined in Article 115(6) of the Criminal Code as PLN 1 000 000). Such information is sent as soon as there are grounds to launch judicial proceedings, or proceedings under way are found to involve the funds in question. Information is stored in a database kept by the NSRF coordinating body, which constantly forwards information obtained to the competent managing authorities. Such information leads to the classification of a beneficiary in a high-risk group and allows the authority to take appropriate preventive action.</p> <p>Cooperation also involves the management of cross-border trade mechanisms for the import and export of goods covered by the CAP. This is based on an agreement between the paying agency and the Customs Service on the circulation of documents and information on work related to trade in goods covered by export refunds under the CAP. The Customs Service thus carries out recommended producer and recipe verification checks, to ascertain whether the quantities of raw materials declared in recipe registration applications are actually used in production.</p>

	<p>Authorities involved in programme implementation use dedicated IT risk analysis tools to collect and compile information on projects implemented under the cohesion policy. Officials at each NSRF managing authority have access to databases of beneficiaries implementing projects at the same time under programmes co-financed from agricultural funds or the EFF. Such beneficiaries are classified as presenting a risk of double financing and cross-checked.</p> <p>Advanced IT work on the Human Capital OP is under way to create a database of compliance with competition rules. The database will allow authorities involved in programme implementation and beneficiaries to record data on action not covered by public procurement provisions but required by competition rules. This tool will ensure greater transparency in an area with a relatively high rate of irregularity.</p> <p>The Register of Irregularities (RIUP) is used for agricultural funds. This makes it possible to store information on irregularity and fraud, calculate their financial impact and keep track of related investigations, including criminal proceedings. Work began in January 2014 on a new application for law enforcement authorities to record any information on suspected criminal activity (involving agricultural funds). This will help coordination and communication relating to criminal activity and make it easier to monitor the results.</p> <p>A major role in minimising the risk of financial fraud is also played by a duly accredited Anti-Corruption System, which has been established in one of the paying agencies. This includes an annual analysis of corruption risks for all procedures, including control activities. Preventive action is taken if any procedure presents an unacceptable level of risk. The effectiveness of that action is subsequently checked.</p>
<p><b>PT</b></p>	<p>The national authorities are committed to developing the controls and checks carried out, improving, if applicable, existing cooperation, risk analysis and the use of IT tools.</p> <p>In this connection, the <i>Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos</i> (Directorate-General for Natural Resources, Safety and Maritime Services – DGRM), which performs the function of MA for the PROMAR, referred to the adoption of the following measures for the prevention and/or detection of irregularities before there is an actual loss for the EU and national budgets, namely (i) strengthening the Internal Control Unit to enhance the supervision of delegated management functions in the IBs, in particular to assess compliance with the procedures adopted with the content of the Description of Management and Control Systems; (ii) consolidation of on-spot checks in accordance with the procedures defined in the Description of Management and Control Systems, in particular</p>

highlighting that the checks are carried out in compliance with the principle of segregation of duties and to check, among other requirements, those relating to public procurement and accounting records under the legal provisions; (iii) dissemination of recommendations by IBs to intensify analysis of, among other things, the ability of promoters and projects to access support; rules on public procurement and the allocation of indirect costs to operations and the issuing of technical guidelines to clarify and standardise management verifications, and (iv) the treatment of systemic errors detected in audits of operations and initiation of fund recovery procedures when irregular situations are detected.

Also the Agency, which is responsible for overall coordination of the ERDF, ESF and CF, and which performs the function of Certification Authority for these funds, highlighted, in connection with the ERDF and CF, the implementation of improvements in the functioning of the management and control systems of the QREN Operational Programmes, encapsulated in the adoption of coordination standards and circulars and the definition of general guidelines, more specifically: (i) the update of the standard that established the ERDF and CF Debt Accounting System; and the procedures to adopt (ii) for the verification of compliance with the State aid rules on the financing of infrastructure; (iii) for the monitoring and management of revenue-generating projects, and (iv) on attachment of the amounts payable to defendant entities that are beneficiaries of operations financed by the ERDF and CF.

In addition, the Managing Authorities of the ROP Algarve, the ROP Lisbon, ROP Alentejo, the ROP Centro, INTERVENE+ OP and ROP Norte described various initiatives adopted in order to increase the effectiveness of controls and/or promote risk analysis or the use of IT tools, which are summarised below:

- Preparation of Plans to Prevent the Risk of Corruption and Related Offences;
- Cooperation with OLAF, whether during the audits that OLAF conducts or in response to its requests;
- Implementation of the WEB Report, which promotes the reporting of information on the Debt Accounting System via webservice;
- Application of Standards and Good Practices adaptable to Equal Opportunities;
- Publication of the synthesis of EU and national environmental legislation and implementation of the respective verification

	<p>checklist in conjunction with the <i>Agência Portuguesa para o Ambiente</i> (Portuguese Environment Agency – APA);</p> <ul style="list-style-type: none"> <li>• Adapting the payment rules of investment incentive systems in order to facilitate the implementation of investment projects, in particular by clarifying the implementation of payment by way of advance against invoice;</li> <li>• Implementation of the ERP - Integrated Business Management System information system - , which increases the security of all information and improves rigour in the organisation of work, with noticeable gains in operational and management terms.</li> </ul>
<p><b>RO</b></p>	<p>DLAF has concluded cooperation protocols with most managing authorities.</p> <p>DLAF and the managing authorities cooperate on a case-by-case basis, depending on the nature of the investigations.</p> <p>When new checks are initiated, DLAF always takes into account the outcomes of the risk assessments.</p> <p>DLAF uses the following IT tools: 12 Analyst's Notebook 7, 12 Base 5, Doctum etc.</p> <p>As IT tools for collecting data necessary for own control missions or to respond to requests from external control bodies, the APDRP's Control and Anti-Fraud Directorate uses the Integrated Computer System ('SPCDR') and the databases kept by the relevant directorates (selection-contracts, payments, accounting). IT operations have been further improved by means of certification for ISO/IEC standard 20000 and compliance with ISO/IEC security standards 27001:2005 and 27002:2005, in preparation for certification.</p> <p>Moreover, the electronic platform AFIS has been installed at the APDRP for the Control and Anti-Fraud Directorate and the Project Payments Directorate, and the employees have been given access rights. The platform is used for quarterly reports on irregularities to the European Commission (OLAF), via DLAF, covering all the irregularities recorded in the DLAF investigations reports, the OLAF final reports and the debts determined by the APDRP.</p>
<p><b>SI</b></p>	<p>In relation to the MA (Ministry of Economic Development and Technology – MGRT) in 2013 we laid down a basis for cooperation between the national anti-corruption body – the Corruption Prevention Commission – and the MA (i.e. MGRT).</p> <p>Following initial meetings, it was agreed that cooperation should first be established in the field of exchanging data and key information. To this end an agreement was reached between the Corruption Prevention Commission and MGRT as the MA. The agreement concerned</p>

the monthly updating of data on European fund recipients between the MA's ISSAR information system (through which European funds are drawn down) and the *Supervisor* program used by the Corruption Prevention Commission.

The main aim is to pair up data according to certain, pre-defined criteria to prevent dual financing and to reduce risk factors, including corruption. To improve cooperation coordinators were appointed on both sides via whom future communication will take place. A 'principles and guidelines tool' was prepared for the Corruption Prevention Commission for control purposes, which includes typical risks for an actual operation and how to assess them, and guidelines on how to prepare adequate counter-measures or produce a risk assessment on the basis of such data. A vital section of the document is a classification of corruption risk assessments and statuses of existing controls that will serve as the starting point for further work.

The following major improvements were made in 2013 by the MA in relation to internal supervision:

- the risk analysis was improved to include additional risk indicators that make it easier to identify the suspicion of fraud
- evaluation of additional risk indicators in a manner that enables the timely identification of risky operations in areas where the suspicion of fraud occurs most often (construction works, equipment purchases)
- introduction of additional controls to reduce risk arising from tasks being transferred from the MA to intermediate bodies and risk detection in individual procedures and implementing steps at intermediate body level (tender implementation phase, selection of contractors).

In relation to AFCOS, the points from Recommendation 8 are under discussion at regular meetings of the inter-ministerial working group for cooperation with OLAF, which is organised by UNP. In June 2013 UNP organised a second conference on the protection of the EU's financial interests. The participants included auditors, supervisors, internal controllers and members of managing authorities, as well as experts on detecting irregularities and irregularity reporting, and managers who work on the use of EU funds.

UNP signed an agreement on cooperation with the Police (a Ministry of Interior body) across all forms of fraud and actions that are detrimental to the financial interests of Slovenia and the EU, which entails cooperation in detecting and investigating the illegal use of public funds (direct and indirect budget spending), illegal spending of local authority budgets, and the illegal use of EU funds in programmes co-financed from the EU budget.

Cooperation with other bodies takes place when needed and on a case-by-case basis, in the form of ad hoc meetings (e.g. with the Office of the State Prosecutor-General or the Corruption Prevention Commission). This is a frequent form of cooperation.



<b>SK</b>	<p>For the implementation of the ERDF, CF and ESF, the Slovak Republic uses the ITMS information that serves for the collection, processing and monitoring of data on the implementation of financial resources from the EU budget. At present, the system has the functionality for the detection and prevention of double financing, consisting of control in the uniqueness of accounting documents and their use in various projects.</p> <p>The Slovak Republic is also working on adjustments to the system for the programming period of 2014-2020, to ensure the collection of data and its subsequent evaluation are compatible with the EC – ARACHNE instrument under preparation. The final form of risk assessment tool, which will be used for the implementation of the ESIF, depends on the conditions under which Slovakia will be able to use the ARACHNE system.</p> <p>A number of managing authorities also use other IT tools, e.g., the commercially established Social Network of Companies in the Slovak Republic, known as "FOAF", which proved a useful complementary tool in identifying conflicts of interest. Further measures are underway in relation to the specific needs of the individual operational programmes at the level of managing authorities. For example, to identify conflict of interests, the managing authority for the Employment and Social Inclusion OP uses its own IT system FONDUE, and a SIMS system, and an alternative to the ARACHNE is expected to be employed soon. In 2013, the Transport OP introduced, after analysis of the frequency and types of findings from audits and controls, a catalogue of risks and risk analysis.</p> <p>In 2013, on the revenue side of the EU budget, cooperation between the Interior Ministry of the SR, National Criminal Agency of the Police Corps Presidium and other bodies (relevant tax control authorities), in the fight against fraud, has proven successful. Cooperation takes the form of the "Tax COBRA". The controls based on the "Tax Cobra" focus, in particular, on fraud and these controls are then carried out in an efficient, coordinated and targeted manner, thereby reducing the cost and increasing the potential success of those controls.</p>
<b>FI</b>	<p>The Agency for Rural Affairs has adopted a sampling technique based on a logistic regression model for selecting projects and companies. Staff from the Agency for Rural Affairs have attended seminars organised by the Commission and OLAF in the area of fighting fraud. An action plan for tackling fraud has also been drawn up for 2014, covering cooperation with the Audit Authority, the Managing Authority and the Paying Agency.</p>
<b>SE</b>	<p>Administrative systems for managing support are improved and developed on an on-going basis. One example of note is that controls are built in to the system for managing support cases pursuant to the Rural Development Programme and European Fisheries Fund. These</p>

controls ensure that processing is stopped if some checks of the application are not carried out. Ahead of the next programme period, new IT systems are being built and new procedures created. Lessons learned from the previous programme period are being taken into account.

On 1 January 2008, a common framework for internal governance and control was introduced at central government authorities. This framework consists of a number of statutory instruments. The objective of the new framework is to clarify the responsibility of management and create better conditions for accountability and a more efficient and secure operation, not only for national funds but also for EU funds jointly managed at national level. The aim of the framework is also to help improve the protection of EU funds.

Another reason why suspected fraud is closely monitored is that Sweden has a council (the Council for the Protection of the EU's financial interests, "the SEFI council"), which has national responsibility for coordinating measures to fight fraud and other improper use of EU-related funds. The Council has members from all the Swedish authorities which are responsible, in various ways, for managing EU funds. Matters discussed in the Council include exchange of knowledge of how administrative systems can be developed and fraud reduced.

The Council is led by the Swedish Economic Crime Authority, which is responsible in Sweden for investigating and prosecuting fraud which involves the EU's financial interests.

The work of the Council ensures that there is structured cooperation between the managing authorities, the audit authority and the crime-investigating authority. Among other things, the Council has produced a policy for the reporting of suspected EU-related fraud, under which all authorities in the Council have agreed that suspected fraud is to be reported to the Economic Crimes Authority.

Cooperation also takes place in individual cases between the Economic Crimes Authority and the managing authority involved. The Authority also holds regular training courses on fraud fighting issues for desk officers and managers from the managing authorities.

Customs cooperates at national level with other authorities, including the Economic Crimes Authority, the Enforcement Agency and the Police, with the objective of discovering and prosecuting fraud. At EU level, Customs cooperates with OLAF and works to discover fraud in international trade. Customs regularly investigates suspected fraud, such as that discovered in other countries and which Sweden has been informed about by OLAF.

Customs also takes part in international joint customs control operations.

	<p>Concerning improved risk analysis and IT tools, Customs has a number of projects under way which aim to develop and improve Customs' ability to analyse and select in the goods flow (see recommendation 7). This applies both to legal and illegal trade.</p>
<p><b>UK</b></p>	<p><b>DWP:</b> The European Social Fund (ESF) Audit Authority and Internal Investigations are part of the same directorate and work closely together to combat fraud. Any potential fraud is referred to Internal Investigations who refer onto the Police where evidence of criminal offences is established. Internal Investigations report back the outcome to The ESF Audit authority.</p> <p><b>DWP:</b> Dealing with fraud has been 'mainstreamed' so that there are dedicated experts available to work with the Managing Authority on any ESF or other programme fraud cases that may arise. With a protocol in place to process potential fraud cases there are established arrangements that are activated when required. There are also well established links to OLAF and in particular nominated lead contacts that we can approach to seek advice and support when required.</p> <p><b>DCLG :</b> An agreed protocol is in place for the 2007-2013 European Regional Development Fund (ERDF) Programme between the Audit Authority, Managing Authority and Certifying Authority that details the arrangements for reporting and investigating suspected cases of fraud;</p> <p>Throughout the current programme, we have undertaken fraud awareness presentations for staff engaged in ERDF activity; and The Audit Authority has undertaken a fraud risk assessment exercise on behalf of the Managing Authority.</p> <p>We attend the annual COCOLAF counter fraud group (usually held in November) and have contact with our appointed OLAF investigator on a frequent basis. Both of these allow for an increased cooperation and sharing of information between OLAF and DCLG in relation to ERDF. We also have contacts within DWP which allows the sharing of information between ESF and ERDF.</p> <p><b>WG:</b> We do not have a formal concordat in place with the other UK authorities, but we do have good relations with our opposite numbers, particularly in BIS and share information as appropriate. WEFO submits irregularity reports every quarter to OLAF and these are available to the Department for Business, Innovation and Skills as required.</p> <p>WEFO also enjoys good relations with OLAF and made a point of meeting Andrea Bordoni and his team in 2012 to ensure that we were</p>

fully compliant with reporting requirements.

All cases of suspected fraud are reported to the Head of Counter Fraud who then provides advice and guidance to WEFO and liaises with his counterparts in other authorities, including the police.

WEFO also operates a comprehensive risk management policy and risks, issues and irregularities are all managed through a computer-based Programme and Project Information Management System..

**DEFRA:** Delegated bodies are involved in the delivery of rural development schemes, the paying agencies have agreements in place supported by Service Level Agreements using both local industry experts routinely and national experts as required. Each case is assessed in terms of the level (if any) of risk involved.

## **2.9. Anti-fraud services and administrative bodies – fraud prevention ... 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.**

**BE**

ESF Flanders:

ESF Flanders is not a legislator.

After approval of the Commission implementing regulations for the specific funds, ESF Flanders will implement these provisions insofar

	as they include provisions on anti-fraud policy.
<b>BG</b>	<p>The Managing Authorities for the seven Operational Programmes financed by the Structural and Cohesion Fund for the programme period 2007—2013 are actively involved in preparing draft legislative acts, including those in the field of preventing and reporting irregularities and combating fraud through interdepartmental working groups and in approving the draft legislation.</p> <p>The AFCOS Directorate is preparing a draft National strategy to prevent and combat irregularities and fraud affecting the financial interests of the European Union for the period 2014—2020 and a draft Action Plan to implement this strategy for 2014. The strategy's main objective is to achieve a higher level of protection for the EU's financial interests in Bulgaria in fulfilment of the provisions of Art. 325 TFEU.</p> <p>The members of the Council for the coordination of the fight against legal infringements affecting the financial interests of the European Union will define the objectives of the Action Plan for 2014. Pursuing these objectives should ensure fulfilment of the priorities and measures in the Strategy. The draft National Strategy, including the Action Plan for 2014, will first have to be presented to and approved by members of the Council, after which they will be adopted at a Council session and submitted to the Council of Ministers for approval.</p>
<b>CZ</b>	<p>The Government of the Czech Republic has taken note, in Resolution No. 851/2013 (dated 13.11.2013), of information on the status and methods of the implementation of tasks contained in the Strategy of Government for combating corruption for the period 2013 – 2014.</p> <p>It states that in order to formulate objectives in the area of risk management, fraud and actions on the level of implementation, structure entities for funds of the Joint Strategic Framework are elaborated on in the Strategy for combatting fraud and corruption in the drawing of funds of the Joint Strategic Framework in the period 2014 – 2020 and is elaborated further in the Action Plan for implementation of this Strategy.</p> <p>The Ministry of Finance, as a Central Contact Point of AFCOS, is preparing the amendment of the national strategy to protect the financial interests of the EU and also the amendment of methodological guidelines regarding the methodology for reporting of irregularities identified during the implementation of the European Funds to OLAF for the programming period 2014 – 2020.</p>
<b>DK</b>	<u>Structural Funds</u>

	<p>The provisions on fraud in the multiannual financial framework will be implemented via the structural funds regulation for 2014–2020.</p> <p><u>Agriculture</u></p> <p>The Danish AgriFish Agency, the payment body responsible for administering the Common Agricultural Policy, is in the process of implementing its anti-fraud strategy.</p> <p>In this context, account is taken of the regulations in the multiannual financial framework.</p>
<p><b>DE</b></p>	<p><u>First:</u> In its report (p. 34) the Commission already refers to the fact that Germany is one of the leading group of Member States so far as the ability to detect fraud relating to expenditure and income is concerned. This is shown by the fact that the measures taken by the managing authorities in the 2007–2013 funding period to combat fraud are efficient and effective. The Commission’s recommendation and comments relate to the version of the general Regulation (Article 125(4)(c) of Regulation (EU) No 1303/2013) now in force and to the ‘Guidance note on fraud risk assessment and effective and proportionate anti-fraud measures’. The Commission asks for a description of an existing general or specific anti-fraud strategy which is currently being applied.</p> <p>A condition for the grant of structural fund monies in the 2014–2020 funding period is the existence of a partnership agreement (PA) approved by the Commission and an approved operational programme. Germany submitted the PA to the Commission at the end of February 2014 and is currently passing through the Commission’s approval process. So far not all German <i>Länder</i> have submitted their operational programmes so that the work on producing the programmes and on the management and control systems needed for the subsidy is currently progressing at full speed. So we ask for the Commission’s understanding that we are unable to make information available at present for this purpose.</p>
<p><b>EE</b></p>	<p>As described in the previous recommendation, the authorities of Estonia usually carry out risk analysis annually, and on the basis of those analyses the authorities make control plans and samples. The risk analyses include all controls made during the previous year by different national authorities. The Intermediate Body will analyse their controls. The Managing Authority is prepared to adopt the Commission’s guidance note when it is finalised.</p>
<p><b>IE</b></p>	<ul style="list-style-type: none"> <li>• <b>Cohesion</b> - The appropriate reference is Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17<sup>th</sup> December 2013 - Article 125 (4c). This states that this is a function of the Managing Authority. The Managing Authorities (MAs) are required to put in place effective and proportionate anti-fraud measures taking into account the risks identified. Such measures</li> </ul>

	<p>will be put in place in Ireland drawing on the experience of MAs in managing previous Operational Programmes.</p> <p>The detail in relation to effective and proportionate anti-fraud measures in the new programme round is being finalised in the context of the development of the Partnership Agreement and Operational Programmes.</p>
<p><b>EL</b></p>	<p><b>Ministry of Development and Competitiveness</b></p> <p>As part of the requirements laid down in the Regulation for the prevention of fraud, the General Secretariat of Public Investment &amp; NSRF of the Ministry of Development and Competitiveness has already determined, via its Services, the basic directions of the <b>National Strategy against Fraud in the Structural Funds and the Cohesion Fund</b>.</p> <p>The main strategic objectives of the National Strategy are the following:</p> <ul style="list-style-type: none"> <li>• the promotion and establishment of moral rules against fraud</li> <li>• the enhancement of transparency</li> <li>• the effective cooperation among the parties involved</li> <li>• the adjustment and/or introduction of procedures and structures in the Management and Audit System of the new 2014-2020 FP, in order to prevent, detect and respond properly and in good time to fraud issues.</li> </ul> <p>The National Strategy is based on a prevention and continuous improvement system, which:</p> <ul style="list-style-type: none"> <li>✓ is consistent with the Commission's guidelines and can operate as support for regulatory rules</li> <li>✓ permits the use of the related computer tools proposed by the Commission (such as the Self-Assessment Fraud Risk Tool)</li> <li>✓ sets the framework for a coherent set of procedures, responsibilities and actions to combat fraud, which is able to govern all the functions of the Management and Audit System.</li> </ul>
<p><b>ES</b></p>	<p>Once the management and control systems have been strengthened, and bearing in mind that the preventive measures do not provide complete and absolute protection against potential fraud, <b>in relation to the Multiannual Financial Framework 2014-20, the Directorate-General of Community Funds is currently examining potential anti-fraud measures that would be effective and</b></p>

	<p><b>proportionate, mindful of the risks detected, in line with Article 125(4)(c) of Regulation (EU) No 1303/2013.</b> In the course of this work, any guidelines approved by the Commission will be followed.</p>
<p><b>FR</b></p>	<p>The DGDDI is very much interested in the HERCULES programme which is linked to the promotion of activities designed to protect the EU's financial interests. The Directorate-General forwards the calls for co-financing regularly issued by OLAF to the customs departments: in 2013, the national Directorate for customs investigations and the national judicial customs service responded to calls for projects from the Hercule II fund (Ibase software for analysts and purchase of equipment and specialised IT software).</p> <p>The HERCULE III programme (2014 to 2020) should make it possible to make use of useful financing. The DGDDI wishes to boost its anti-fraud strategy by making greater use of this programme, which is why a new organisational structure will be set up within the Directorate-General in order to assess needs and look into co-financing opportunities under the HERCULE III fund.</p> <p>Finally, the PERICLES programme has for several years made it possible for the Directorate-General of the national police (DGPN) to put in place measures to protect the euro both in France and in bordering countries.</p> <p>The PERICLES 2020 programme designed to set up exchange, assistance and training programmes for the prevention of counterfeiting of the euro should make it possible, in partnership with other institutions (for example the Bank of France), to carry out in the coming years new measures, in particular, relating to the putting into circulation of the euro and to new technologies for making and issuing counterfeit coins and notes (use of the Internet, Darknet, etc.).</p> <p>In 2013, a call for projects in cooperation with the INHESJ (Institut National des Hautes Etudes de la Sécurité et de la Justice - French National Institute for Advanced Studies in Security and Justice) on 'counterfeiting of euro bank notes on French soil: parties involved and organisation' was commissioned by the Office central pour la répression du faux monnayage (Central Office for Fighting Counterfeiting) (in the Central Directorate of the Judicial Police – DCPJ- /OCRFM). This project will be concluded in 2014.</p>
<p><b>HR</b></p>	<p>The Republic of Croatia, as a candidate country, put in place effective and proportionate anti-fraud measures taking into account the risks identified by adopting <b><u>The National Anti-Fraud Strategy for the Protection of the European Union's Financial Interest for the period 2010 – 2012 and its Action plan.</u></b></p> <p>After <b><u>OLAF's monitoring</u></b> of how Croatia is, prepared, organised and structured to protect the EU financial interests (e.g. the awareness of protecting financial interests, how are bodies connected, existence of controlling mechanisms, awareness of reporting irregularities, the</p>



system of sanctioning irregularities and fraud, existence of a criminal act in national legislation as regards fraudulent use of EU funds etc), OLAF created the **assessment report** according to the findings. The assessment report was comprised of **recommendations**, the implementation of which would enhance the system of protection of EU financial interests in Croatia. One of the recommendations was **drafting and implementing The National Anti-Fraud Strategy for the Protection of the European Union's Financial Interest and its Action plan**. Fulfilling OLAF's recommendations, Croatia presented one of the benchmarks for closing the Negotiation chapter 32 – Financial control.

**On 14 January 2010, the Government of the Republic of Croatia adopted the National Anti-fraud Strategy for the Protection of the EU Financial Interest for the period 2010-2012 as the main strategic document stressing the priorities in the protection of EU financial interests and measures for its attainment.**

**The Strategy defined the scope of work and responsibilities of bodies in the AFCOS system, as well as the measures and activities for strengthening the protection of the EU financial interests in the Republic of Croatia. Most of those measures and activities were fulfilled during the course of implementation of IPA 2007 Twinning light project "Strengthening Croatian AFCOS System with the aim of protection of EU financial interests".**

Additionally, the Republic of Croatia has adopted **the National Anti-Fraud Strategy in the Field of Protection of EU Financial Interests for the period 2014-2016** and its Action plan. The Strategy concerned presents a follow-up document to the National Anti-Fraud Strategy for the Protection of the European Union's Financial Interest for the period 2010 – 2012. It sets goals and measures to be achieved in the framework of Structural instruments.

<b>The National Anti-Fraud Strategy for The Protection of the European Union's Financial Interest for The Period 2010 – 2012</b>	
<b>Work</b>	The Strategy was drafted within the Working group composed of representatives of the AFCOS Network bodies, Irregularity Reporting System bodies and Service for combating Irregularities and Fraud, which was the coordinating body
<b>Implementation period</b>	2010-2012
<b>Purpose:</b>	To ensure the effective protection of EU financial interests by strengthening the AFCOS system in the

	<p>Republic of Croatia, through the implementation of previously defined measures and the accomplishment of set objectives</p>
<p><b>Objectives</b></p>	<ul style="list-style-type: none"> <li>• <i>the effective prevention of fraud through communication, public relations and integrity in the civil service;</i></li> <li>• <i>the efficient and effective management of the EU pre-accession funds and EU own resources, as well as the preparation for the management of future Structural funds and a Cohesion fund;</i></li> <li>• <i>the efficient and effective coordination of legislative, administrative and operational activities relating to the combat of irregularities and fraud, cooperation with OLAF</i></li> <li>• <i>the development of administrative capacities and strengthening legal base crucial for applying the <i>acquis communautaire</i></i></li> <li>• <i>the development of efficient supervision and monitoring procedures within the AFCOS system</i></li> <li>• <i>ensuring a sustainable and independent AFCOS system</i></li> </ul>
<p><b>Structure</b></p>	<p>The Strategy <b>describes</b> the <b>actual situation</b>, <b>defines objectives</b> and <b>measures</b> to be taken in areas related to <b>prevention, detection, sanctioning</b> of irregularities and fraud, plus the <b>recovery</b> of EU money.</p>
<p><b>Chapters</b></p>	<p>Chapter I. Introduction  Chapter II. Prevention of Fraud  Chapter III. Managing EU pre-accession funds and EU own resources  Chapter IV. Proceedings with irregularities  Chapter V. Criminal investigation and prosecution  Chapter VI. Financial recovery  Chapter VII. Coordination of the fight against fraud and the protection of EU financial interests in the Republic of Croatia  Chapter VIII. Strategy evaluation and monitoring the Action plan</p>

	Appendix 1. The AFCOS System in the Republic of Croatia Appendix 2. Schematic overview of irregularity reporting	
	<b>Note</b> While describing each chapter special attention was paid to state of play, deficiencies and major bodies in particular areas, and what should be done to strengthen the AFCOS system and enhance protection of EU financial interests. The Strategy was implemented in accordance with the objectives and measures set out in the Action Plan.	
	<b>Result</b> Most of measures and activities were fulfilled during the course of implementation of IPA 2007 Twinning light project “Strengthening Croatian AFCOS System with the aim of protection of EU financial interests”.	
<b>IT</b>	The Committee for the prevention of fraud against the European Union (CO.L.A.F.), as AFCOS (Anti-Fraud Coordination Service) for Italy, is supporting the project for the realisation of an IT platform of <i>business intelligence</i> by the Guardia di Finanza. Such a system increases the effectiveness of the activity of repression of irregularities and frauds against the EU budget. Thanks to the development of specific risk indicators relating to the beneficiaries of EU funds, it is also possible to implement the prevention system from such offenses, through the constant exchange of information between the Management Authorities and the Guardia di Finanza itself.	
<b>CY</b>	The anti-fraud Strategy is currently being developed by the Managing Authority. To that effect a workshop for the Arachne tool will take place in Cyprus on the 10 <sup>th</sup> and 11 <sup>th</sup> of March. Following that workshop, the strategy will be developed in cooperation with all involved national authorities and will be agreed with the National Audit Authority for Structural and Cohesion Funds in Cyprus. The resulting outcome will be the formalisation of national procedures, the incorporation of fraud-risk as a factor in the sample selection of operation, as well as the incorporation of fraud-risk identification questionnaires in the controls performed by the Managing Authority.	
<b>LV</b>	The Managing Authority for EU Structural Funds and Cohesion Funds has adopted the MFF provisions on fraud prevention in draft legislation on Management of European Union Structural Funds and the Cohesion Fund (2014-2020), which requires the Managing Authority to put in place effective and proportionate anti-fraud measures, taking into account the risks identified. The Managing Authority for Fishery and Agricultural funds has begun preparatory work on adoption of the MFF provisions on fraud	

	<p>prevention for EAFRD and EMFF (2014-2020), which requires the Managing Authority to put in place effective and proportionate anti-fraud measures taking into account the risks identified.</p> <p>Also in 2013 the Managing Authority for EU Structural Funds and Cohesion Fund has started to put in place actions to develop an EU funds anti-fraud and anti-corruption strategy.</p>
<p><b>LT</b></p>	<p>With a view to fighting corruption and preventing fraud as regards the administration of the action programme relating to EU structural funds for 2014-2020, the managing authority will, when creating the relevant management and control system, adopt procedures for determining effective and proportional anti-fraud measures, and procedures will also be established for providing information on infringements, investigating and identifying infringements, recovering amounts unlawfully paid and monitoring infringements and the recovery of amounts unlawfully paid.</p> <p>The legislation regulating the responsibility, functions and rights of authorities involved in implementing the action programme relating to EU structural funds for 2014-2020 requires the managing and intermediate authorities to take account of the identified risk when establishing and applying anti-fraud measures within their area of competence. Provision will be made, in the context of implementing the action programme relating to EU structural funds for 2014-2020, for the FNTT to organise meetings with the authorities responsible for administering EU structural funds with a view to providing methodological and practical support concerning suspected criminal activities linked to the unlawful receipt and use of EU structural funds; in accordance with the procedure laid down by legislation, information will be provided to the authorities responsible for administering the action programme concerning the results of the examination of the notifications of suspected criminal activity submitted by them; working groups involved in the infringement investigation, identification, elimination and prevention systems will take part.</p> <p>At present the Ministry of Finance is conducting a survey among authorities involved in implementing action programmes relating to EU structural funds with the aim of gathering the information necessary to improve the management and control system for EU structural funds concerning the anti-fraud and anti-corruption measures they are implementing and intend to implement as regards the administration of the action programmes relating to EU structural funds and of obtaining suggestions and determining needs regarding the application of systematic measures to combat fraud and corruption at national level.</p>
<p><b>LU</b></p>	<p>Because the ESF Managing Authority carries out checks in 100% of cases and before any Commission request, any fraud is detected at the first level. There is thus no risk to the Commission of any fraud committed by a project organiser. Please note that no fraud has been</p>

	detected for several years (OLAF declarations = EUR 0).
<b>HU</b>	<p>Hungary does not currently have a national anti-fraud strategy summarised in a single document; however, the EU's financial interests are protected through anti-fraud instruments. A number of such initiatives and items of legislation have been introduced in recent years, in the fields of law, public administration and the economy, which have been introduced in order to improve the prevention, detection and inspection of fraud while at the same time ensuring a clear-cut, effective, verifiable management guarantee, thereby harmonising the Hungarian sectoral strategy with the relevant Union one.</p>
<b>MT</b>	<p>The MA is aware that it has to introduce effective and proportionate anti-fraud measures in terms of Article 125(4)(C) of Regulation 1303/2013. The manual of procedures is being drawn up for the forthcoming period. It will incorporate these anti-fraud measures in line with the CPR. Currently the MA already has in place anti-fraud measures, such as:</p> <ul style="list-style-type: none"> <li>- Separation of duties so that control of a key function is not vested in one individual;</li> <li>- Supervisory checks are established in each area of work, and such checks are carried out routinely and periodically;</li> <li>- Regulations governing contracts and the supply of goods and services are properly enforced; and</li> <li>- Creation of a climate to promote ethical behaviour.</li> </ul> <p>The MA is also aware that AFCOS (Malta) has an anti-fraud and corruption strategy and it will work closely with AFCOS in combating fraud by, for example: reporting irregularities to AFCOS for onward transmission to DG OLAF, where applicable.</p>
<b>NL</b>	<p>The measures in the Netherlands are as follows:</p> <p><i>Preventive measures</i></p> <ul style="list-style-type: none"> <li>- Clear national legislation laying down detailed rules for EU-funded projects.</li> <li>- Risk assessment is part of the subsidy award process and involves looking, for example, at previous experience with the beneficiary, data</li> </ul>

available from the Chamber of Commerce, etc. Part of this risk assessment is a procedure for verifying the identity of the applicant before the subsidies are awarded.

- Public legislation (integrity screening): the BIBOB Act is a piece of national legislation intended to prevent public authorities from unintentionally doing business with mala fide parties. The BIBOB legislative authority is authorised to investigate the background of an organisation or person before granting a permit or subsidy or awarding a contract. If the party concerned has a criminal record, or the financial constructions are unclear, the permit, subsidy or contract may be refused.

- General risk assessment relating to fraud or misuse of EU funds, as part of the operational programme of the Structural Funds.

The following additional measures apply to the monitoring of ESF funds:

- An extensive Financial Management Plan is drawn up. This formalises the internal procedures in the Ministry of Social Affairs and Employment for a particular scheme and thus forms part of the formal internal Ministry regulations. The structure of the organisation and working methods must be appropriate and must provide assurance that the money is being spent legitimately.

- Checks on implementation, misuse and improper use are carried out periodically. The Audit Authority is consulted on whether additional measures are needed. At the same time the Commission's Arachne tool and fraud risk assessment support are discussed.

#### *Investigation measures*

- Risk assessment as part of the on-the-spot checks, based on previous experience with the beneficiary.

- Implementation of extensive on-the-spot checks for all EU-financed projects by the Dutch Management Authority (MA).

- Certification procedures by the Dutch Certification Authority and audit procedures that include on-the-spot checks by the Dutch Audit Authority.

- Investigation and possibility of prosecution if irregularities lead to administrative or judicial proceedings being launched at national level to determine whether the action was deliberate or fraud is suspected. If this is the case, it must be explained and recorded in the monitoring

	<p>report. On the basis of this report, the MA will decide what follow-up measures are necessary to investigate this suspicion further, in preparation for any formal charges.</p> <p>- If there are doubts about the legitimacy of a request for EU funding by a beneficiary, that beneficiary's declarations will not be included in the EU declaration. This will keep dubious claims out of the EU declarations.</p> <p>Together, these measures form an extensive framework that targets the risks of fraud affecting the EU Structural Funds and investment funds.</p>
<b>AT</b>	No Response.
<b>PL</b>	<p>Legislative work is under way to regulate overall implementation of Cohesion Policy OPs in the 2014-2020 programming period. The resulting legislation will ensure compliance with Member State obligations under EU rules, including particularly Regulation No. 1303/2013. One provision will be that procedures for introducing effective and proportional measures against financial fraud will be one of the criteria for the designation of managing authorities. This is consistent with EU legislation containing general guidance and requirements on tools for preventing financial fraud, to be detailed in Commission guidelines.</p> <p>Based on past experience and EU rules, national legislation will provide for procedures to control and rectify irregularities. Those procedures will be detailed in horizontal and programmatic guidelines and recommendations to managing authorities and should raise the effectiveness of actions aimed at elimination of all irregularities, including those classified as fraud.</p>
<b>PT</b>	The national authorities are committed to continuing to comply with the Community rules under the Multiannual Financial Framework.
<b>RO</b>	<p>The national anti-fraud strategy for the financial period 2014-2020 is in the process of being drawn up by DLAF. Pending its completion, the managing authorities are responsible for ensuring the implementation of the anti-fraud measures laid down in the National Anti-corruption Strategy for 2012-2015, such as:</p> <ul style="list-style-type: none"> <li>• improving monitoring of projects by the managing authorities;</li> <li>• updating the guides and the working methodology;</li> </ul>

	<ul style="list-style-type: none"> <li>• strengthening cooperation between the competent authorities;</li> <li>• intensifying control activities;</li> <li>• carrying out professional training programmes in the area of fighting corruption and fraud;</li> <li>• improving the control systems for each risk area;</li> <li>• performing ex post checks for fraud and conflicts of interest.</li> </ul>
<p><b>SI</b></p>	<p>A decision issued by the minister responsible for economic development and technology in January 2014 set up a working group to ensure appropriate and effective anti-corruption measures; in cooperation with the Corruption Prevention Commission, the group examined the tendering system for EU funds, focusing on the risk of corruption. It found that risk could not be limited to one sector, since it occurs in several places and achieving the most efficient and effective assessment requires the overall process of tendering and awarding EU funds to be studied (synergistic effects).</p> <p>The working group produced a process inventory and process diagram for both cases (tendering and awarding) with a statement of risk indicators and proposed measures. The process inventory sets out the processes for tendering out the use of EU funds from document preparation, via the evaluation of applications to the signing of co-financing contracts. Particular focus was paid in each phase to risks that occur as the result of different forms of pressure or irregular conduct by individual stakeholders. The process diagram is a graphic presentation of the bodies, processes and instructions indicating the risks relating to the tendering of funds that together with the process inventory provides an integrated overview.</p>
<p><b>SK</b></p>	<p>In the context of compliance with the legislative requirements for the new programming period, a methodological instruction for risk management and the fight against fraud is under preparation. The guidance reflects the requirement of Art. 125(2)(C) of the General Regulation (1303/2013). The instruction was drafted in accordance with the EC document - Guidance on the assessment of the risk of fraud and the EC - effective and appropriate measures to combat fraud. In the preparation of the new programming period, the Slovak Republic intends to increase and streamline its efforts in the field of the fight against fraud and corruption prevention.</p> <p>The Environment Ministry of the Slovak Republic, as managing authority, has incorporated anti-fraud measures into the Internal Manual for investment and non-investment projects, whose total costs do not exceed EUR 50 mil., and for large projects co-financed by the ERDF</p>



	<p>and CF, as well as into the document Guide for Assessors of Applications for the NFC from the ERDF and CF, whose total costs do not exceed EUR 50 mil.. They include responsibilities for the application procedures in the approval process, in accordance with law No. 566/2008 Coll. on assistance and support from the funds provided by the EC, as amended, and in accordance with the applicable System for the Management of the SF and the CF for the programming period 2007-2013.</p>
<b>FI</b>	<p>The Regulation of the European Parliament and of the Council on the European structural and investment funds was adopted on 17 December 2013.</p> <p>The Regulation requires the Managing Authority to put in place effective and proportionate anti-fraud measures taking into account the risks identified.</p> <p>These measures will be defined and evaluated as part of the preparation and adoption of the management and control system for the 2014-2020 programming period.</p>
<b>SE</b>	<p>How Article 125, etc. (functions of the managing authority) must be carried out in the Swedish system is an issue that remains to be resolved in the Government Offices.</p>
<b>UK</b>	<p><b>WG:</b> Training on detecting and dealing with potential fraud is provided to WEFO staff by the Welsh Government's Counter Fraud Unit.</p> <p><b>DCLG:</b> We were involved in the testing of OLAF's fraud risk assessment which is to be rolled out for all Member States for the 2014-2020 programmes.</p> <p>We have no new initiatives to report this year as most of our time has been taken up with reactive investigation work.</p>