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**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**

{SEC(2011) 791 final}

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## 1. INTRODUCTION

With this Communication the Commission improves and modernises its Anti-Fraud Strategy. The **overall objective** of this new Commission Anti-Fraud Strategy is to improve **prevention, detection and the conditions for investigations** of fraud and to achieve adequate **reparation and deterrence, with proportionate and dissuasive sanctions, and respecting the due process**, especially by introducing **anti-fraud strategies at Commission Service level** respecting and clarifying the different responsibilities of the various stakeholders.

Article 325 of the Treaty on the functioning of the European Union (TFEU) requires the Commission and the Member States to counter fraud and any illegal activities affecting the financial interests of the Union. Preventing and detecting fraud is therefore a general obligation for all Commission Services in the framework of their daily activities involving the use of resources.

The European Commission implements the EU budget in accordance with the principles of sound financial management (Article 317 TFEU). It is committed to ensuring that the framework, the policies, the rules and the procedures in place enable the effective prevention and detection of fraud.<sup>1</sup>

Financial management and accountability have been strengthened. The Commission Services<sup>2</sup> are responsible for the management of the operational and administrative resources allocated to them to implement EU policies or to contribute to the smooth functioning of EU institutions in a cost-effective way and reducing administrative burden as far as possible. In this respect, Commission Services<sup>3</sup> are responsible for taking the necessary measures to provide reasonable assurance of achieving prevention and detection of fraud.<sup>4</sup> and irregularities.<sup>5</sup>

The European Anti-Fraud Office (OLAF) conducts administrative investigations. It draws on its experience and expertise to support other Commission Services in the prevention and detection of fraud.<sup>6</sup>

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<sup>1</sup> The definition of fraud can be found in Article 1 of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests (OJ C 316 , 27/11/1995, p. 49).

<sup>2</sup> References to Commission Services cover all Commission Directorates-General and Services plus the executive agencies.

<sup>3</sup> Authorising Officers by Delegation, within the meaning of the TFEU (Article 322) and the Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1). See Article 28 and Article 28a of the Financial Regulation.

<sup>4</sup> An irregularity is any infringement of an EU provision by an economic operator which has, or would have, the effect of prejudicing the EU's financial interests, Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995).

<sup>6</sup> Commission Communication 'Prevention of fraud by building on operational results: a dynamic approach to fraud-proofing' (COM(2007)806 final).

Fraud prevention and detection are at the core of the Commission's anti-fraud policies. However, other factors are equally important, namely effective and efficient investigation, swift recovery of money unduly paid from the EU budget, and deterrent sanctions.

The Member States administer nearly all the revenues of the EU budget. They also share the management of around 80% of budget expenditure with the Commission. The remaining 20% is administered directly by the Commission Services, partly together with the administrations of non-EU countries and international organisations.

In recommendations on discharge procedures and various other resolutions and reports, the European Parliament (EP),<sup>7</sup> the Council<sup>8</sup> and the European Court of Auditors<sup>9</sup> have called for better protection of EU financial interests against irregularities and fraud. However, the Council<sup>10</sup> and Parliament<sup>11</sup> have also called for simplification and the avoidance administrative burden in European programmes. The Commission therefore needs to strike the balance between cost effective control and simplification.

In 2010, the Council adopted the multi-annual Stockholm Programme<sup>12</sup> for policies in the area of justice, civil liberties and security. It calls on the EU and its Member States to step up their efforts to combat corruption and other forms of financial crime. This includes building capacity for financial investigations and making it clearer who are the 'beneficial owners' of assets.

In 2011, several initiatives will be taken to step up the fight against fraud and corruption affecting EU public money:

The Commission's proposal for **amending the legal framework of OLAF**<sup>13</sup> aims at increasing the efficiency and speed of OLAF investigations, at strengthening procedural guarantees, at reinforcing OLAF's cooperation with Member States and at improving its governance.

The **Communication on the protection of EU financial interests by criminal law and administrative investigations**<sup>14</sup> sets out how the Commission intends to safeguard taxpayers' money

<sup>7</sup> E.g. the Reports on the protection of the Communities' financial interests and the fight against fraud - Annual Reports 2008 (2009/2167(INI)) and 2009 (2010/2247(INI)).

<sup>8</sup> See, e.g. the Council Resolution concerning a comprehensive EU policy against corruption — 14 April 2005; conclusions of the Working Group on the European Public Prosecutor's Office organised by the Spanish Presidency (first half of 2010), and the statement of the Belgian Presidency (second half of 2010) on the Stockholm Programme.

<sup>9</sup> ECA Opinion No 1/2010 – Improving the financial management of the EU budget: risks and challenges, OJ C35, 12.2.2010, p. 4; ECA Report concerning the financial year 2009, OJ C 303, 9.11.2010, p. 10, 11, 26.

<sup>10</sup> See for example EUCO 2/1/11 REV1, 8 March 2011 ("it is crucial that EU instruments aimed at fostering Research and Development and Innovation be simplified in order to facilitate their take-up by the best scientists and the most innovative companies, in particular by agreeing between the relevant institutions a new balance between trust and control and between risk taking and risk avoidance")

<sup>11</sup> EP Resolution of 11 November 2010 – P7 TA(2010)0401 - (highlighting the complex and time-consuming rules governing participation, high personnel costs and red tape)

<sup>12</sup> OJ 4.5.2010, C 115, p.1.

<sup>13</sup> COM(2011)135 final.

<sup>14</sup> Communication on the protection of the financial interests of the European Union by criminal law and by administrative investigations: An integrated policy to safeguard the taxpayers' money, COM(2011)293 final.

at EU level against illegal activities, including threats posed by corruption inside and outside the EU institutions. The Communication points to opportunities for improving the criminal law framework and the procedural tools for investigators and prosecutors, and to possible institutional developments such as the setting up of a European Public Prosecutor's Office.

Complementing those initiatives, the **Communication on Fighting Corruption in the EU**<sup>15</sup> sets an EU anti-corruption reporting mechanism for periodic assessment of Member States ('EU Anti-Corruption Report').

The Commission Work Programme for 2011 also includes a **Proposal for a new legal framework on the confiscation and recovery of criminal assets** under the heading 'Initiatives on Protecting the Licit Economy'.<sup>16</sup>

Complementing these initiatives, this Anti-Fraud Strategy deals mainly with aspects of good administration. All these communications together develop the future EU anti-fraud and anti-corruption policies within a coherent and comprehensive framework.

This Anti-Fraud Strategy of the Commission is directed primarily to the Commission Services and will reinforce the EU's policies and contribute to the protection of the EU's financial interests. It complements the fundamental policy orientations of the Commission which were presented in its recent Communications on **Europe 2020**<sup>17</sup> and in the **Budget Review**,<sup>18</sup> and which highlighted important objectives for the simplification and coherence of EU rules while, at the same time, maintaining high standards of accountability and oversight of financial risks.

## 2. A COMPREHENSIVE COMMISSION ANTI-FRAUD STRATEGY

*Fraud affecting the EU budget — where are we and what challenges do we face?*

The last Commission Anti-Fraud Strategy was adopted in 2000<sup>19</sup> and the ensuing Action Plans for 2001-2003 and 2004-2005 created a basis for a comprehensive EU policy against fraud.<sup>20</sup> The Commission reported on the implementation of the Action Plan and on progress in the development of anti-fraud policies in its annual reports on the protection of the financial interests of the Communities and the fight against fraud from 2001 to 2005.<sup>21</sup> In 2007, the Commission adopted a Communication on fraud-proofing<sup>22</sup> together with a Communication on the division of responsibilities between OLAF and the Commission Services for expenditure under shared management, whereby the Services assumed responsibility for financial follow-up of irregularities and fraud.<sup>23</sup> The implementation of these

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<sup>15</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Fighting Corruption in the EU (COM(2011)308 final).

<sup>16</sup> [http://ec.europa.eu/atwork/programmes/index\\_en.htm](http://ec.europa.eu/atwork/programmes/index_en.htm).

<sup>17</sup> COM(2010)2020.

<sup>18</sup> COM(2010)700.

<sup>19</sup> COM(2000)358 final.

<sup>20</sup> COM(2001)254 final; COM(2004)544 final.

<sup>21</sup> See COM(2006)378, p.5-12 for more details (assessment of the strategy for the years 2000-2005).

<sup>22</sup> COM(2007)806 final.

<sup>23</sup> C(2007)5709.

Communications shows that OLAF's know-how, drawn from its investigative experience, can provide valuable input into the Commission.

The current context of the preparation of the new multi-annual financial framework (MFF) gives the Commission the opportunity to reinforce anti-fraud approaches across different EU policies. The MFF for the period after 2013 will be supported by new specific legislative proposals for EU programmes. Complementing the overall objective of far-reaching simplification, these should include appropriate anti-fraud measures. The Commission is committed to the further enhancement of anti-fraud legislative provisions in a cost-effective and proportionate manner. This process will take into account the actions already being taken by Commission Services.

Fraudsters, in particular organised crime, adapt quickly to new circumstances. The Commission must be in a position to face such new challenges. The changing context of fraud requires continuous adjustment to EU anti-fraud policies. Fraud prevention and detection is a key governance issue which the Commission is committed to addressing at all levels and throughout the whole expenditure/income cycle.

The EU budget is taxpayer's money that must be used only for implementing the policies which the EU legislature has approved. Yet in 2009, Member States reported EUR 279.8 million worth of suspected fraud cases involving EU funds managed in their respective countries<sup>24</sup>.

This is only an indicator of the financial impact of the issue, as it does not mean the cases will be proven, or that money cannot be recovered. But it shows that prevention efforts have to be made and that the measures in place have to be adapted regularly to counter new fraud schemes.

On the other hand, further controls that the Commission suggests putting in place should be proportional, efficient and cost-effective. As fraud often involves sophisticated and carefully organised schemes to conceal it, the risk of non-detection is higher than for other irregularities and so anti-fraud systems, if they are to be efficient, must be smarter and more sophisticated and are likely to be more costly. The marginal value of fraud likely to be detected and corrected by the Member States and the Commission as a result of additional anti-fraud controls must exceed the marginal cost of additional controls and costs, taking into account the reputational risk as well.

In addition, anti-fraud measures have to be achieved in line with the Commission's stated objective of maintaining zero growth of resources and reducing the administrative support and coordination functions.<sup>25</sup> Additional investments, if any, must therefore be achieved through staff redeployment within the Services in line with these principles.

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<sup>24</sup> COM(2010)382, p.6. This figure refers to an early stage, after the opening of investigations into irregularities, where there is an initial suspicion of a criminal offence.

<sup>25</sup> SEC(2007)530.

The Commission has already developed and is developing anti-fraud measures. The following examples of best practice show the potential of well designed anti-fraud measures:

For structural actions,<sup>26</sup> the Commission has put in place a **Joint Fraud Prevention Strategy** whose objective is to strengthen its capacity to deal with fraud, to raise awareness in the Member States and in the Commission Services of the importance of fraud prevention and to strengthen cooperation with OLAF. This Joint Fraud Prevention Strategy reinforces existing measures for the Funds concerned, and will facilitate the implementation of this Anti-Fraud Strategy in this budget area. Other Commission Services, such as those responsible for research policies, have also adopted specific anti-fraud strategies that exploit the available data for anti-fraud purposes.

However, not all Commission Services managing EU funds follow such a systematic approach yet.

**Developing the 'Pluto' approach to fraud detection and prevention:**

The Pluto project was set up to help the Commission's Directorate-General for the Information Society to improve its audit capabilities and control functions through the provision of powerful analytical tools and information on fraud indicators based on OLAF's operational experience. With this approach it has been possible to detect many more cases of suspected fraud.<sup>27</sup>

Given the success of the project, notably in terms of the timely detection of cases of fraud, there has been widespread interest from other operational Commission Services in implementing such an approach. This will be facilitated.

A single technical platform for secure exchange of data between customs and other relevant national authorities, including the EU Financial Intelligence Units<sup>28</sup> (anti-money laundering authorities), accessible by using a web browser has been developed under the name "**Mutual Assistance Broker (MAB)**" by the European Commission. It allows for secure exchange of information regarding established or suspected illicit movements of goods and cash entering or leaving the EU eradicating the need for burdensome duplicate of data input, while respecting the rules on data protection.

New IT tools can reduce considerably the administrative burden to detect fraud and irregularities also for the management of the revenue side of the budget.

The Commission developed a fraud awareness training course based on real cases that a Commission Service had encountered.

This kind of tailor-made training course will be developed using real cases encountered by other Commission Services too, and offered on a regular basis as outlined in Section 2.2.4.

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<sup>26</sup> In particular, the European Regional Development Funds (ERDF), the European Social Fund (ESF) and the Financial Instrument for Fisheries Guidance (FIFG).

<sup>27</sup> OLAF Annual Report 2010, p. 30.

<sup>28</sup> This development is particularly aimed at fulfilling the requirement for exchange of information fixed by the Financial Action Task Force (FATF) in the Special Recommendation IX on cash couriers, which is implemented in the EU by virtue of the provisions in Article 6 of the Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the EU (OJ L 309, 25.11.2005, p. 9-12).

## 2.1. Basic principles and priorities

*What are the basic principles of the Commission Anti-Fraud Strategy?*

The Commission Anti-Fraud Strategy applies to both the expenditure and the revenue sides of the budget.

The main **guiding principles** and target standards of the Commission's policy in this area are as follows:

**Ethics.** 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.

**Enhanced transparency.** This is an important tool in the fight against fraud. The relevant information on the use of EU funds should so far as possible be available in a format which can be audited, compared and analysed for anti-fraud purposes, subject to the relevant data protection rules.<sup>29</sup>

**Fraud prevention.** The design of spending programmes is the first stage of effective fraud prevention. Therefore, an analysis of the potential for exposure to fraud will be included in feasibility studies and impact assessments, wherever relevant. At the implementation stage of the programmes, cost-effective and risk-based monitoring and control mechanisms should ensure proper mitigation of the risk of fraud.

**Effective investigation capacity.** Adequate tools and incentives are important for the effective detection and investigation of fraud. When fraud is suspected, anti-fraud bodies need discreet access to the necessary information, in cooperation with the institutions and bodies concerned with an audit trail and in compliance with the regulations in force. In addition, the institutions and bodies concerned need adequate and timely information from the investigative body in order to take precautionary measures and prevent the continuation of any irregularities or fraud having an impact on the EU budget. Whistleblowers, witnesses and informants need easy, secure and fast procedures for reporting fraud.

**Sanctions.** Justice must be achieved with due process and in reasonable time. Procedures must provide for enhanced standards of due process using mechanisms that enable swift and independent action. In addition to adequate sanctions, convicted and administratively sanctioned persons must be effectively deprived of the proceeds of their offence and defrauded resources must be recovered.

**Good cooperation between internal and external actors.** In particular, good cooperation between the EU and national authorities responsible, and between the Services of all the institutions concerned, is a prerequisite for efficiently combating fraud. The Commission

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<sup>29</sup> See Article 29 and 30 of the Financial Regulation (principle of transparency).



takes into account the important role of its implementation partners, notably within shared management systems.

*Where does the Commission set its priorities?*

The Commission Anti-Fraud Strategy will provide for anti-fraud measures in the areas of prevention and detection (2.2.), investigations (2.3.), sanctions (2.4.), recovery (2.5.) and other horizontal fraud prevention policies such as ethics and integrity; transparency and access to information; and procurement and grants (2.6.).

The issues that need to be addressed as a matter of **priority** relate to fraud prevention:

- (1) Adequate anti-fraud provisions in Commission proposals on spending programmes under the new multi-annual financial framework, in the light of impact analyses, as referred to in section 2.2.1;
- (2) The development of anti-fraud strategies at Commission Service level with the assistance of OLAF (section 2.2.2.) and of the central Services, and their implementation (sections 2.2.1 to 2.2.3 and 2.2.4); and
- (3) The revision of the public procurement directives with a view to addressing the need for simplification while limiting the risks of procurement fraud in the Member States (section 2.6.4).

These priorities will be put into effect by the end of 2013 at the latest. The other measures set out in this Anti-Fraud Strategy will be implemented at the latest by the end of 2014.

## **2.2. Prevention and detection of fraud**

Prevention and detection of fraud and irregularities<sup>30</sup> are objectives to be achieved through the internal control process within the Commission that is applicable at all management levels.<sup>31</sup> All entities managing EU funds are legally bound to prevent irregularities and fraud affecting the EU budget. In practical terms, the Commission, the Member States and other implementing partners have an obligation to put in place management and internal control procedures designed to prevent and detect irregularities, errors and fraud.<sup>32</sup>

The controls aimed at preventing and detecting fraud are part of those intended to ensure the legality and regularity of transactions. This Anti-Fraud Strategy should not, therefore, result in an additional layer of controls. It is necessary nonetheless to ensure that the internal control systems in place adequately cover the risk of fraud.

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<sup>30</sup> Fraud is a penal law qualification given by a judge. In the context of this communication, *detection* of fraud and irregularities, refers to the detection of facts or highly suspicious circumstances that point at irregularities and therefore potential fraud (e.g. by financial staff or auditors) which require transmission to OLAF with a view to have them *investigated* by OLAF.

<sup>31</sup> Article 28a of the Financial Regulation.

<sup>32</sup> Article 60(4) in conjunction with Article 48 of the Implementing Rules of the Financial Regulation (OJ L 357, 31.12.2002, p. 1-71).

While the legal framework already provides a full set of requirements to ensure the regularity and legality of the procedures, further improvements are needed in order to address specific exposure to fraud in a satisfactory manner. The Commission's central, and certain management, Services have developed risk analysis tools which are also suited to managing fraud risks, but these need to be reviewed regularly in order better to address these issues.<sup>33</sup> The Commission will actively promote fraud risk management and will monitor the practical results stemming from the fraud prevention measures which are already in place.

### 2.2.1. *Anti-fraud strategies at Commission Service level*

Depending on the management mode and the policy area, the responsibilities of the actors vary. This calls for a tailored approach: anti-fraud strategies at Commission Service level have to be designed on an individual basis with some common features, depending on the policy area and Commission Service concerned. A 'one-size-fits-all' solution would not be the most efficient. Where applicable, implementation must be based on **specific sectoral anti-fraud strategies**, which must be adopted by all Services managing or supervising EU funds.

As far as **direct management** is concerned, the Commission Services responsible for the different policies are primarily responsible for prevention of fraud, for the financial follow-up of fraud cases in their areas of responsibility, and where appropriate and in close cooperation with OLAF, for the adoption of mitigating measures to avoid the continuation of fraud or irregularities.<sup>34</sup>

In the **shared management** domain, the Member States have primary responsibility for the implementation of a significant part of the EU budget (some 80%).<sup>35</sup> This poses specific challenges to the Commission Services concerned in relation to fraud prevention and detection. In relation to shared management, Member States are responsible in the first instance for the establishment of management and control systems for operational programmes that are compliant with the regulatory framework. Member States are required to operate these systems effectively so as to prevent, detect and correct irregularities, including fraud. The Commission has then to apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget under shared management.

Regarding indirect, joint and decentralised<sup>36</sup> and shared management, Commission Services rely on **external partners** for the implementation of the EU budget. An anti-fraud strategy at Commission Service level will have to respect the proportionality and cost-benefit of the measures to be implemented, where possible building on an existing strategy. The particularities of management by external partners vary, so Commission Services need to determine how best to protect the EU's financial interests in each area, taking into account cost-benefit considerations. OLAF will support the Commission Services as set out in Section 2.2.2. Where appropriate, the Commission will propose or reinforce legislation, modify

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<sup>33</sup> See Communication to the Commission 'Towards an effective and coherent risk management in the Commission services' (SEC(2005)1327).

<sup>34</sup> In direct management, under Article 53a of the Financial Regulation, implementation tasks must be performed either directly by the Commission Services or by EU Delegations.

<sup>35</sup> Article 53b of the Financial Regulation.

<sup>36</sup> Articles 54, 53, 56, and 163 of the Financial Regulation.

agreements or negotiate necessary changes with Member States and other external partners. Such proposals will also take into account relevant fraud risk assessments and other analysis.

*Which elements are needed in anti-fraud strategies at Commission Service level?*

The Commission Services will **adjust** their **internal control systems and procedures** in a coherent manner, with due regard for the principle of proportionality.

Sectoral strategies should address the whole anti-fraud cycle, namely fraud prevention and detection, cooperation between OLAF and Commission Services, recovery, and penalties. They should adjust these elements to the specific needs and circumstances of the individual policy sector including to the risk of fraud in that sector.

Existing sectoral strategies may be used as a basis, duly augmented or supplemented as appropriate.

The Commission may also put in place **regional strategies** covering specific types of fraud. A new example of a horizontal approach is the Action Plan to fight against smuggling of cigarettes and alcohol along the EU's Eastern border, which accompanies this Strategy as a working document.<sup>37</sup>

The Commission will develop close cooperation and synergies and also promote the relevant standards set out in this Anti-Fraud Strategy within **EU institutions, including the EEAS, offices, agencies and bodies**, including **joint undertakings**.

#### *2.2.2. OLAF's role in developing and implementing strategies*

According to Regulation (EC) No 1073/1999 OLAF 'shall contribute to the design and development of methods of fighting fraud and any other illegal activity affecting the financial interests of the European Community.'<sup>38</sup> OLAF should be involved in this exercise at an early stage. While fraud prevention and detection is primarily the responsibility of each Head of a Commission Service (as appropriate in each management mode), OLAF plays an important role throughout the process.

OLAF will play a proactive and reinforced role, assisting the Services by providing, inter alia, a methodology and guidance on the development and implementation of the sectoral anti-fraud strategies.

Currently there is only an exchange of best practices between certain Commission Services managing EU funds, but it does not involve all Commission Services. The Inter-service group of Fraud Proofing Correspondents will be developed into a Fraud Prevention and Detection Network organised by OLAF. This network will be used as centre of expertise providing support and advice. It will disseminate best practices (e.g. the data mining project 'Pluto' mentioned above) and fraud risk assessments based on OLAF's operational experience

<sup>37</sup> SEC(2011)791

<sup>38</sup> Article 1; in the amended proposal for reforming OLAF (COM(2011)135 this part has been slightly adapted insofar as OLAF must contribute to the design and development of methods **of preventing and combating** fraud, corruption and any other illegal activity affecting the financial interests of the Union.

as well as the relevant information from Member States, non-EU countries and international organisations which OLAF holds. This network should also help develop and regularly update the sectoral strategies adopted by Commission Services.

OLAF contributes to coordinating Member States' cooperation against fraud in accordance with Article 325(3) TFEU and the applicable regulatory framework<sup>39</sup>. Member States' action is supported by regular consultation, notably within the Committee on the coordination of the fight against fraud (COCOLAF).<sup>40</sup> This Committee could have more sectoral subgroups, ensuring the presence of experts for the different policy sectors. These subgroups should stimulate cooperation among the anti-fraud services of the Member States, encouraging them to share their operational experiences and to raise awareness of the fraudulent practices detected in the different Member States.

This reflects OLAF's role, which is to investigate allegations of fraud and to actively assist all Commission Services in developing fraud prevention policies.

### 2.2.3. *Systematic controls and risk analyses*

As appropriate in each management mode, the Commission Services will, with the assistance of OLAF, put in place systems which give them a reasonable assurance that they will **detect** major irregularities and fraud. In particular, conditions should be created for identifying suspicious operations or operators through the presence of specific indicators ('red flags').

The Services will assess the need to improve fraud **risk assessment** by developing a more systematic and formalised process for identifying areas of fraud risk. In parallel, making the most efficient use of existing resources, they should introduce smart controls using the IT tools, duly adapted to their needs, which have been developed by some Services in collaboration with OLAF.<sup>41</sup> Such tools enable, for example, the pooling of existing data linked to closed or ongoing EU-funded projects. This is useful for fraud prevention purposes, but can also detect plagiarism and fraudulent double funding. These tools will be fully effective only if the relevant information systems contain complete, consistent and reliable data on EU funds. The possibility of analysing data for fraud prevention purposes should also be taken into consideration when defining business requirements for new IT systems.

Communication between Commission Services about fraud risks could be improved. The use made of the Commission's internal **Early Warning System (EWS)**<sup>42</sup> will be reviewed to make it an even more effective fraud prevention tool for direct management. The conditions should be put in place for a more extensive **exchange of information** with external

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<sup>39</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States (OJ L 82, 22.3.1997, p. 1) and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by OLAF, Article 1 (OJ L 136, 31.5.1999, p. 1).

<sup>40</sup> Commission Decision 94/140/EC, OJ L 61, 4.3.1994, p. 27.

<sup>41</sup> Such as the 'Pluto' data-mining project mentioned under Section 1 developed by Services involved in research funding and OLAF.

<sup>42</sup> Commission Decision C(2008) 3872 of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies OJ L 344, 20.12.2008, p.125.

stakeholders via the Central Exclusion Database,<sup>43</sup> based on relevant legislation and respecting data protection rules.

Effective monitoring may be hampered by inadequate access to documents and information in some areas of **joint management** involving international organisations.<sup>44</sup> The Commission will continue to endeavour to improve the legal instruments for cooperating with non-EU countries and international organisations, and to ensure that these are properly implemented and applied. This may include inserting in international agreements and memoranda of understanding, in line with existing regulations on investigations, provisions on exchanging information and on cooperating at operational level, including joint investigations.

#### 2.2.4. *Awareness-raising and training*

The Commission will regularly raise awareness of potential fraud among its **staff**, in particular project managers, financial staff and auditors and staff posted in the EU delegations. It will cooperate closely with the EEAS and other EU bodies to promote this policy. It will disseminate information on the Early Warning System, on the **procedures for reporting fraud** and on measures for countering fraud. These include limiting the impact of fraud and irregularities by taking timely and appropriate action to prevent them continuing, focusing initially on the bodies and entities most concerned. The information disseminated should include information on anti-fraud measures and on OLAF.

All **staff** working in project management and financial operations have a responsibility in fraud prevention and detection and should be sufficiently trained, including in anti-fraud matters. OLAF will provide an internal dedicated Commission **anti-fraud website** with methodological guidance to help services and executive agencies to develop anti-fraud strategies, including best practices and fraud patterns, and will provide its expertise for the development of training programmes.

The OLAF **Fraud Prevention and Detection Network** and possibly other existing expert groups will contribute to awareness raising and training.

The Commission, and in particular OLAF, will also continue to exchange best practices, assist and cooperate with other international organisations and expert bodies in developing anti-fraud and anti-corruption policies. The activities related to the latter will be coordinated with the EU anti-corruption reporting mechanism.

### 2.3. **Investigations**

#### 2.3.1. *OLAF investigations*

The Commission has presented its amended proposal for reforming OLAF.<sup>45</sup> This proposal reinforces OLAF's efficiency in the conduct of its investigations.<sup>46</sup> The proposal also provides

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<sup>43</sup> Article 95 of the Financial Regulation.

<sup>44</sup> ECA Opinion No 1/2010 — Improving the financial management of the EU budget: risks and challenges, OJ C35, 12.2.2010, point 14.

<sup>45</sup> COM(2011)135.

for better cooperation with other authorities. It provides for specific procedural rights and guarantees the protection of individual rights in line with the EU Charter of Fundamental Rights.

**Information flow** between the Commission Services and OLAF before, during and after investigations should enable the Commission to take appropriate precautionary measures, such as suspending grants, contracts or payments and halting ongoing irregular practices. This will also help OLAF to access all relevant information for the purpose of its investigations.

Where investigations involve staff members of the EU Institutions ('internal investigations'), intensive **cooperation between OLAF and other investigation services** is an essential condition for success. Such **cooperation** should be reinforced wherever necessary, in particular **between OLAF and the other investigation and inspection services of the EU Institutions**.<sup>47</sup>

For all management modes, **central contact point authorities** should be identified within Member States,<sup>48</sup> non-EU countries and international organisations. OLAF can then use these contact points as a direct link for investigation purposes, as proposed in the amended proposal for reforming OLAF.

Where appropriate, and for the purposes of OLAF investigations, **cooperation between OLAF and external auditors of the Commission Services** should be further enhanced to profit from their respective expertise. To this end, Commission auditors can take part in OLAF's missions and on-the-spot checks.

OLAF promotes and shares with the Member States its operational experience and best practices in protecting the EU's financial interests. It should support joint anti-fraud measures undertaken by Member States.<sup>49</sup> The partners should **inform** OLAF about detected cases of fraud at an early stage and update this information as the matter is followed up, respecting the applicable legal framework.

With a view to the new Multi-annual Financial Framework, the spending programmes and all related decisions, contracts and grant agreements financed by the EU must state that **OLAF** has the **competence** to investigate suspected fraud in EU financed programmes and projects.<sup>50</sup> The clauses concerned should place a duty on all contractors and grant beneficiaries and their staff to give OLAF, at its request, access to all information on the implementation of the programmes and projects. Contractors and grant beneficiaries should be required to include in

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<sup>46</sup> The European Court of Auditors highlights also the need to improve efficiency. See Special Report No 2/2011 of the European Court of Auditors 'Follow-up of Special Report No 1/2005 concerning the management of the European Anti-Fraud Office'.

<sup>47</sup> The amended proposal for the OLAF reform (COM(2011)135) foresees therefore that OLAF prioritises its investigative work, see Article 5(1) and Explanatory Memorandum, p.4.

<sup>48</sup> Article 3 of the amended proposal for OLAF reform (COM(2011)135) provides for this. See also Explanatory Memorandum, p.4.

<sup>49</sup> Under Article 1 of the amended proposal for OLAF reform (COM(2011)135), OLAF shall 'support joint anti-fraud actions undertaken by Member States on a voluntary basis'.

<sup>50</sup> See in this context SEC(2007)1676 on the fraud proofing activities with regard to spending programmes under the Financial Perspectives 2001-2006.

contracts signed with their subcontractors the necessary clauses giving OLAF the same access rights in relation to all subcontractors.

### 2.3.2. *Informants and whistleblowers*

The framework for reporting suspected fraud and corruption and for **protecting all informants** who act in good faith is important for the detection of fraud. EU legislation lays down whistleblowing rules for EU staff.<sup>51</sup> All other parties (**informants**) should also have easy access to the investigation authorities, such as OLAF.<sup>52</sup> The Commission will consider how whistleblowers can receive better guidance and protection from the authorities concerned, and how further **to encourage informants** to communicate irregularities, fraud and corruption (for example measures to motivate informants and to encourage voluntary disclosure).

## 2.4. **Sanctions**

The Commission will streamline and reinforce the use of **financial and/or administrative penalties**, including exclusion from EU financing in the event of serious irregularities, fraud and corruption. When deciding what penalties to impose on legal entities, account should be taken of the measures which these entities have taken against persons responsible for fraud and corruption. These penalties should receive appropriate publicity, in compliance with the existing legal framework.

Member States are obliged to report certain cases of fraud against the EU budget that may provide a basis for excluding beneficiaries from further EU financing.<sup>53</sup> However, they have no obligation to keep this information in a centralised system which would channel information flows through a single responsible authority, making the system more effective. The Commission will therefore encourage Member States to adopt guidelines for authorities **at national level** to ensure that notifications are properly communicated to the Commission's Central Exclusion Database (CED). The Commission will encourage action within Member States' authorities and EU bodies to raise awareness of the CED.

To ensure a level playing field across the EU,<sup>54</sup> the Commission will assess whether the **financial and/or administrative penalties applied by Member States** under national rules are sufficiently **effective, proportionate and dissuasive**. It will also prepare relevant legislative initiatives, in particular in the customs area as provided for in the Stockholm Action Plan.<sup>55</sup>

To increase the deterrent effect of **disciplinary sanctions**, the outcome of disciplinary proceedings should be communicated more effectively, while respecting the fundamental rights of the persons concerned and data protection. **Information on sanctioned staff** should

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<sup>51</sup> Staff Regulations, Article 22a and 22b (OJ 45, 14.6.1962, p. 1385).

<sup>52</sup> For example, the **Fraud Notification System (FNS)** can be used for confidential reporting: <https://fns.olaf.europa.eu/>.

<sup>53</sup> Article 95 (2) of the Financial Regulation.

<sup>54</sup> See relevant initiatives, which are considered in the Communication on the Protection of the Financial Interests of the EU by criminal law and administrative investigations, COM(2011)293.

<sup>55</sup> COM(2010)171, p.22.

be kept and shared with other authorities on a need-to-know basis for fraud prevention purposes, in compliance with data protection rules and subject to appropriate specific safeguards.<sup>56</sup>

## 2.5. Recovery

In the case of shared management, the Member States are in the first instance responsible for investigating irregularities and fraud and for recovering funds wrongly paid, including as a follow-up to OLAF investigations.<sup>57</sup> In the case of direct management, Commission Services should without delay issue recovery orders as a follow-up to OLAF investigations. It is important that information on these recoveries be systematically fed back into OLAF's operational activities. The Commission will further improve the completeness, quality and presentation of data on recoveries in its report on the Protection of the Financial Interests of the European Union.<sup>58</sup>

## 2.6. Other cross-cutting fraud prevention instruments

### 2.6.1. International legislative standards

The Commission will ensure due implementation of the relevant **international conventions** and standards relating to anti-fraud policies, with a particular focus on the UN Convention against Corruption (UNCAC), the Council of Europe instruments (GRECO) and the OECD and G20 standards and recommendations.<sup>59</sup>

### 2.6.2. Ethics and integrity

The Commission is equipped with a comprehensive system of rules on ethics and integrity for staff<sup>60</sup> as well as for the Members of the Commission.<sup>61</sup> These rules have recently been revised. The Commission provides all newcomers with training, and refresher courses are available.

The Commission will ensure that the rules and the ethical values of the EU public service are properly and regularly communicated from the highest levels to all of its staff and that appropriate **training** is provided.

The Commission must ensure that there are efficient fraud prevention measures in place in its recruitment and staff policies. These should include effective checks on a candidate's past.

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<sup>56</sup> See Article 8(5) of Directive 95/46/EC and Article 10(5) of Regulation (EC) No 45/2001.

<sup>57</sup> Article 53b(2)(c) of the Financial Regulation.

<sup>58</sup> [http://ec.europa.eu/anti\\_fraud/reports/anti-fraud\\_en.html](http://ec.europa.eu/anti_fraud/reports/anti-fraud_en.html).

<sup>59</sup> See The Communication of the Commission 'Fighting Corruption in the EU' (COM(2011)308), p. 9-10.

<sup>60</sup> Staff Regulations (OJ 45, 14.6.1962, p. 1385), Code of Good Administrative Behaviour (OJ L 267, 20.10.2000), the Practical Guide to Staff Ethics and Conduct and other specific rules.

<sup>61</sup> Code of Conduct for Commissioners (C(2011)2904): [http://ec.europa.eu/commission\\_2010-2014/pdf/code\\_conduct\\_en.pdf](http://ec.europa.eu/commission_2010-2014/pdf/code_conduct_en.pdf).



### 2.6.3. *Transparency and access to information*

Transparency contributes to fraud prevention and detection. To ensure that EU finances are managed in a transparent way, and subject to the applicable legal requirements, citizens should enjoy easy access to relevant information.

Following the European Transparency Initiative,<sup>62</sup> the Commission has also introduced a voluntary regime for more transparency in the representation of interests at EU level. A register has been set up and a code of conduct has been adopted. On 23 June 2011, the Commission signed an inter-institutional agreement with the European Parliament on a common register.<sup>63</sup>

### 2.6.4. *Procurement and grants*

The Commission is currently reviewing the EU procurement directives.<sup>64</sup> This should **simplify** and increase **transparency** of procurement procedures at all levels, the EU and the Member States. In the context of the reform, the Commission will examine additional possible means of **prevention** of fraudulent behaviour and **conflicts of interest** in distribution of public funds.

The Commission is also considering proposing rules with regard to the award of service concessions, which may involve the use of the EU funds in public private partnerships, and which today are not covered by any clear requirement of transparency.

Entities receiving EU funds should be able to demonstrate, on request, **transparent ownership**. All entities in the ownership structure should be verifiable by the authorities on a need-to-know basis. This also applies to the consortium partners and third parties receiving financial support when a grant is implemented.

## 3. MONITORING OF AND REPORTING ON IMPLEMENTATION

The reference to the implementation of this Anti-Fraud Strategy should be integrated in the Commission's existing Strategic Planning and Programming cycle, which provides for a full set of mechanisms for planning, monitoring and reporting. Anti-fraud strategies do not require additional layers of control and administrative burden, but need to be properly integrated into existing planning, control and reporting mechanisms.

At the Commission Services level, the Annual Management Plans are used for planning and monitoring activities; they should also include the implementation of their anti-fraud strategies. The Annual Activity Report is the reporting tool which explains what each Service has achieved that year, including how it has improved its management and control systems and financial management, including anti-fraud issues. **The Annual Activity Reports**<sup>65</sup> should contain information on fraud prevention **as part of the assessment of their internal control systems**, reflecting the implementation of the sectoral strategy and describing

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<sup>62</sup> SEC(2005)1300 and SEC(2005)1301.

<sup>63</sup> [http://ec.europa.eu/transparency/index\\_en.htm](http://ec.europa.eu/transparency/index_en.htm).

<sup>64</sup> Green Paper on the modernisation of EU public procurement policy (COM(2011)15).

<sup>65</sup> These reports are published on the website of the EU: [http://ec.europa.eu/atwork/synthesis/aar/index\\_en.htm](http://ec.europa.eu/atwork/synthesis/aar/index_en.htm).

measures to mitigate fraud risks.<sup>66</sup> They should also include regular updates on the implementation of the sectoral anti-fraud strategies.

The Commission will report on the implementation of this Anti-Fraud Strategy starting from the 2013 Commission report on the protection of EU financial interests.

These arrangements will ensure that anti-fraud measures remain high on the Commission's agenda and will emphasise their relevance to the discharge procedure.

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<sup>66</sup> For overall reporting on this Anti-Fraud Strategy see Section 3.