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**COMMISSION STAFF WORKING DOCUMENT**

**EVALUATION**

**of the**

**Commission's Anti-Fraud Strategy**

{SWD(2019) 501 final}

## Table of Contents

<b>1. INTRODUCTION: PURPOSE AND SCOPE.....</b>	<b>3</b>
<b>2. BACKGROUND TO THE INTERVENTION: CONTEXT, OBJECTIVES, NEW BASELINE AND TRENDS.....</b>	<b>4</b>
<b>2.1 Policy context and baseline.....</b>	<b>4</b>
<b>2.2 Objectives and key elements .....</b>	<b>5</b>
<b>2.3 Intervention logic.....</b>	<b>6</b>
<b>2.4 Emerging trends and developments .....</b>	<b>9</b>
<b>3. IMPLEMENTATION, STATE OF PLAY AND RESULTS.....</b>	<b>14</b>
<b>3.1 Overview of CAFS implementation.....</b>	<b>14</b>
<b>3.2 State of play and results.....</b>	<b>17</b>
<b>4. METHOD .....</b>	<b>19</b>
<b>4.1 Short description of methodology.....</b>	<b>19</b>
<b>4.2 Limitation and robustness of findings.....</b>	<b>22</b>
<b>5. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS.....</b>	<b>24</b>
<b>5.1 Relevance.....</b>	<b>24</b>
<b>5.1.1 General objectives of the CAFS.....</b>	<b>24</b>
<b>5.1.2 The CAFS' three key priorities as included in the Communication .....</b>	<b>28</b>
<b>5.2 Effectiveness.....</b>	<b>31</b>
<b>5.2.1 Deterrence .....</b>	<b>32</b>
<b>5.2.2 Prevention and detection .....</b>	<b>34</b>
<b>5.2.3 Investigations .....</b>	<b>42</b>
<b>5.2.4 Sanctions .....</b>	<b>46</b>
<b>5.2.5 Recovery .....</b>	<b>49</b>
<b>5.2.6 Ethics and integrity.....</b>	<b>52</b>
<b>5.2.7 Transparency.....</b>	<b>55</b>
<b>5.2.8 Public procurement and grants .....</b>	<b>57</b>
<b>5.2.9 OLAF's role in establishing anti-fraud strategies at department level.....</b>	<b>61</b>
<b>5.3 Coherence.....</b>	<b>62</b>
<b>5.3.1 Internal Coherence .....</b>	<b>62</b>
<b>5.3.2 External Coherence .....</b>	<b>64</b>
<b>5.4 Efficiency.....</b>	<b>69</b>
<b>6. CONCLUSIONS .....</b>	<b>71</b>
<b>ANNEXES .....</b>	<b>76</b>

### List of abbreviations

<i>Term or abbreviation</i>	<i>Meaning or definition</i>
AAR	Annual activity report
ABAC	Accrual-based accounting system
AFIS	Anti-fraud information system
AOD	Authorising Officer by Delegation
ARES	The Commission's internal document registration system
CAFS	Commission anti-fraud strategy
CAP	Common agricultural policy
CED	Central exclusion database
COCOLAF	Advisory Committee for Coordination of Fraud Prevention
DG	Directorate-General
ECA	European Court of Auditors
EDES	Early Detection and Exclusion System
EEAS	European External Action Service
EPPO	European Public Prosecutor's Office
ESI	European structural and investment funds
EU	European Union
EWS	Early warning system
FPDNet	Fraud Prevention and Detection Network
IAS	Internal Audit Service
IBOAs	Institutions, bodies, offices and agencies of the European Union
IDOC	Investigation and Disciplinary Office of the Commission
IMS	Irregularity Management System
MFF	Multiannual Financial Framework
OLAF	European Anti-Fraud Office
PIF	Protection of the EU's financial interests
PIF Report	Annual report on the protection of the EU's financial interests
TFEU	Treaty on the Functioning of the European Union
TOR	Traditional own resources
VAT	Value-added tax

## 1. INTRODUCTION: PURPOSE AND SCOPE

The purpose of this evaluation is to assess the functioning of the Commission Anti-Fraud Strategy<sup>1</sup> (CAFS). The CAFS, adopted in 2011, was intended to provide a coherent framework for preventing, detecting, investigating and remedying fraud affecting the European Commission. Implementation of the strategy was expected to help make the Commission Services<sup>2</sup> more effective in their task of managing the protection of the EU's financial interests.

The CAFS comprised two documents:

- a Communication<sup>3</sup> from the Commission to the other EU institutions that set the main priorities and highlighted the overall objectives of Commission measures and the Member States' responsibility to combat fraud;
- an internal Commission Action Plan<sup>4</sup> detailing the action which the Commission Services had committed themselves to implementing.

The evaluation covers the period since the CAFS was adopted (2011-2018).

While the CAFS applied to both sides of the EU budget - expenditure and revenue - the action points set out in the Action Plan focused mainly on expenditure. The evaluation includes revenue to the extent that revenue fell within the strategy's original scope. Combating fraud against revenue was covered by a strategy<sup>5</sup> from 2013 to step up the fight against the illicit tobacco trade, accompanied by an action plan.<sup>6</sup> This strategy built on an earlier component of the CAFS' Action Plan, adopted in 2011 and designed to establish an action plan for combating cigarette and alcohol smuggling at the eastern EU border.<sup>7</sup> A progress report<sup>8</sup> by the Commission, adopted in 2017, illustrates the main initiatives taken in

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions and the Court of Auditors on the Commission Anti-Fraud Strategy; COM(2011) 376 final of 26 June 2011.

<sup>2</sup> References to Commission Services cover all Commission Directorates-General and Services, including the Commission's administrative offices, plus the executive agencies.

<sup>3</sup> CAFS, COM(2011)376 final of 26 June 2011.

<sup>4</sup> Commission to the Commission, Commission Internal Action Plan for the Implementation of the Commission Anti-Fraud Strategy, SEC(2011) 787.

<sup>5</sup> Communication from the Commission to the Council and the European Parliament on 'stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – a comprehensive EU strategy'; COM(2013) 324 final of 6 June 2013.

<sup>6</sup> Commission Staff Working Document accompanying the Communication from the Commission on 'stepping up efforts to fight against cigarette smuggling and other forms of illicit trade in tobacco products'; SWD(2013) 193 final of 6 June 2013.

<sup>7</sup> Commission Staff Working Document accompanying the CAFS communication entitled 'Action plan to fight against smuggling of cigarettes and alcohol along the EU Eastern border'; SEC(2011) 791 final of 24 June 2011.

<sup>8</sup> Report from the Commission to the Council and the European Parliament: Progress report on the implementation of the Commission Communication 'stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – a comprehensive EU strategy'; COM(2017) 235 final of 12 May 2017.

the revenue area, highlights the lessons learned, describes the new challenges and suggests some options for future reflection. The Commission also adopted a second action plan<sup>9</sup> in 2018, which reaffirms its leading role in combating cigarette smuggling and the illicit tobacco trade. The current CAFS evaluation does not include these documents.

The CAFS targeted the Commission Services that are its primary stakeholders. As the strategy had no immediate impact on EU countries<sup>10</sup>, non-EU countries or other EU institutions, the evaluation focused on stakeholders within the Commission.

The evaluation assesses CAFS implementation against the CAFS's objectives and in terms of its relevance, effectiveness, efficiency and coherence.

EU added value was not analysed, as the CAFS' aims could not be achieved by measures taken solely at national level.

Overall, the evaluation aims to help analyse whether the CAFS needs updating to address the challenges emerging from the current anti-fraud landscape.

## **2. BACKGROUND TO THE INTERVENTION: CONTEXT, OBJECTIVES, NEW BASELINE AND TRENDS**

### **2.1 Policy context and baseline**

Article 325 of the Treaty on the Functioning of the European Union (TFEU) requires the EU and its Member States to combat fraud and any other illegal activities which may affect the EU's financial interests. This means all Commission Services are obliged to prevent and detect fraud as part of daily activities involving the use of resources. A strategic framework was therefore developed to coordinate the Commission's anti-fraud measures and guarantee a robust, high-calibre anti-fraud policy.

The adoption of the CAFS in 2011 followed the Commission anti-fraud strategy in 2000<sup>11</sup> and its ensuing action plans for 2001-2003 and 2004-2005, which created a basis for a comprehensive EU anti-fraud policy. The Commission reported on its implementation (from 2001 to 2005) in the PIF Report. In 2007, the Commission adopted a Communication on

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<sup>9</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, '2nd Action Plan to fight the illicit tobacco trade 2018-2022', COM(2018) 846 final dated 7.12.2018.

<sup>10</sup> If the CAFS (Communication and internal Action Plan) has no immediate effect on Member States, they still have to fulfil the Article 325 obligation of protecting the EU's financial interests. This evaluation report refers to this, as some of their actions may contribute, to a limited extent, to the implementation of the CAFS' objectives.

<sup>11</sup> Communication from the Commission — Protection of the Communities' financial interests — The fight against fraud — For an overall strategic approach (COM(2000) 358 final, 28.6.2000).

fraud-proofing<sup>12</sup>, and a Communication on a new division of responsibilities between OLAF and the spending DGs<sup>13</sup>. On that basis, expertise acquired by OLAF through its experience of conducting investigations provided valuable input into the Commission's fight against fraud. With time, these instruments proved less efficient; fraudsters managed to circumvent the rules.<sup>14</sup> Moreover, the need for a new global anti-fraud strategy became more acute with changes in the EU policy context: the reform of the Commission (12-15 years ago), EU enlargement and new approaches in financial management.<sup>15</sup> The economic context and budgetary constraints also underlined the importance of ensuring that EU funds were spent appropriately and effectively. It was in this context that the CAFS was adopted in 2011.

## 2.2 Objectives and key elements

The CAFS was designed as a way to improve and modernise the Commission's anti-fraud strategy.<sup>16</sup> It prioritised fraud prevention and set out three priorities:

- appropriate anti-fraud provisions in Commission proposals on spending programmes under the Multiannual Financial Framework (MFF) for 2014-2020;
- developing anti-fraud strategies at Commission Services' level with the assistance of the European Anti-Fraud Office (OLAF) and the central Services<sup>17</sup>, and implementing those strategies; and
- revision of the public procurement directives.

The Strategy was also designed to introduce appropriate remedies against fraud through proportionate and dissuasive sanctions, especially by introducing anti-fraud strategies at Commission department level that respect and clarify the various stakeholders' different responsibilities. It reaffirms the overall objective of the fight against fraud through recalling basic principles underpinning anti-fraud measures and covers prevention and detection of

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<sup>12</sup> Communication from the Commission to the Council, the European Parliament and the European Court of Auditors – Prevention of fraud by building on operational results: a dynamic approach to fraud-proofing. COM(2007) 806 final, 17.12.2007.

<sup>13</sup> Commission staff working document SEC(2007)1676 – accompanying document to the Communication from the Commission to the Council, the European Parliament and the European Court of Auditors – Prevention of fraud by building on operational results: a dynamic approach to fraud-proofing.

<sup>14</sup> Frequently Asked Questions: Commission's Anti-Fraud Strategy, 24 June 2011. MEMO/11/454. [http://europa.eu/rapid/press-release\\_MEMO-11-454\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-11-454_en.htm?locale=en)

<sup>15</sup> Ibid.

<sup>16</sup> The previous Commission anti-fraud overall strategic approach was adopted in 2000. Communication from the Commission on 'Protection of the Communities' financial interest – The fight against fraud for an overall strategic approach', COM(2000) 358 final of 28 June 2000.

<sup>17</sup> OLAF and DG BUDG provided a methodology and guidance for DGs' anti-fraud strategies. (see action 2.2.1 of the Commission action plan designed to implement the Communication on the Commission Anti-Fraud Strategy) SEC(2011) 787/2

fraud, investigations, sanctions, recovery of funds and other cross-cutting issues such as ethics and integrity, transparency, procurements and grants.<sup>18</sup>

This evaluation focuses on progress since 2011 in the light of these objectives and the implementation of the CAFS. It takes account of developments in EU policies and corresponding fraud risks, plus emerging fraud patterns.

### **2.3 Intervention logic**

As noted above, the CAFS is a policy document designed to improve prevention, detection and the conditions for investigating fraud and achieving appropriate remedies and deterrence. It sets out proportionate deterrent sanctions and respects due process, especially by introducing anti-fraud strategies within the Commission that respect and clarify the different responsibilities of the various stakeholders.

The 2011 CAFS Communication is the Commission's main anti-fraud policy document, designed to modernise its anti-fraud strategy. It is accompanied by an Action Plan that translates the CAFS' objectives into practical measures and assigns responsibility for taking action to specific parties as well as deadlines.

The CAFS was designed to reinforce the Commission's commitment to ensure that the framework, policies, rules and procedures in place enable fraud to be effectively prevented and detected. It sets forth a particular role for OLAF, which is responsible for conducting administrative investigations. OLAF is to draw on its experience and expertise to support other Commission Services in preventing and detecting fraud, both by helping them develop sectoral anti-fraud strategies and by coordinating anti-fraud activities overall, including reporting on progress made during the year with implementing the CAFS. Measures taken by Commission Services that should enable the CAFS' objectives to be achieved are:

- Adopting measures for the prevention and detection of fraud and irregularities;
- Adopting Services' anti-fraud strategies within the Commission;
- Carrying out systematic checks and risk analyses;
- Intensifying fraud awareness-raising and training;
- Carrying out effective and efficient OLAF investigations, and providing protection for informants and whistleblowers;
- Streamlining and stepping up financial and/or administrative penalties;
- Increasing disciplinary sanctions' deterrent effect;
- Recovering funds wrongly paid under shared and direct management;
- Other cross-cutting fraud prevention instruments (ethics and integrity, transparency, procurement and grants).

The intervention logic developed in the context of the evaluation (Figure 1) is designed to mirror the cause and effect chains through which the CAFS' objectives generated key results and impacts. Based on the intervention logic, the evaluation will show how far the CAFS is

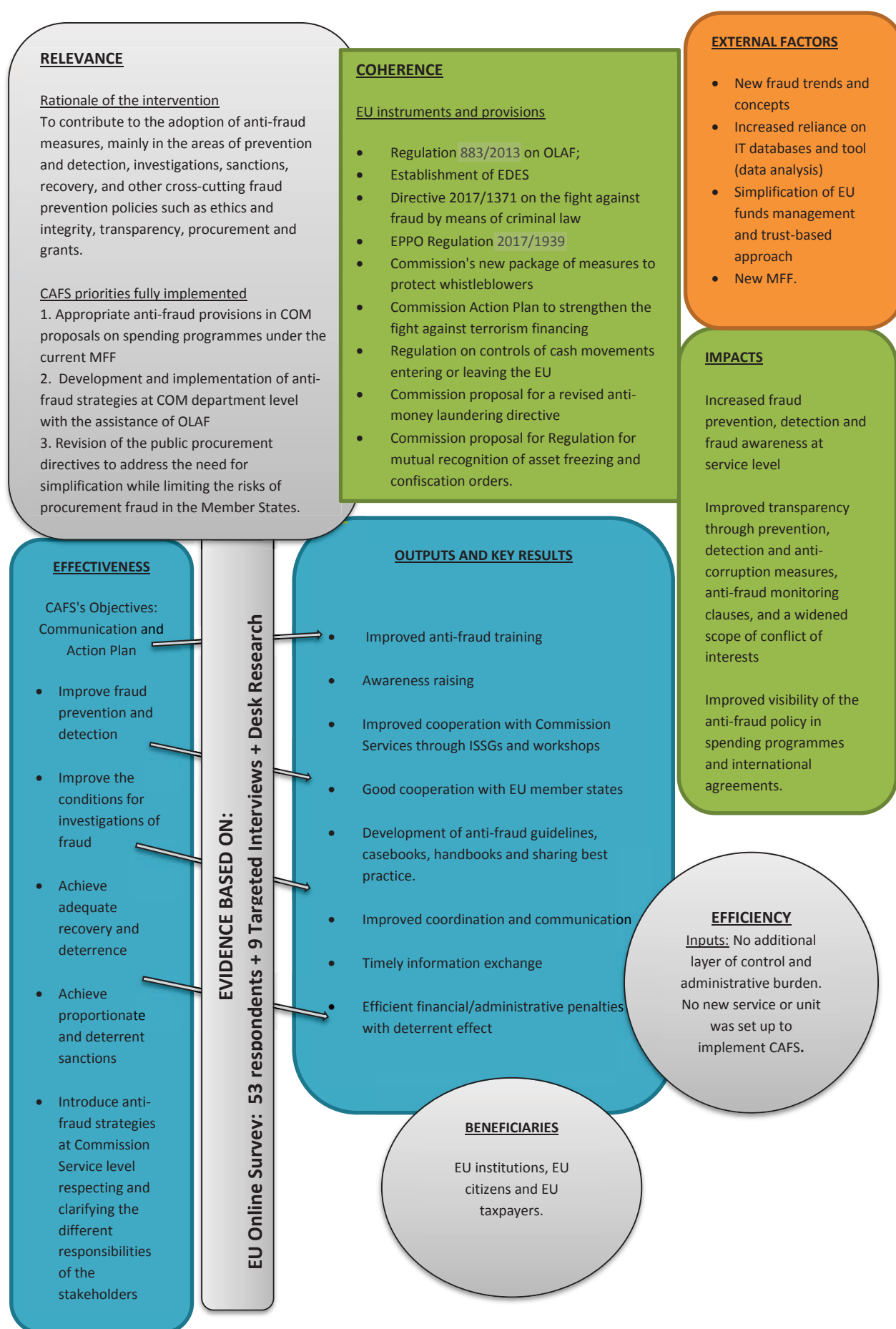
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<sup>18</sup> Ibid.



responsible for the achievements observed in the anti-fraud landscape as regards its primary and secondary objectives.

Figure 1 – Intervention logic for the Commission's anti-fraud strategy



## 2.4 Emerging trends and developments

The CAFS listed a number of measures to be implemented and the 2016 PIF Report stated that the strategy had been fully implemented, as all measures had been finalised or were already in place (such as recurrent measures).

However, a number of anti-fraud measures were also taken by the Commission Services outside the CAFS, without an exhaustive list of these measures being available. This makes it difficult to define a new baseline precisely.

However, the most relevant measures seem to be the following<sup>19</sup>:

- The changing legislative context of anti-fraud measures: The ongoing discussion on OLAF's legal framework, the implementation of the PIF Directive and the setting up of the EPPO are significant.
- The recent revision of the Financial Regulation and the ongoing discussions on the new Multiannual Financial Framework: These were and remain an opportunity for the Commission to have new or stronger anti-fraud measures.
- The IAS audit on performance and coordination of anti-fraud activities in the traditional own resources (TOR) area: The audit encouraged better coordination and cooperation in this field, going beyond the CAFS and the DGs' anti-fraud strategies.<sup>20</sup>
- The new Early Detection and Exclusion System (EDES), introduced in 2016: EDES has greatly improved detection and deterrence thanks to measures such as making the names of some excluded economic operators public. This is a robust new element of the new baseline in the PIF area.
- IT tools that are becoming increasingly important in combating fraud: They have increased vastly in number. Today, a stronger focus is needed on the quality of the data input, strategic analysis, the security of the systems, and compliance with new data protection rules.

At the same time, the new baseline is influenced by the developments in the outside world, in particular:

- More complex fraud schemes call for better cooperation and clearer communication between different parts of the Commission.
- Internationally, new challenges have emerged, especially in connection with migration and the refugee crisis, organised crime and its link with terrorism. EU-funded actions are implemented and managed in a context of increasing insecurity among beneficiaries of EU funds and of threats to them.<sup>21</sup> This new context inevitably results in a new baseline for the CAFS.

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<sup>19</sup> As resulting from targeted interviews with BUDG/D.EDES; BUDG/B.3 (TOR); TAXUD/C.4 (VAT); and OLAF/Policy.

<sup>20</sup> COM(2017) 306 final, p. 15.

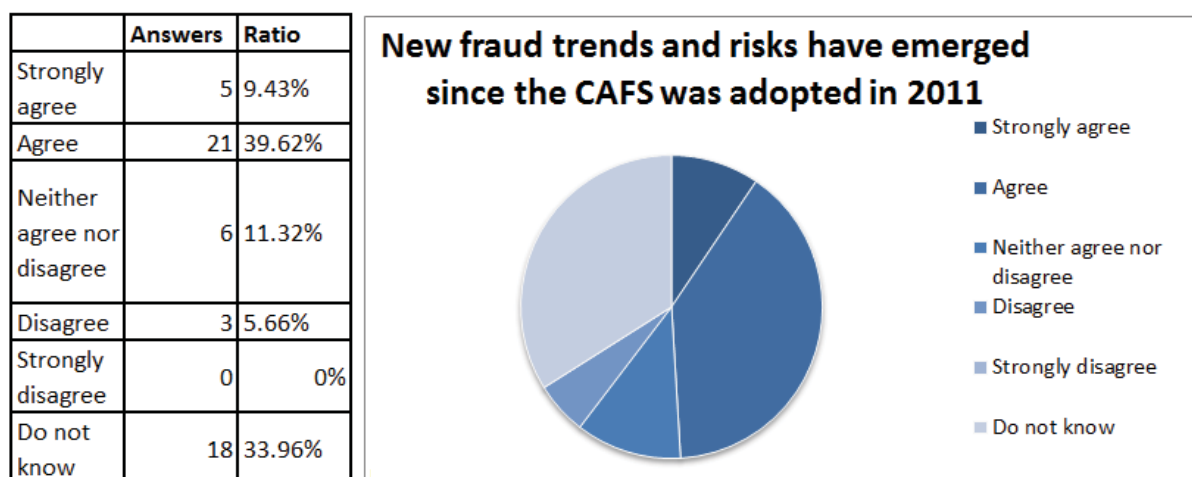
<sup>21</sup> EU online survey – comments.

- The developing and sometimes changing political context in Member States may have some impact on how EU funds are managed.

### New trends

In parallel to taking stock of the measures taken in the framework of the CAFS, the evaluation also focused on identifying potential new fraud trends and risks. To that end, a question was tabled to the stakeholders of the CAFS through an EU online survey.<sup>22</sup>

Figure 2



Source: Online EU survey; number of respondents: 53.

Almost half of the participants in an online survey carried out in the framework of this evaluation (see section 4) said new fraud trends and risks had arisen since the CAFS was adopted in 2011. Participants who identified no new risks in their area of competence maintain the approach of continuing to develop a fully-fledged anti-fraud strategy based on OLAF's awareness campaign, training and close monitoring of actual or potential fraud cases.

The new trends identified can be summarised as follows:

- Cyber-security: Consideration must be given to the risk of cyber-attacks<sup>23</sup>, especially given the Commission's increasing dependence on IT systems. Anti-fraud measures must be taken into account when IT tools are developed and they must be IT-secured.<sup>24</sup>

<sup>22</sup> This section is based on replies to question Q.6.1. ("Have there been new trends or new risks in fraud, corruption and other illegal activities against the financial interests of the EU since the CAFS was adopted?") of the online survey carried out in the framework of this evaluation – see section 4.

<sup>23</sup> EU online survey – comments. This was voice by 15% of respondents to the EU online survey, as well as in Targeted interviews, in particular with DG GROW, DG TAXUD.

<sup>24</sup> EU online survey – comments.

- Countering tax fraud: The risks of fraud linked to the development of e-commerce, including cryptocurrencies, need to be tackled swiftly. To that end, improved IT tools need to be introduced to improve information-sharing among the Commission's Services and cooperation among the various parties dealing with VAT-related crime. It is even more important to take this into account efficiently and quickly, since e-commerce is developing apace, as are fraud schemes and challenges.<sup>25</sup>
- Food fraud is becoming an increasingly important topic as regards intellectual property rights, health and the fight against fraud. DG SANTE created in 2013 an EU Food Fraud Network composed of representatives of the Commission and all Member States, plus Switzerland, Norway and Iceland, for more efficient cross-border administrative assistance and cooperation.<sup>26</sup>
- The increasing use of new financial instruments could lead to possible new risks of fraud. One reason for this is the many interlocutors at different levels of implementation.<sup>27</sup>
- There has been an increase in transnational fraud.
- Information leaks within the Commission are seen as a growing risk that may affect the protection of the EU's financial interests. DG HR reviewed a training module on ethics to also cover leak avoidance.<sup>28</sup>
- E-government procedures involving more and more electronic transmission of documents, combined with the difficulty of identifying the person responsible, represent another new fraud risk.<sup>29</sup>
- The acceleration of globalisation and transnational financial flows are contributing factors in higher risks of fraud in general, including fraud involving EU funds. This also makes detection of fraud very difficult.<sup>30</sup>

## Concepts

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<sup>25</sup> Targeted interview with DG TAXUD. The interview took place before the adoption by the Council on 2 October 2018 of measures to boost administrative cooperation and improve the prevention of VAT fraud by amending Regulation 904/2010 on administrative cooperation and combating fraud in the field of value-added tax (OJ L 268/1 of 12.10.2010).

<sup>26</sup> EU online survey – comments.

<sup>27</sup> 10% of the respondents to the EU online survey referred to the new financial instruments as possibly creating new risks of frauds.

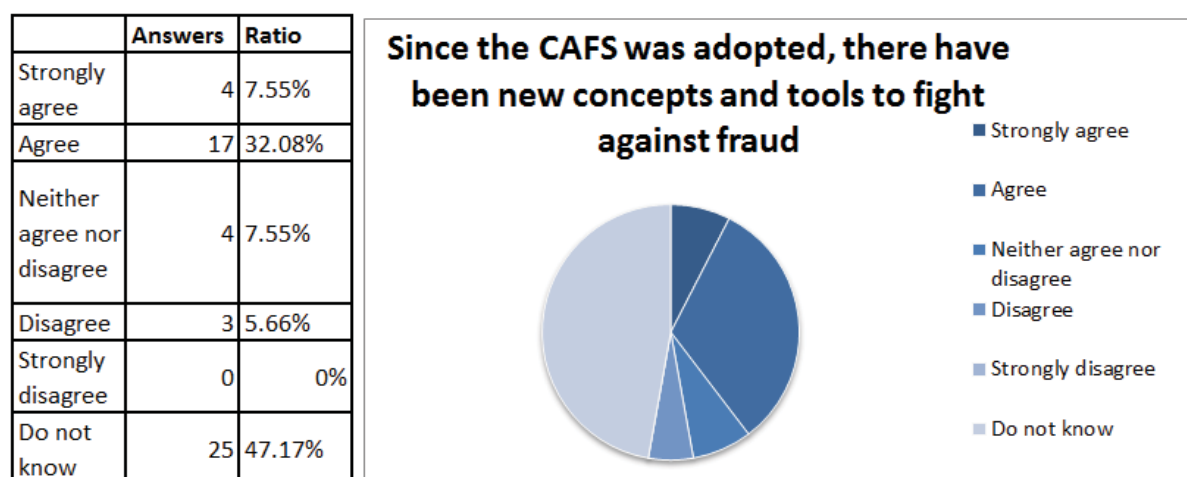
<sup>28</sup> Targeted interview with DG HR/E.3

<sup>29</sup> EU online survey – comments.

<sup>30</sup> EU online survey comments. For about 10% of the respondents, the acceleration of financial flows is a new trend of fraud.

***Q.6.2) Have any new concepts, ideas or approaches involving tools or measures to combat fraud, corruption and other illegal activities against the EU's financial interests been introduced since the CAFS was adopted?***

Figure 3



Source: Online EU survey; number of respondents: 53.

47 % of respondents found it difficult to identify any new concepts or tools. However, the information included in the new trends and developments indicates that several tools have enriched the fight against fraud since the implementation of the CAFS.

Listed below are the main concepts, tools and approaches reported in the EU online survey and targeted interviews:

- The setting up of the EPPO, and with it, a division between administrative (OLAF) and criminal (EPPO) investigations, is a new approach to combating illegal activities detrimental to the EU budget;
- Linked to IT tools: open data, data mining, pattern tracking; DIGIWHIST<sup>31</sup>, ARACHNE;
- Increasing involvement of civil society and investigative journalism;
- Setting up of more inter-service groups to increase focus on, and raise awareness of fraud and build anti-fraud networks among related DGs. A network of national anti-corruption correspondents is also active;
- Agreements with non-EU countries and international organisations within the area of indirect management with candidate countries;
- Stronger focus on prevention as a new trend in all Commission Services, including the use of data analysis for preventive purposes, and systematic data collection;

<sup>31</sup> In the targeted interview with DG GROW, it was explained that DIGIWHIST's main objective is to combine the provision of data on public spending on public procurement with actionable governance indicators and a monitoring procedure enabling members of the public to give feedback. This improves the accountability and transparency of public administrations. This tool was presented to some EU institutions or Commission Services in the context of COCOLAF.

- OLAF is making increasing use of administrative cooperation arrangements with its non-EU partners to facilitate its investigators' work in investigations covering funds spent outside of the EU.

The evaluation shows that new trends and new anti-fraud concepts and tools have emerged since the CAFS was adopted in 2011. To facilitate a robust anti-fraud policy, the Commission and OLAF have to make sure these new trends, concepts and tools are taken into account when designing new strategies or spending programmes, using new financial instruments, proposing legislation or introducing new initiatives and setting new goals.

### **3. IMPLEMENTATION, STATE OF PLAY AND RESULTS**

#### **3.1 Overview of CAFS implementation**

References to the implementation of the CAFS cover the measures presented in the CAFS Communication and the Action Plan. The Communication sets general objectives and guidelines; the Action Plan translates those objectives into action, identifies the service (s) responsible and sets deadlines for implementation. The Communication and the Action Plan thus complement each other.

Soon after the CAFS Communication and the Action Plan had been adopted, the Commission's Fraud Prevention and Detection Network (FPDNet)<sup>32</sup> was set up. This network comprises representatives of all Commission Services (including the executive agencies) and the European External Action Service (EEAS) (as an observer)<sup>33</sup>. Its role is to steer activities related to the implementation of the CAFS. It meets four times a year and is a major discussion forum in which participants share information and best practice.

In accordance with the CAFS, and to keep anti-fraud measures high up on the Commission's agenda, the Commission has monitored and reported on the implementation of the CAFS annually, in accordance with Article 325 of the 'Commission Report on the protection of the EU financial interests' (PIF Report). For the 2013, 2014 and 2015 PIF Reports, a summary section was included in each report and an accompanying Commission staff working document<sup>34</sup> on implementing the CAFS was published. The 2016 PIF Report<sup>35</sup> contained a

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<sup>32</sup> The first FPDNet meeting took place on 21 September 2011.

<sup>33</sup> European External Action Service: The original anti-fraud work covered all Commission Services, including the entire external relations family (including the former DG RELEX). The EEAS was set up progressively from the end of 2010 as a separate institution and was thus invited to the FPDNet as an observer.

<sup>34</sup> 2013 PIF Report: (a) Report from the Commission to the European Parliament and the Council – Protection of the European Union's financial interests – Fight against fraud, 2013 Annual Report; COM(2014) 474 final of 17 July 2014;

(b) Commission Staff Working Document on the Implementation of the Commission Anti-Fraud Strategy (CAFS) accompanying the 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, SWD(2014) 248 final;



special section on the implementation of the CAFS. No Commission staff working document was published in 2016 or 2017<sup>36</sup>, since it was considered that all measures under the CAFS had either been implemented or, in the case of recurrent measures, were ongoing.

Section 5 of this document analyses the effects and results of the CAFS' implementation, as well as relevant data.

The data reported were provided by the Commission Services implementing the measures set out in the CAFS. The reports on its implementation were structured in the same way as the 2011 Communication. They covered the three priority measures (appropriate anti-fraud provisions in Commission proposals on spending programmes under the 2014-2020 MFF, the development of anti-fraud strategies for Commission Services, and revision of the public procurement directives) and the measures covered by the entire anti-fraud cycle (preventing and detecting fraud, investigations, sanctions and recovery), plus other cross-cutting prevention instruments.<sup>37</sup>

By 2013, most legislative acts had incorporated anti-fraud clauses.<sup>38</sup> The Commission considered that the appropriate level of responsibilities for preventing, detecting, reporting and correcting fraud and irregularities by relevant parties had also been addressed by various legal instruments.<sup>39</sup> Anti-fraud strategies at Commission department level were in place, and most were based on a methodology<sup>40</sup> developed by OLAF in 2012.<sup>41</sup> Most stakeholders

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2014 PIF Report: (a) Report from the Commission to the European Parliament and the Council – Protection of the European Union's financial interests – Fight against fraud, 2014 Annual Report; COM(2015) 386 final of 31 July 2015;

(b) Commission Staff Working Document on the Implementation of the Commission Anti-Fraud Strategy (CAFS) accompanying the Report from the Commission to the European Parliament and the Council – Protection of the European Union's financial interests – Fight against fraud, Annual Report 2014; SWD(2015) 153 final of 31 July 2015;

2015 PIF Report: (a) Report from the Commission to the European Parliament and the Council – Protection of the European Union's financial interests – Fight against fraud, 2015 Annual Report; COM(2016) 472 final of 14 July 2016;

(b) Commission Staff Working Document on the Implementation of the Commission Anti-Fraud Strategy (CAFS) accompanying the Report from the Commission to the European Parliament and the Council – Protection of the European Union's financial interests – Fight against fraud, Annual Report 2015, SWD(2016) 239 final of 14 July 2016.

<sup>35</sup> 2016 PIF Report: Report from the Commission to the European Parliament and the Council – Protection of the European Union's financial interests – Fight against fraud, 2016 Annual Report; COM(2017) 383 final of 20 July 2017, Section 2.1.7, p. 10.

<sup>36</sup> 2017 PIF Report: Report from the Commission to the European Parliament and the Council, 29th Annual Report on the Protection of the European Union's financial interests – Fight against Fraud – 2017, COM(2018) 553 final, of 3 September 2018.

<sup>37</sup> Ethics and integrity, transparency and access to information, and procurement and grants.

<sup>38</sup> Accompanying SWD on the CAFS' implementation, Fight against fraud 2013 PIF Report; SWD(2014) 248 final, p. 6.

<sup>39</sup> Ibid, p. 13.

<sup>40</sup> ARES(2012)859571, 13 July 2012.

perceived the individual anti-fraud strategies as having a positive effect on the anti-fraud cycle, through the anti-fraud measures proposed in the Action Plan.<sup>42</sup> This is addressed in the section on effectiveness.

Commission Services also reported on their anti-fraud strategies in the Commission's annual activity reports. The revised public procurement directives<sup>43</sup> also included provisions on fraud prevention and detection, such as monitoring and reporting on the award of contracts and following up breaches of procurement rules and specific violations such as fraud, corruption, conflicts of interest and other irregularities.<sup>44</sup>

By the end of 2014, the CAFS' priority measures, as defined in both the Communication and the Action Plan<sup>45</sup>, had been completed. Anti-fraud clauses in the legal bases for financing decisions in the 2014-2020 programming period provided a sound legal background for protecting the EU's financial interests, and also covered secondary legislation.<sup>46</sup> This is analysed in more detail in the section on effectiveness. Regular updates of Commission Services' anti-fraud strategies started and are ongoing.<sup>47</sup>

The Commission entered a new phase of CAFS implementation in 2015. As its priority measures had been implemented, the focus shifted to measures stemming from the Commission Services' anti-fraud strategies. In the meantime, the Internal Audit Service (DG IAS) conducted an audit on the *'Adequacy and effective implementation of DG's anti-fraud strategies'*<sup>48</sup>. The overall assessment was positive, but identified areas for improvement, particularly integrating the DGs' anti-fraud strategies better into the internal control system.

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<sup>41</sup> Ibid. p.6.

<sup>42</sup> CAFS' Internal Action Plan, SEC(2011) 787.

<sup>43</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26.2.2014 on the award of concession contracts; OJ L 94, 28.3.2014, p. 1.

Directive 2014/24/EU of the European Parliament and of the Council of 26.2.2014 on public procurement and repealing Directive 2004/12/EC; OJ L 94, 28.3.2014, p. 65.

Directive 2014/25/EU of the European Parliament and of the Council of 26.2.2014 on procurement by entities operation in the water, energy transport and postal services sectors and repealing Directive 2004/17/EC; OJ L 94, 28.3.2014, p. 243.

<sup>44</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2013 PIF Report; SWD(2014) 248 final, p. 8.

<sup>45</sup> Reminder: the three priority actions consisted in (1) adequate anti-fraud provisions in Commission proposals on spending programmes under the MFF 2014-2020, (2) the development of anti-fraud strategies for Commission Services and (3) the revision of the public procurement directives.

<sup>46</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2014 PIF Report; SWD(2015) 153 final, p. 4 and 7.

<sup>47</sup> Ibid., p. 7.

<sup>48</sup> Report from the Commission to the European Parliament and the Council; Annual Report on internal audits carried out in 2015, COM(2016) 628 final of 30 September 2016, p. 10.

As a result, OLAF was recommended to provide an updated methodology and guidance<sup>49</sup> for developing the Commission Services' anti-fraud strategies.<sup>50</sup>

### 3.2 State of play and results

As stated in the 2016 PIF Report,<sup>51</sup> the CAFS has been fully implemented, meaning that all measures have either been completed or are ongoing, with a focus on sectoral strategies and action plans that tackle fraud in specific policy areas.

In line with the measures planned in the CAFS Action Plan, the state of play of the main points is listed below. This can be traced back to the CAFS' implementation reports referred to above:

- All Commission departments have included sectoral anti-fraud strategies for the policy areas for which they are responsible.<sup>52</sup>
- Anti-fraud provisions are incorporated in Commission proposals on spending programmes that are under direct,<sup>53</sup> indirect<sup>54</sup> or shared<sup>55</sup> management and that have been successfully negotiated in EU international agreements.<sup>56</sup>

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<sup>49</sup> ARES(2016)931345, 23 February 2016, 'Methodology and guidance for DG's anti-fraud strategies'.

<sup>50</sup> Accompanying SWD on the CAFS implementation, 2015 PIF Report 2015, SWD(2016) 239 final, p. 4.

<sup>51</sup> 2016 PIF Report, COM(2017) 383 final; Section 2.1.7 p. 10.

<sup>52</sup> Report from the Commission to the European Parliament, the Council and the Court of Auditors – 2016 Annual Management and Performance Report for the EU Budget; COM(2017) 351 final Part 1/2, of 13 June 2017, Section 2.1.4, p. 78.

<sup>53</sup> Horizon 2020, for example.

<sup>54</sup> The European Development Fund, for example.

<sup>55</sup> For ESI Funds, these include Articles 122 (2) and 125 (4) (c) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, p. 320.

For agricultural funds, these include Articles 54 and 58 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, OJ L 347, 20.12.2013, p. 549.

For the Fund for European Aid to the Most Deprived, Articles 28 (h), 30 (2) and 32 (4) (c) of Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived, OJ L 72, 12.3.2014, p. 1.

For the AMIF Funds, in particular Article 5 of Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, OJ L 150, 20.5.2014, p. 112.

- The adoption of public procurement directives 2014/23/EU, 2014/24/EU and 2014/25/EU was designed to simplify the procedures and make them more flexible. They incorporated provisions designed to limit the risks of procurement fraud in Member States.<sup>57</sup> See the section on public procurement (Section 5.2.8).
- All Commission Services adopted their anti-fraud strategies on the basis of their obligations under the CAFS. Since then, most have updated their strategies at least once, using OLAF's updated methodology and guidance for developing Commission Services' anti-fraud strategies.<sup>58</sup> 49 Commission Services now have an up-to-date anti-fraud strategy.
- Many Commission Services systematically organise fraud awareness-raising activities such as training sessions and seminars.<sup>59</sup>
- The CAFS referred to the Early Warning System (EWS)<sup>60</sup> and the Central Exclusion Database (CED) as a system that would give the Commission Services reasonable assurance about efficient detection of major irregularities and fraud under direct management. This system was reviewed and resulted in the establishment of the Early Detection and Exclusion System (EDES), which was developed and became operational in January 2016<sup>61</sup>. It was designed to bolster deterrence, prevention, and

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<sup>56</sup> 2016 PIF Report, COM(2017) 383 final; Section 2.1.7 p. 10.

<sup>57</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26.2.2014 on the award of concession contracts; OJ L 94, 28.3.2014, p. 1.

Directive 2014/24/EU of the European Parliament and of the Council of 26.2.2014 on public procurement and repealing Directive 2004/12/EC; OJ L 94, 28.3.2014, p. 65.

Directive 2014/25/EU of the European Parliament and of the Council of 26.2.2014 on procurement by entities operating in the water, energy transport and postal services sectors and repealing Directive 2004/17/EC; OJ L 94, 28.3.2014, p. 243.

<sup>58</sup> 2016 PIF report, COM(2017) 383 final; Section 2.1.7, p. 11.

<sup>59</sup> 2016 Annual Management and Performance Report for the EU Budget, COM(2017) 351 final; Section 2.1.4, p. 79.

<sup>60</sup> Lastly, Decision 2014/792/EU of 13 November 2014 on the Early Warning System to be used by authorising officers of the Commission and by the executive agencies. OJ L 329, 14.11.2014, pp. 68-80.

<sup>61</sup> As per Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union, OJ L 286 30.10.2015, p.1. Following the 2018 revision of the Financial Regulation, the provisions on the EDES are now to be found in Articles 135 – 145 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1.

EDES website: [http://ec.europa.eu/budget/edes/index\\_en.cfm](http://ec.europa.eu/budget/edes/index_en.cfm)

sanctions while ensuring compliance with standards for the protection of fundamental rights.<sup>62</sup>

- The 2012 Commission guidelines on whistleblowing have been revised by the Commission's Investigation and Disciplinary Office (IDOC) in cooperation with OLAF.<sup>63</sup> The evaluation gave IDOC and OLAF the opportunity to reiterate that some clarifications would be welcomed, especially of practical aspects such as the identification of the department or official granting the whistleblower status or the right to request assistance to ask for protection (Art. 22(c) of the Staff Regulation).<sup>64</sup>

As a result of the CAFS implementation and audits from the IAS or ECA, the following results can also be stated:

- After the implementation of a first methodology<sup>65</sup> to draft anti-fraud strategies at service level (2012), and following the conclusions of the IAS performance audit of the adequacy and effective implementation of the Commission Services' anti-fraud strategies (2014), in February 2016 the FPDNet endorsed an updated methodology and guidance<sup>66</sup> for the Services' anti-fraud strategies, encouraging the strategic programming planning (SPP) and monitoring cycle to take anti-fraud measures into account more. These measures ranged from identifying the risk of fraud to fraud control and monitoring. In this way, anti-fraud strategies have become part of the Commission's risk management. At the same time, each service's specific features are fully taken into account.<sup>67</sup> This measure was not planned in the CAFS Communication or the Action Plan, but followed the IAS performance audit referred to above: OLAF has thus become more active in the Commission's strategic programming planning and monitoring cycle, being informed about Services' management plans and annual activity reports.
- Anti-fraud strategies are part of the Commission's risk management policy, which is defined as a 'continuous, proactive and systematic process of identifying, assessing and managing risks in line with the accepted risk levels, carried out at every level of the Commission to provide reasonable assurance as regards the achievement of the objectives'.<sup>68</sup> Risk management is integrated into the planning and decision-making processes designed to achieve each department's policy objectives. To make risk identification exhaustive, the implementation guide refers to fraud risks and recommends cross-checking the updating of the anti-fraud strategies with the annual risk exercise.

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<sup>62</sup> Targeted interview with DG BUDG/D.EDES.

<sup>63</sup> Activity Report of the Investigation and Disciplinary Office of the Commission (IDOC) 2016, p. 10.

<sup>64</sup> Targeted interview with OLAF/0.1 and DG HR/IDOC.

<sup>65</sup> ARES(2012)859571, 13 July 2012.

<sup>66</sup> ARES(2016)931345, 23 February 2016, 'Methodology and guidance for DGs' anti-fraud strategies'.

<sup>67</sup> 2016 PIF Report, COM(2017) 383 final; Section 2.1.7, p. 10.

<sup>68</sup> Risk Management in the Commission, Implementation Guide, 2016 Edition, p. 5. <https://myintracomm.ec.europa.eu/dg/empl/management/RiskManagement/Pages/default.aspx>

## 4. METHOD

### 4.1 Short description of methodology

This evaluation was conducted internally by OLAF, without using an external consultant. The consultation process was based on a mixed method of data collection. The Inter-Service Steering Group (ISSG) used the FPDNet<sup>69</sup>, comprising representatives of Commission Services, including executive agencies, and the EEAS. This network was set up in 2011 in connection with the implementation of the CAFS. It has met four times as the ISSG for the purpose of the evaluation.

The methodology was designed to collect data from the Commission Services, executive agencies and the EEAS (the stakeholders) on the perceived relevance, effectiveness, efficiency, consistency and coherence of the CAFS as regards capturing the main elements which were regarded as either fully satisfactory, or as needing further improvement in an updated CAFS. Data were collected through an EU online survey (53 responses received); nine targeted interviews with relevant stakeholders, conducted by OLAF; and desk research.

#### *EU online survey*

The questionnaire for the EU online survey was circulated among FPDNet correspondents before publication to enable them to comment. At the FPDNet meeting of 19 September 2017, OLAF presented the whole process and comments were integrated as appropriate. The EU online survey was open from 18 October 2017 to 27 November 2017.

The questionnaire remained internal to the Commission. 53 responses were received from members of Commission or executive agency staff. Respondents usually answered on behalf of their unit; most were from the teams represented in the FPDNet. A total of 26 Commission departments and 5 executive agencies responded.

#### *Targeted interviews*

Between October 2017 and March 2018, nine targeted interviews were held with the following units:

- DG BUDG/D.EDES;
- DG BUDG/B.3, in charge of traditional own resources (TOR);
- DG TAXUD/C.4, responsible for value-added tax (VAT) matters;
- DG HR/E.3, in charge of ethics;
- DG HR/IDOC;
- DG GROW/G.4, responsible for public procurement;
- DG HOME/D.3, in charge of anti-corruption policy;

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<sup>69</sup> Evaluation Roadmap, ARES(2017)4732749.

[https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-4732749\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-4732749_en)



- OLAF/0.1, responsible for the selection and review process; and
- OLAF/D.1, in charge of legislation and policy development.<sup>70</sup>

The interviews were conducted and structured on the basis of the evaluation questions used in the EU online survey. They covered all the main aspects needed for the evaluation to examine the CAFS' results in some detail. Conducting targeted interviews was particularly helpful for the analysis of relevance, effectiveness and coherence between the CAFS and related measures or initiatives taken at Commission level. The interviews were designed to complement the results of the EU online survey and research based on documents in the public domain.

### *Desk research*

Research drew mainly on various Commission reports and staff working documents covering the period from 2013 (when the first staff working document on the implementation of the CAFS was produced) to 2018, in particular the 2016 PIF Report<sup>71</sup> and OLAF Reports,<sup>72</sup> the Commission Services and executive agencies' most recent annual activity reports and management plans; mid-term reviews of the MFF, Horizon 2020, the Hercule III programme<sup>73</sup> and its mid-term evaluation,<sup>74</sup> the proposal for an EU anti-fraud programme,<sup>75</sup> the evaluation of Regulation 883/2013 defining OLAF's legal framework<sup>76</sup> and the Commission proposal to amend the latter,<sup>77</sup> as well as reports from the IAS<sup>78</sup> and the

<sup>70</sup> ARES(2017)5574408; ARES(2017)5574669; ARES(2018)1315583; ARES(2018)701323; ARES(2018)677587; ARES(2018)5146908; ARES(2018)5146929; ARES (2018)5146950; ARES(2018)5146974

<sup>71</sup> 2016 PIF Report, COM(2017) 383 final.

<sup>72</sup> [https://ec.europa.eu/anti-fraud/about-us/reports/olaf-report\\_en](https://ec.europa.eu/anti-fraud/about-us/reports/olaf-report_en)

<sup>73</sup> Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC; OJ L 84, 20.3.2014, pp.6-13.

<sup>74</sup> European Commission, Mid-Term Evaluation of the Hercule III Programme - Final Report. ([https://ec.europa.eu/anti-fraud/sites/antifraud/files/herculeiii\\_midterm\\_evaluation\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/herculeiii_midterm_evaluation_en.pdf))

<sup>75</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme, COM(2018) 386 final, of 30 May 2018.

<sup>76</sup> Report from the Commission to the European Parliament and the Council: 'Evaluation of the application of Regulation (EU, Euratom) No 833/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by OLAF and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999; COM(2017) 589 final of 2 October 2017'.

<sup>77</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations; COM(2018) 338 final of 23 May 2018.

<sup>78</sup> Audit on the 'Adequacy and effective implementation of DG's anti-fraud strategies' (2015); audit on the 'Performance and coordination of anti-fraud activities in the TOR area' (2016).

European Court of Auditors<sup>79</sup> (ECA). Public documents covering the legislative process and the implementation of the CAFS priority measures on the public procurement directives and the 2014-2020 MFF were also used. This evaluation also includes references to other legislations<sup>80</sup> and other documents in the public domain.

### *Outcome*

Both quantitative and qualitative data were used to achieve a reliable and accurate evaluation.

- Quantitative data were collected through the EU online survey on all aspects of the CAFS. These data were used to generate relevant results on the implementation of the CAFS. The statistics used covered the relevance, effectiveness, efficiency, consistency and coherence of the measures taken under the CAFS. They helped to highlight (a) areas requiring improvement and (b) the degree of adaptability of the CAFS.
- Qualitative data included comments made by respondents to the EU online survey, plus the output of the targeted interviews. These interviews were designed to gain an understanding of underlying issues, the relevance and recurrence of trends, the emergence of new trends, and particular areas in need of improvement. They were also designed to feed into preparations for the CAFS update.

## **4.2 Limitation and robustness of findings**

This evaluation is part of the 2017 Commission Work Programme. The Roadmap was published between 28 September 2017 and 16 October 2017. OLAF did not expect to receive any feedback, as the CAFS is an internal matter, and indeed there was none.

### *EU online survey*

The EU online survey proved to be extremely useful in obtaining statistics. These can be considered robust, given the number of respondents and the overall representation of the Commission Services.

The limitations of the EU online survey identified had to do with the broad scope of the questions: it was difficult for many of the respondents to reply to all questions, given the specific nature of some of them. 10% of respondents also mentioned that completing the survey was a difficult task, either because it was the first time for them, and they were unfamiliar with their anti-fraud or internal control portfolio, or because it was too time-consuming to read the necessary documents to form a comprehensive view of the CAFS and its impact on their department.

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<sup>79</sup> Special Report No 30/2016: the effectiveness of EU support to priority sectors in Honduras; audit brief 'Fighting fraud in EU spending', October 2017.

<sup>80</sup> See Section 5.3 of this report: 'Consistency and coherence' and in particular, external consistency.



Some stakeholders did not, therefore, feel confident enough to answer all the questions in full or evaluate the specific results of the measures taken in the context of the CAFS, or to assess new risks. This was clear from instances where respondents picked the 'Don't know' or the 'neither agree nor disagree' option.

To counterbalance these limitations, the number of Services represented was examined, and it was decided that the spread gave a full picture of the Commission's management practices and policy areas. Where a department considered vital to the evaluation did not complete the online survey, a targeted interview was held instead.

Comments were thoroughly analysed to mitigate these limitations. In addition, desk research was carried out on the local intranet when it was considered that any information was unclear or missing.

Finally, a draft of the evaluation was presented to the Commission Services at the last ISSG meeting on 24 April 2018, thus giving them an opportunity to comment.

Some stakeholders were short of time, and this affected the quality of their replies in some cases.<sup>81</sup>

### *Targeted interviews*

Early on in the evaluation process, more targeted interviews were envisaged, but not all Services responded to the offer to meet for one. However, all the Services that did not respond to OLAF's invitation completed the EU online survey, thus compensating for the lack of a face-to-face meeting.

The FPDNet contact point was also present at most interviews. This enabled the topic discussed (such as VAT) to be linked with the CAFS (which does not cover VAT). The risk of VAT-related fraud is covered by the specific anti-fraud strategy of DG TAXUD. This contributes to the complementary role of the CAFS and the Services anti-fraud strategies.

Even though participants in the targeted interviews did not have the full expertise of the CAFS, all aspects necessary for the evaluation were covered: budgetary resources; training and awareness-raising, including ethics; cooperation between Services; the growing importance of databases; the changing anti-fraud landscape; public procurement, and so on.

It was also important to take on board OLAF's views on the implementation of the CAFS, especially as regards the changing legislative context of the protection of the EU's financial interests (PIF) - notably the PIF Directive and the establishment of the European Public Prosecutor's Office (EPPO) (OLAF Unit/D.1) - and the importance of cooperation between the Commission's Services (OLAF Unit/0.1).

To maintain the quality of the comments, data and analysis received in the course of the targeted interviews, minutes were drafted, agreed on by the interviewees and registered in ARES for archiving purposes. As mentioned during the interviews, this evaluation contains no direct quotes from the interviewees. This form of dialogue with relevant stakeholders gave

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<sup>81</sup> EU online survey – comments.

them a measure of protection and enabled the evaluators to go into some depth on certain points of discussion.

### *Research work*

The CAFS is a cross-cutting strategy targeting all Commission Services and touches upon a broad spectrum of Commission legislative proposals, policy documents and reports. It was thus impossible to conduct an exhaustive analysis of all measures linked directly or indirectly to the CAFS. The fact that the CAFS' implementation had been annually reported upon (2012-2015) in a Commission staff working document accompanying the PIF Report played a central role in gathering relevant information and overview on the CAFS performance since its adoption. The policy areas analysed in this evaluation are considered to be those that are most relevant to the CAFS.

## **5. Analysis and answers to the evaluation questions**

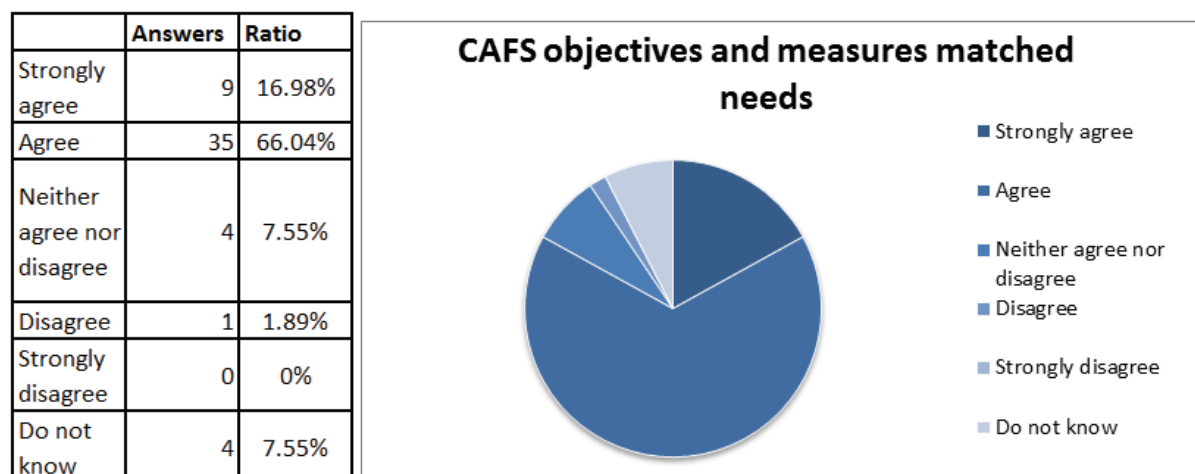
### **5.1 Relevance**

This section examines the relevance of the CAFS for the overarching goal of protecting the EU's financial interests.

#### *5.1.1 General objectives of the CAFS*

***Q 1.1) How far did the objectives and the measures implemented under the CAFS correspond to the needs relating to the protection of the EU's financial interests?***

*Figure 4*



Source: Online EU survey; number of respondents: 53.

The relevance of the CAFS' objectives was acknowledged by all categories of stakeholders consulted (83% of respondents taking part in the EU online survey agreed or strongly agreed

on this point), either as actors directly involved in implementing the CAFS<sup>82</sup> or because their activities match the CAFS' objectives, as is the case for the files in the revenue area of the EU budget.<sup>83</sup>

The CAFS is still widely considered a high-level anti-fraud policy document which provides the framework within which the Commission can protect the EU's financial interests and combats fraud, corruption and any other illegal activity harmful to the EU budget.<sup>84</sup>

The comments on the EU online survey and targeted interviews show that implementing the CAFS gave anti-fraud matters a higher profile throughout the Commission, also in view of the implementation of the CAFS' three priority objectives. Although there were no questions designed to measure the relevance of each of the three main objectives, comments to the EU online survey and outcomes of the targeted interviewed confirmed their relevance and importance:

- In the common provisions regulation (CPR) for the spending programmes (2014-2020), specific anti-fraud provisions were inserted;
- Concerning anti-fraud strategies set up at service level, none of the respondents or staff interviewed said that the Communication and its Action Plan were not relevant for the protection of the financial interests of the Union.
- Concerning the relevance of the revision of the public procurement directives, the outcome of the targeted interview with DG GROW confirmed that the revised Directives have a stronger anti-corruption focus on enhancing transparency and tackling corruption in public procurement.

As regards the division of labour or cooperation between Services – which was also among the CAFS' objectives – more has yet to be done, according to some stakeholders, coming from the area of shared management.<sup>85</sup>

### ***Q 1.2) Are the objectives established by the CAFS still relevant?***

This question was designed to assess whether the CAFS adapted well to any changes in fraud patterns and policy developments between 2011 and 2018.

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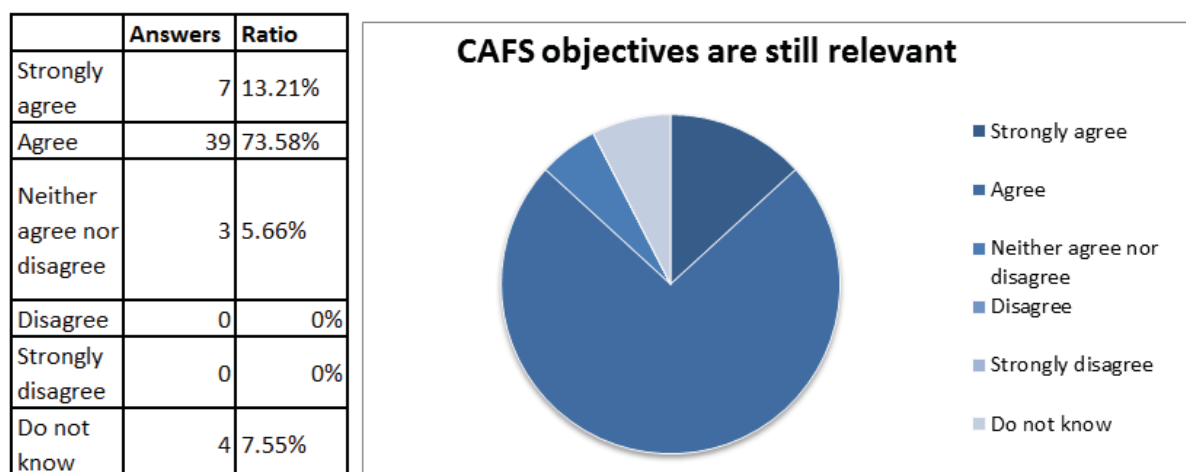
<sup>82</sup> In addition to all DGs having to draft their anti-fraud strategy, several Commission Services had to set up and implement specific measures, activities or legislations: IDOC (investigations, sanctions), DG GROW (public procurement directives), DG HR (awareness-raising, training, fraud prevention and detection, informants and whistleblowers; ethics and integrity); OLAF (awareness-raising, training, fraud prevention and detection, investigations, sanctions, recovery; anti-corruption reporting mechanism; informants and whistleblowers). DG HOME (assessment of anti-corruption developments of the Member States in the context of the European Semester; experience-sharing programme with anti-corruption practitioners).

<sup>83</sup> VAT fraud risk is addressed in DG TAXUD's risk register (targeted interview with TAXUD/C.4). Although CAFS does not focus sufficiently on the TOR area, DG BUDG explained that they were focusing on detection and investigation in their activities (targeted interview with BUDG/B.3).

<sup>84</sup> EU online survey - comments; targeted interviews with DG BUDG, DG TAXUD, HR/IDOC, OLAF, DG GROW.

<sup>85</sup> EU online survey – comments.

Figure 5



Source: Online EU survey; number of respondents: 53.

87% of respondents agreed, or strongly agreed, that the CAFS' objectives are still relevant. While most acknowledged that the CAFS is a flexible tool that can be adapted to the specific characteristics of each Commission Service, some stressed that department-level anti-fraud strategies could more readily be adapted to new fraud patterns and challenges than the original CAFS. Some stakeholders also said OLAF would need to take on a stronger advisory role when anti-fraud strategies and fraud risk assessment are updated, if the anti-fraud strategies of both the CAFS and the Commission's Services are to remain consistent with and complementary to each other. This is because the CAFS made provision for OLAF to play an explicit role in developing and implementing anti-fraud strategies.

The CAFS has the capacity to address potential challenges arising from changing fraud patterns, for instance through awareness-raising and training, which should take account of new fraud patterns. This was confirmed by some participants in the EU online survey. The use of risk registers and fraud risk assessment tools, referred to in the CAFS and its Action Plan, were of added value to identify risks of fraud. Including fraud risk assessment in annual risk management exercises allows for the counter-measures to be reviewed/checked regularly, thereby ensuring that they can be adapted if necessary.<sup>86</sup>

The use of IT tools<sup>87</sup> by the Commission Services has helped reaching the objectives set by the CAFS.. The evaluation showed that information through the use of Arachne, IMS, EDES and the Tenders Electronic Daily (TED) database covering public procurements enabled the services to have a better overview of the fraud patterns.<sup>88</sup> The evaluation also identified that to remain of added value IT tools need to adapt timely to changing fraud patterns: several of the EU online survey replies and many comments from targeted interviews indicated that

<sup>86</sup> EU online survey – comments.

<sup>87</sup> Fraud Risk Assessment Tool in the area of ESI Funds, Arachne, OWNRES, EDES, in particular the AFIS applications, including IMS.

<sup>88</sup> EU online survey – comments and targeted interviews, in particular with DG GROW for whom the TED database was not only used as an information tool for potential bidders, but as a source of data for improving the performance of national public procurement systems.

more attention should be given to the flexibility of IT tools, especially to interlink data and use them for a more structured data analysis.<sup>89</sup>

The data collected through the evaluation process<sup>90</sup> suggest that not all areas face substantial changes in fraud patterns.<sup>91</sup> However, it was noted that the updated CAFS was better able to adapt to cyber-fraud and non-financial risks (leakage of information or bribery without budgetary impact, reputational risks and the complexity of EU processes for obtaining grants or procurement contracts, preventing potential beneficiaries from applying).

As regards adaptation to policy developments, stakeholders thought that the CAFS had adapted well overall through its various implementing measures.<sup>92</sup> There were, however, several suggestions for improvement in order to strengthen further the protection of the financial interests of the Union and adapt fraud prevention to new elements:<sup>93</sup> for the CAFS to remain relevant, it needs to be able to adapt swiftly to new policy priorities: migration, the refugee crisis, interventions and operations in conflict areas, money laundering and terrorism financing. It also needs to be able to adapt to the changing context of anti-fraud legislation, with the adoption of the PIF Directive, the establishment of the EPPO, and OLAF's future legal framework<sup>94</sup>. The CAFS is expected to need substantial adaptation in order to address these new policy challenges. The current CAFS is currently not designed to cover fully the changing fraud schemes, the new policy developments, the new anti-fraud legislation or new global challenges.

If the CAFS' objectives are to remain relevant, they should also take account of:

- the upcoming Multi-Annual Financial Framework (post-2020 MFF);<sup>95</sup>
- the new Financial Regulation;<sup>96</sup>
- the guidance and tips provided in the toolbox on fraud prevention,<sup>97</sup> which complements the Better Regulation rules;

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<sup>89</sup> EU online survey – comments and targeted interviews.

<sup>90</sup> EU online survey – comments and targeted interviews.

<sup>91</sup> EU online survey – comments; targeted interview with DG GROW/G.4.

<sup>92</sup> Such as: awareness-raising and training, anti-fraud measures in public procurement, the inclusion of the fraud risk assessment in annual risk management exercises and individual anti-fraud strategy, the inclusion of OLAF references in legal bases for EU spending programmes and the flexibility to counterbalance the trust-based approach by risk-based checks.

<sup>93</sup> EU online survey - comments and targeted interviews with DG BUDG/B.3, DG TAXUD/C.4, OLAF/O.1.

<sup>94</sup> COM(2018) 338 final of 23 May 2018.

<sup>95</sup> Legal texts on the next MFF are available here: [https://ec.europa.eu/commission/publications/factsheets-long-term-budget-proposals\\_en](https://ec.europa.eu/commission/publications/factsheets-long-term-budget-proposals_en)

<sup>96</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.07.2018, p. 1.

- the use of new financial instruments; and
- the trust-based funding approaches following the political endorsement of simplification in funding procedures for contracts and tenders under direct management, with an increased use of external contractors.<sup>98</sup>

The CAFS' objectives should also take account of emerging fraud schemes linked with growing cyber-fraud, e-procurement, and the increasing complexity of international fraud patterns, covering financial movements and the ways the parties concerned interact.<sup>99</sup>

### ***5.1.2 The CAFS' three key priorities as included in the Communication***

#### **(i) Anti-fraud provisions**

When the CAFS was adopted in 2011, preparatory work on the next multi-financial framework (post-2013) was already under way. The CAFS was an opportunity to reinforce existing<sup>100</sup> anti-fraud approaches across different EU policies through new specific legislative proposals for EU programmes that include simplified and systematic anti-fraud measures.<sup>101</sup>

These provisions anchored OLAF's powers to investigate suspected fraud against EU spending.<sup>102</sup> Furthermore, the reference to the anti-fraud provision in the CAFS enshrined this approach in a Commission policy document, thus ensuring that this good practice would be enhanced.

As a result of this priority measure, anti-fraud provisions were incorporated in the MFF 2014-2020 legal framework<sup>103</sup> and continue to serve as good practice for new legislative proposals and in the new Financial Regulation.<sup>104</sup>

The reference to OLAF in the legal bases underpinning EU spending programmes is discussed in the course of negotiations on the programmes or agreements. This allows for discussion of fraud prevention and control. It also facilitates the work of OLAF's investigators and provides them with the relevant legislative framework to carry out their duties.

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<sup>97</sup> Toolbox #22, Prevention of fraud. See the 'toolbox' section on: [https://myintracomm.ec.europa.eu/sg/better\\_regulation/Pages/guidelines-toolbox.aspx](https://myintracomm.ec.europa.eu/sg/better_regulation/Pages/guidelines-toolbox.aspx)

<sup>98</sup> EU online survey – comments.

<sup>99</sup> EU online survey – comments and targeted interviews with DG TAXUD/C.4 and DG GROW/G.4.

<sup>100</sup> See in this context SEC(2007)1676 on the fraud proofing activities with regard to spending programmes under the Financial Perspectives 2001-2006.

<sup>101</sup> 2011 CAFS Communication, COM(2011) 376 final, p. 6.

<sup>102</sup> 2013 PIF Report, SWD (2014) 248 final of 17 July 2014, p. 6.

<sup>103</sup> For example: Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020), OJ L 347/104, 20.12.2013.

<sup>104</sup> Regulation (EU, Euratom) 2018/1046 of 18 July 2018.



It should be noted that the new Financial Regulation includes a reference to OLAF's investigative powers. The recitals of the basic acts of EU spending programmes will include a similar reference.

## (ii) Commission Services' anti-fraud strategies

As noted in the chapter covering the background to the CAFS (2.1, Policy context), there were several instruments in place before the CAFS was adopted, covering the fraud proofing of legislation, the division of responsibilities between OLAF and spending DGs, and fraud prevention. However, while some of the Commission Services had anti-fraud strategies,<sup>105</sup> not all did. The purpose of the CAFS was to ensure more consistency between the practices of Commission Services in this area. Given the diversity of the financial instruments used by Commission Services, the variety of areas affected by Commission policies, and the large number of different parties involved in managing EU funds, the specific characteristics of each service should be taken into consideration when establishing individual anti-fraud strategies.

As can be seen in most Commission Services,<sup>106</sup> one of the CAFS' most relevant aspects was the adoption of individual anti-fraud strategies tailored to the particular needs of each department. The CAFS also required these strategies to be updated regularly.

The fact that anti-fraud strategies were tailored to the needs of individual Services and policy areas enabled a risk-based, bespoke approach to be taken to tackling fraud. OLAF established a methodology<sup>107</sup> for drawing up anti-fraud strategies based on identifying fraud risks and developing action plans focusing on these risks.<sup>108</sup> It helped Services<sup>109</sup> draw up a format and revised format for anti-fraud strategies at department level, including procedures for internal checks, risk assessment and regulatory framework items, and it promoted best practice. 88% of Commission Services have used OLAF's methodology to draw up their anti-fraud strategies.<sup>110</sup> This approach, which can be classed as decentralised, as it makes each department responsible for its own anti-fraud strategy, was considered a positive outcome by all relevant stakeholders.<sup>111</sup>

The CAFS requires Commission Services to update their anti-fraud strategies and the underlying fraud risk assessments regularly. This has proven to be a good way to identify and

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<sup>105</sup> This was the case for the DG REGIO, DG EMPL and DG MARE as regards the shared management funds

<sup>106</sup> EU Online Survey – comments.

<sup>107</sup> A first methodology was adopted in 2012 (ARES(2012)859571, 13 July 2012). It was updated in February 2016 (ARES(2016)931345, 23 February 2016).

<sup>108</sup> 2016 PIF Report, COM(2017) 383 final, Section 2.1.7, p. 10.

<sup>109</sup> Through workshops, inter-service groups, guidance documents, training and bilateral contacts or meetings.

<sup>110</sup> 2013 PIF Report 2013 - SWD(2014) 248 final of 17 July 2014, p. 6.

<sup>111</sup> EU Online Survey - comments, targeted interviews with IDOC, DG HR.E.3, BUDG/D.EDES, TAXUD/C.4.

tackle changing fraud patterns.<sup>112</sup> By 2016, 16 Commission Services had updated their anti-fraud strategies. An estimated 49 Commission Services now have an up-to-date anti-fraud strategy.

In the results of the IAS 2014 performance audit on the adequacy and effective implementation of the Commission Services' anti-fraud strategies, OLAF's cross-cutting role in maintaining appropriate and effective anti-fraud strategies was positively assessed. It was also recommended that the anti-fraud measures identified in the individual anti-fraud strategies be integrated into the internal system of checks. To that end, OLAF has taken up a new role through its involvement in the reporting on the implementation of anti-fraud measures through the follow-up of Services' fraud risk assessments, analysis of the AARs or management or strategic plans.

However, OLAF's current degree of involvement in this area is not explicitly stipulated in the CAFS, which initially gave to OLAF a coordinating role.

As regards setting up anti-fraud strategies, the CAFS and its Action Plan were sufficiently broad and flexible to allow each Commission department (or family of DGs) to adapt and develop its own anti-fraud strategy, taking account of its own special features and aspects of their policies and funding programmes.<sup>113</sup>

### (iii) Public procurement

Public procurement has always been an essential tool for the spending of EU funds. The review of the public procurement directives was already under way when the CAFS was adopted in 2011. Incorporating the revised versions of these directives into the CAFS (Communication and Action Plan) reinforced the anti-fraud aspect of this initiative.

The simplified public procurement directives<sup>114</sup> were designed to contribute to a better PIF by striking a better balance between simplifying rules and limiting the risks of procurement fraud in Member States. One instance is the introduction of transparency enhanced by e-procurement.<sup>115</sup> In the context of the public procurement directives, the **Tenders Electronic Daily database (TED)** is a platform accessible to all potential bidders which serves as a source of data for improving the performance of national public procurement systems.<sup>116</sup> TED is relevant in helping to attain those of the CAFS's objectives that relate to public procurement.

*Directive 2014/24/EU on Public Procurement, Article 83 (3) provides that:*

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<sup>112</sup> EU online survey – comments.

<sup>113</sup> EU online survey – comments.

<sup>114</sup> The 2016 PIF Report stated that by the end of 2016, 11 Member States had not fully transposed the public procurement directives into national law. According to updated information from mid-January 2018, four Member States had yet to transpose the Public Procurement Directives fully or in part.

<sup>115</sup> Targeted interview with DG GROW.

<sup>116</sup> Ibid.



*'...every three years thereafter Member States shall submit to the Commission a monitoring report covering, where applicable, information on the most frequent sources of wrong application, [...] and **about prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.**'*

Importantly, the emphasis placed on the general idea of conflict of interest in the public procurement directives was considered to be a step forward.<sup>117</sup> Also, the results of the EU online survey show that many respondents thought the CAFS successfully anticipated developments in the area of public procurement and adapted well to that environment. It was, however, felt that other fraud patterns such as collusion<sup>118</sup> and cartels need to be tackled more forcefully.<sup>119</sup>

## 5.2 Effectiveness

In the context of this evaluation, 'effectiveness' means the relative success of EU measures in meeting or progressing towards CAFS objectives, and underlined to what extent the CAFS has provided an impulse for progress, if any. The way in which such measures are implemented has been analysed from different points of view corresponding to the objectives of the CAFS: deterrent effect on potential fraudsters, prevention, detection, investigations, sanctions, recovery, ethics and integrity, transparency, public procurement and grants, plus interaction between the CAFS Communication and the Commission's Action Plan.

Overall, 65% of respondents rated the CAFS as effective as regards all aspects of its objectives. However, depending on the points of view from which measures are analysed, results may vary substantially: while 80% agreed that the link between the CAFS and the Action Plan helped with implementing the CAFS' objectives, only 51% agreed that the measures taken as part of the CAFS contributed to fraud sanctions, and only 53% agreed that the measures taken under the CAFS helped recover funds more effectively.

However, care should be taken when interpreting these figures. Nearly 30% of respondents answered 'I don't know' to the series of question or took a neutral view ('neither agree or disagree'). Overall, only 8% of them rated the effectiveness of the measures taken under the CAFS rather negatively. It is worth bearing in mind that the CAFS' scope was limited to Commission Services, so the point of this evaluation is to measure the effects of the CAFS within the Commission. It is not designed to measure any impact which the CAFS may have had in Member States, which are responsible for collecting EU revenue and managing about 80% of the budget.<sup>120</sup>

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<sup>117</sup> Targeted interview with DG GROW.

<sup>118</sup> Collusion in public procurement increases risks because the formal rules governing public procurement can make communication among rival companies easier, promoting collusion among bidders. While collusion can emerge in both procurement and ordinary markets, procurement regulations may facilitate collusive arrangements. (Source: OECD policy brief, Fighting Cartels in Public Procurement)

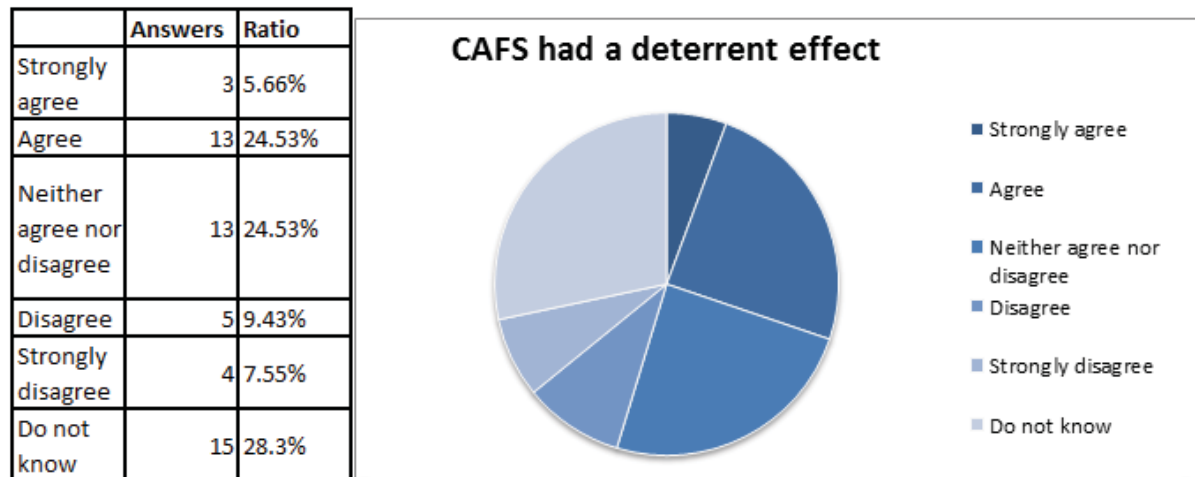
<sup>119</sup> EU online survey – comments.

<sup>120</sup> EU online survey – comments.

### 5.2.1 Deterrence

#### *Q 2.1) Did the CAFS itself have any deterrent effect on fraudsters?*

Figure 6



Source: Online EU survey; number of respondents: 53.

The idea behind the CAFS was to deter fraudsters by taking action to limit opportunities to commit fraud. It has more of a deterrent effect in the field of direct expenditure, as anti-fraud clauses in contracts and grant agreements and information provided to contractors and beneficiaries draw their attention to the Commission's anti-fraud policies. As it is the Member States which administer nearly all EU budget revenue and manage about 80% of EU expenditure, many fraudsters may not know these anti-fraud policies (or the CAFS itself) even exist. In that sense, the direct deterrent effect that the CAFS may have had on fraudsters is limited.

Given that the CAFS aims at creating a political framework for further measures and the very nature of anti-fraud policy, it is difficult to measure the deterrent effect of the CAFS.

These deterrent effects of the CAFS should be viewed in terms of the various anti-fraud measures introduced in the framework of the CAFS to make the Commission's work more resilient to fraudsters. These include: red flags to make the Commission's internal system of checks more effective; developing risk indicators; developing systematic, formalised processes to identify the risk of fraud; and disseminating information about disciplinary sanctions.

Implementing such measures was facilitated by setting up the FPDNet and creating a methodology used as a guideline for establishing an anti-fraud strategy for each department. This enabled the Commission Services to tackle the problem in a coordinated and structured way.<sup>121</sup>

<sup>121</sup> EU online survey – comments.

The results of the EU online survey (comments) and the outcome of the targeted interview with DG BUDG/EDES<sup>122</sup> in particular show that deterrence has been improved by the implementation, since 1 January 2016, of the early detection and exclusion system (EDES). EDES, the successor to the early warning system (EWS) and the central exclusion database (CED) which were referred to in the CAFS as anti-fraud measures (the Communication makes a general reference; more details are provided in the Action Plan).

EDES ensures compliance with the highest standards of protection of fundamental rights and data protection rules and provides the Commission and other institutions and EU bodies with a flexible tool to respond efficiently to known risks of fraud and other illegal activity.<sup>123</sup> Deterrence is boosted by the publication<sup>124</sup> of a list of selected economic operators excluded from participation in any type of EU contract for a given period. The list also contains the grounds for the decision to exclude these parties and any financial sanctions imposed.<sup>125</sup>

The comments in response to the EU online survey and the targeted interviews indicate that all Services have done a good deal since the implementation of the CAFS to develop training and raise awareness of anti-fraud matters. Some of this training, which also includes the 'train the trainer' approach, target Commission staff. Some is directed at the Commission's stakeholders, such as the Member States when they are managing EU funds. The aim is to heighten awareness of anti-fraud issues, thereby boosting the deterrent effect of the anti-fraud measures taken. For example, DG AGRI provides regular training in EU countries for the authorities responsible for implementing the CAP budget. The units covering ethics matters in DG HR and DG HR/IDOC have a well-established practice of holding joint training sessions to give a comprehensive picture of ethics rules and the consequences of non-compliance. This link with sanctions can only boost the latter's deterrent effect.<sup>126</sup>

Effective communication on sanctions, either disciplinary or through EDES – which was one of the measures introduced for this purpose – needs to be further improved to ensure stronger deterrence.<sup>127</sup>

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<sup>122</sup> In 2014, the Commission amended the legal framework of the EWS, putting in place a stricter and more transparent procedure. This was a first step before the establishment of EDES through the revision of the Financial Regulation of 2016 where EDES replaced the EWS. Unlike the EWS, EDES also covers other institutions and EU bodies.

<sup>123</sup> Interview with BUDG/D.EDES.

<sup>124</sup> EDES website: [http://ec.europa.eu/budget/edes/index\\_en.cfm](http://ec.europa.eu/budget/edes/index_en.cfm)

<sup>125</sup> See Article 140 of the 2018 Financial Regulation (reference in Footnote 61). The decision to publish is taken in compliance with the criteria of the proportionality principle (seriousness of the situation, including the impact on the EU's financial interests and image, the time which has elapsed since the relevant conduct, its duration and its recurrence, the intention or degree of negligence, the limited amount at stake) and in line with the protection of personal data. See Article 136(3) of the Financial Regulation. In the case of exclusion, the information published has to be removed as soon as the exclusion has come to an end. In the case of a financial penalty, the publication has to be removed six months after payment of that penalty, see the fourth subparagraph of Article 140(1) of the Financial Regulation.

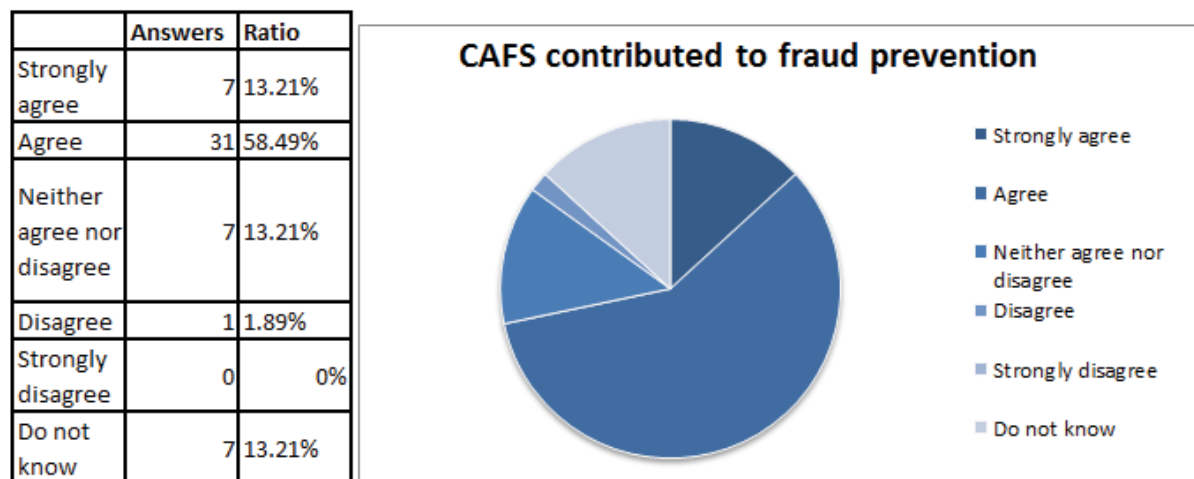
<sup>126</sup> Targeted interview with DG HR/E.3, Ethics

<sup>127</sup> Targeted interview with DG HR/E.3, Ethics, and DG HR/IDOC.

### 5.2.2 Prevention<sup>128</sup> and detection

**Q 2.2) Did the measures implemented under the CAFS contribute to prevent fraud, corruption and other illegal activity against the EU's financial interests?**

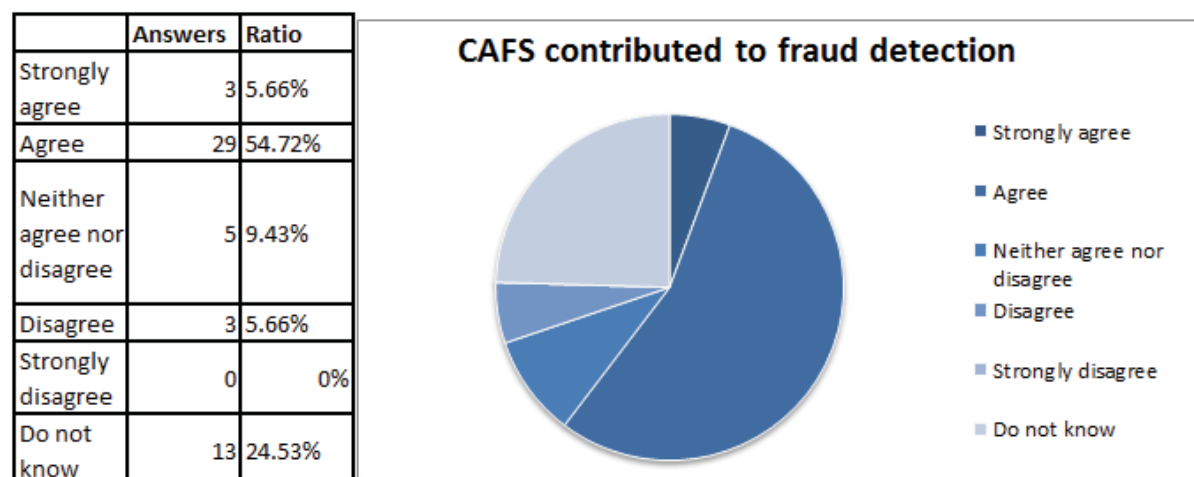
Figure 7



Source: Online EU survey; number of respondents: 53.

**Q2.3) Did the measures implemented under the CAFS contribute to the detection of fraud, corruption and other illegal activity against the EU's financial interests?**

Figure 8



Source: Online EU survey; number of respondents: 53.

The CAFS, as a matter of priority, covers the prevention and detection of fraud via the Commission's internal control process, applicable at all management levels<sup>129</sup> and in particular through the establishment of anti-fraud strategies. It provided a clear framework to

<sup>128</sup> Deterrence is the discouragement of persons from committing fraud or any other illegal activity affecting the EU's financial interests while prevention means to obstruct them from doing it.

<sup>129</sup> PIF SWD on CAFS implementation – 2015, p. 5.

establish prevention and detection measures. OLAF helps develop and implement these anti-fraud strategies, providing guidance and targeted awareness-raising and training.

As a general remark, the evaluation showed that stakeholders widely accepted that measures taken under the CAFS helped prevent (+/- 70%) and detect (+/- 60%) fraud, corruption and other illegal activities against the EU's financial interests.<sup>130</sup>

OLAF provided regular advice and assistance to Commission Services on issues relating to fraud prevention and detection, such as fraud risk assessment,<sup>131</sup> as well as other areas relating to their responsibilities to EU countries.

### *Prevention*

The CAFS stressed that the first step in effective fraud prevention is designing spending programmes appropriately.<sup>132</sup> As in the past, anti-fraud provisions covered the possibility for OLAF to conduct investigations and take fraud prevention measures, the Structural and Investment Funds being one relevant area.<sup>133</sup> The fact that several Services have developed guidance on implementing anti-fraud provisions<sup>134</sup> can be considered as having a direct effect on fraud prevention, this link being highlighted in the CAFS. The implementation report on the CAFS accompanying the 2013 PIF Report takes as an example the guidance developed by DG REGIO, DG EMPL and DG MARE on the implementation of the obligation for the national managing authorities to put in place proportionate and effective anti-fraud measures, taking on board the risks identified.<sup>135</sup>

As stated in the CAFS Communication, for direct management, the anti-fraud provisions introduced into spending programmes managed by Commission Services were designed to make prevention more effective. The CAFS communication (2011) stated that feasibility studies and impact assessments were to include analysis of potential exposure to fraud, wherever relevant. Moreover, at the implementation stage of the programmes, cost-effective and risk-based monitoring and control mechanisms should mitigate the risk of fraud.<sup>136</sup> This measure was implemented on the basis of evidence gathered through the evaluation. In addition, mid-term evaluations carried out for the current MFF programmes systematically looked at aspects related to fraud prevention. Spending Directorates-General systematically include fraud prevention in their impact assessment of new programmes. OLAF contributed

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<sup>130</sup> EU online survey.

<sup>131</sup> As stated in the European Court of Auditors Audit brief, '*Fighting fraud in EU spending*' in October 2017, 'Robust fraud risk assessment is key to effective fraud prevention. It involves analysing the profile and motivation of potential fraudsters, and estimating the total risk of fraud relating to the organisation. This proactive identification of the causes and enabling factors for fraud and their removal is also essential to make fraud deterrence more effective'.

[https://www.eca.europa.eu/Lists/ECADDocuments/AB\\_FRAUD\\_RISKS/AB\\_FRAUD\\_RISKS\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADDocuments/AB_FRAUD_RISKS/AB_FRAUD_RISKS_EN.pdf)

<sup>132</sup> Commission Anti-Fraud Strategy, Communication, COM(2011) 376 final, p. 8.

<sup>133</sup> PIF Report 2013, SWD(2014) 248 final, p. 6.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Commission Anti-Fraud Strategy, Communication, COM(2011) 376 final, p. 8.

to preparations: for example, a confidential document on the types of fraud encountered in the research sector enabled DGs concerned with research to take account of the lessons learned from previous OLAF investigations into time-sheet fraud, experts' conflicts of interest, and plagiarism.

In shared management, the CAFS Action Plan provided for an exchange of best practice between Member States, on the basis that the Advisory Committee for Coordination of Fraud Prevention (COCOLAF), coordinated by OLAF, could play a bigger role in fraud prevention. On the basis of the work undertaken by the various subgroups of the COCOLAF (see below), and the agendas and minutes from the meetings,<sup>137</sup> it can be concluded that the discussions and work of national experts and shared management DGs<sup>138</sup> on developments in the fight against fraud and drawing up the annual PIF Reports helped focus on prevention.<sup>139</sup> The COCOLAF oversees a series of four sub-groups, each of which deals with specific issues.<sup>140</sup> One of them works on fraud prevention. Important guidance documents were drawn up by this sub-group on the basis of cooperation with the national experts. The documents were drafted with OLAF as coordinator.<sup>141</sup> The COCOLAF has issued the following documents since 2012:<sup>142</sup>

- Detection of forged documents in the field of structural actions, A practical guide for managing authorities (2013)

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<sup>137</sup> More information available on the COCOLAF website:

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=656>

<sup>138</sup> In particular DG REGIO, DG MARE, DG EMPL, DG AGRI, DG HOME.

<sup>139</sup> 2016 PIF Report, COM (2017) 383 final, p. 27.

<sup>140</sup> The four subgroups are: the Fraud Prevention Group; the Reporting and Analysis of Fraudulent and Other Irregularities Group; the Anti-Fraud Coordination Service Group' (AFCOS); and the 'OLAF Anti-Fraud Communicators' Network' (OAFCN).

<sup>141</sup> The latest documents prepared by the Fraud Prevention sub-group are:

1. 'Identifying conflicts of interests in public procurement procedures for structural actions: A practical guide for managers', 12 November 2013.

([www.esfondi.lv/.../EK\\_vadl\\_par\\_interesu\\_konflikta\\_identif\\_publ\\_iepirk\\_EN.pdf](http://www.esfondi.lv/.../EK_vadl_par_interesu_konflikta_identif_publ_iepirk_EN.pdf))

2. 'General Guidelines on National Anti-Fraud Strategies', for Member States drawing up their national strategy', 23 December 2014.

(<https://ec.europa.eu/sfc/sites/sfc2014/files/sfc-files/Guidelines%20foe%20national%20anti-fraud%20strategies%20for%20ESIF%20EN.pdf>)

3. 'Identifying conflicts of interest in the agricultural sector — A practical guide for funds managers', 18 December 2015.

(<https://ec.europa.eu/sfc/sites/.../IdentifyingConflictsInterestsAgriculturalSector.pdf>)

4. 'Fraud in Public Procurement: A collection of Red Flags and Best Practices' ARES(2017)6254403

<sup>142</sup> These documents are either registered in ARES or published via CIRCABC (Communication and Information Resource Centre for Administrations, Businesses and Citizens), which is the secured communication network that links the Member States' authorities with the Commission Services, including OLAF. It enables documents to be distributed and managed.



- Identifying conflicts of interests in public procurement procedures for structural actions, A practical guide for managers (2013)
- Guidelines for national anti-fraud strategies for European Structural and Investment Funds (2014)
- Handbook: The role of Member States' auditors in fraud prevention and detection for EU Structural and Investment Funds, Experience and practice in the Member States (2014)
- Practical steps towards the drafting of a National anti-fraud Strategy (2015)
- Identifying conflicts of interests in the Agricultural Sector, A practical guide for fund managers (2015)
- Guidelines on National Anti-Fraud Strategies (2016)
- Handbook on reporting of irregularities in shared management (2017)
- Casebook of OLAF internal investigations (2017)
- Fraud in Public Procurement: a collection of Red Flags and Best Practices (2017)

In addition, under the auspices of the FPDNet, coordinated by OLAF, several Directorates-General and executive agencies managing significant budgets have joined forces with the Legal Service, DG BUDG and DG HR to draw up three sectoral reports (Shared Management, Direct/Indirect Expenditure and non-financial or ethical issues) on ways to identify, prevent and handle conflicts of interest. They have disseminated these reports among FPDNet members with a view to establishing an internal guidance document for authorising officers and their support staff, auditors and investigators.<sup>143</sup>

Moreover, increased attention has been given to data analysis based on information sources available to the Commission Services and the Member States.<sup>144</sup> For example, two workshops organised in 2018 by OLAF and JRC brought together 25 Member States as well as DG TAXUD and DG BUDG. One of the main issues discussed was advances in the field of customs data analysis for anti-fraud purposes and how Member States are using this analysis to identify and target potential fraud.

The PIF Reports also show the increasing importance of databases in preventing (and detecting) fraud. The 2015 report refers to Denmark's national anti-fraud policy on the European Regional Development Funds and the European Social Funds, under which the Danish Business Authority set up a website in 2015 to encourage a culture of fraud

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<sup>143</sup> The preparation of the horizontal document on 'Conflict of interests' is postponed in order to take into account the changes introduced in relation to this matter by the revised Financial Regulation.

<sup>144</sup> EU online survey – comments.

prevention and detection.<sup>145</sup> Many stakeholders also thought this increased use of databases and data analysis a good way of improving fraud prevention.<sup>146</sup>

The CAFS Action Plan targeted fraud risk management by requiring Commission Services to ensure that their fraud risk management helps identify risky areas and introduce appropriate response tools, drawing on sector-specific cost-benefit considerations and on OLAF's fraud prevention and risk analysis work.<sup>147</sup> Better organisational structures, clear systems of internal checks, guidelines on checks, and updated risk analyses all help prevent fraud; as stated in sections 3.1 and 3.2, the Commission has implemented DG IAS's recommendation following its 2014 audit covering CAFS and anti-fraud strategies<sup>148</sup> at department level. It has thus improved its anti-fraud framework throughout the institution, improved guidance, and integrated anti-fraud strategies better into the Commission SPP cycle.

This analysis of data analysis and risk management is backed up by the numerous comments collected through the EU online survey and the targeted interviews, explaining the increasing role of IT tools and risk analysis in prevention.

Most stakeholders considered EDES<sup>149</sup> as a significant step towards a strong fraud detection and prevention mechanism. Also, EDES is not only an instrument for administrative sanctioning. It also prevents from paying EU funds for the duration of the exclusion. This is supported by various EDES training sessions and awareness-raising for Commission, executive and decentralised agencies, other institutions and other EU bodies.

Moreover, the Hercule III spending programme<sup>150</sup> was included in the CAFS Action Plan: through its activities, the programme was designed to promote the implementation of the CAFS and step up fraud prevention and detection measures through EU financing. The Hercule programme provides for training in and awareness-raising of fraud risk indicators and EU anti-fraud policy. Its seminars cover a wide range of disciplines: combating irregularities in EU funds, VAT fraud, illegal trade and smuggling, and financial crime.<sup>151</sup> The Programme also finances legal studies and helps raise awareness of the anti-fraud campaign throughout the EU. According to the recent mid-term evaluation,<sup>152</sup> 'the evaluation found the programme has been effective' and helps protect EU financial interests. This statement

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<sup>145</sup> PIF Report 2015, COM(2016) 472 final, p.17.

<sup>146</sup> EU online survey – comments.

<sup>147</sup> SEC(2011) 787 final, p.11.

<sup>148</sup> IAS audit on '*Adequacy and effective implementation of DG's anti-fraud strategies*', 2015.

<sup>149</sup> EU online survey – comments and targeted interviews with BUDG/D.EDES and HR/IDOC.

<sup>150</sup> Hercule III is the only financial programme specifically dedicated to protecting the EU's financial interests.

<sup>151</sup> SWD(2017) 269 final, 20.7.2017 – Commission Staff Working Document, Annual overview with information on the results of the Hercule III Programme in 2016, accompanying the 2016 PIF report, p. 3.

<sup>152</sup> Report from the Commission to the European Parliament and the Council – Mid-Term evaluation of the Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the financial interests of the EU (Hercule III programme) and repealing Decision No 804/2004/EC, COM(2018) 3 final dated 10.1.2018, p.3.



establishes a clear link between action taken under the Hercule III programme and the objectives of the CAFS.

The revision process undertaken by the Commission Services to update their anti-fraud strategies<sup>153</sup> and revise their fraud risk assessment has enabled them to go beyond the purely financial fraud by better integrating non-financial risks such as reputational risks and breaches of confidentiality.<sup>154</sup> As underlined by the IAS audit on the adequacy and effective implementation of the Commission Services' anti-fraud strategies (see paragraph above focussing risk management), their effectiveness, if already good, could be reinforced through a better integration of the anti-fraud strategies into the internal control system. To that end, OLAF has reinforced its support role by reviewing the annual activity reports of the Commission Services and their management and strategic plans.<sup>155</sup>

The Commission has taken several further measures to improve fraud prevention, such as systematic checks and risk analyses, awareness-raising and training.<sup>156</sup> Under Horizon 2020, for example, it regularly conducts double-funding and plagiarism checks on documents submitted by consortia.<sup>157</sup>

### *Detection*

Although the EU survey clearly reveals that the CAFS has made significant progress towards detecting fraud, irregularities and other illegal activities detrimental to the EU budget, more attention could be devoted to raising awareness of ways to recognise fraud and deal with a fraud situation, especially for EU officials dealing with tender procedures and contracts. The need to develop methodologies to measure fraud (indicators) was raised during the evaluation.<sup>158</sup>

Given the complex nature of fraud, the Commission acknowledges that it cannot have complete, reliable and comparable data on the progress on the level of fraud detected that would give a clear and complete picture of the fraud phenomenon. This weakness arises primarily from the inadequacy of reporting by Member States, which provides information about detected (suspected) fraud, but gives no real insight into that part of fraud that remains undetected. To gather the most complete information possible on detected fraud, the Commission continued to make every effort to improve Member States' reporting of fraud and irregularities, which is a Treaty obligation for them. In the context of the COCOLAF prevention subgroup, a handbook on reporting of irregularities was endorsed by the national experts, the *Handbook on the requirement to report irregularities*. It provides guidance on

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<sup>153</sup> To date, 49 Commission Services have updated their anti-fraud strategy.

<sup>154</sup> EU online survey – comments.

<sup>155</sup> PIF Report 2015, SWD(2016)239 final, p. 4.

<sup>156</sup> Including via the FPDNet fora.

<sup>157</sup> During or after project implementation, the Commission checks, reviews, investigates and audits project implementation and compliance with the grant agreement. More information under: [http://ec.europa.eu/research/participants/docs/h2020-funding-guide/grants/grant-management/checks-audits-reviews-investigations\\_en.htm](http://ec.europa.eu/research/participants/docs/h2020-funding-guide/grants/grant-management/checks-audits-reviews-investigations_en.htm)

<sup>158</sup> EU online survey – comments.

common aspects of Member States' reporting of irregularities in connection with EU budget expenditure as part of shared management for the 2014-2020 programming period.<sup>159</sup>

The Commission furthermore recognises that, in theory, it would be useful to be able to estimate the levels of undetected fraud. However, given the data and tools currently available, it considers that such an estimate would be neither realistic nor reliable. It has therefore decided against making any such estimate. Rather, it bases its action on facts and uses the information and methods it considers most appropriate for its purposes.

The results of the Commission's estimates are published in the annual PIF Report.<sup>160</sup>

Many cases of suspicion of fraud or irregularity can be reported by informants or whistleblowers.<sup>161</sup> The CAFS provided for effective protection for such people.<sup>162</sup> To that end, 'Guidelines on Whistleblowing'<sup>163</sup> were issued in December 2012, providing guidance on how and when to report serious irregularities or suspected fraud. They highlight the protection of whistleblowers<sup>164</sup> acting in good faith. This protection includes confidentiality of the whistleblower's identity. The guidelines also include provisions on the consequences of malicious denunciations.<sup>165</sup>

As stated above (section 3), IDOC, in close cooperation with OLAF, has reviewed the 2012 Commission guidelines on whistleblowing. Outreach efforts in this area continue.<sup>166</sup> Some clarifications could still be made, in particular of practical aspects such as the identification of the service or official granting the whistleblower status or the right to make a request for assistance to ask for protection (Art. 22(c) of the Staff Regulation).<sup>167</sup> Lack of clarity makes whistleblower status less effective.<sup>168</sup> Information and communication on whistleblowing forms an integral part of the ethics presentations given by DG HR provide to Commission, EEAS and executive agency staff. More could be done to encourage staff to use that status. Indeed, staff are sometimes reluctant to denounce their colleagues.<sup>169</sup>

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<sup>159</sup> See Annex to the PIF Report: 'Statistical evaluation of irregularities reported for own resources, natural resources, cohesion policy, pre-accession and direct expenditure'.

<sup>160</sup> In particular in the Annex to the PIF Report: 'Statistical evaluation of irregularities reported for Own Resources, Natural Resources, Cohesion Policy, Pre-accession and Direct expenditure'.

<sup>161</sup> EU online survey – comments.

<sup>162</sup> Commission Anti-Fraud Strategy, Communication, COM(2011) 376 final, p. 15.

<sup>163</sup> Communication from Vice-President Šefčovič to the Commission on Guidelines on whistleblowing - SEC(2012) 679 final of 6 December 2012.

<sup>164</sup> A whistleblower is a member of staff, acting in good faith, who reports facts discovered in the course of or in connection with his or her duties which point to the existence of serious irregularities. The reporting should be done in writing and without delay. SEC(2012) 679 final, pp. 3-5.

<sup>165</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2014 PIF Report, SWD(2015) 153 final, p. 6.

<sup>166</sup> Activity Report of the Investigation and Disciplinary Office of the Commission (IDOC) 2016, p. 10

<sup>167</sup> Targeted interview with OLAF/0.1 and DG HR/IDOC.

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

An increasingly important way to detect fraud or irregularity is through data analysis of IT tools and databases. In recent years, the Commission has developed and improved the quality and efficiency of several databases:

- Arachne, a risk-scoring tool, was promoted by DG EMPL, DG REGIO and DG MARE for use by the Member States. They also provided training. Arachne, which is based on publicly available information, can be used to identify areas of higher risk to which national authorities need to pay more attention.<sup>170</sup>
- The Irregularity Management System (IMS), on which extensive training was provided, was updated recently, enabling the DGs implementing ESI funds during audits to use it in a standardised way.<sup>171</sup> Also, an interface exists between EDES and IMS which makes it possible for the EDES-user to check directly in IMS if a person is also mentioned in one or more fraudulent IMS-case(s).
- The CHARON and DAISY databases were developed on the basis of experience with PLUTO in the research sector. They are designed to identify fraud risks in EU-funded projects and to enable a better definition of fraud-risk audits complementing regular sample-based audits.
- In the field of revenue, Regulation 2015/1525<sup>172</sup> amending Regulation 515/1997 on mutual assistance between the national administrative authorities and the Commission, reinforced the existing framework by establishing centralised databases containing information on container movements and on goods entering, leaving and transiting through the EU. This helps improve the detection (and investigation) of suspected fraud or irregularities.<sup>173</sup>
- As stated above (*detection*), the establishment of plagiarism checks contributes to the effectiveness of fraud detection. Several DGs expressed a strong interest in using this IT tool, limiting risks related to externalised EU services and addressing reputational risks.<sup>174</sup>
- In addition to the administrative sanctions of exclusion and financial penalty, the EDES system still encompasses an early detection branch to monitor the behaviour of an operator about which suspicions have been expressed. No measures affecting that operator's rights can be taken on that basis, and the operator is notified that it has been

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<sup>170</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2013 PIF Report, SWD(2014) 248 final p. 9.

<sup>171</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2014 PIF Report, SWD (2015)153 final, p. 7.

<sup>172</sup> Regulation (EU) 2015/1525 of the European Parliament and of the Council of 9 September 2015 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, OJ L 243, 18.9.2015, p. 1–12.

<sup>173</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2015 PIF Report, SWD (2016) 239 final p. 6.

<sup>174</sup> Ibid. p. 5.

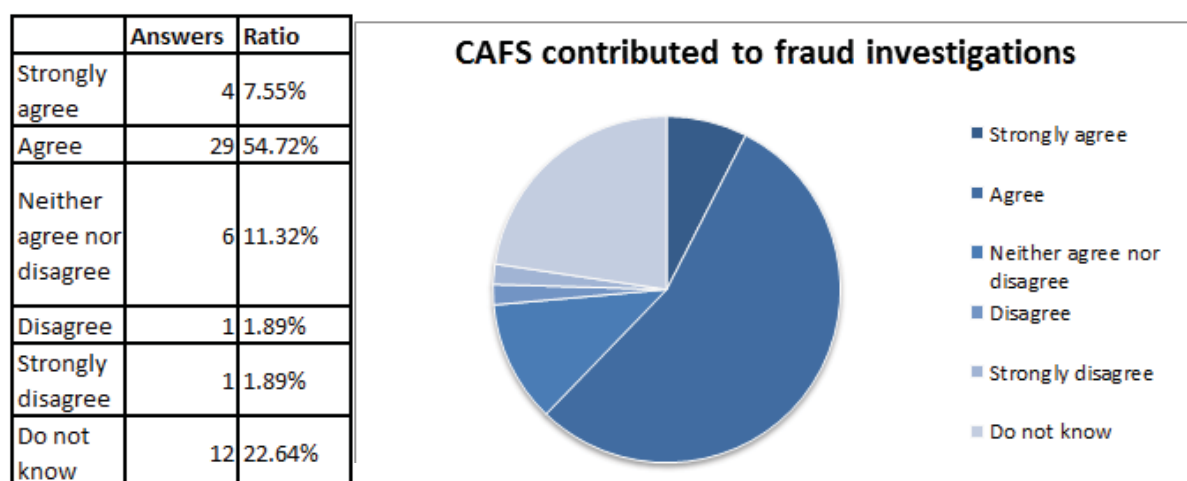
registered, unless by way of exception deferral where there are compelling grounds to preserve the confidentiality of investigations or national judicial proceedings.<sup>175</sup> Improvements will continue to be made, also in the light of the results of an ongoing IAS audit. The update of the CAFS could also provide an opportunity to smoothen cooperation between OLAF and Commission Services while an investigation is in progress.

- Member States can improve their detection capacity by means of a technical assistance tool funded under the Hercule programme. One example is systems that recognise container codes or vehicle number plates (automated number plate recognition systems) for purposes related to the PIF.

### 5.2.3 Investigations

***Q2.4) Did the measures implemented under the CAFS contribute to the investigation of fraud, corruption and other illegal activity against EU financial interests?***

Figure 9



Source: Online EU survey; number of respondents: 53.

The EU online survey revealed that some two thirds of stakeholders agreed that the measures taken under the CAFS contributed to the investigation of fraud, corruption and other illegal activities<sup>176</sup> detrimental to the EU's financial interests.

The CAFS provided for making OLAF investigations more efficient by promoting a consistent and timely flow of information between the Commission Services and OLAF. It stressed the importance of 'intensive cooperation between OLAF and other investigation services' in the context of internal investigations. The CAFS also noted the importance of identifying 'central contact point authorities' within EU and non-EU countries and international organisations, as well as the need for OLAF to be granted the powers and the

<sup>175</sup> Targeted interview with DG BUDG/D.EDES.

<sup>176</sup> Such as fraud, money laundering, active/passive corruption, embezzlement, trading in influence, favouritism /abuse of power; abuse of public procurement procedures.

effective tools necessary to investigate suspected fraud in EU-financed programmes and projects, for the purposes of the 2014-2020 MFF.<sup>177</sup>

The effectiveness of OLAF's investigation is primarily linked to the implementation of Regulation 883/2013 which has designed a new legal framework for OLAF and whose main objective was the improvement of the effectiveness of OLAF's investigations. The evaluation report on the application of Regulation 883/2013<sup>178</sup> confirms this. The CAFS in this regard supported the implementation of Regulation 883/2013 by designing a political framework enabling exchange of information and discussions. The implementation of the CAFS in this regard was reported in the Commission's annual reports on the protection of the EU's financial interests (PIF Report). The list below highlights the main elements of Regulation 883/2013 that have contributed to a better effectiveness of OLAF's investigations:

- On 1 October 2013, Regulation No 883/2013<sup>179</sup> (currently under revision<sup>180</sup>) governing the work of OLAF entered into force, replacing Regulation 1073/1999.<sup>181</sup> Articles 3(6), 4(8) and 7(6) of the Regulation reinforce OLAF's obligation to inform the institutions and bodies concerned by investigation and refer to the possibility of adopting appropriate precautionary measures to protect EU financial interests without delay, even during an investigation.<sup>182</sup>
- In its 2016 report,<sup>183</sup> OLAF gave a cross-cutting overview of statistics relating to its investigative work over 2009-2016. In 2012, it had undergone a substantial internal reorganisation reflecting changes in Regulation 883/2013 and speeding up the process of selecting incoming information. Overall, OLAF now conducts its investigations more effectively. This is confirmed by the findings of the report evaluating the implementation of Regulation 883/2013. That evaluation also reported that OLAF's case selection and investigations were now more efficient.<sup>184</sup>
- The adoption of Regulation 883/2013 established a basis for a better exchange of information between OLAF and its partners. Following its adoption, it appeared

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<sup>177</sup> Commission Anti-Fraud Strategy, Communication, COM(2011) 376 final, p. 14.

<sup>178</sup> Evaluation report, COM(2017) 589 final.

<sup>179</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248/1, 18.9.2013).

<sup>180</sup> Proposal for the Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations, COM(2018) 338 final, of 23 May 2018.

<sup>181</sup> Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 136/1, 31.5.1999.

<sup>182</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2013 PIF Report, SWD(2014)248 final, p. 10.

<sup>183</sup> OLAF Reports are available at: [https://ec.europa.eu/anti-fraud/about-us/reports/olaf-report\\_en](https://ec.europa.eu/anti-fraud/about-us/reports/olaf-report_en)

<sup>184</sup> Evaluation report on Regulation 883/2013, COM(2017) 589 final, p.3.

necessary to revise the rules governing the exchange of information on OLAF's internal and external investigations. As a result, the Commission and OLAF revised their Administrative Arrangements, signing new arrangements on 21 November 2018.<sup>185</sup> The Arrangements, which concern internal and external investigations, clarify the flow of information received from OLAF, as well as the flow of and the arrangements for access to the information provided by the Commission in the course of OLAF investigations.<sup>186</sup> The report evaluating the implementation of Regulation 883/2013 highlights the improved cooperation and exchange of information between Commission Services and OLAF.

- In line with Article 17(5) of Regulation 883/2013, the Director-General of OLAF defines the investigation policy priorities (IPPs) each year. The members of FPDNet members are consulted before the IPPs are adopted.
- As noted above (*detection*), the adoption of Regulation 2015/1525 improved the legal framework for not only the detection but also the investigation of customs fraud cases at EU and national level.<sup>187</sup>

However, comments in response to the EU online survey and targeted interviews<sup>188</sup>, plus the evaluation report on Regulation 883/2013 also identify some shortcomings. They note that an even more effective exchange of information at the right time is needed to enable Commission Services to take corrective or preventive measures.

Stakeholders say<sup>189</sup> more could be done to improve the way Commission Services supply information to OLAF.<sup>190</sup> OLAF is currently drafting a Charter for its contacts in the Services that will clarify their role, powers, responsibilities and prerogatives and set out its expectations as regards the provision of information.<sup>191</sup> Even if Commission Services scrupulously respect OLAF's independence during an investigation, they sometimes find that they do not receive information in time to act upon it (information linked to the knowledge of the desk officer responsible for that particular file; possibility to take mitigating measures) or to take precautionary measures.

Specific attention should be given to the TOR area, in terms of the scope of the CAFS following the results of the 2016 audit of the Commission's IAS on the *Performance and*

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<sup>185</sup> See Annex to the Communication to the Commission of 21 November 2018 on revision of administrative arrangements on co-operation and a timely exchange of information between the European Commission and the European Anti-Fraud Office, C (2018) 7705 final.

<sup>186</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2014 PIF Report, SWD(2015) 153 final, p. 8.

<sup>187</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2015 PIF Report, SWD(2016) 239 final, p. 6.

<sup>188</sup> Targeted interviews with DG BUDG/D.EDES, DG BUDG/B.3, DH HR/IDOC.

<sup>189</sup> EU online survey – comments and targeted interviews with OLAF/0.1.

<sup>190</sup> Targeted interview with OLAF/0.1.

<sup>191</sup> Ibid.



*coordination of anti-fraud activities in the TOR area*, the updated CAFS shall envisage additional emphasis on TOR.<sup>192</sup>

- The evaluation of Regulation 883/2013 stressed the need to clarify OLAF's mandate as regards investigations of suspected VAT fraud cases. Some stakeholders, meeting in the course of the CAFS evaluation, referred to the implementation of the PIF Directive, whose definition of offences against EU financial interests includes serious cases of cross-border VAT fraud above a threshold of €10 million.
- More detailed information on the results of fraud investigations and fraud patterns would enable the Services concerned (chiefly DG BUDG and DG TAXUD) to take them into consideration.<sup>193</sup> The Steering Group between DG BUDG, DG TAXUD and OLAF<sup>194</sup> is the forum in which to raise such issues. However, the Steering Group has not yet been working for long enough for its results to be evaluated.
- According to responses given in targeted interviews,<sup>195</sup> fraud and irregularities are now reported much more rapidly. Such information is sometimes shared in real time among EU countries and the Commission. One of the reasons for this is that DG BUDG's TOR inspection focuses more on patterns of fraud reported by OLAF or DG TAXUD or on DG BUDG's own analysis in the OWNRES database. This information can serve as evidence to prove that a CAFS objective – improved communication between Commission Services on fraud risks – has been achieved.<sup>196</sup>

As regards internal investigations:

- The evaluation report on the implementation of Regulation 883/2013 highlighted the importance of internal decisions of Institutions, bodies, offices and agencies (IBOAs) being fully consistent with the OLAF Regulation, as this may otherwise lead to divergent possibilities for OLAF to take action.<sup>197</sup>
- As far as IDOC and OLAF are concerned, the targeted interviews<sup>198</sup> held during this evaluation underlined that cooperation between the two has been more structured in the last few years. With an improved understanding of both Services' mandates and powers, only a few cases from OLAF have not been given a positive outcome by IDOC. There is no overlap of powers and no risk of parallel investigations. IDOC consults OLAF on any issues relating to the cases listed in the Administrative

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<sup>192</sup> PIF Report 2016, p. 10.

<sup>193</sup> Targeted interview with DG BUDG/B3

<sup>194</sup> This Steering Group was set up following the results of the 2016 IAS audit on the *Performance and coordination of anti-fraud activities in the TOR area*. Commission Staff Working Document, Summary of Executive summaries, Internal audit engagements finalised by the IAS in 2016, accompanying the Discharge Report, SWD(2017) 306 final of 15.9.2017.

<sup>195</sup> Targeted interview with DG BUDG/B.3.

<sup>196</sup> Commission Anti-Fraud Strategy, Communication, COM(2011) 376 final, p. 12.

<sup>197</sup> Evaluation report on Regulation 883/2013, COM(2017) 589 final, p.3.

<sup>198</sup> Targeted interviews with DG HR/IDOC and OLAF/0.1.

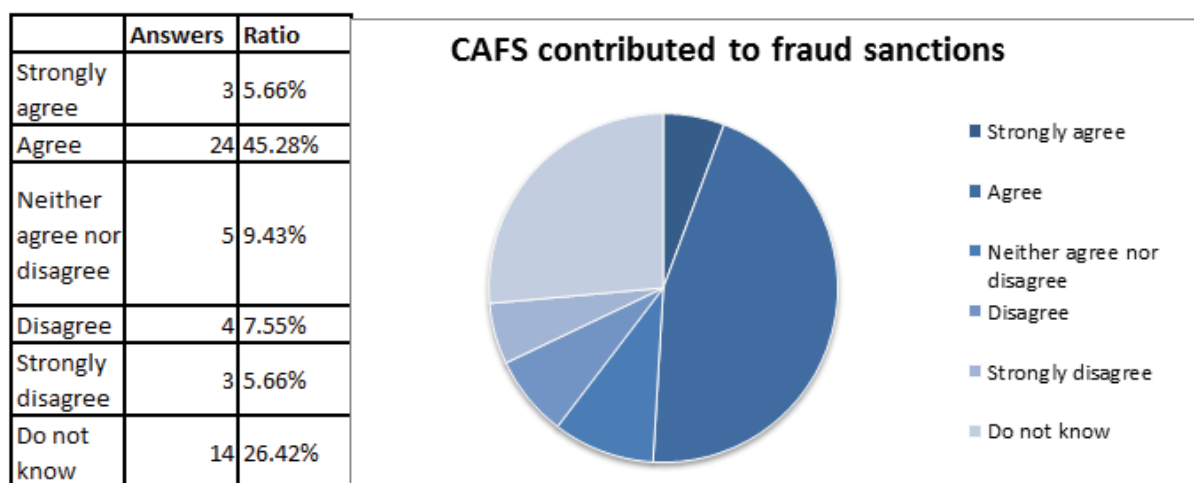


Arrangements. More could still be done, especially as regards the timing of the transmission of OLAF's decision to open (or not to open) a case. There have, however, been improvements in terms of substance and direct communication between OLAF and IDOC.<sup>199</sup> No data was available in the activity reports on the number of cases not opened by IDOC that were transmitted by OLAF, and vice-versa.

#### 5.2.4 Sanctions

**Q 2.5) Did the measures implemented under the CAFS contribute to the sanctioning of fraud, corruption and other illegal activity against EU financial interests?**

Figure 10



Source: Online EU survey; number of respondents: 53.

Over half of respondents to the EU online survey agreed that the measures taken under the CAFS helped penalise fraud, corruption and other illegal activities harmful to the EU's financial interests. The fact that over 35% of stakeholders said they either did not know, or they neither agreed nor disagreed, shows there is not enough information about sanctions or awareness of them at a certain level in Commission Services.

OLAF cannot sanction any person or any economic operator. It makes recommendations which can be disciplinary, administrative, financial or judicial. The responsibility to impose appropriate, adequate and proportionate sanctions lies with the competent administrative or judicial Member State authorities or the IBOAs' competent panel (disciplinary sanctions). The CAFS is designed to streamline and step up the use of financial and administrative penalties. It thus required procedures to provide higher standards of due process, using mechanisms that enable swift and independent action. In addition to adequate sanctions, convicted or administratively sanctioned persons must be effectively deprived of the proceeds of their offence, and defrauded resources must be recovered.<sup>200</sup> The CAFS also anticipated that the deterrent effect of disciplinary sanctions would be greater if the outcome of disciplinary proceedings were more effectively communicated. Such communication must,

<sup>199</sup> Targeted interview with DG HR/IDOC.

<sup>200</sup> Commission Anti-Fraud Strategy, Communication, COM(2011) 376 final, p. 8.

according to the CAFS Action Plan, be in compliance with the fundamental rights of the persons concerned and data protection rules.<sup>201</sup>

Since the CAFS' main focus in relation to effective sanctions is closely linked to OLAF's investigations and recommendations, other aspects should also be analysed to take account of new legislation and tools which affect the effectiveness of sanctions and thereby play an indirect role in implementing the objectives of the CAFS.

**Disciplinary recommendations** concern misconduct of EU staff or members of the EU institutions and are directed at the authority having disciplinary powers in the institution concerned. OLAF's recent reports give some details of how its disciplinary recommendations have been followed up. They confirm that the effectiveness of the follow-up and the quality of OLAF's recommendations has improved; between 2013 and 2015, 55% of OLAF's disciplinary recommendations were followed up by a decision taken by the competent authority. For 2015-2017, this figure was 75%. Increasingly, such decisions are measures taken by the disciplinary body: the percentage rose from just over 50% for 2013-2015 to almost 65% for 2015-2017.<sup>202</sup>

As stated above, cooperation between OLAF and the Commission's IDOC has greatly improved in recent years.<sup>203</sup> There are regular meetings between Unit A.1 of OLAF's Directorate A (internal investigations) and IDOC. This practice is now well established. IDOC gives OLAF an assessment of lessons learned from the cases the latter has transmitted and explains why certain cases do not require any follow-up.

However, if a criminal investigation at national or an administrative investigation at OLAF level is ongoing, IDOC (and other disciplinary bodies) cannot take a decision. Their procedure is then suspended, weakening the effectiveness of the sanctions and limiting their deterrent effect.<sup>204</sup>

As regards OLAF's **administrative recommendations**, its 2017 report gives an overview of changes in the number of administrative recommendations since 2009.<sup>205</sup> The figures show that more could be done.

In the direct management and indirect management areas, as already stated, the creation of EDES goes beyond the CAFS and includes under strict legal conditions the publication of sanctions, a tool to ensure a deterrent effect and prevent misuse of EU funds. In addition to having a preventive and detection effect, EDES<sup>206</sup> is a step towards more effective sanctions. It ensures:

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<sup>201</sup> Commission Anti-Fraud Strategy, Action Plan, COM SEC(2011) 787 final, p. 18

<sup>202</sup> 2015 OLAF Report, p. 30, and 2016 OLAF Report, p. 34; 2017 OLAF Report, p.44.

<sup>203</sup> Targeted interview with DG/HR.IDOC.

<sup>204</sup> Ibid.

<sup>205</sup> 2016 OLAF Report, p.50.

<sup>206</sup> Established on 1 January 2016 following the adoption of Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the European Union, OJ L 286, 30.10.2015 p1-29.

- (i) early detection of an economic operator representing risks to EU financial interests;
- (ii) the exclusion of unreliable economic operators from receiving EU funds (Article 136 of the FR);<sup>207</sup>
- (iii) and/or the imposition of financial penalties on such economic operators (Article 138 of the FR);
- (iv) the publication,<sup>208</sup> in the most severe cases, on the Commission's website of information about the exclusion and, where applicable, the financial penalty, to reinforce their deterrent effect (Article 140 of the FR).

Overall, the EDES system gives the Commission the option of taking actual decisions without having to await final judgment. Many stakeholders see this as a positive step towards making sanctions more effective.

As regards **judicial follow-up**, the CAFS acknowledged that OLAF's judicial recommendations did not always lead to the opening of criminal proceedings and that OLAF should cooperate with the national judicial authorities to ensure that they follow up cases as appropriate. OLAF's analysis of follow-up by national judicial authorities over 2010-2017 shows no change in effectiveness. The figures extracted from OLAF's report confirmed that the proportion of cases leading to indictments remains stable at about 45%. This is partly because the legal basis in Regulation 883/2013 for Member States to use OLAF's final case reports as evidence does not meet all Member States' requirements<sup>209</sup> and many national prosecutors have to repeat investigation activities already carried out by OLAF.<sup>210</sup> Furthermore, since OLAF's mandate is limited to administrative investigations, it cannot collect all the evidence that may be necessary for criminal proceedings. Finally, it is quite possible that national prosecutors do not always prioritise OLAF's cases.<sup>211</sup>

However, as noted by many stakeholders in the course of the evaluation, the Commission has introduced key legislative instruments to improve the effectiveness of judicial sanctions in cases of fraud affecting the EU's financial interests:

- The PIF Directive is a first step towards more effective sanctions. It will improve the prosecution and sanctioning of crimes against the EU's financial interests and facilitate recovery. It provides standard definitions of a number of offences against the EU budget and minimum rules on sanctions, including imprisonment for the most serious cases.<sup>212</sup>

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<sup>207</sup> See Section 5.2.2 of this Evaluation Report: Prevention and Detection.

<sup>208</sup> See Section 5.2.1 of this Evaluation Report: Deterrence.

<sup>209</sup> Evaluation Report on Regulation 883/2013, page 8.

<sup>210</sup> 2016 OLAF Report, p. 32.

<sup>211</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Better protection of the Union's financial interests: Setting up the European Public Prosecutor's Office and reforming Eurojust, COM(2013) 532 dated 17 July 2013, p.4

<sup>212</sup> See Council press release, 25.4.2017.

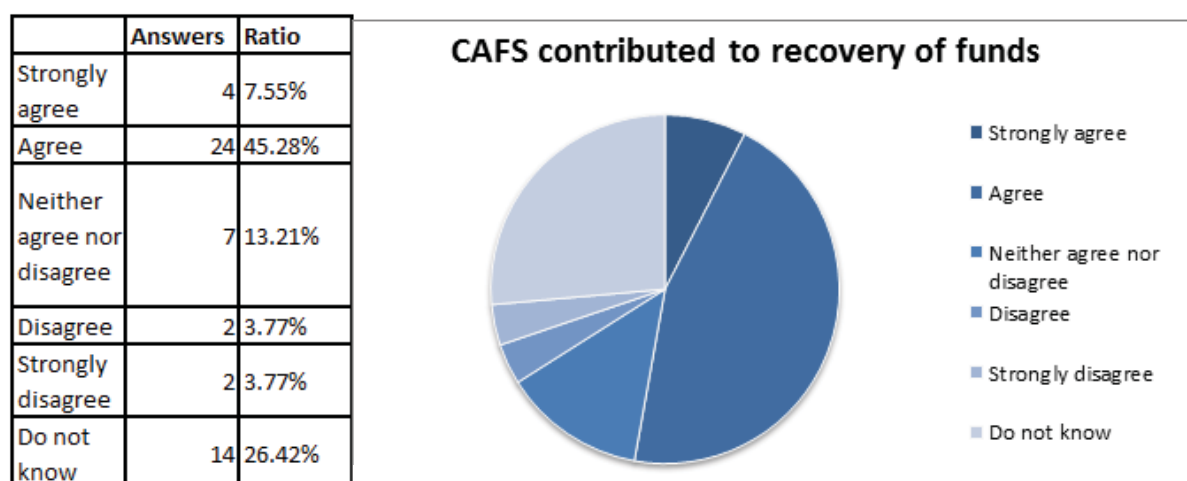
- The establishment of the EPPO will further improve the legal framework surrounding the protection of the EU's financial interests, covering the 22 participating Member States.

In the customs area, the CAFS (Action Plan) referred to a Commission legislative proposal for a Directive<sup>213</sup> covering the EU's legal framework for customs infringements and sanctions. The Directive has not yet been adopted but its objective is to ensure similar treatment of economic operators in all Member States. Currently, there are 28 different sets of legal rules, plus different administrative or legal traditions. This means the sanctions imposed on economic operators are not standardised and differ substantially from one country to another.<sup>214</sup> The proposal for a Directive is designed to provide for a list of standard infringements and for standard sanctions. The outcome will, however, depend on the legislative authority.<sup>215</sup>

### 5.2.5 Recovery

**Q 2.6) Have the measures implemented under the CAFS contributed to recover funds affected by fraud, corruption and other illegal activity against EU financial interests?**

Figure 11



Source: Online EU survey; number of respondents: 53.

According to the EU online survey, 53% of stakeholders agreed that the measures implemented under the CAFS contributed to effective recovery of funds. However, a small proportion of stakeholders thought the adoption of the CAFS had no influence on recovery performance or had not helped to make recovery (whether by the Commission or a Member

<http://www.consilium.europa.eu/en/press/press-releases/2017/04/25/new-rules-to-protect-eu-finances/>

<sup>213</sup> Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions, COM(2013) 884 final, 13.12.2013.

<sup>214</sup> Ibid., pp.2-3.

<sup>215</sup> 2016 Annual Activity Report, DG TAXUD, p. 51.

State) a higher priority.<sup>216</sup> Several stakeholders also said that to improve the effectiveness of recovery overall, reporting could be improved and the calculation of the amount to be recovered clearer.<sup>217</sup>

As regards recovery, the 2011 CAFS states the following:

- As regards shared management, the Member States are responsible for recovering any funds unduly paid;
- As regards direct management, Commission departments responsible for the recovery or its monitoring should issue recovery orders in good time and report back to OLAF.
- The Commission will further improve the completeness, quality and presentation of data on recoveries in its PIF report.

Recovery is the responsibility of the authorising officers by delegation.

Regulation 883/2013 on this matter sets out objectives similar to those of the CAFS: the authorities responsible must provide information on any action taken in response to OLAF's recommendations (recital 32); this includes recovery procedures. Given this obligation, the Commission has set up a reporting system to monitor the recovery of sums unduly paid. The Commission and OLAF analyse these data and present them in annual reports (PIF Reports, OLAF Reports).<sup>218</sup> The Commission publishes an annual report describing the functioning of the preventive and corrective mechanisms provided for in the legislation and the action taken by Commission departments to protect the EU budget. The Commission holds a supervisory role vis-à-vis the Member States.<sup>219</sup>

As regards direct expenditure, in order to ensure an accurate measurement of the recoveries, reliable data must be entered in good time so that ABAC<sup>220</sup> is efficient and fit for purpose. However, several Commission departments acknowledge that there is room for improvement to ensure a clear identification of OLAF cases when recoveries occur.<sup>221</sup>

The CAFS drew attention to the Member States' responsibility in the area of shared management of recovery. The sectoral legislation provides for a clear obligation of the

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<sup>216</sup> EU online survey – comments

<sup>217</sup> EU online survey – comments.

<sup>218</sup> Accompanying SWD on the CAFS implementation, Fight against fraud, 2014 PIF Report, SWD (2015) 153 final, p. 9.

<sup>219</sup> Report – 2016 Annual Management and Performance Report for the EU Budget, COM(2017) 351 final, p. 18.

<sup>220</sup> Direct management statistics are based on recovery orders issued by Commission Services recorded in the ABAC System. In 2016, ABAC recorded 49 recovery items classed as fraudulent, which accounted for EUR 6.25 million. As regards non-fraudulent irregularities, 1 861 recovery items totalling EUR 78 million were recorded in 2016. In 2016, following investigations in direct management areas, OLAF recommended the recovery of EUR 22.3 million. 2016 PIF Report, COM(2017) 383 final, p. 26.

<sup>221</sup> EU online survey – comments.

Member States in this field: they are required to prevent, detect and correct irregularities and recover amounts unduly paid, together with any interest on late payments.<sup>222</sup>

Under the sectoral rules on a first level, Member States send aggregated figures on recoveries to the relevant Commission departments. These are dealt with by the Report on the protection of the EU's financial interests (PIF Report). A second level corresponds to relations between Member States and final beneficiaries, which are not covered by the CAFS. However, the CAFS Action Plan proposed that OLAF took action to improve the effectiveness of the IMS in terms of detection and prevention. These developments touched indirectly upon the quality of the reporting of recoveries. OLAF's experience indicates that the quality of reporting has improved over time, thanks to ongoing targeted training and technical improvements.

In the event of a breach of applicable EU law or national law related to applying relevant EU law concerning the eligibility, regularity, management or control of operations and the corresponding expenditure declared to the Commission, the Commission, under circumstances described by EU legislation, imposes financial corrections on Member States.<sup>223</sup> It does this in addition to the recoveries conducted by Member States, for the purpose of safeguarding the EU budget.

As stated in the OLAF Report, OLAF makes **financial recommendations** to the Commission departments responsible for implementing EU funds and ensuring that the EU funds concerned are recovered. In 2017, it recommended recovery of EUR 3.09 billion (2016: EUR 631 million and 2015: EUR 888 million). EUR 187.3 million were recovered in 2015.<sup>224</sup> However, it shall be borne in mind that the amount of the overall EU Commission-wide financial corrections corresponds to a much higher number. The above-mentioned figures consist only in financial recoveries triggered by OLAF's financial recommendations.<sup>225</sup>

As mentioned in the CAFS Action Plan, to ensure efficient recovery in accordance with OLAF's recommendations, cooperation between OLAF and Commission Services needs to be well structured: OLAF's recommendations indicate an estimated amount to be recovered on the basis of the information available to it. AOD/contracting authorities should establish the actual amounts to be recovered on that basis. Stakeholders say some improvements are needed to ensure effective recovery.<sup>226</sup> To that end, OLAF recently issued new instructions on

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<sup>222</sup> See for example the Article 122, (2) of Regulation (EU) NO 1303/2013 of EP and of the Council with regard to ESI Funds.

<sup>223</sup> Report – 2016 Annual Management and Performance Report for the EU Budget, COM(2017) 351 final.

<sup>224</sup> 2015 OLAF Report, p. 33; and 2017 OLAF Report, p. 38.

<sup>225</sup> For further details see the 2016 Annual Management and Performance Report for the EU Budget page 8: *'In 2016, the total financial corrections and recoveries implemented amounted to EUR 3.4 billion, which is equivalent to 2.5 % of payments made. During the period 2010-2016 the average amount confirmed was EUR 3.3 billion or 2.4 % of the average amount of payments made from the EU budget, while the average amount implemented was EUR 3.2 billion or 2.3 % of payments'.*  
Also, see the 2017 AMPR, pages 95 and 96: *'In 2017, the total financial corrections and recoveries amounted to EUR 2.7 billion confirmed or EUR 2.8 billion implemented. This amount covers corrections and recoveries made during 2017 irrespective of the year during which the initial expenditure had been made'.*

<sup>226</sup> EU online survey – comments.

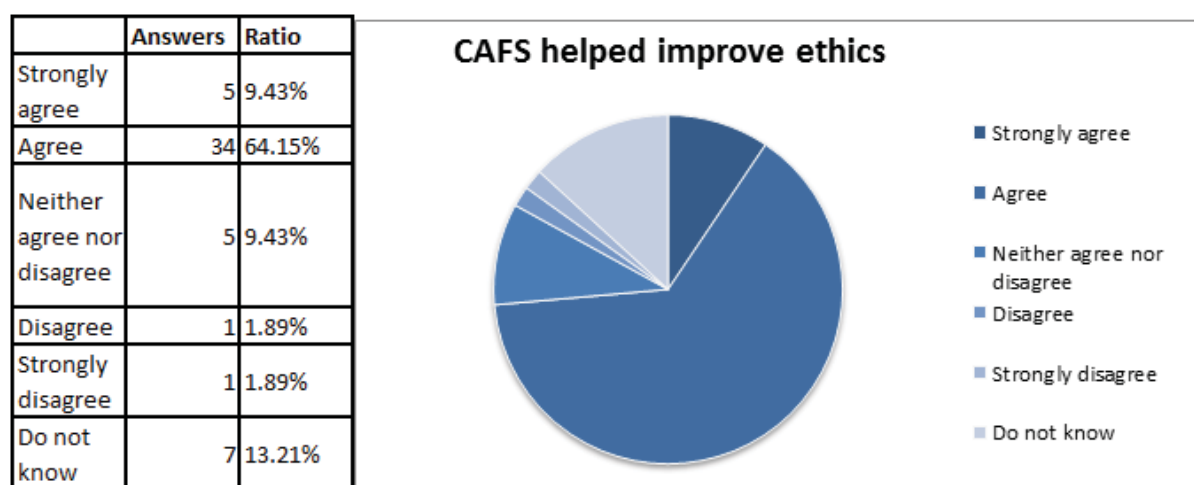


drafting financial recommendations and relevant sections of the final case report; it also revised its guidelines on financial monitoring and presented the revised guidelines in the context of the FPDNet. These new instructions are designed to clarify responsibilities within the Commission. OLAF continues to discuss this issue with the Commission Services.

### 5.2.6 Ethics and integrity

**Q 2.7) Did the measures implemented under the CAFS contribute to maintaining/enhancing ethics and integrity in the management of EU financial interests?**

Figure 12



Source: Online EU survey; number of respondents: 53.

74% of stakeholders agreed or strongly agreed that the measures taken under the CAFS helped improve ethics and integrity in the management of the EU's financial interests.

The CAFS set as a basic principle and priority that the Commission and the other authorities responsible for the management of EU funds must observe the highest standards of ethical behaviour and integrity. Their staff must comply with these standards and must be adequately trained both on the risks of fraud and the need to fight it. Therefore, the CAFS was designed to include anti-fraud measures in the area of ethics and integrity as well, with a focus on ethics training.<sup>227</sup> This evaluation shows that a lot has been achieved. According to stakeholders, the CAFS has had a direct positive influence in this area.

During the period of the CAFS implementation, it was stated in the Communication to the Commission from President Juncker and First Vice-President Timmermans on governance in the European Commission, that the Commission aims to pursue the highest standards. It expects its staff to maintain high standards of professional ethics.<sup>228</sup>

<sup>227</sup> See Commission Anti-Fraud Strategy, Communication, COM(2011) 376 final, p. 8, 9 and 16.

<sup>228</sup> Communication to the Commission from President Juncker and First Vice-President Timmermans, Governance in the European Commission, C(2017) 6915 final, 11.10.2017.



Since 1 January 2014, a number of changes have been made to ethics rules to clarify and modernise the rights and obligations of EU staff. These changes have taken place at Commission level to heighten ethics and integrity as it can be seen below. Developments in this area not only match with the CAFS Communication and Action Plan but also go beyond.

- Both Commissioners and Commission staff are required to act objectively and impartially in the interest of the EU and the public good. Both operate within a framework of principles and rules that govern their conduct with regard to ethics and integrity.<sup>229</sup>
- Ethics is given top priority in EU-funded research: all activities carried out under Horizon 2020<sup>230</sup> must comply with ethical principles and relevant national, EU and international legislation, such as the Charter of Fundamental Rights<sup>231</sup> of the European Union and the European Convention on Human Rights.<sup>232</sup>
- DG HR engages in systematic awareness-raising and training to promote ethical behaviour and create an ethical culture.<sup>233</sup> All Commission newcomers and managers receive ethics training.<sup>234</sup> IDOC gives a presentation on ethics which raises many issues, including conflict of interest and fraud.<sup>235</sup> Several stakeholders note that more training sessions are now being given and that it is important to ensure that the courses develop in line with the changing context.<sup>236</sup>
- DG HR's ethics unit and DG.HR/IDOC provide well-established training in a variety of ethics-related areas. They hold joint courses providing a comprehensive overview of ethics rules and the consequences of non-compliance. These joint training sessions target EU executive agencies, Commission DGs, and cabinets.<sup>237</sup> It is worth mentioning that both DG.HR/IDOC and DG HR's ethics unit are ready to assist non-executive agencies and other institutions or bodies with ethics and integrity, whenever feasible.<sup>238</sup>

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<sup>229</sup> [https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/codes-conduct\\_en](https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/codes-conduct_en)

<sup>230</sup> European Commission – Horizon 2020 on ethics:

<https://ec.europa.eu/programmes/horizon2020/en/h2020-section/ethics>

<sup>231</sup> European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, available at: <http://www.refworld.org/docid/3ae6b3b70.html>

<sup>232</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>

<sup>233</sup> Targeted interview with DG HR/E.3, DG HR/IDOC.

<sup>234</sup> Targeted interview with DG HR/E.3- Ethics.

<sup>235</sup> Targeted interview with DG HR/IDOC.

<sup>236</sup> EU online survey – comments.

<sup>237</sup> Ibid.

<sup>238</sup> Targeted interview with DG HR/E.3 – Ethics.

- Initiatives to raise awareness of ethics and anti-fraud matters are also an essential component of all anti-fraud strategies. Commission Services often ask OLAF to help with their anti-fraud training. For example, DG CONNECT has held anti-fraud training sessions for its staff and management with the assistance of OLAF. It has also worked with DG RTD to hold a training session on grant management and public procurement.<sup>239</sup>
- Advising on and encouraging a culture of ethics based on the rules laid down in the Staff Regulations in conjunction with secondary provisions is considered essential to improve professional ethics throughout the Commission. This is also a preventive measure to tackle the risk of fraud.<sup>240</sup>
- Both the Staff Regulations<sup>241</sup> and the Financial Regulation<sup>242</sup> provide for specific obligations as regards conflict of interest situations.<sup>243</sup>
- In the area of external action, guidelines relevant to ethics and integrity (a Code of Conduct and Discipline<sup>244</sup> for EU Civilian CSDP Missions) were introduced in 2016.<sup>245</sup>

Nonetheless, the evaluation showed several areas requiring improvement or more clarity regarding ethics and integrity at EU level.

For instance, half of the stakeholders who commented on the ethics question in the EU online survey said ethics and integrity went beyond any strategy, including the CAFS, being a question of culture and behaviour. They are not convinced that strategies can improve ethics and integrity, because they involve very different concepts and actors.<sup>246</sup> The cultural aspect of ethics and integrity in the Commission was also stressed by DG HR/E.3 Unit in a targeted interview.

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<sup>239</sup> EU online survey – comments.

<sup>240</sup> Ibid.

<sup>241</sup> Article 110 of the Staff Regulations.

<sup>242</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.

Formerly Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ L 298, 26.10.2012, pp. 1–96 (regarding conflict of interests that may arise in the context of budgetary actions.)

<sup>243</sup> Article 11(a) of the Staff Regulations and Article 61 of the Financial Regulation (formerly Article 57).

<sup>244</sup> Code of Conduct and Discipline for EU Civilian CSDP Missions, as adopted by the Foreign Affairs Council on 18 July 2016, 12076/16.

<sup>245</sup> EU online survey – comments.

<sup>246</sup> EU online survey – comments.

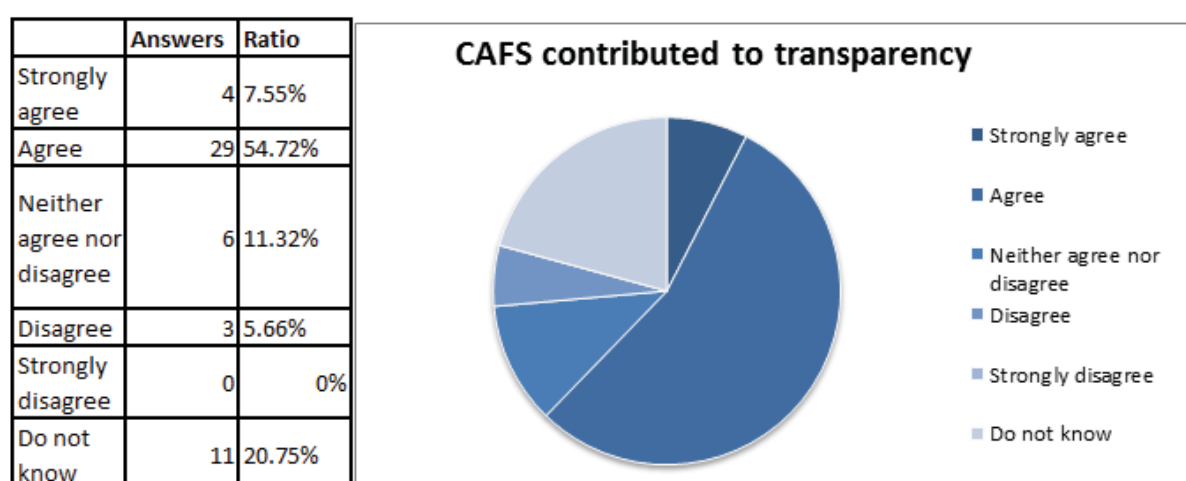
The evaluation also revealed that the Commission could do more in general to be more transparent and open about ethics and integrity in areas such as procurement procedures. Several stakeholders view the discontinuation of the anti-corruption report as a setback.<sup>247</sup> As noted during the targeted interview with DG HOME, it was clarified that the assessment of the anti-corruption measures taken by Member States continues in the context of the European Semester of economic governance, which has increasingly prioritised integrity and anti-corruption as effective judicial systems and anti-corruption frameworks are crucial to attract business and enable economic growth. It is against this background, in line with the general approach of this Commission to streamline processes and focus on key issues in the relevant fora that the Commission decided that the European Semester, which is the main economic policy dialogue with Member States, is the most appropriate policy instrument for systematically engaging with the Member States in this area.

Stakeholders also noted that at Commission level, the integration of the ethics teams in the account management centre (AMC) created some distance with the staff, making it more difficult for the ethics experts to have a full overview and thorough understanding of the individual characteristics of each Commission department. However, DG HR adapted to centralisation by stepping up its capacity to explain ethics rules to staff.<sup>248</sup> The recent further integration of the ethics correspondent into DG HR, as of 1 April 2018, is another change in the Commission's ethics landscape. It is too early to tell how this reorganisation will affect the effectiveness of the ethics policy.<sup>249</sup>

### 5.2.7 Transparency

**Q 2.8) Did the measures implemented under the CAFS contribute to enhancing transparency in, and access to, information on the management of the EU's financial interests?**

Figure 13



<sup>247</sup> EU online survey – comments.

<sup>248</sup> Targeted interview, DG HR/ E.3, Ethics Unit.

<sup>249</sup> Ibid.

*Source: Online EU survey; number of respondents: 53.*

The evaluation showed that 63% of stakeholders agreed that the CAFS helped improve transparency in and access to information on the management of the EU's financial interests.

Interestingly, 32% of respondents neither agreed nor disagreed, or did not know how to address this question. This percentage shows that significant numbers of the main stakeholders may not know enough about whether the CAFS as a policy document affects EU-level measures to do with transparency.

The 2011 CAFS emphasises access to information to ensure that EU finances are managed in a transparent way and in accordance with the applicable legal requirements; the public should have easy access to relevant information, including to information on how the Commission deals with interest representatives.<sup>250</sup>

On a general note, the Commission's relations with interest representatives consist in the following:

- As the Commission has the right of initiative in the EU legislative process, it is a natural target for interest representation with regard to a policy issue or a legislative initiative. On the one hand, interest groups operating in a healthy democratic system can provide valuable input in order to initiate and implement legislation and policies that take full account of the specificities of the domain concerned. On the other hand, they can represent a risk for an administration, as the staff involved in policy - making may - even inadvertently - be exploited for the purposes of a specific interest group with possible detrimental effects for the general interest of the Union.
- Transparency is a strong antidote to fraud and corruption. The Transparency Register is one of the key tools for implementing the Commission's commitment to transparency. The Register covers all activities carried out with the objective of influencing the law-making and policy implementation processes of the EU institutions. By revealing what interests are being pursued, by whom and with what level of resources, the Register allows for public scrutiny, giving citizens and other interest groups the possibility to track the activities and potential influence of lobbyists.
- The Inter-institutional Agreement between the European Parliament and the European Commission from 2014 sets out the rules and principles on which the Transparency Register is based. Today, the Register includes nearly 12 000 entities, which are all bound by the related Code of Conduct. This Code serves as a "moral compass" for lobbyists – setting out certain principles and norms of ethical behaviour in their contacts with EU officials and politicians.
- At very start of its mandate, the Juncker Commission decided that decision-makers at the political level (Commissioners) and those directly responsible for advising them (Cabinet members and Directors-General) would only meet with interest representatives which feature on the Transparency Register, and that information

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<sup>250</sup> Commission Anti-Fraud Strategy, Commission Staff Working Paper, Action Plan to fight against smuggling of cigarettes and alcohol along the EU Eastern border, accompanying the Commission Anti-Fraud Strategy, SEC(2011) 791 final, 24.6.2011.

about such meetings would be published proactively on their respective websites. These unprecedented commitments for the EU institutions represent a key element under the Democratic Change priority of this Commission. The transparency measures have enhanced the reputation of the Commission as an open public administration 'leading by example' and have led to a significant increase in the number of entities which have signed up to the Transparency Register and the associated Code of Conduct. Information on more than 18 000 meetings has been published on Europa since December 2014.

In addition, the 'Financial Transparency System', a website accessible to all, was created to include a database of beneficiaries of EU funds<sup>251</sup> implemented directly by the Commission or other EU bodies such as executive agencies, as well as beneficiaries of the European Development Fund (since 2010).<sup>252</sup>

Some stakeholders thought new Open Data Platforms<sup>253</sup> and e-government services such as e-procurement improved transparency.<sup>254</sup> These new trends were not a direct result of the CAFS<sup>255</sup>; they went beyond the current CAFS.

Several stakeholders said there was a need for a better structured more high-profile policy on transparency vis-à-vis external stakeholders.<sup>256</sup> It was suggested that more could be done in this respect. Internally, the FPDNet forum and the information available in the PIF Report could be used for this purpose.<sup>257</sup>

#### **5.2.8 Public procurement and grants**

***Q 2.9) Did the measures implemented under the CAFS contribute to a more robust anti-fraud capacity in the area of public procurement and grants funded (or part-funded) by the EU?***

*Figure 14*

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<sup>251</sup> [http://ec.europa.eu/budget/fts/index\\_en.htm](http://ec.europa.eu/budget/fts/index_en.htm)

<sup>252</sup> [https://ec.europa.eu/info/about-european-commission/service-standards-andprinciples/transparency/funding-recipients\\_en](https://ec.europa.eu/info/about-european-commission/service-standards-andprinciples/transparency/funding-recipients_en)

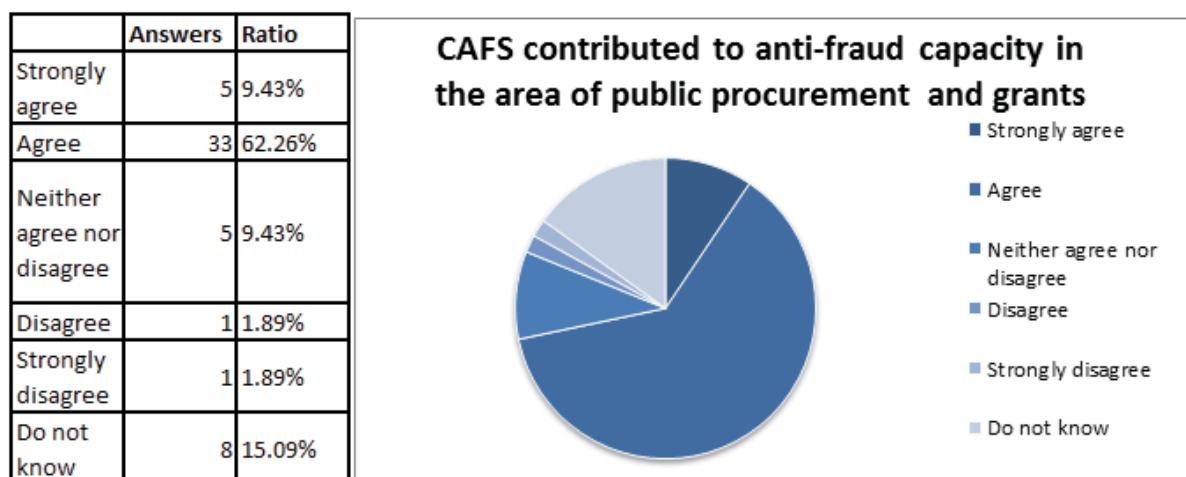
<sup>253</sup> Open Data Platforms provide access to data on financing and achievements under the ESI Funds for 2014-2020. The platform displays the latest data on over 530 programmes (Dec. 2016 for achievements, Sept. 2017 for finances implemented, daily updates for EU payments). (Source: <https://cohesiondata.ec.europa.eu/>).

<sup>254</sup> EU online survey – comments and targeted interview with DG GROW.

<sup>255</sup> EU online survey – comments.

<sup>256</sup> EU online survey – comments.

<sup>257</sup> Ibid.



Source: Online EU Survey; Number of respondents: 53.

The EU online survey showed that 72% of the stakeholders agreed or strongly agreed that the CAFS contributed to a more robust anti-fraud capacity in the area of public procurement and grants funded by the EU.

One of the priority actions of the CAFS covered the revision of the Public Procurement Directives<sup>258</sup> with a view to addressing the need for simplification while limiting the risks of procurement fraud in the Member States.

The revision of the Directives ensures simplification and increases transparency of procurement procedures: It has a stronger focus on fraud detection through the extension of the exclusion ground to cover collusion and a stronger focus on the concept of conflict of interest. The provision in the Directives on conflict of interest places a clear obligation on Member States to prevent, detect and remedy such conflicts. This includes the concept of perception of conflicts of interest,<sup>259</sup> an important tool that helps strengthen the means to combat illicit behaviour which could hinder the protection of the EU's financial interests.

By the end of 2018, all EU Member States had transposed the three Directives into national law.

Even though this evaluation report is not meant to assess the Directives' effectiveness, the fact that they were one of the CAFS' three priority measures justifies further analysis:

<sup>258</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26.2.2014 on the award of concession contracts; OJ L 94/1, 28.3.2014.

Directive 2014/24/EU of the European Parliament and of the Council of 26.2.2014 on public procurement and repealing Directive 2004/12/EC; OJ L 94/65, 28.3.2014.

Directive 2014/25/EU of the European Parliament and of the Council of 26.2.2014 on procurement by entities operation in the water, energy transport and postal services sectors and repealing Directive 2004/17/EC; OJ L 94/243, 28.3.2014.

<sup>259</sup> Targeted interview with DG GROW.



- The scope of conflict of interests has been widened to include the perception of conflict of interest. Some Member States go beyond the minimum requirements laid down in the Directives in this regard.<sup>260</sup>
- The creation of the European Single Procurement Document<sup>261</sup> (ESPD) contributes clearly and effectively to simplification and thus improves tenderers' access to public procurement throughout the EU.
- However, the added value of the freer use of negotiated procedures laid down in the Directives may have divergent effects: on the one hand, flexibility in using these procedures is more clearly framed, but on the other, it has also increased the risk of collusion or corruption. To mitigate this risk, the Commission monitors cases of negotiation procedures and uses them as red flags to detect suspicious cases of fraudulent procurement procedures.
- The Directives also integrated the European Court of Justice's jurisprudence on the modification of contracts, making the rules clearer.
- The setting up of the Tenders Electronic Daily (TED) database is the cornerstone of the Directives. It creates a platform that is accessible to all potential bidders. Although there is room for further improvement, TED is a useful database which also covers contracts, regardless of their amounts.

The introduction of e-procurement, as reflected in the revised public procurement Directives, is considered an effective step forward by the relevant stakeholders. It is designed to improve transparency, make decisions easier to trace, and improve confidentiality, and thus represents a move towards more effective protection of the EU's financial interests. E-procurement is also designed to lower costs, cut paperwork, improve data accuracy, and improve collaboration in the procurement process while making it more transparent.<sup>262</sup>

The Commission helps the Member States implement the Directives by raising awareness, sharing best practice, and encouraging Member States to set up contract registers.

It is also working with them to improve guidance documents on the reporting obligation stemming from the legislation.<sup>263</sup> Though the Directives introduce this obligation, they do not define its format or content. However, the Commission's efforts to set up voluntary activities with the Member States are sometimes thwarted by the rules governing procurement at EU level, which may be perceived as weaker.

Notably, however, the 2016 OLAF Report presented public procurement within the most striking trends in fraud regarding EU funds. OLAF's analysis revealed, for example, that

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<sup>260</sup> Targeted interview with DG GROW.

<sup>261</sup> The European Single Procurement Document (ESPD) is a Commission tool covering self-declaration of businesses' financial status, abilities and suitability for public procurement procedures. See: <http://ec.europa.eu/growth/single-market/public-procurement/e-procurement/espd/>

<sup>262</sup> Targeted interview, DG GROW.

<sup>263</sup> Under Article 83(3) of Directive 2014/24/EU on Public Procurement. OJ L 94, 28.3.2014, p. 65–242.



public procurement remains attractive to fraudsters, who use corruption and off-shore accounts as fraud facilitators.<sup>264</sup>

Moreover, some stakeholders stressed in the course of the evaluation that the development of electronic transmission of financial documents (in connection with the use of e-government tools) poses a significant risk. Examples include invoices and purchase orders, email exchanges relating to public procurement procedures, and the use of functional mailboxes. Moreover, the absence of authenticated signatures makes it more difficult to identify the person who approved the documents at a high enough level in the hierarchy. This constitutes a significant risk.<sup>265</sup>

As regards grants, Commission measures to improve the effectiveness of mechanisms to check grant procedures and transparency are closely linked with those governing direct management. EDES is a particularly useful tool in this area.

Some stakeholders were not convinced that simplified grants will help in combating fraud. They proposed that minimum requirements for databases and information should be standardised in order to track individuals (names, period of work, etc.), sub-contractors and activities. This can facilitate the effective treatment of relevant information effectively, enabling comparisons to be made among all Commission Services and their respective programmes.<sup>266</sup> Small grants also pose a definite fraud risk: even if the Commission has a zero tolerance approach, a suspected fraud with a small financial impact is unlikely to be closely examined (IPPs). However, while the financial risk may not be significant, the reputational risk could well be.<sup>267</sup>

The 2016 OLAF Report noted that research and employment grants provide opportunities for lucrative fraud, with double-funding and employment subsidy fraud becoming increasingly popular.<sup>268</sup>

About 10% of stakeholders thought that policy developments designed to simplify the grant management process, such as lump sums, flat rates, and promotion of a more trust-based checks environment, might lead to new fraud risks. They also said there was a need to find different ways to detect fraud to ensure adequate protection of the EU's financial interests with respect to grants.<sup>269</sup>

In conclusion, while the current and evolving legal and policy framework initiated at EU level around public procurement and grants has made good progress towards more simplification, transparency and efficiency, the results of OLAF investigations and analysis<sup>270</sup>

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<sup>264</sup> 2016 OLAF Report, p. 16.

<sup>265</sup> EU online survey – comments.

<sup>266</sup> EU online survey – comments.

<sup>267</sup> EU only survey – comments.

<sup>268</sup> 2016 OLAF Report, p. 3.

<sup>269</sup> EU online survey – comments.

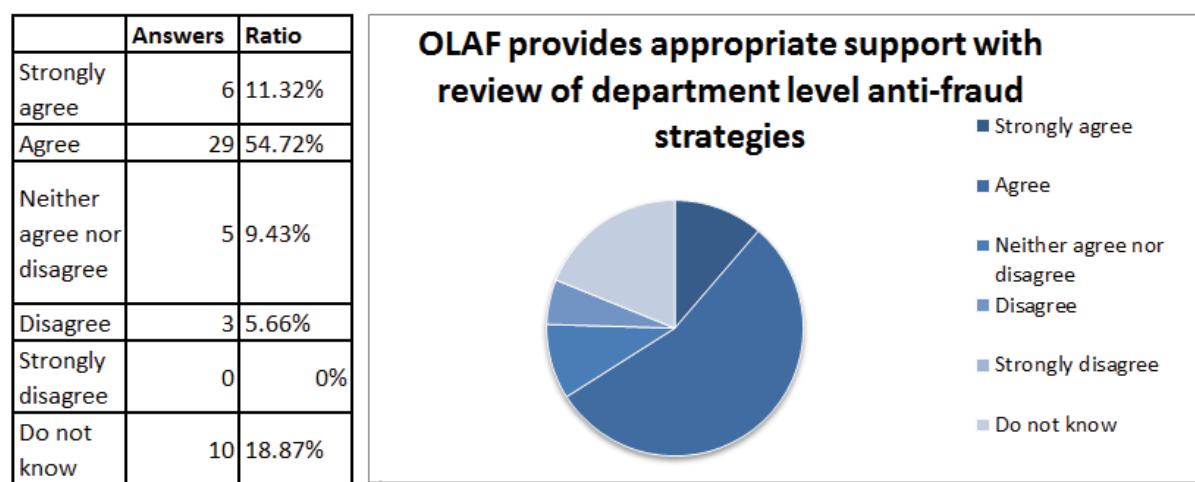
<sup>270</sup> See 2016 PIF Report, p. 12 and Annex on the Statistical Evaluation of Irregularities Reported for 2016: Own Resources, Natural Resources, Cohesion Policy, Pre-Accession and Direct Expenditure.

show that public procurement and grants are still vulnerable to corruption and fraud risks<sup>271</sup>. Updated measures taken under the updated CAFS should ensure that appropriate attention is given to new or recurrent risks in these areas.

### 5.2.9 OLAF's role in establishing anti-fraud strategies at department level

**Q. 2.12 Does OLAF provide appropriate assistance and support with establishing and regularly reviewing anti-fraud strategies at department level?**

Figure 15



Source: Online EU survey; number of respondents: 53.

66% of stakeholders said OLAF provided appropriate support with reviewing department-level anti-fraud strategies, while about 19% said they did not know. Stakeholders who said they disagreed with the statement were asked to say whether their department needed more or less assistance and guidance from OLAF and what kind of specific help or guidance was needed.

Replies varied. The EU online survey showed that guidance focuses too much on policies and grants. OLAF's efforts were acknowledged. However, if it played a more proactive role and showed more ability to liaise, this might improve the Commission Services' capabilities and resources. OLAF was also asked to step up its role in drafting legislation as much as possible.<sup>272</sup>

The evaluation showed that shared management DGs need more specific help from OLAF to design their fraud risk assessments, as their action in that area depends on the results of fraud risk assessments conducted by the Member States.

<sup>271</sup> 2016 PIF Report, p. 32.

<sup>272</sup> EU online survey – comments.

The general view is that it is appropriate for OLAF to provide help and support with drawing up and reviewing anti-fraud strategies at department level. Indeed, Commission Services would like it to take a more proactive role.

The IAS audit confirms this conclusion. On the basis of one of its recommendations, OLAF is now checking each Commission department's AAR and Strategic and Management Plan.<sup>273</sup>

### 5.3 Coherence

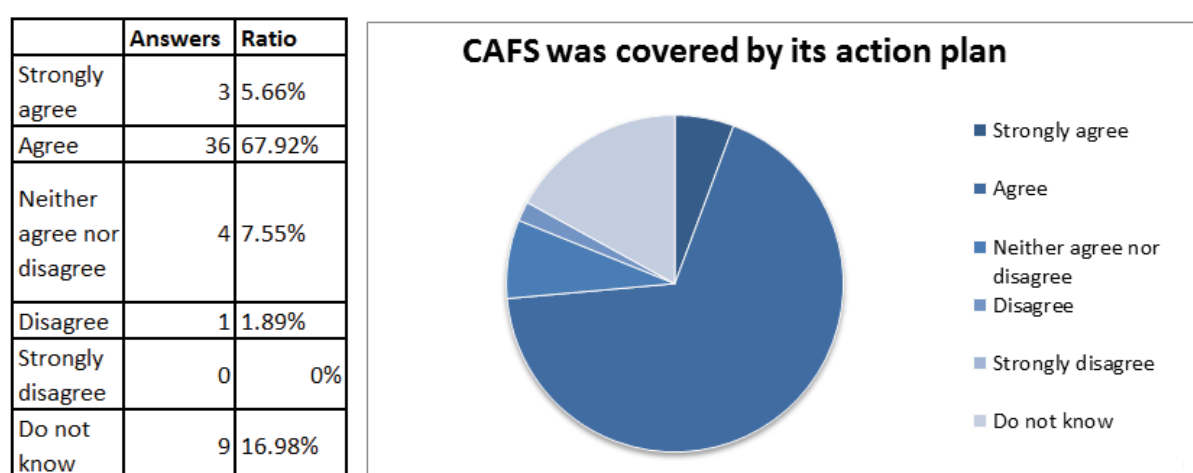
Evaluating coherence means examining how well various measures and actors work together. The quality may be internal or external.

#### 5.3.1 Internal Coherence

Examining internal coherence means examining the degree of coherence between measures presented by the CAFS (Communication and Action Plan). This means analysing the Plan's coherence.

#### *Scope and objectives of the CAFS vis-à-vis the Action Plan*

Figure 16



Source: Online EU survey; number of respondents: 53.

An indicative example of such an update was the new common anti-fraud strategy for the Research family (the 'RAFS'). The RAFS was adopted by the Research Common Support Centre's Steering Board on 18 March 2015. This anti-fraud strategy reflected the Commission's integrated approach in the research policy area as it applies to the spending research directorates-general in the research area and to four executive agencies (ERCEA, REA, INEA, EASME) and five joint technology initiatives (JTIs) - IMI, Clean Sky, FCH, BBI and ENIAC.

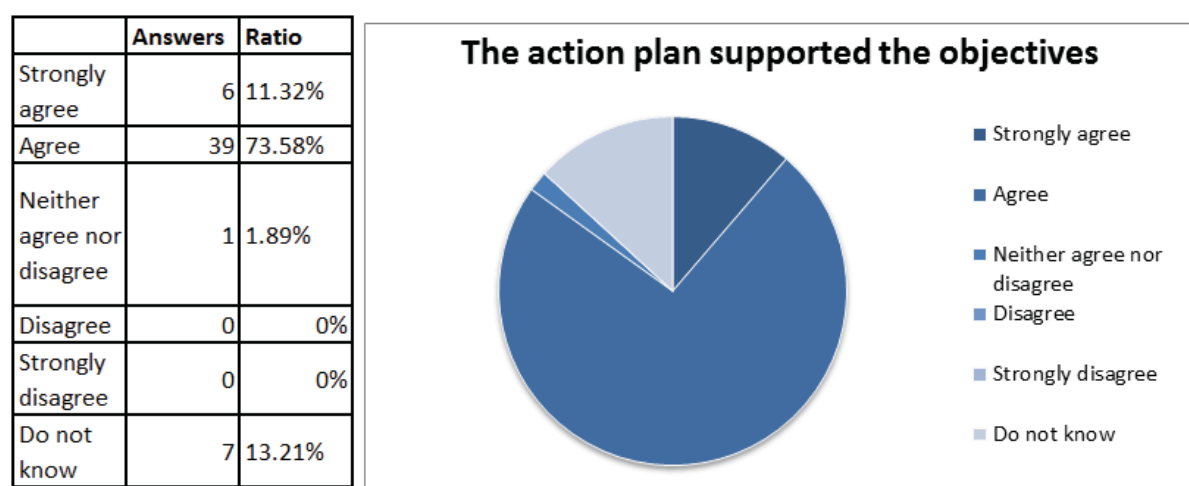
Moreover, one of the CAFS measures designed to raise awareness and provide training was set up by the Fraud Prevention and Detection Network (FPDNet). This network met four

<sup>273</sup> Audit on the adequacy and effective implementation of DG's anti-fraud strategies. Annual Report on internal audits carried out in 2015, COM(2016) 628 final, p. 10.

times in 2014 (and a total of 14 times between September 2011 and December 2014). Its aim, to share best practice, was pursued through presentations given by various Commission Services on their anti-fraud activities. Apart from the FPDNet, in which all Commission Services take part, individual Commission Services have been engaged in training and awareness-raising measures: fraud-related topics such as ethics training for newcomers, and fraud risk workshops to include staff in DGs' risk awareness.<sup>274</sup>

## Q 2.11) Did the Action Plan support the objectives of the CAFS?

Figure 17



Source: Online EU survey; number of respondents: 53.

85% of respondents to the EU online survey thought the Action Plan supported the objectives of the CAFS. None disagreed, and only a small percentage said they did not know. This shows that the CAFS and related Action Plan complemented each other, focusing on the same objectives. In addition, the 2016 PIF Report acknowledged that all CAFS measures had been implemented.<sup>275</sup>

### Coherence between CAFS measures

The figures illustrating the links between the Communication and the Action Plan, taken together with the comments made by the EU online survey respondents and the outcomes of the targeted interviews, show that the various measures taken under the CAFS are consistent with each other.

- Departmental anti-fraud strategies complement CAFS objectives. The CAFS provides Commission Services with guidance on developing their own anti-fraud strategies.

<sup>274</sup> Commission Staff Working Document on the Implementation of the Commission Anti-Fraud Strategy (CAFS) accompanying the Report from the Commission to the European Parliament and the Council – Protection of the European Union's financial interests – Fight against fraud, Annual Report 2014; SWD(2015) 153 final of 31 July 2015.

<sup>275</sup> 2016 PIF Report, p. 10.

- About half of the EU survey respondents viewed the implementation of EDES – the successor to EWS and CED, which, as explained above, is considered part of the CAFS – as consistent with the measures and objectives of the CAFS with regard to sanctions and its deterrent effect on fraudsters. However, one respondent pointed out a potential inconsistency: EDES calls for transparency, while potential cases of fraud investigated require confidentiality. This, however, is considered to be a very minor inconvenience or inconsistency as regards EDES.
- The mid-term evaluation report on the Hercule III financial programme confirmed that the programme scores well on all evaluation criteria and needs no major changes. The report also recommends that the next generation should include some improvements to the programme's current performance, especially as regards the expenditure side of the budget, tackling corruption and VAT fraud, improving cross-border cooperation and procuring technical equipment and making it available to national authorities. Both the current programme and the recommendations are entirely consistent with CAFS measures and objectives. The CAFS Action Plan is referred to in the Hercule programme as an 'action point', designed to step up fraud prevention and detection.

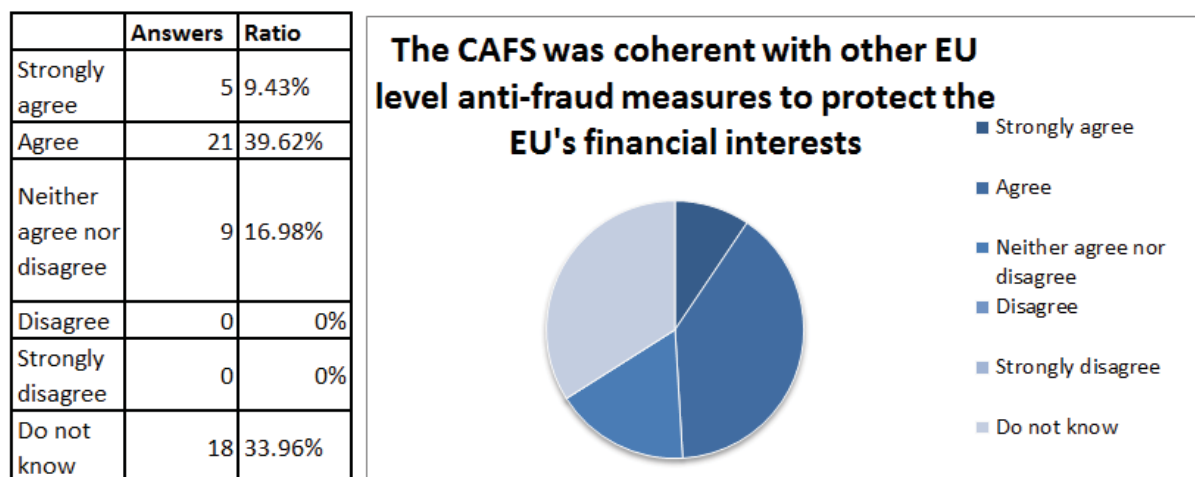
### 5.3.2 External Coherence

External coherence means whether the CAFS complements or interacts with other policies, legislation or measures taken at EU level to protect the EU's financial interests and improve anti-fraud measures. This was the CAFS' overall aim. It also involves cooperation among the various parties involved.

#### Coherence of measures to protect the EU's financial interests

***Q 4.1 Were the measures implemented under the CAFS coherent with other measures implemented at EU level to protect the EU's financial interests?***

Figure 18



Source: Online EU survey; number of respondents: 53.

The results of the question on external coherence in the e-survey show that while no respondents disagreed with the statement that the implementation of the CAFS was consistent with other policies designed to protect the EU's financial interests, just under half said they were consistent. The other half was undecided or didn't know. These results show that the CAFS does not seem to have had the visibility and weight needed for its measures to be clearly linked to policies. . Even though the CAFS was designed to initiate certain measures to be taken through its Action Plan, stakeholders did not strongly agree that the CAFS was directly linked to anti-fraud measures taken at EU level. Therefore, for future policies, CAFS would need more visibility to its primary stakeholders so as to facilitate a greater balance between its purposes and measures envisaged on the one hand, and the actual initiatives taken at EU level on the other.

The main legislative developments introduced since 2011 to protect the EU's financial interests which complement the CAFS or serve a similar purpose are:

- the revision of the original OLAF Regulation in 2013 (Regulation 883/2013), based on Article 325 TFEU, and currently under revision;<sup>276</sup>
- the Directive on the fight against fraud by means of criminal law, adopted in July 2017; and
- the EPPO Regulation, adopted in October 2017.

The current legislative landscape is consistent with the CAFS, thanks mainly to the Financial Regulation and Regulation 883/2013; the former includes the main anti-fraud provisions, in line with the objectives of the CAFS. As regards OLAF's legal framework, established by Regulation 883/2013, the evaluation report on the Regulation confirms OLAF's overall operational results have improved substantially. This is in line with the objectives of the CAFS.

This changing landscape underlines the increasing importance of the area, as these new policies constitute decisive progress towards a stronger clampdown on fraud, corruption and other illegal activities harmful to the EU's financial interests.

Even if EDES was not part of the CAFS as such, its implementation clearly complements the measures set out in the CAFS and matches its objectives. As the system is still fairly new, a few improvements are needed to smooth out cooperation between the DGs involved in terms of quality and the timely exchange of information. Overall, however, the system works and is consistent with the CAFS.

The three directives on public procurement adopted in 2014 have improved transparency, strengthened anti-fraud and anti-corruption provisions, introduced monitoring and reporting obligations, and facilitated e-procurement<sup>277</sup>. The latter was made mandatory in October 2018.<sup>278</sup> This should curb procurement fraud and other serious irregularities, even if more

<sup>276</sup> COM(2018) 338 final of 23 May 2018.

<sup>277</sup> See Article 45 of Directive 2014/23/EU; Article 82 of Directive 2014/24/EU; and Article 99 of Directive 2014/25/EU.

<sup>278</sup> 2016 PIF Report, p. 32.



needs to be done in the area of e-procurement.<sup>279</sup> This is entirely consistent with the measures and objectives laid down in the CAFS, including a provision that the revision of the directives should simplify and increase transparency of procurement procedures at all levels, the EU and the Member States.<sup>280</sup> In view of the above, in October 2017, the Commission adopted a public procurement strategy focusing on six priority measures<sup>281</sup> to improve EU public procurement practice. Priority 4 highlights the importance of reliable data for the sound analysis that underpins needs-driven policy-making, and thus the need to make more efficient use of funds, including EU funds.

Stakeholders from OLAF and DG HR/IDOC acknowledged that IDOC's and OLAF's measures are mutually consistent. They noted that there had been an improvement in cooperation and information sharing between OLAF and IDOC, as well as with the Services concerned.

Many key EU measures have only an indirect link with the protection of the EU's financial interests, but nevertheless match its objectives.

#### Anti-corruption policies and legislation

- The Commission's anti-corruption efforts focus on the following: mainstreaming anti-corruption provisions in EU cross-cutting and sectorial legislation and policy; monitoring performances in Member States' effort to combat corruption; supporting the implementation of national anti-corruption measures through funding, technical assistance and experience-sharing; and improving the quantitative evidence base for anti-corruption policy. The Commission has taken action to ensure that anti-corruption provisions are an integral part of all relevant legislative instruments<sup>282</sup>
- The EU anti-corruption report<sup>283</sup> adopted in 2014 demonstrated that the nature and scope of corruption vary from one EU country to another and that the effectiveness of anti-corruption policies is quite different. The Report also showed that corruption deserves greater attention in all EU countries. Since then, the EU Anti-Corruption Report has served as the basis for dialogue with national authorities while also informing broader debates across Europe. All EU countries have designated a national contact point to facilitate information exchange on anti-corruption policy. Together with the [anti-corruption experience-sharing programme](#) launched by the Commission

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<sup>279</sup> Ibid.

<sup>280</sup> CAFS Communication, p. 17.

<sup>281</sup> Wider inclusion of innovative, green and social procurement; professionalisation of public buyers; increased access to procurement markets; improved transparency, integrity and quality of data; boost of the digital transformation of procurement; stronger cooperation to procure together. [http://ec.europa.eu/growth/single-market/public-procurement/strategy\\_en](http://ec.europa.eu/growth/single-market/public-procurement/strategy_en)

<sup>282</sup> An overview of the Commission's anti-corruption work is available at [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption_en)

<sup>283</sup> Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report, COM(2014) 38 final, 3.2.2014.



in 2015, these efforts have encouraged national authorities to better implement laws and policies against corruption.

This has contributed to an enhanced protection of the EU financial interests.

- In 2016 the Commission adopted an Action Plan to strengthen the fight against terrorist financing including three proposals: a Regulation for mutual recognition of asset freezing and confiscation orders;<sup>284</sup> a new Directive to criminalise money laundering<sup>285</sup>; and an amended Regulation on controls of cash movements entering or leaving the EU<sup>286</sup>. These initiatives aim at inter alia preventing money laundering and facilitating investigations into money laundering offences thereby; enhancing the deterrent effect. The scope of this multi-fold initiative may cover fraud cases<sup>287</sup> involving EU Funds and thus contribute indirectly to the protection of the financial interests of the EU. The Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders was adopted on 14 November 2018, the Directive 2018/1673 on combating money laundering by criminal law was adopted on 23 October 2018 and the amended Regulation on cash controls was adopted by the Council on 2 October 2018.

### Whistleblower protection

On 23 April 2018, the Commission adopted a package of measures to strengthen whistleblower protection as a means of uncovering unlawful activities and helping to enforce EU law. The package includes a proposal for a directive aiming to guarantee a high level of protection for whistleblowers who report breaches of EU law by setting new, EU-wide standards. The new law will establish safe channels for reporting, both within an organisation and to public authorities. It will also protect whistleblowers against dismissal, demotion and other forms of retaliation, and require national authorities to inform the public and provide training for public authorities on how to deal with whistleblowers.<sup>288</sup> The Commission's new initiative is in line with the CAFS provision according to which, whistleblowers, witnesses and informants need easy, secure and fast procedures for reporting fraud.

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<sup>284</sup> Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders, COM(2016) 819 final, 21.12.2016.

<sup>285</sup> Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law, COM(2016) 826 final, 21.12.2016.

<sup>286</sup> Proposal for a Regulation of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005, COM(2016) 825 final.

<sup>287</sup> See Q&A note on the proposal for a Directive on countering money laundering by criminal law: "International conventions and FATF recommendations require the inclusion of a number of offences as predicate offences for money laundering such as terrorism, (...), fraud, corruption and tax crimes. Source: [http://europa.eu/rapid/press-release\\_MEMO-16-4452\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-4452_en.htm)

<sup>288</sup> Proposal for a Directive of the European Parliament and the Council on the protection of persons reporting on breaches of Union law (SWD(2018) 116 final) – (SWD(2018) 117 final)

These elements contribute to the general anti-fraud policy and match the CAFS' overall objectives. The measures taken under the CAFS and the priority given to combating fraud and corruption have helped to improve information sharing and cooperation between Services, which now complement one another better.<sup>289</sup>

As regards external consistency, the CAFS stated that the Commission would pursue its efforts to improve the legal instruments for cooperation with non-EU countries and international organisations and to ensure that these are properly implemented and applied. This may include incorporating provisions on information-sharing and cooperating at operational level, including joint investigations, into international agreements and memoranda of understanding, in line with existing regulations on investigations.

In view of the above, the following were implemented:

- Joint customs operations (JCOs) help protect the EU's financial interests. They bring together national authorities, and/or OLAF, and/or Europol. JCOs are brief, coordinated and targeted operations implemented by customs authorities to combat illicit cross-border trafficking in goods.<sup>290</sup>
- Customs: Implementation of the EU Customs Code<sup>291</sup> forms the centrepiece of a customs union that runs smoothly, with full digitalisation of all customs procedures. One of the main objectives of the measures taken by customs authorities is to protect the financial interests of the EU and its Member States. Through its Customs 2020 financing programme, the Commission ensures that national customs administrations are well equipped with modern, automated electronic systems. The Commission adopted a communication on 21 December 2016<sup>292</sup> that highlighted the need for closer cooperation between customs authorities to deliver the benefits of the ongoing changes, mainly in relation to the full implementation of the UCC.<sup>293</sup> Additionally, in May 2018, the decision on financial risk criteria and standards was adopted to reinforce a common approach to risk based controls at the external border.
- VAT: The adoption, in October 2018, of a Council Regulation on administrative cooperation and combating VAT fraud complements the measures and objectives of the CAFS by providing new tools to make the EU VAT system more fraud-proof and close loopholes in the system of importing goods into the EU, which can lead to large-

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<sup>289</sup> Targeted interview with IDOC, Ethics, awareness raising and training (comments).

<sup>290</sup> 2016 OLAF Report, p. 24.

<sup>291</sup> The UCC entered into force on 30 October 2013, although its most substantive provisions took effect from 1 May 2016.

<sup>292</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Developing the EU Customs Union and its Governance, COM(2016) 813 final, 21.12.2016.

<sup>293</sup> [https://ec.europa.eu/taxation\\_customs/general-information-customs/eu-customs-strategy\\_en](https://ec.europa.eu/taxation_customs/general-information-customs/eu-customs-strategy_en)

scale VAT fraud. The new Regulation (EU) 2017/2454 of 5 December 2017<sup>294</sup> amending Regulation 904/2010 on administrative cooperation and combating fraud in the field of VAT, is designed to step up cooperation among Member States and between national tax authorities and EU bodies (OLAF, Europol and EPPO), and to improve information-sharing between tax and customs administrations.<sup>295</sup>

- Many international agreements contain provisions on mutual administrative assistance in customs matters. These cover over 75 partner countries.
- Preferential tariff agreements contain measures to enforce preferential instruments (called anti-fraud clauses), including with some major trade partners (Japan, the USA, Mexico, Mercosur, Ukraine, Tunisia, etc).<sup>296</sup>
- Looking at external consistency on a larger scale, the agreement boosting VAT cooperation between the EU and Norway, signed on 6 February 2018,<sup>297</sup> is a significant step towards the protection of the EU's financial interests that goes beyond the measures covered by the CAFS and its Action Plan. Article 1 states that its objective is: *'to establish the framework for administrative cooperation between the Member States of the Union and Norway, in order to enable the authorities responsible for the application of VAT legislation to assist each other in ensuring compliance with that legislation and in protecting VAT revenue'*.<sup>298</sup>

Finally, Regulation (EU) 2015/1525<sup>299</sup> amending Regulation (EC) 515/97<sup>300</sup> on mutual administrative assistance in customs matters provides for the creation of two centralised databases containing information on container movements and on goods entering, leaving and transiting the EU, to improve detection and investigation of customs fraud at EU and national level.<sup>301</sup>

## 5.4 Efficiency

***Q.3.1) To what extent were the measures implemented under the CAFS achieved at a reasonable cost in terms of the financial and human resources deployed?***

<sup>294</sup> Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax; OJ L 348, 29.12.2017, p. 1.

<sup>295</sup> Press release of the Council dated 2 October 2018: <https://www.consilium.europa.eu/en/press/press-releases/2018/10/02/vat-fraud-council-adopts-measures-to-boost-administrative-cooperation/>

<sup>296</sup> 2016 PIF Report, p. 20.

<sup>297</sup> Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax; <http://data.consilium.europa.eu/doc/document/ST-14390-2017-INIT/en/pdf>

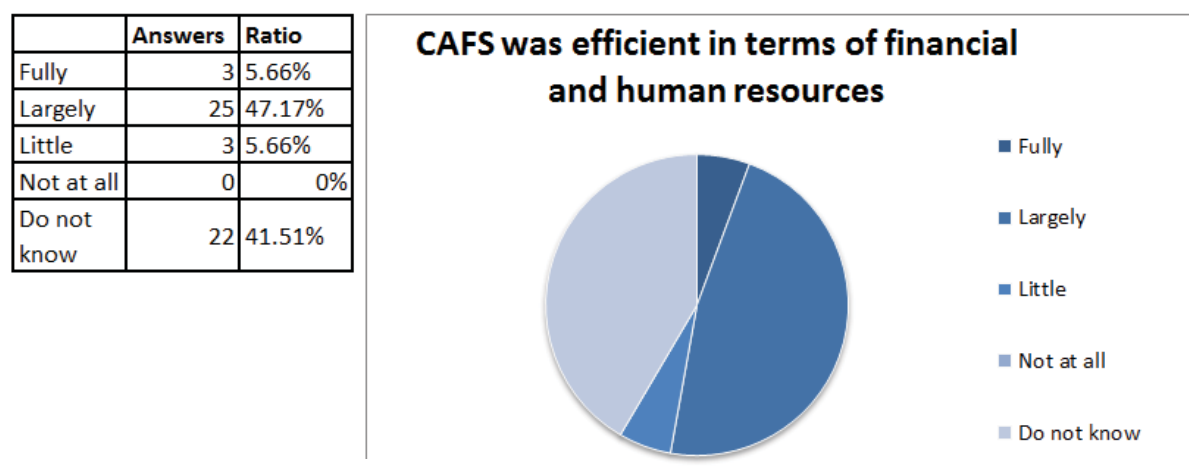
<sup>298</sup> Ibid. p. 5.

<sup>299</sup> OJ L 243, 18.09.2015, p. 1.

<sup>300</sup> OJ L 82, 22.3.1997, p. 1.

<sup>301</sup> [ec.europa.eu/anti-fraud/sites/antifraud/files/regulation1525\\_main\\_elements\\_en.pdf](http://ec.europa.eu/anti-fraud/sites/antifraud/files/regulation1525_main_elements_en.pdf)

Figure 19



Source: Online EU survey; number of respondents: 53.

By adopting the CAFS, the Commission envisaged reaching its objectives without creating additional layers of checks or administrative burdens. The CAFS focused solely on Commission Services. Neither the CAFS nor its Action Plan had any direct impact on EU or non-EU countries, or on other EU institutions, nor did it have any financial or administrative impact on businesses. This is why the evaluation covered only stakeholders within the Commission, with a particular focus on the Commission departments, executive agencies and the EEAS represented in the FPDNet.

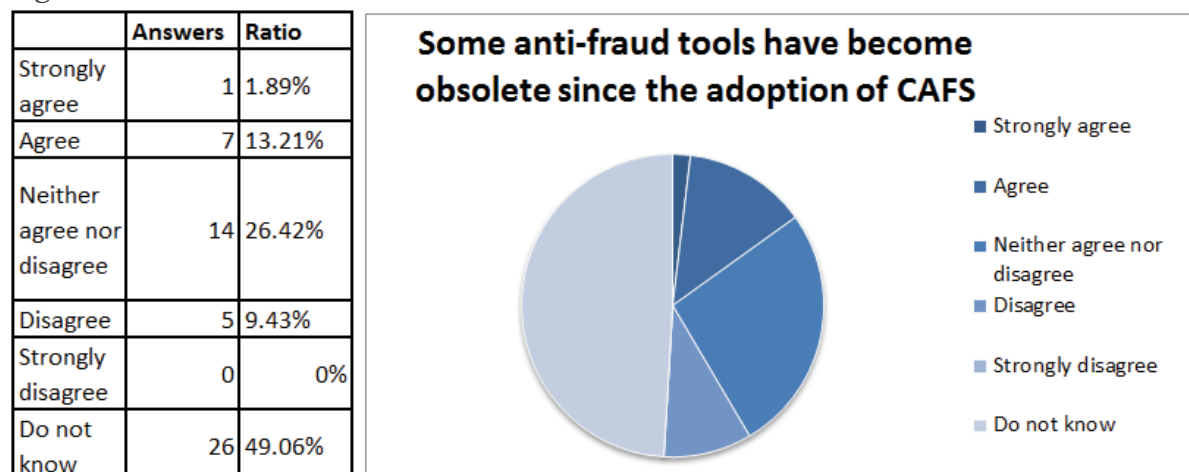
Although it is difficult to put an exact figure on the number of full-time equivalents (FTEs) responsible for implementing the CAFS, most of the 30 respondents who provided a number said that between 0.5 and 2 FTEs per department were assigned to this task. Some respondents gave a much higher number (OLAF: 250 FTEs), but this figure covers FTEs of staff working on measures with no direct bearing on the CAFS.

However, some stakeholders said that in general not enough human resources were assigned to dealing with anti-fraud matters. The same could be said of the financial resources allotted to certain IT tools which could be improved or modernised (such as TED for public procurement<sup>302</sup>).

***Q.3.4) Have any tools to prevent and fight fraud, corruption and other illegal activities against the EU's financial interests become obsolete since the adoption of the CAFS on 24 June 2011?***

<sup>302</sup> Targeted interview with DG GROW.

Figure 20



Source: Online EU survey; number of respondents: 53.

It was difficult for stakeholders to say whether some of the tools for which the CAFS make provision had become obsolete; 75 % either did not know or neither agreed nor disagreed. However, like any other area, the CAFS has developed in a changing context, especially as regards the development of technological tools (IT databases, awareness-raising materials matching changes in IT,<sup>303</sup> TED<sup>304</sup>). Furthermore, as the 2016 OLAF Report notes, investigative tools have become more innovative and OLAF has beefed up its analytical and forensic tools.<sup>305</sup> Figure 20 clearly shows that almost half of stakeholders consulted through the EU online survey were not aware of or did not know the added value or state of play of the existing anti-fraud tools used at Commission level since the adoption of the 2011 CAFS. The conclusion is that anti-fraud tools must both remain up-to-date and be given a higher profile among primary stakeholders in Commission Services.

Some stakeholders also said it would be useful to upgrade certain tools currently used only in certain Services so that they could be used throughout the Commission. One example is the research tool used for copyrights/plagiarism.

Comments in response to the EU online survey also make it clear that references to tools which are to be incorporated in the CAFS when it is updated should cover EDES and the tools used to monitor the new financial instruments.

## 6. CONCLUSIONS

### Relevance

- The evaluation has shown that the objectives of the CAFS have proven relevant and remain so. In times of scarce resources, and taking into account a changing European

<sup>303</sup> EU online survey – comments focus mainly on IT tools.

<sup>304</sup> Targeted interview with DG GROW.

<sup>305</sup> 2016 OLAF Report, p. 36.

context (e.g. new MFF), these objectives are even more relevant and may well face new trends and challenges.

- The CAFS is a useful policy document providing for a structured, holistic approach within the Commission, to ensure that it meets its treaty obligation to counter fraud, corruption and any other illegal activity affecting the EU's financial interest.
- The evaluation concludes that to enhance the protection of the EU financial interests, more could be done so that the CAFS also covers more the revenue side of the EU budget, especially in light of new legislative developments, especially in the area of VAT.
- A more visible role of OLAF, a stronger cooperation between the Commission Services would give more weight to the CAFS and its objectives.

### *Effectiveness*

- The evaluation has confirmed that the nature of the challenges or issues Commission Services face when taking action on fraud prevention, development of risk assessment and other anti-fraud matters differ according to the type of funds managed.
- Deterrence: The above statement is particularly true when it comes to assessing the CAFS' deterrent effect; where shared management funds are concerned, the gap between an internal policy (CAFS) and the end-beneficiaries is too large for the CAFS to affect the final beneficiaries' behaviour. For funds directly managed by the Commission, EDES is seen as representing progress; the publication of financial and administrative penalties seems to be a potential deterrent. Anti-fraud training heightened awareness of anti-fraud issues and boosted the deterrent effect of the measures taken. To boost this further, effective communication on sanctions, either disciplinary or through EDES (which was one of the measures introduced for this purpose), needs to be further improved.
- Prevention and detection: According to the evaluation, the CAFS has paved the way for improved prevention and detection of fraud through the implementation of its three main priorities. These are: incorporating anti-fraud provisions in EU spending programmes; developing individual, bespoke anti-fraud strategies at Commission department level; and revising the public procurement directives.
  - Prevention: The CAFS has helped improve anti-fraud training and awareness-raising and cooperation between Commission Services and between the Commission and Member States. It has achieved this through the establishment of relevant ISSGs, COCOLAF, workshops, the drafting of anti-fraud guidelines and handbooks, and frequent exchange of best practices. Cross-cutting measures like awareness-raising and training (especially covering ethics and integrity), combined with appropriate anti-fraud strategies and risk assessments, have helped make staff more aware of anti-fraud matters and had a positive impact on anti-fraud policy, in line with the CAFS' objectives.



- Detection: The need to develop more methodologies to measure fraud (indicators) was raised during the evaluation. Also, the evaluation has shown that IT tools play an increasingly important role in detecting fraud (as well as in fraud investigations) and in communicating information between Services or partners. In recent years, the Commission has developed and improved the quality and efficiency of several databases such as IMS and Arachne. As underlined in this evaluation, the importance of data analysis is increasing and such analysis should be more used.
- Investigations: OLAF's investigations were improved by the organisation's revised legal framework, altered by the adoption of Regulation 883/2013. The main improvements were to organise OLAF in a more structured way and improve the framework for exchanging information between OLAF and the Commission Services and with national authorities. This assessment is confirmed by the evaluation of Regulation 883/2013.
- Stepping up cooperation between OLAF and the Commission Services remains a priority. This includes sharing clear information in good time. Cooperation between IDOC and OLAF is an example of good practice.
- Sanctions: Disciplinary sanctions could be more effective and more could be done to publicise such sanctions on staff. The outcome of disciplinary proceedings could be better communicated. Interviews with IDOC and desk research confirmed that safeguards are in place to ensure respect for fundamental rights.
- The framework governing whistleblowers in the Commission was shown to be adequate in terms of the provisions in place. However, more could be done to clarify which department is responsible for granting whistleblower status.
- Recovery: The recovery of funds needs improvement. The CAFS has had relatively little impact. Both the measures taken by the various parties concerned and the structure of the information provided when following up a fraud case need clarification.
- Ethics and integrity: The CAFS stated that the senior echelons of the Commission must inform all staff thoroughly and regularly of the rules and ethical values applicable to the Commission and that appropriate training must be provided. This has been achieved. The evaluation has provided evidence that DG HR has organised systematic ethics training and awareness-raising throughout the Commission. Ethics and integrity was a recurrent issue brought forward by stakeholders during the evaluation and it remains an area to be dealt with heightened attention by the updated CAFS.
- Transparency: The objectives set out in the CAFS dealing with improving transparency have been adequately met, with the endorsement of e-government, including e-procurement, and the establishment of transparency registers including publicly available details of the management of EU finances. Training in this area still needs to be enhanced in order to ensure stronger awareness. It was also not always possible to identify that the initiatives taken for strengthening transparency were



stemming from the CAFS or whether the CAFS itself had a direct effect on the measures taken to improve transparency in the EU.

- It may thus be concluded that while the current and evolving legal and policy framework initiated at EU level surrounding public procurement and grants remain areas where corruption and fraud risks continue to occur. Updated actions in the framework of the updated CAFS should ensure that new or recurrent risks in these areas acquire the relevant attention.
- OLAF's role: The evaluation showed that shared management DGs need more specific help from OLAF to design their fraud risk assessments, as their action in that area depends on the results of fraud risk assessments conducted by the Member States. OLAF is expected to provide more assistance with drawing up and reviewing anti-fraud strategies at department level. During the evaluation, Commission Services voiced their support for such a new role.

### *Coherence*

- Internal coherence: The CAFS is a policy document enabling Commission Services to coordinate their anti-fraud measures and initiatives. The evaluation takes a positive view of efforts to develop individual, sectoral anti-fraud strategies tailored to Commission Services' needs. These strategies were seamlessly linked with the CAFS.
- Measures synchronised with the CAFS on the one hand, setting a general direction and developing key priority measures, and the Action Plan on the other, and which give targeted commitment to Commission Services in line with their individual context and specific characteristics, proved to be a useful way to work in a coherent manner within the Commission. Both had a complementary role.
- Stakeholders acknowledged the FPDNet's central role as a useful forum for discussing and sharing best practices among Commission Services.
- Policy and legislative initiatives taken at EU level seem to be consistent with the CAFS' objectives, as they include anti-fraud components and clauses. Nevertheless, the evaluation also underlined a lack of clear link between the CAFS and policy or legal developments at EU level. The updated CAFS should aim at ensuring a stronger connection between the design of new policies or legislation and the objectives of the CAFS.
- Stakeholders highlighted the ongoing and forthcoming changes in the anti-fraud landscape, which need to be taken into account when developing anti-fraud strategies and new policies at department or Commission level. This has to do mainly with the implementation of the PIF Directive (designed to step up the fight against fraud, corruption and other crimes affecting the EU's financial interests, including serious cross-border cases of VAT fraud) and the setting-up of the EPPO, a new institution with a remit to investigate, prosecute and bring to justice perpetrators of criminal offences affecting the EU's financial interests.

### *Efficiency*

- CAFS implementation was meant to be cost-neutral and avoid imposing any additional administrative layers on Commission Services. However, some stakeholders said the human resources assigned to anti-fraud matters were generally inadequate.

Overall, this evaluation shows that the Commission's Anti-Fraud Strategy is a useful policy tool which, given its wide scope and coverage of areas relevant to anti-fraud measures, can serve as a basis for a constructive and increasingly robust anti-fraud policy throughout the Commission.

Its added value lies in the fact that it can serve as a basis for the Commission Services to develop and modernise their own anti-fraud strategies, safeguarding thus, the EU budget across the different Commission domains.

The evaluation showed that new trends and concepts such as cyber-fraud, e-commerce, food fraud, leakage of information, new concepts of tax fraud and the acceleration of globalisation and transnational financial flows frequently occur and may potentially involve EU funds.

## ANNEXES

### Annex 1: Procedural information

This annex provides procedural information. It explains how the evaluation was managed in terms of organisation and time.

#### A1.1 Lead DG

European Commission, European Anti-Fraud Office (OLAF).

#### A1.2 Organisation

The evaluation roadmap was published on 28 September 2017 and set out the context, scope and aim of the evaluation. The roadmap presented the questions to be addressed under the five categories of effectiveness, efficiency, relevance and coherence.

An Inter-Service Steering Group (ISSG) was set up to support the evaluation. The tasks of the ISSG were to follow-up on the evaluation procedure and to monitor the evidence gathering and stakeholder consultation process, to review the progress of the SWD.

The ISSG was the Fraud Prevention and Detection Network (FPDNet). This network comprises representatives of all Commission Services, executive agencies and the European External Action Service (EEAS) (as an observer). Its role is to steer activities to do with implementing the CAFS. It meets four times a year and is a major discussion forum in which participants share information and best practice. For the purposes of the evaluation, the ISSG met four times in between 2017 and 2018. The tasks of the ISSG were to check the key elements of the evaluation, to support and monitor the evidence gathering and stakeholder consultation process and to review the SWD.

The Commission did not procure an external contractor in support to the evaluation. It was carried out internally by OLAF Unit D.2.<sup>306</sup>

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<sup>306</sup> Mrs Gwenn Belbeoch (OLAF D.), Mrs Christiana Makri (OLAF D.2) and Mr Pal Madarassy (OLAF D.2).

### A1.3 Timetable

Date	Description
19 September 2017	Establishment of the ISSG
19 September 2017	1 <sup>st</sup> ISSG meeting: Draft consultation strategy for the evaluation of the CAFS. Survey of internal stakeholders only (Commission services and executive agencies as well as the EEAS).
28 September 2017 – 26 October 2017	Publication of evaluation roadmap for feedback.
14 December 2017	2 <sup>nd</sup> ISSG meeting: State of Play: online-survey results and targeted interviews.
26 November 2017	EU online survey completed. 53 replies received.
October 2017 – March 2018	Interviews of specific internal stakeholders (services the tasks of which are related to the protection of financial interests of the EU and/or anti-fraud).
22 February 2018	3rd ISSG meeting: state of play on the evaluation and progress on targeted interviews and draft SWD.
24 April 2018	4th ISSG meeting: SWD presented to the ISSG for feedback.
18 December 2018	Inter-service consultation for the adoption of the SWD was launched.

### A1.4 Exceptions to the Better Regulation Guidelines

The evaluation criterion 'EU added value' was excluded from the scope of the evaluation.

Targeted interviews and a questionnaire, given the scope of the CAFS, were considered as an appropriate and proportional means of consultation rather than an open public consultation. Considering that the public at large could not be considered as directly impacted by the provisions of the CAFS, or responsible for their application, or possessing specific evidence needed for the evaluation, an open public consultation was not carried out.

## **Annex 2: Synthesis report of stakeholder consultation**

This annex provides a synthesis of the stakeholder consultation that was carried out for this evaluation by OLAF D.2. It presents the main steps and findings of the consultation of interested parties and stakeholders in compliance with better regulation guidelines.

### **A2.1 Feedback on evaluation roadmap**

The evaluation roadmap was opened for feedback to stakeholders in September 2017 during the course of the evaluation. No feedback was received.

### **A2.3 Targeted consultations – overview of stakeholders consulted**

This section presents an overview of different stakeholder groups consulted via an online survey and targeted interviews.

A total of 62 stakeholders were consulted through targeted interviews and an online survey: 9 were consulted through targeted interviews and 53 through the online survey.

EU Commission departments staff were the most represented within the stakeholder consultation. The table below provides a breakdown of categories of Commission services consulted.

Commission services were consulted to understand their role vis-a-vis measures taken under their remit during the implementation of the CAFS. The interviewees were asked to provide information on whether and how the CAFS had a direct or indirect impact on the measures taken and identify any shortcomings as well. Stakeholder coverage of the Commission DGs is presented in the table below.

	Stakeholders consulted through targeted interviews	Replies to the online survey
AGRI	-	5
BUDG	2	3
CLIMA	-	1
CNECT	-	1
DEVCO	-	1
DGT	-	1
DIGIT	-	1
EAC	-	1
EACEA	-	1
EASME	-	2
EMPL	-	4
ENER	-	1
ERCEA	-	2
ESTAT	-	2
FISMA	-	1
FPI	-	1
GROW	1	-
HOME	1	-
HR	2	4
INEA	-	1
JRC	-	1
MARE	-	1
MOVE	-	2
NEAR	-	1
OIB	-	1
OLAF	2	3
OP	-	1
REA	-	3
REGIO	-	2
RTD	-	1
SANTE	-	1
SCIC	-	1
TAXUD	1	2
<b>Total</b>	<b>9</b>	<b>53</b>

## A2.4 Targeted consultations – overview of consultation activities

The targeted consultation of stakeholders was carried out through in-depth interviews, an online survey and meetings of the ISSG. These tools allowed for collecting information from various stakeholders and were complementary.

### A2.5.1 Targeted interviews

Nine targeted interviews were conducted with a diverse range of stakeholders (DGs) to better understand the needs and expectations of the users of this evaluation and to enhance the study



team's understanding of the CAFS functioning and performance to date. The interviews were conducted by OLAF staff members (D. and D.2) without the assistance of external consultants. The interviews' questions were based on measures included in the CAFS Action Plan under the responsibility of the interviewed service/unit. The interviews' questions covered the areas of relevance, effectiveness, efficiency, coherence. Also, the interviews included questions about potential new baseline (post-CAFS implementation) and new trends.

The findings from these interviews informed the contextual analysis and the evaluation approach in particular.

#### **A2.5.2 EU online survey**

The EU online survey was launched in November 2017 and made available to all Commission Services and Executive Agencies – as well as the EEAS. The EU online survey endeavoured to answer the following over-arching questions:

- *To what extent did the objectives and the actual measures implemented under the CAFS correspond to the needs related to the protection of the financial interests of the Union?*
- *To what extent did the measures implemented under the CAFS contribute to the individual objectives formulated in the CAFS?*
- *To what extent were the measures implemented under the CAFS achieved at a reasonable cost in terms of financial and human resources deployed?*
- *To what extent were the measures implemented under the CAFS coherent with other measures implemented at EU level in the area of the protection of the financial interests of the Union?*
- *To what extent would the measures implemented under the CAFS have been designed and implemented without the backing of a CAFS?*
- *What measures that were not provided for in the CAFS were implemented in the area of protection of financial interests?*
- *Which of those measures resulted from the continuous fraud risk assessment mandated by the CAFS?*
- *Which new risks or typologies of fraud were identified after the adoption of the CAFS?*
- *Which new measures or tools to prevent, detect and generally fight fraud were identified after the adoption of the CAFS?*

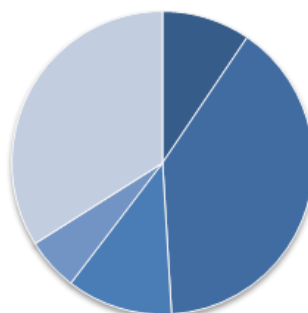
The EU online survey allowed for the gathering of experience and information on gaps, difficulties and new trends in the area of fraud to the detriment of the budget of the EU.

### A2.5.2.1 EU online survey results

The EU online survey was filled by 53 respondents from DGs and Executive Agencies. Based on the aggregated results the following tables were presented:

	Answers	Ratio
Strongly agree	5	9.43%
Agree	21	39.62%
Neither agree nor disagree	6	11.32%
Disagree	3	5.66%
Strongly disagree	0	0%
Do not know	18	33.96%

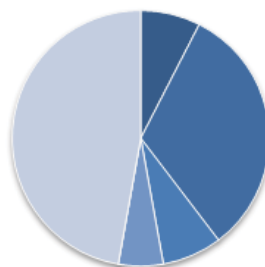
#### New fraud trends and risks have emerged since the CAFS was adopted in 2011



- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Do not know

	Answers	Ratio
Strongly agree	4	7.55%
Agree	17	32.08%
Neither agree nor disagree	4	7.55%
Disagree	3	5.66%
Strongly disagree	0	0%
Do not know	25	47.17%

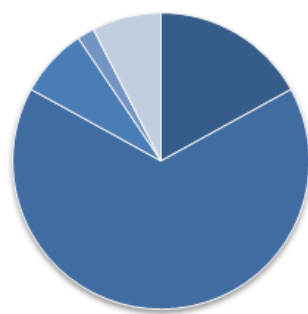
#### Since the CAFS was adopted, there have been new concepts and tools to fight against fraud



- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Do not know

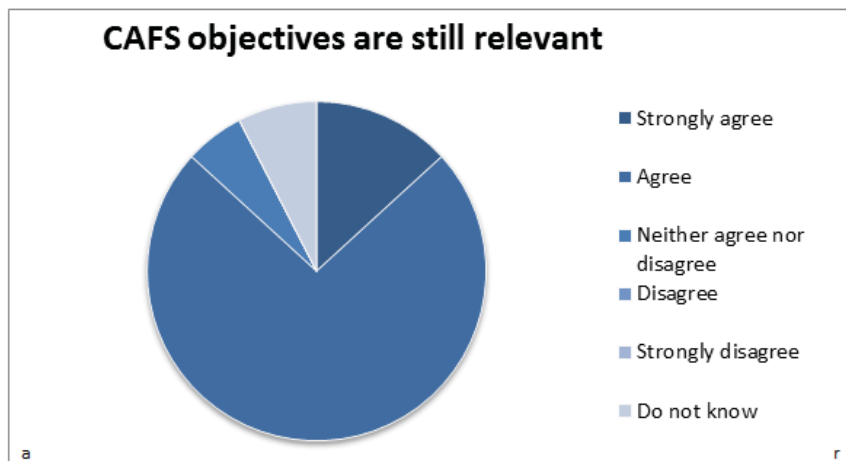
	Answers	Ratio
Strongly agree	9	16.98%
Agree	35	66.04%
Neither agree nor disagree	4	7.55%
Disagree	1	1.89%
Strongly disagree	0	0%
Do not know	4	7.55%

#### CAFS objectives and measures matched needs

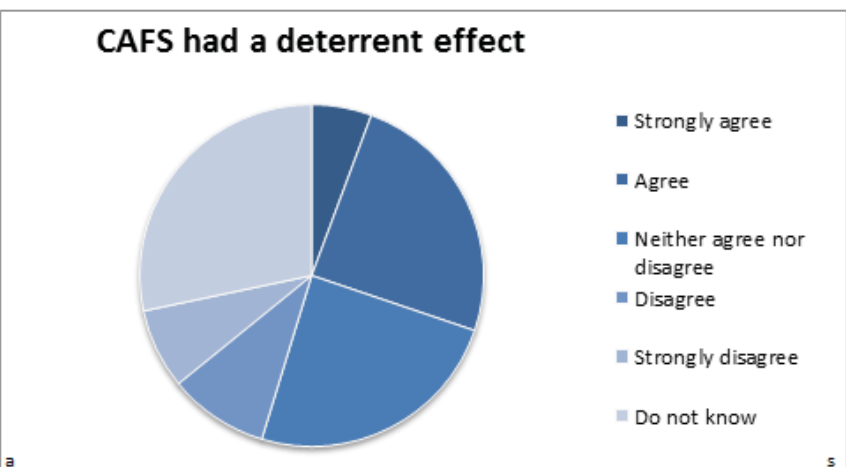


- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Do not know

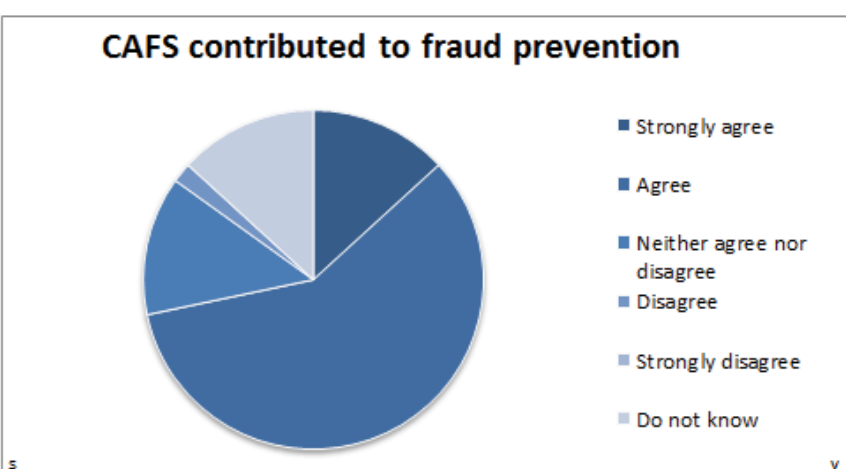
	Answers	Ratio
Strongly agree	7	13.21%
Agree	39	73.58%
Neither agree nor disagree	3	5.66%
Disagree	0	0%
Strongly disagree	0	0%
Do not know	4	7.55%



	Answers	Ratio
Strongly agree	3	5.66%
Agree	13	24.53%
Neither agree nor disagree	13	24.53%
Disagree	5	9.43%
Strongly disagree	4	7.55%
Do not know	15	28.3%

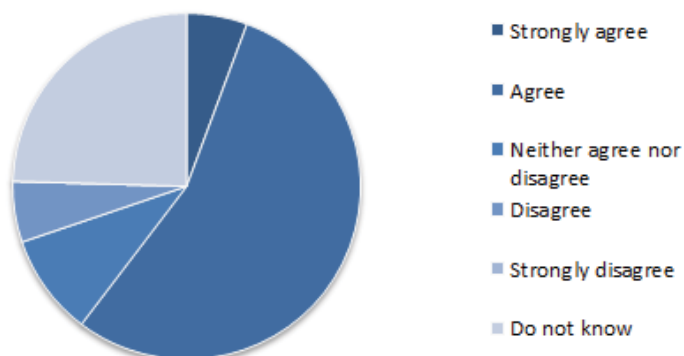


	Answers	Ratio
Strongly agree	7	13.21%
Agree	31	58.49%
Neither agree nor disagree	7	13.21%
Disagree	1	1.89%
Strongly disagree	0	0%
Do not know	7	13.21%



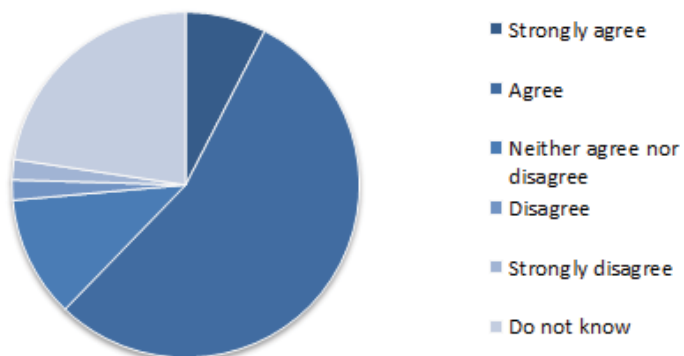
	Answers	Ratio
Strongly agree	3	5.66%
Agree	29	54.72%
Neither agree nor disagree	5	9.43%
Disagree	3	5.66%
Strongly disagree	0	0%
Do not know	13	24.53%

### CAFS contributed to fraud detection



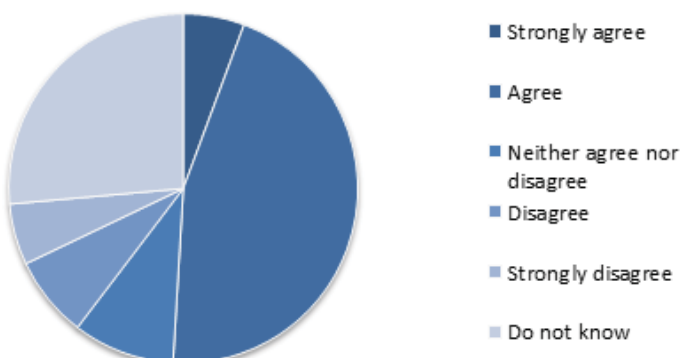
	Answers	Ratio
Strongly agree	4	7.55%
Agree	29	54.72%
Neither agree nor disagree	6	11.32%
Disagree	1	1.89%
Strongly disagree	1	1.89%
Do not know	12	22.64%

### CAFS contributed to fraud investigations



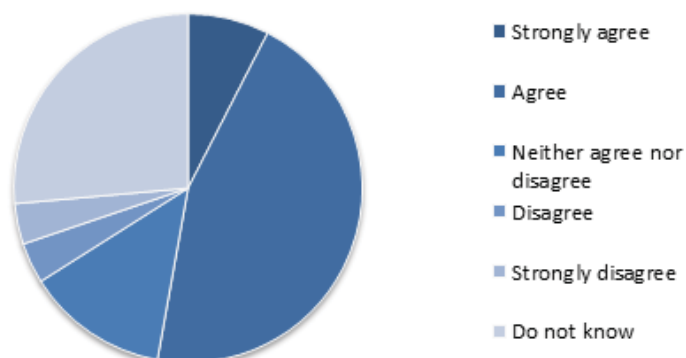
	Answers	Ratio
Strongly agree	3	5.66%
Agree	24	45.28%
Neither agree nor disagree	5	9.43%
Disagree	4	7.55%
Strongly disagree	3	5.66%
Do not know	14	26.42%

### CAFS contributed to fraud sanctions



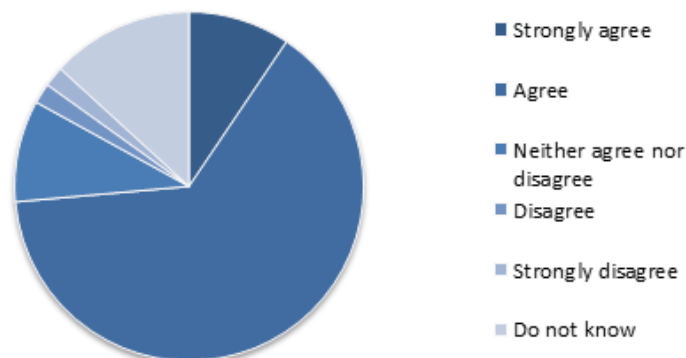
	Answers	Ratio
Strongly agree	4	7.55%
Agree	24	45.28%
Neither agree nor disagree	7	13.21%
Disagree	2	3.77%
Strongly disagree	2	3.77%
Do not know	14	26.42%

### CAFS contributed to recovery of funds



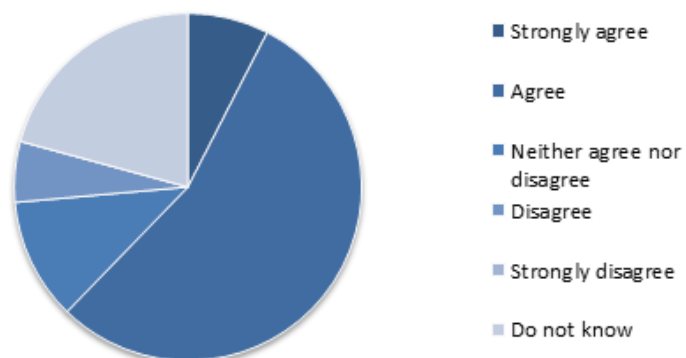
	Answers	Ratio
Strongly agree	5	9.43%
Agree	34	64.15%
Neither agree nor disagree	5	9.43%
Disagree	1	1.89%
Strongly disagree	1	1.89%
Do not know	7	13.21%

### CAFS helped improve ethics



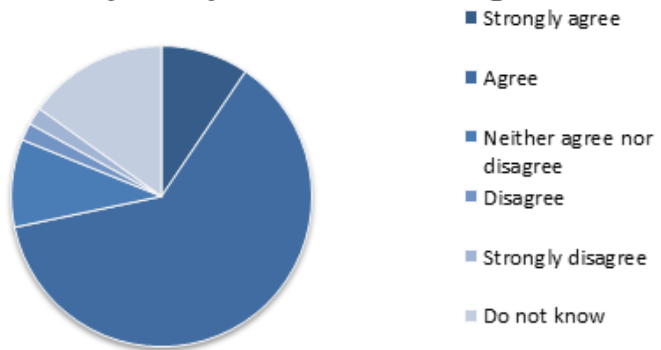
	Answers	Ratio
Strongly agree	4	7.55%
Agree	29	54.72%
Neither agree nor disagree	6	11.32%
Disagree	3	5.66%
Strongly disagree	0	0%
Do not know	11	20.75%

### CAFS contributed to transparency



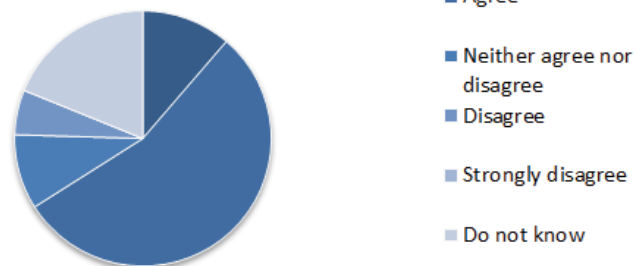
	Answers	Ratio
Strongly agree	5	9.43%
Agree	33	62.26%
Neither agree nor disagree	5	9.43%
Disagree	1	1.89%
Strongly disagree	1	1.89%
Do not know	8	15.09%

### CAFS contributed to anti-fraud capacity in the area of public procurement and grants



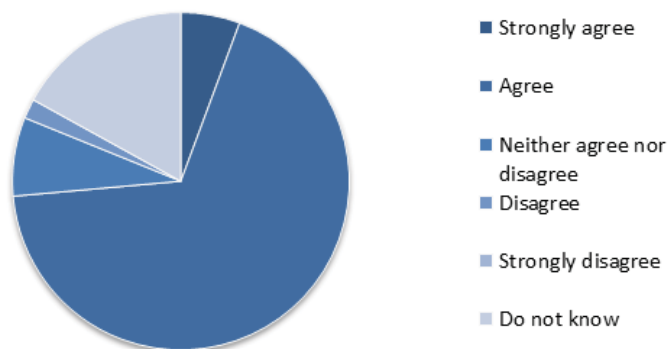
	Answers	Ratio
Strongly agree	6	11.32%
Agree	29	54.72%
Neither agree nor disagree	5	9.43%
Disagree	3	5.66%
Strongly disagree	0	0%
Do not know	10	18.87%

### OLAF provides appropriate support with review of department level anti-fraud strategies



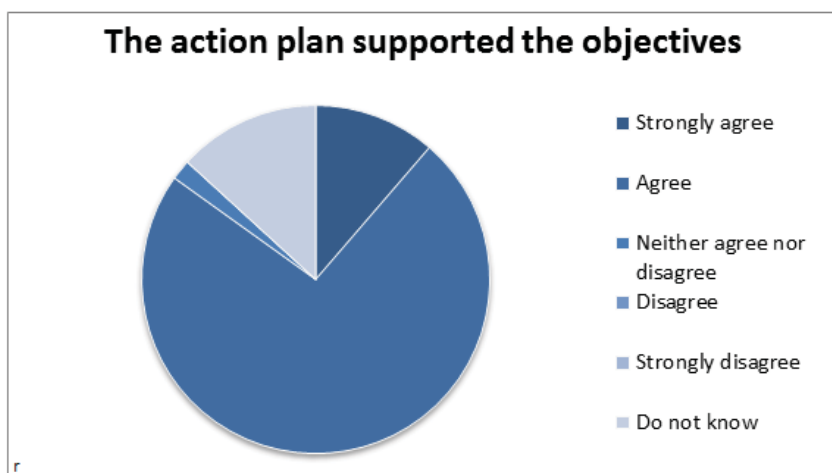
	Answers	Ratio
Strongly agree	3	5.66%
Agree	36	67.92%
Neither agree nor disagree	4	7.55%
Disagree	1	1.89%
Strongly disagree	0	0%
Do not know	9	16.98%

### CAFS was covered by its action plan

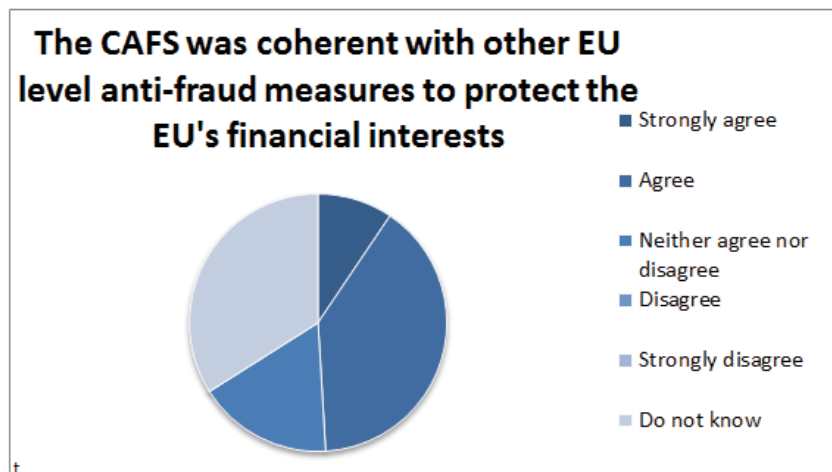




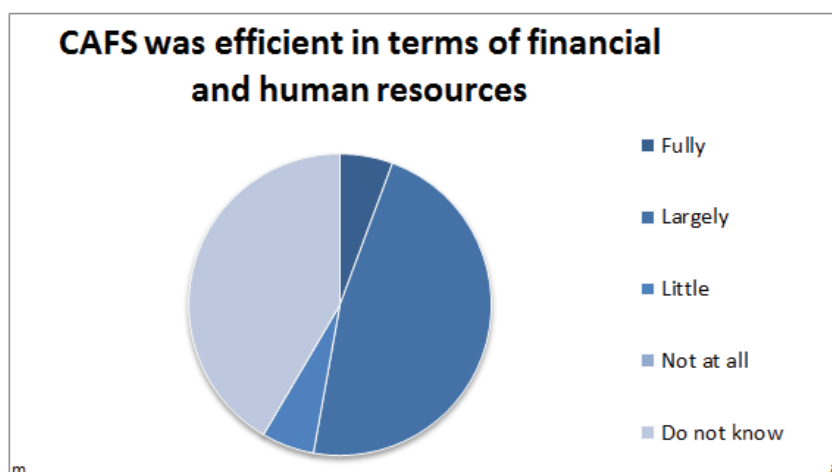
	Answers	Ratio
Strongly agree	6	11.32%
Agree	39	73.58%
Neither agree nor disagree	1	1.89%
Disagree	0	0%
Strongly disagree	0	0%
Do not know	7	13.21%



	Answers	Ratio
Strongly agree	5	9.43%
Agree	21	39.62%
Neither agree nor disagree	9	16.98%
Disagree	0	0%
Strongly disagree	0	0%
Do not know	18	33.96%

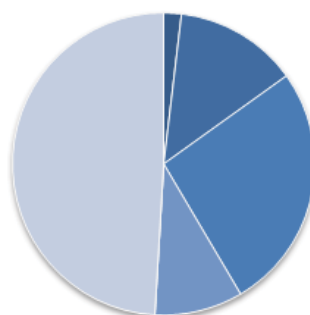


	Answers	Ratio
Fully	3	5.66%
Largely	25	47.17%
Little	3	5.66%
Not at all	0	0%
Do not know	22	41.51%



	Answers	Ratio
Strongly agree	1	1.89%
Agree	7	13.21%
Neither agree nor disagree	14	26.42%
Disagree	5	9.43%
Strongly disagree	0	0%
Do not know	26	49.06%

### Some anti-fraud tools have become obsolete since the adoption of CAFS



- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Do not know

### **Annex 3: Methods and analytical approach**

This annex provides a description of the methodological approach to the evaluation taken by OLAF D.2 that supported this SWD.

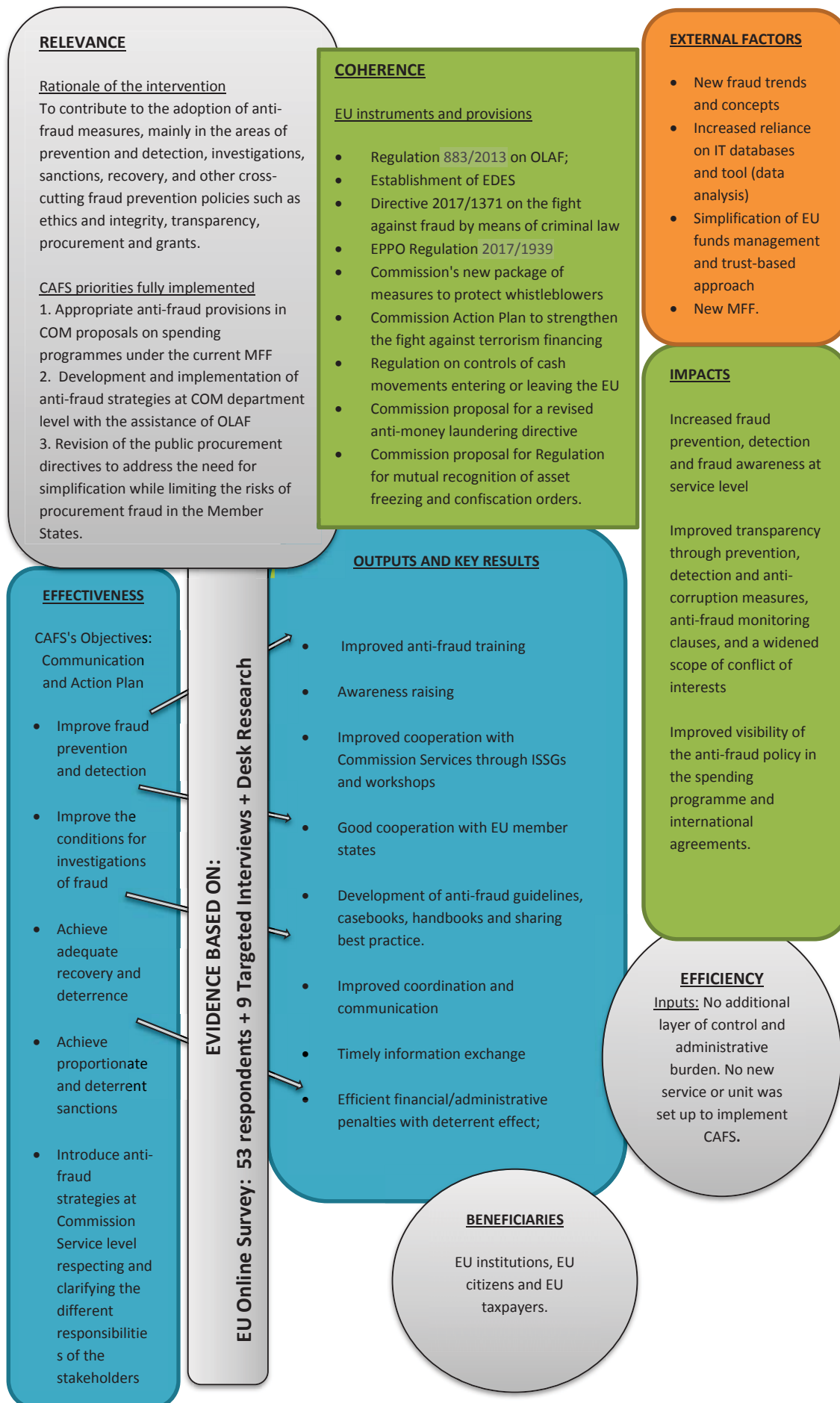
#### **A3.1 Logic of intervention**

The CAFS is a policy document designed to improve prevention, detection and the conditions for investigating fraud and achieving appropriate remedies and deterrence. It sets out proportionate deterrent sanctions and respects due process, especially by introducing anti-fraud strategies within the Commission that respect and clarify the different responsibilities of the various stakeholders. The CAFS Communication is the Commission's main anti-fraud policy document, designed to modernise its anti-fraud strategy. It is accompanied by an Action Plan that translates the CAFS' objectives into practical measures and assigns responsibility for taking action to specific parties and deadlines. The CAFS was designed to reinforce the Commission's commitment to ensure that the framework, policies, rules and procedures in place enable fraud to be effectively prevented and detected. It sets forth a particular role for OLAF. OLAF is to draw on its experience and expertise to support other Commission Services in preventing and detecting fraud, both by helping them develop sectoral anti-fraud strategies and by coordinating anti-fraud activities overall, including any progress made during the year with implementing the CAFS. Measures taken by Commission Services that should enable the CAFS' objectives to be achieved are:

- Preventing and detecting fraud;
- Anti-fraud strategies within the Commission;
- Systematic checks and risk analyses;
- Fraud awareness-raising and training;
- Effective and efficient OLAF investigations, and protection for informants and whistleblowers;
- Streamlining and stepping up financial and/or administrative penalties;
- Increasing disciplinary sanctions' deterrent effect;
- Recovering funds wrongly paid under shared and direct management;
- Other cross-cutting fraud prevention instruments (ethics and integrity, transparency, procurement and grants).

The intervention logic developed in the context of the evaluation (Figure below) is designed to mirror the cause and effect chains through which the CAFS' objectives generated key results and impacts. Based on the intervention logic, the evaluation will show how far the CAFS is responsible for the achievements observed in the anti-fraud landscape as regards its primary and secondary objectives.

**Figure A3.1: Intervention logic of the Regulation**



### **A3.2 Evaluation Framework**

The evaluation framework included means of verification that is the research methods and tools that were used to collect data and to run the analytical exercises to justify the evaluation's findings.

### **A3.3 Data collection and analytical exercises**

The evaluation built on the following research:

- Desk research was used to collect structure and analyse all relevant documentation related to CAFS and its implementation since 2011.
- Stakeholder consultations were organised by way of a survey reaching out to 53 respondents and by way of 9 interviews with key respondents. 62 stakeholders were consulted via both interviews and online survey.

### **A3.4 Evaluation challenges and limitations**

#### **EU online survey**

The limitations of the online survey identified had to do with the broad scope of the questions: it was difficult for many of the respondents to reply to all questions, given the specific nature of some of them. 10% of respondents also mentioned that completing the survey was a difficult task, either because it was the first time for them, and they were unfamiliar with their anti-fraud or internal control portfolio, or because it was too time-consuming to read the necessary documents to form a comprehensive view of the CAFS and its impact on their department. Some stakeholders did not, therefore, feel confident enough to answer all the questions in full or evaluate the specific results of the measures taken in the context of the CAFS, or to assess new risks. This was clear from instances where respondents picked the 'Don't know' or the 'neither agree nor disagree' option.

To counterbalance these limitations, the number of Services represented was examined, and it was decided that the spread gave a full picture of the Commission's management practices and policy areas. Where a department considered vital to the evaluation did not complete the online survey, a targeted interview was held instead. Comments were thoroughly analysed to mitigate these limitations. In addition, desk research was carried out on the local intranet when it was considered that any information was unclear or missing. Some stakeholders were short of time, and this affected the quality of their replies in some cases.<sup>307</sup>

#### **Targeted interviews**

Even though participants in the targeted interviews did not have the full expertise of the CAFS, all aspects necessary for the evaluation were covered: budgetary resources; training and awareness-raising, including ethics; cooperation between Services; the growing importance of databases; the changing anti-fraud landscape; public procurement, and so on.

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<sup>307</sup> EU online survey – comments.

To maintain the quality of the comments, data and analysis received in the course of the targeted interviews, minutes were drafted, agreed on by the interviewees and registered in ARES for archiving purposes. As mentioned during the interviews, this evaluation contains no direct quotes from the interviewees. This form of dialogue with relevant stakeholders gave them a measure of protection and enabled the evaluators to go into some depth on certain points of discussion.

## Research

The CAFS is a cross-cutting strategy targeting all Commission Services and touches upon a broad spectrum of Commission legislative proposals, policy documents and reports. It was thus impossible to conduct an exhaustive analysis of all measures linked directly or indirectly to the CAFS. The fact that the CAFS' implementation had been annually reported upon (2012-2015) in a Commission staff working document accompanying the PIF Report played a central role in gathering relevant information and overview on the CAFS performance since its adoption. The policy areas analysed in this evaluation are considered to be those that are most relevant to the CAFS.

Research drew mainly on various Commission reports and staff working documents covering the period from 2013 (when the first staff working document on the implementation of the CAFS was produced) to 2018, in particular the 2016 PIF Report<sup>308</sup> and OLAF Reports<sup>309</sup>, the Commission Services and executive agencies' most recent annual activity reports and management plans; mid-term reviews of the MFF, Horizon 2020, the Hercule III programme<sup>310</sup> and its mid-term evaluation,<sup>311</sup> the proposal for an EU anti-fraud programme,<sup>312</sup> the evaluation of Regulation 883/2013 defining OLAF's legal framework<sup>313</sup> and the Commission proposal amending the latter,<sup>314</sup> as well as reports from the IAS<sup>315</sup> and

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<sup>308</sup> 2016 PIF Report, COM(2017) 383 final.

<sup>309</sup> [https://ec.europa.eu/anti-fraud/about-us/reports/olaf-report\\_en](https://ec.europa.eu/anti-fraud/about-us/reports/olaf-report_en)

<sup>310</sup> Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC; OJ L 84, 20.3.2014, pp.6-13.

<sup>311</sup> European Commission, Mid-Term Evaluation of the Hercule III Programme - Final Report. ([https://ec.europa.eu/anti-fraud/sites/antifraud/files/herculeiii\\_midterm\\_evaluation\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/herculeiii_midterm_evaluation_en.pdf))

<sup>312</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme, COM(2018) 386 final, of 30 May 2018.

<sup>313</sup> Report from the Commission to the European Parliament and the Council: 'Evaluation of the application of Regulation (EU, Euratom) No 833/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by OLAF and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999; COM(2017) 589 final of 2 October 2017'.

<sup>314</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations; COM(2018) 338 final of 23 May 2018.

<sup>315</sup> Audit on the 'Adequacy and effective implementation of DG's anti-fraud strategies' (2015); audit on the 'Performance and coordination of anti-fraud activities in the TOR area' (2016).



the European Court of Auditors<sup>316</sup> (ECA). Public documents covering the legislative process and the implementation of the CAFS priority measures on the public procurement directives and the 2014-2020 MFF were also used. This evaluation also includes references to other legislations<sup>317</sup> and other documents in the public domain.

Both quantitative and qualitative data were used to achieve a reliable and accurate evaluation.

- Quantitative data were collected through the EU online survey on all aspects of the CAFS. These data were used to generate relevant results on the implementation of the CAFS. The statistics used covered the relevance, effectiveness, efficiency, consistency and coherence of the measures taken under the CAFS. They helped to highlight (a) areas requiring improvement and (b) the degree of adaptability of the CAFS.
- Qualitative data included comments made by respondents to the EU online survey, plus the output of the targeted interviews. These interviews were designed to gain an understanding of underlying issues, the relevance and recurrence of trends, the emergence of new trends, and particular areas in need of improvement. They were also designed to feed into preparations for the CAFS update.

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<sup>316</sup> Special Report No 30/2016: the effectiveness of EU support to priority sectors in Honduras; audit brief 'Fighting fraud in EU spending', October 2017.

<sup>317</sup> See Section 5.3 of this report: 'Consistency and coherence' and in particular, external consistency.

## Annex 4: Evaluation questions

This annex provides an overview of evaluation questions as presented in the evaluation roadmap.

### A. Relevance:

- *How far did the objectives and the measures implemented under the CAFS match needs relating to the protection of the EU's financial interests?*
- *Are the objectives established by the CAFS still relevant?*

### B. Effectiveness:

- *Did the CAFS itself have any deterrent effect on fraudsters?*
- *Did the measures taken under the CAFS help prevent fraud, corruption and other illegal activity against the EU's financial interests?*
- *Did the measures taken under the CAFS contribute to the detection of fraud, corruption and other illegal activity against the EU's financial interests?*
- *Did the measures taken under the CAFS contribute to the investigation of fraud, corruption and other illegal activity against EU financial interests?*
- *Did the measures implemented under the CAFS contribute to the sanctioning of fraud, corruption and other illegal activity against EU financial interests?*
- *Have the measures taken under the CAFS helped recover funds lost through fraud, corruption and other illegal activity against EU financial interests?*
- *Did the measures implemented under the CAFS help maintain/improve ethics and integrity in the management of EU financial interests?*
- *Did the measures taken under the CAFS help improve transparency in, and access to, information on the management of the EU's financial interests?*
- *Did the measures implemented under the CAFS contribute to a more robust anti-fraud capacity in the area of public procurement and grants funded or part-funded by the EU?*
- *Does OLAF provide appropriate assistance and support with establishing and regularly reviewing anti-fraud strategies at department level?*

### C. Efficiency:

- *To what extent were the measures implemented under the CAFS achieved at a reasonable cost in terms of the financial and human resources deployed?*
- *Have any tools to prevent and combat fraud, corruption and other illegal activities against the EU's financial interests become obsolete since the adoption of the CAFS on 24 June 2011?*

### D. Coherence:

- *Did the Action Plan support the objectives of the CAFS?*
- *Were the measures taken under the CAFS coherent with other measures taken at EU level to protect the EU's financial interests?*