



EUROPEAN COMMISSION
EUROPEAN ANTI-FRAUD OFFICE (OLAF)

Policy
Strategic Analysis, Reporting, Joint Operations

Brussels,
OLAF/D4

Reporting and Analysis of Fraudulent and Other Irregularities Group
02 DECEMBER 2013
WORKING PAPER

**REPORTING OF IRREGULARITIES IN SHARED MANAGEMENT FOR THE
NEW MFF 2014-2020 STATE OF PLAY**

1. Purpose of this working document

The original purpose of this document was both to inform the Member States on the state of play in the preparation of the detailed provisions for the reporting of irregularities for the next programming period whilst also asking Member States for their views and input in order to simplify further the reporting process during the COCOLAF meeting on 22 November 2013. Following this meeting, the working document has been updated to include the valuable feedback the Commission received from numerous Member States. It now serves as a point for departure for the meeting on 02 December at which the Commission is looking forward to hearing the views of Member States' reporting experts' on the issues laid out below.

2. Background

For the protection of its financial interests, Union legislation lays down reporting requirements as regards Union fields of financial support. Member States must send regular reports of the irregularities detected, the amount concerned and the progress of related administrative and legal proceedings

The duty to report falls on Member States in all sectors of the Union budget which are managed directly by the Member States.

The information is used to carry out risk analyses, produce reports and develop early-warning systems which help to identify risks more effectively. Moreover, analysis of the results of Member States' actions assists the Commission services in enhancing fraud proofing of Union legislation.

In addition to being a tool for sound financial management, the reporting of fraudulent and other irregularities is also an information tool for the public, the European Parliament

and Member States about the fight against fraud. This information is an input to the report on the protection of the EU's financial interests under Article 325 TFEU.

3. MFF proposals

In the framework of the new Multiannual Financial Framework for the period 2014-2020, the detailed provisions for the reporting of irregularities should be defined in the framework of delegated and implementing act(s).

The co-legislators have now agreed on the (draft) Common Provision Regulation (CPR) for Cohesion Policy funds and European Maritime and Fisheries Fund (EMFF) as well as on the corresponding provisions of the horizontal regulation on CAP Reform, which both include empowerments for delegated and implementing acts on irregularity reporting. For the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime and crisis management, the trilogue is still on-going.

In order to achieve maximum clarity whilst imposing a minimal administrative burden on the Member States, the detailed provisions concerning the reporting of irregularities mentioned above in the basic acts should be harmonised to the maximum extent across all of the Union's expenditure fields under shared management.

4. Legal Instruments

With regard to the legal instrument to be used, two options are currently under consideration.

- **The first option foresees the detailed provisions for the reporting of irregularities for all shared management expenditure fields to be laid out in one single delegated act and one single implementing act.** While this instrument would harmonise and simplify Member States' reporting requirements once it force, procedural incompatibilities may emerge during the adoption process.

- **The second option is the preparation of a specific "Anti-fraud package" consisting of three separate delegated and three separate implementing acts harmonised to the maximum extent.** Under this option, the Commission would endeavour to publish all six acts in the official journal at the same time in order to keep all relevant legislation for Member States' responsible administrations in one place. In addition to providing a solid legal basis for the reporting of irregularities, this solution would also provide for a clear allocation of responsibilities between OLAF and AFCOS on the one hand and Authorising Commission departments and relevant Member States' departments on the other.

5. Content

a) Delegated acts

The delegated acts will lay down additional detailed rules on the criteria for determining the cases of irregularity to be reported (the threshold and the derogations of reporting for agriculture domain are included) and the data to be provided. The delegated acts will also include provisions on specific definitions for the reporting of irregularities, the reimbursement of judicial costs, cooperation among Member States and the use of the information received.

b) Implementing acts

The implementing acts will set out the frequency of the reporting, the format to be used (electronic using the IMS System) and the use and conversion of national currencies for Member States which have not adopted the Euro.

6. Possible modifications under consideration compared to the current programming period

a) Removal of threshold for fraudulent irregularities

The latest version foreseen for adoption of the CPR proposal for the new MFF (2014-2020) includes a threshold for reporting set at EUR 10.000. This means that, with regard to the Cohesion Policy funds and the European Maritime and Fisheries Fund, there is no longer an option to lower the reporting threshold for all fraudulent irregularities, as previously considered.

In the agriculture domain, however, the latest version of the basic act includes no provision that sets the threshold for the reporting of irregularities at EUR 10.000. Taking into account that 87% of beneficiaries in the agriculture domain receive EU funds that do not exceed the EUR 10.000 threshold, the Commission asked Member States' to voice their opinions on the removal of the threshold with regard to the agriculture domain. Moreover, the possibility of sourcing summary reports concerning irregularities under the threshold could also be considered.

With regard to the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime and crisis management, a political agreement on the basic acts has yet to be reached.

- ❖ In the COCOLAF meeting on 22 November 2013, numerous Member States clearly positioned themselves against the removal of the EUR 10.000 threshold in the agriculture domain. It was argued that a removal of the threshold would heavily increase Member States' administrative burden without adding any further value to the information received by the Commission. The Commission shall take these views into consideration.
- ❖ The option of submitting summary reports for cases of fraud or suspected fraud under EUR 10.000 will be further discussed in the expert group meeting on 02 December. With regard to these cases, one approach under consideration would require the information on recoveries transmitted by the Member States to Authorising Commission Departments to be supplemented with an indication of the type of irregularity involved (irregularity, suspected fraud, established fraud) in order for the Commission to make the best use of the information already at hand.

b) Harmonisation and simplification of reporting process

The goal of harmonising and simplifying the reporting process whilst clarifying the provisions to the maximum extent throughout all expenditure fields is paramount to the legislation currently in preparation for the next MFF. The Commission is open to Member States' views on how the reporting process can be simplified in general and e.g which data fields can be removed or adapted from free text format (description) to codified selections from predefined lists in particular.

Accordingly, the New Irregularity Management System (NIMS) (which introduces a standard module) currently under development for Member States and candidate countries to fulfil their reporting obligations under the different shared management policies for the new MFF (2014-2020) is also designed to allow for maximum harmonisation and simplification.

- ❖ In the COCOLAF meeting on 22 November 2013, it was suggested that the provisions for the reporting of "special cases" (agriculture) or "urgent cases" (cohesion policy) be removed for the next programming period, since they had not proven useful. While the Commission accepts that only a small number of cases have hitherto been reported under these provisions, it holds that the continuous threat of both new and cross-national malpractices to the European Union's financial interest does not warrant their removal for the next Multiannual Financial Framework (2014-2020).

c) Frequency of reporting

Member States currently send their communications four times a year (quarterly) within the 2-month period that follows the quarter in which the irregularity was detected. While this practice seems convenient, Member States' views are welcome so as to determine whether any modification of the current rule would facilitate the transmission taking into account the electronic reporting.

- ❖ In the COCOLAF meeting on 22 November 2013, it was suggested that the frequency of reporting be reduced to one initial and one final report. While this suggestion will be taken into consideration with regard to the reporting of irregularities, the Commission would prefer the provision requiring Member States to submit continuous updates on the initiation, conclusion or abandonment of judicial or administrative procedures in cases of fraud or suspected fraud to be maintained.

d) Electronic reporting

Only electronic reporting will be accepted in the future. Reporting of information by Member States on irregularities has become much easier and quicker since the creation of and the enhanced use of IMS and its modules.

- ❖ In the COCOLAF meeting on 22 November 2013, a new module in IMS to facilitate communication between the Commission and affected Member States within the framework of the EU's territorial cooperation was requested. The Commission will seek to address this request in due course.

7. Timeline for the adoption

The act can only be adopted following the adoption of the individual policy basic acts. This means that the adoption of the "antifraud package" would be expected in the first half of 2014.