



## **NATIONAL STRATEGY**

# **FOR PREVENTING AND COMBATING IRREGULARITIES AND FRAUD AFFECTING THE FINANCIAL INTERESTS OF THE EUROPEAN UNION**

**OVER THE PERIOD 2021-2027**



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## **1. INTRODUCTION**

During the programming period 2014-2020 Bulgarian citizens and institutions demonstrated an increasingly strong commitment to countering fraud, corruption and any other illegal activity affecting Bulgaria's national budget and the budget of the European Union. There is a shared expectation that all European Union funds will be disbursed in the most effective way under the direct responsibility of Bulgaria's institutions with support from EU institutions within the established framework for cooperation.

The national strategy sets out the goals of the Bulgarian competent authorities in the field of preventing and combating irregularities and fraud affecting the EU's financial interests over the period 2021-2027. It is fully aligned with the initiatives for protection of the Union's financial interests recently launched at EU level, and more specifically with Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive)<sup>1</sup>, Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO Regulation') and Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

The development and adoption of the strategy follow on from the actions taken by the national authorities to ensure protection of the Union's financial interests. These are detailed in the National Strategy for Preventing and Combating Irregularities and Fraud Affecting the Financial Interests of the European Union over the period 2014-2020 and are fully in line with Bulgaria's commitments under Article 325 of the Treaty on the Functioning of the European Union (TFEU).

The main objective of the national strategy for the programming period 2021-2027 is to continue efforts to improve the prevention, detection and fight against irregularities and fraud on the expenditure and revenue sides of the EU budget.

In parallel, there has to be a significant reduction in the level of corruption reflected both in public perception and in the relevant indicators. Having kept in place the main goals of the National Strategy for Preventing and Combating Irregularities and Fraud over the period 2014-2020, Bulgaria now needs to ensure continuity and build on the results already achieved. The Strategy reflects the recommendations of the European Court of Auditors set out in

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<sup>1</sup> 'PIF' is the acronym for 'protection of the financial interests' and may refer to various acts whose substantive scope covers matters in this area.



Special Reports Nos 19/2017<sup>2</sup>, 1/2019<sup>3</sup> and 6/2019<sup>4</sup>, and the implementation of point 37 of the Action Plan to the European Commission's Anti-Fraud Strategy<sup>5</sup>.

On the basis of an analysis of the Mechanism for protection of the Union's financial interests for the period until 2019 and the problem areas identified, strategic goals and operational objectives have been set out and a strong need for action to counter irregularities and fraud affecting the revenue and expenditure sides of the EU budget, including on the part of revenue, law enforcement and judicial authorities, has been identified.

### **1.1. Legal basis**

The Strategy has been adopted at a meeting of the Council of Ministers of the Republic of Bulgaria. The draft was drawn up by an inter-institutional working group pursuant to Article 33(9), in conjunction with subparagraph 8, of the Law on the Ministry of Interior (ZMVR), Article 6(1)(4) and (11) of Decree No 18 of 4 February 2003 establishing a Council for Coordination of the Fight against Infringements Affecting the Financial Interests of the European Union and in accordance with the 2019 Action Plan to the National Strategy for Preventing and Combating Irregularities and Fraud Affecting the Financial Interests of the European Union over the period 2014-2020, adopted by Decision No 30 of the Council of Ministers of 24 January 2019.

The National Strategy is further adopted in line with point 37 of the Action Plan to the European Commission Anti-Fraud Strategy<sup>6</sup>; Audit recommendation No 1<sup>7</sup> set out in Special Report No 6/2019 of the European Court of Auditors and Recommendation No 2<sup>8</sup> set out in the European Commission's report on protection of EU's financial interests ('PIF' Report) for 2018 drawn up in accordance with Article 325 of the Treaty on the Functioning of the European Union (TFEU).

It is fully in line with the Commission's Guidelines for national anti-fraud strategies for European Structural and Investment Funds (ESIF) Ref. Ares (2014) 4344594 – 23/12/2014, [SWD] Practical steps towards the drafting of a National Anti-Fraud Strategy Ref. Ares (2015)5642419 – 07/12/2015, and the Commission's Guidelines on National Anti-Fraud Strategies

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<sup>2</sup> <https://op.europa.eu/webpub/eca/special-reports/eu-customs-19-2017/bg> Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU.

<sup>3</sup> <https://op.europa.eu/webpub/eca/special-reports/fraud-1-2019/bg/> Fighting fraud in EU spending: action needed.

<sup>4</sup> <https://op.europa.eu/webpub/eca/special-reports/fraud-in-cohesion-6-2019/bg/> Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination.

<sup>5</sup> [https://ec.europa.eu/anti-fraud/sites/antifraud/files/2019\\_commission\\_anti\\_fraud\\_strategy\\_action\\_plan\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/2019_commission_anti_fraud_strategy_action_plan_en.pdf) — Action Plan to the 2019 Commission Anti-Fraud Strategy. In point 37 of the Action Plan the Commission encourages all Member States to put in place national anti-fraud strategies.

<sup>6</sup> Full text in English: Commission Anti-Fraud Strategy (CAFS): [https://ec.europa.eu/anti-fraud/sites/antifraud/files/2019\\_commission\\_anti\\_fraud\\_strategy\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/2019_commission_anti_fraud_strategy_en.pdf)

<sup>7</sup> Recommendation 1 – Develop formal strategies and policies to combat fraud against EU funds.

<sup>8</sup> Recommendation 2 – The Commission reiterates the appropriateness of Member States that have not already done so to adopt national anti-fraud strategies. These strategies should be developed in cooperation with all bodies and authorities which have a specific role and expertise in the protection of the EU's financial interests, including law enforcement and prosecution services.



Ref. Ares (2016)6943965 — 13/12/2016. Bulgaria's anti-fraud strategy is further in line with the Methodology for Strategic Planning in the Republic of Bulgaria.

A fraud risk assessment is set out in Annex No 1 to the Strategy.

## **1.2. Definitions**

According to the definition laid down in Article 2(1) of Regulation (EC, 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 '**financial interests of the Union**' means revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them.

According to the definition laid down in Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests '**irregularity**' means any infringement of a provision of Community or national law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.<sup>9</sup>

Within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law the elements of 'fraud' include the following:

- (a) fraud affecting non-procurement-related expenditure;
- (b) fraud affecting procurement-related expenditure;
- (c) fraud affecting non-VAT-related revenue;
- (d) fraud affecting VAT-related revenue.

Taking into account the four elements of the definition of fraud set out in Article 3, fraud involving European Union funds has the following elements:

- i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
- ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

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<sup>9</sup> The definition is fully in line with Council Regulation (EC, Euratom) No 2988/95, amended to ensure that it is consistent with the case-law of the Court of Justice of the European Union according to which the definition of 'irregularity' also extends to breaches of provisions laid down in national law. This is clearly stated in the settled case-law of the CJEU, for example in the Judgment in the *Judetul Neamț* case (2016), Joined Cases C-260/14 and C-261/14 of 26 May 2016, paragraphs 36 and 43. The modified definition is set out in the Regulation laying down the general provisions for the programming period 2014-2020, which is not cited here because the Commission is currently preparing a new general regulation for the period 2021-2027.



iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted;

According to the definition laid down in Article 2 of Commission Delegated Regulation (EU) 2015/1970 of 8 July 2015 **suspected fraud** means an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud.

In accordance with Article 61 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 a **conflict of interests involving EU funds** exists where the impartial and objective exercise of the functions of a financial actor or other person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

The European Commission pays serious attention to conflict of interests. This means that financial actors within the meaning of Chapter 4 of Regulation (EU, Euratom) 2018/1046 and other persons, including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, must not take any action which may bring their own interests into conflict with those of the Union.

In accordance with Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law:

**Passive corruption involving European Union funds** means the action of a public official who, directly or through an intermediary, requests or receives advantages of any kind, for himself or for a third party, or accepts a promise of such an advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.

**Active corruption involving European Union funds** means the action of a person who promises, offers or gives, directly or through an intermediary, an advantage of any kind to a public official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.

**Misappropriation of European Union funds** means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests.

**Public official** (including a national official) means a Union official or a national official, including any national official



of another Member State and any national official of a third country, as well as any persons who do not hold formal office but who are nonetheless assigned and exercise, in a similar manner, a public service function in relation to Union funds, such as contractors involved in the management of such funds.

### **1.3. Mechanism and institutional framework at EU level**

#### **1.3.1. Shared responsibility**

Article 325(1) of the Treaty on the Functioning of the European Union (TFEU) requires Member States to counter fraud and any other illegal activity affecting the Union's financial interests. When the Commission implements the budget under shared management, tasks relating to budget implementation are delegated to the Member States. When they manage Union funds, the Commission and the Member States respect the principles of sound financial management (Article 317 of the TFEU), transparency and non-discrimination and ensure visibility of the Union action. To that end, the Commission and the Member States fulfil their respective control and audit obligations and assume the resulting responsibilities laid down in Article 63 of Regulation (EU, Euratom) 2018/1046 (the Financial Regulation, 'Omnibus' Regulation).

The contributions of the Member States form nearly all revenues in the EU budget. The Member States also share the management of approximately 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.

When executing tasks relating to budget implementation, Member States are required to take all the necessary measures, including legislative, regulatory and administrative measures, in order to protect the financial interests of the Union, namely by preventing, detecting and correcting irregularities and fraud.<sup>10</sup>

#### **1.3.2. European Anti-Fraud Office (OLAF)**

The prevention and detection of fraud is a primary responsibility of the European Commission. The European Anti-Fraud Office was established on 28 April 1999 by Commission Decision 1999/352/EC with a mandate to counter fraud, corruption and any other illegal activity that may prejudice the Community's financial interests. Its functioning is governed by 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). The Office, which has a mandate to conduct administrative investigations as a means of combating fraud, has been granted special status and operates as an independent investigation service of the European Commission. OLAF exercises the investigative powers of the Commission in accordance with EU law and the applicable agreements concluded by the Union with third countries.

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<sup>10</sup> In accordance with Article 63(2)(c) of Regulation (EU, Euratom) No 2018/1046.



It is also involved in the coordination of the actions of Member States aimed at protecting the Union's financial interests against fraud in accordance with Article 325(3) of the TFEU and the applicable regulatory framework.<sup>11</sup> The actions of the Commission and the Member States are supported through regular consultations, more specifically within the framework of the Commission's Advisory Committee for the Coordination of Fraud Prevention (COCOLAF).<sup>12</sup> OLAF also contributes to the elaboration and development of methods for preventing and combating fraud, corruption and other illegal activities affecting the Union's financial interests. It promotes and coordinates, together with the Member States and between them, the exchange of operational experience and good procedural practices in the area of protection of the Union's financial interests and supports the joint anti-fraud action that Member States take on a voluntary basis.

OLAF works in close cooperation with the Anti-Fraud Coordination Services (AFCOS)<sup>13</sup> of the Member States, pursuing effective cooperation and exchange of information, including information of operational nature, fostering synergies and advancing coordination in the fight against fraud and irregularities.<sup>14</sup>

OLAF and the European Public Prosecutor's Office have complementary and mutually reinforcing goals. In accordance with Article 101 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, the EPPO establishes and maintains a close relationship with OLAF based on mutual cooperation and information exchange within the respective mandate of each organisation. The relationship aims in particular to ensure that all available means are used to protect the Union's financial interests through complementarity and support provided by OLAF to the EPPO.

### **1.3.3. European Public Prosecutor's Office**

The European Public Prosecutor's Office is the independent and decentralised prosecution service of the European Union with competence to investigate and prosecute under criminal law offenses against the budget of the European Union, such as fraud, corruption or cross-border VAT fraud of more than EUR 10 million, and bring to judgment the perpetrators of such crimes. In accordance with Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, Bulgaria is a member of the EPPO.

The European Public Prosecutor's Office functions as a single body across the territory of the participating Member States and brings together the efforts of the EU and national

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<sup>11</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and 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).

<sup>12</sup> Commission Decision 94/140/EC, OJ L 61, 4.3.1994, p. 27

<sup>13</sup> In English: Anti-Fraud Co-ordination Service – AFCOS.

<sup>14</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), Article 3(4).



law enforcement authorities in an integrated and efficient approach to combating fraud by means of criminal law.

The EPPO operates at both central and at national level. The central level consists of the European Chief Prosecutor, European Prosecutors (one per participating Member State), two of whom as Deputies for the European Chief Prosecutor, the Administrative Director and dedicated technical and investigative staff. The decentralised level consists of European Delegated Prosecutors located in the participating Member States. The central level supervises the investigations and prosecutions undertaken at the national level.

The functioning of the European Public Prosecutor's Office will affect the *modus operandi* of all national bodies concerned with the management and control of EU funds, including the Bulgarian Prosecution Office, the managing, certifying and audit authorities, and the Directorate for Protection of the Financial Interests of the European Union (AFCOS) of the Ministry of Interior (MVR), among others. It is therefore imperative that Bulgaria puts in place a national institutional framework to enable the necessary cooperation.

#### **1.4. Mechanism and institutional framework in Bulgaria**

Article 325(2) of the TFEU requires Member States to take the same measures to counter fraud affecting the Union's financial interests as they take to counter fraud affecting their own financial interests.

Taking into account the specifics of national legislation and system of government bodies concerned with the fight against irregularities and fraud, Bulgaria has chosen a model, which precludes duplication and brings together as well as enhances coordination between the competent institutions, including independent judicial authorities.

##### **1.4.1. Council for coordination of the fight against infringements affecting the financial interests of the European Union**

The Council for coordination of the fight against infringements affecting the financial interests of the European Union (the Council), established by Decree No 18 of the Council of Ministers of 4 February 2003, ensures coherence and complementarity of the measures taken by the national authorities in the fight against irregularities and corruption involving EU funds at the highest political level.

The Council is chaired by the Minister for Interior who has the overall responsibility for the implementation of government policy on protection of the Union's financial interests. The members of the Council are ministers, deputy ministers, the heads of administrative services responsible for the management of EU funds, the directors of revenue agencies, and the heads of control bodies and certifying, audit and law enforcement authorities.

The conditions, procedure, competent bodies and form of interaction and cooperation between the Council for coordination of the fight against infringements affecting the financial interests of the European Union and the Bulgarian Prosecution Service are governed by a cooperation agreement



signed in 2015. The meetings of the Council are attended by the Prosecutor-General or by a duly authorised representative thereof.

The Council performs the following functions: proposes to the Council of Ministers draft legislation, strategies on the fight against criminal offences against the Union's financial interests and action plans thereto; submits annual reports on its activity to the Council of Ministers; acts on a proposal from the members or the chairperson of the Council, discusses matters relating to the fight against irregularities and fraud affecting the Union's financial interests and adopts decisions on appropriate measures to optimise it. Such measures are compulsory and Council members are required to make arrangements for their implementation.

They must furthermore make arrangements within the administrative services they lead to enable the implementation of activities in the area of preventing irregularities and combating fraud affecting the Union's financial interests. Each administration designates officials responsible for countering irregularities and fraud and enabling cooperation with the AFCOS Directorate on operational matters, and officials responsible for the administration of irregularities and alerts. Inter-institutional working groups to the Council may be set up, as necessary.

In carrying out its role, the national Council interacts with the Council for Coordination in the Management of EU funds tasked with the coordination of government policy measures on Bulgaria's development financed by EU funds.

The Council's work is assisted by the AFCOS Directorate within the Ministry of Interior in its capacity of a Secretariat.

#### **1.4.2. AFCOS Directorate of the Ministry of Interior**

The AFCOS Directorate is a special unit of the Ministry of Interior, which performs control, information and coordination activities relating to the protection of the EU financial interests and acts as an anti-fraud coordination service in accordance with Regulation (EU, Euratom) No 883/2013. It is the national contact point with OLAF and the competent authorities responsible for protection of the Union's financial interests of other Member States and third countries. In this capacity, it makes arrangements at national level, coordinates and monitors the reporting of irregularities by the national authorities to European Commission services, conducts administrative checks to detect irregularities and fraud affecting the Union's financial interests (administrative investigations), of its own initiative or at the request of OLAF, and coordinates at national level the investigations conducted by OLAF in Bulgaria. The AFCOS Directorate also makes the necessary arrangements for the preparation of Bulgaria's contribution to the annual report of the European Commission under Article 325 of the TFEU.

Its role is also relevant to the implementation of Recommendation No 5 set out in Special Report No 6/2019 of the European Court of Auditors (Support the expansion of the AFCOSs' function in the European Union)<sup>15</sup>.

#### **1.4.3. National bodies responsible for the management and control of EU funds**

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<sup>15</sup> See point 92 of the report, <https://op.europa.eu/webpub/eca/special-reports/fraud-in-cohesion-6-2019/bg/#chapter4>



The bodies concerned with the management of EU funds are the managing authorities, the certifying authorities and the audit authorities. The managing authorities and the audit authority have retained their functions and responsibilities in the programming period 2021-2027 and a new accounting function has been introduced, which will either be performed by a separate body or as an element of the responsibilities of the managing authority. At national level, the following institutions have retained their respective competence with regard to the Union's financial interests: the Ministry of Finance, the Public Financial Inspection Agency, the National Audit Office, the Central Coordination Unit within the Council of Ministers' administration, the competent bodies of the Ministry of Interior, Bulgaria's Prosecution Office, the State Agency for National Security, the Commission for Combating Corruption and Confiscation of Illegally Acquired Property, the national courts, etc.

The bodies concerned with the management and control of European Structural and Investment Funds (ESIF) are designated in the Law on the Management of the Financial Assistance from the European Structural and Investment Funds (ZUSESIF). Their functions and responsibilities in countering irregularities and fraud involving EU funds are stipulated in the ZUSESIF, the Public Sector Financial Management and Control Act (ZFKUPS) and the implementing regulations thereto.

## **2. ANALYSIS OF THE STATE OF PLAY OF THE SECTOR AND FRAUD RISK ASSESSMENT**

### **2.1. Analysis of the state of play of sector**

The European Commission and the Member States have a shared responsibility to protect the Union's financial interests against fraud and corruption. In its assessment, the European Court of Auditors found that in the programming period 2014-2020 [the awareness of] the competent institutions, and more specifically [of] the managing authorities, of anti-fraud risk assessment increased and that the use of IT systems in their work improved, stressing the need for continued effort in the fight against fraud.<sup>16</sup>

At the same time, several new legislative initiatives for the period after 2020 have been launched at EU level that will make it possible, for the first time in the history of the European Union, for fraud involving EU funds to be prosecuted by the means of criminal law by a supranational body — the European Public Prosecutor's Office.

Directive (EU) 2017/1371 establishes minimum rules concerning the definition of criminal offences and sanctions with regard to combating fraud and other illegal activities affecting the Union's financial interests and introduces, inter alia: liability of legal persons for the criminal offences defined in the Directive, definitions of active and passive corruption affecting EU funds, and a definition of a public official, to which status private persons who have received EU funds are equated. These changes are provoked out of the need to raise the standard of liability in the

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<sup>16</sup> <https://op.europa.eu/webpub/eca/special-reports/fraud-in-cohesion-6-2019/en>, Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination, p. 4, vol. III.



use of EU funds and enable the prosecution of criminal offences involving such funds by the European Public Prosecutor's Office.

By 17 December 2021, Bulgaria must bring its national legislation into line with the requirements laid down in Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Article 2(b) of the Directive lays down common minimum standards for the protection of persons who report breaches affecting the Union's financial interests referred to in Article 325 of the TFEU and further specified in the relevant Union measures. The Directive requires that arrangements should be made for the introduction and functioning of a national mechanism for the protection of whistle-blowers and for the investigation and follow up of each reported breach of Union law. A mechanism is also introduced for the submission of statistics to the European Commission on the number of reports received by the competent authorities, the number of investigations and proceedings initiated in connection with reported breaches and their outcome, the estimated financial damage, and the amounts recovered following investigations and proceedings related to the reported breaches.

At EU level, the importance of countering irregularities and fraud was highlighted with the appointment of the new College of Commissioners in 2019, and more specifically by the fact that coordination of the fight against fraud is now part of the portfolio of one of the Commissioners. Furthermore, a proposal<sup>17</sup> is currently being discussed for a new regulation that seeks to strengthen the rule of law.

Where necessary, the European Commission and the Member States should be sufficiently flexible in the allocation of funds in order to be able to respond to common challenges to Union policy, such as the outbreak of the global COVID-19 pandemic in 2020 and ensure an adequate level of control of emergency funds made available in response to crises. In order to push forward with Europe's economic recovery and protect the lives, livelihoods and jobs of citizens, in 2020 the Commission proposed a large-scale recovery plan seeking to achieve a more sustainable, digital and fair Europe, including a new European Recovery and Resilience Facility for the period 2021-2024 to boost the EU budget with new financing raised on the financial markets.<sup>18</sup>

Civic initiatives and civil society organisations are becoming increasingly active at the national level. In order to keep up with this trend, Bulgaria endeavours to amend its legal framework in a timely manner. With the amendments to the ZFUKPS adopted in 2019, a requirement was introduced for preventing, detecting and taking corrective actions to rectify irregularities. In 2019 and 2020, amendments were introduced to the Ordinance on the detection of irregularities giving rise to the application of financial corrections and on the rates for calculation of financial corrections in accordance with the ZUSESIF. With the latest amendments, new types

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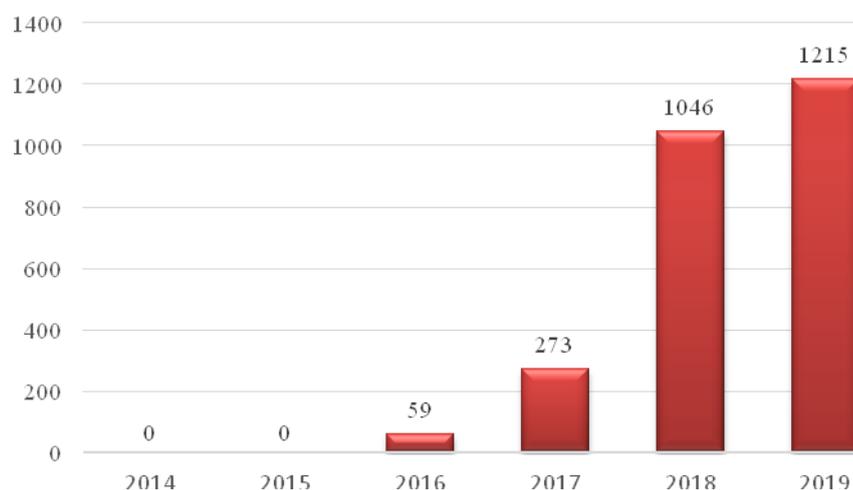
<sup>17</sup> [Proposal for a] Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States. Full text of the proposal: [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0038\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0038_EN.html)

<sup>18</sup> See Recovery Plan for Europe, [https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/recovery-plan-europe\\_bg](https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/recovery-plan-europe_bg)



of irregularities were defined in line with the updated Commission Guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the rules on public procurement. In 2020, amendments to the Value Added Tax Act (ZDDS) entered into force and they seek to address the exploitation of loopholes in the law that previously made it possible for taxable persons to avoid registering for VAT, respectively charging VAT for supplies of goods and/or services. Following the amendments to the Customs Act, which entered into force of 1 January 2020, the Minister for Finance, acting on a proposal from the Director of the Customs Agency, may approve a list of goods posing a high risk to the Union's financial interests by a dedicated order. Accordingly, when on the basis of checks performed to verify the data contained in customs declaration for release for free circulation of goods included in the list approved by Minister for Finance, it is established that the declared prices are lower than the fair prices of the goods in the European Union, the customs authorities require that a guarantee is provided. The guarantee must be sufficient to cover the full amount of the relevant customs duty, calculated on the basis of the fair prices of the goods concerned upon declaration, as a prior condition for completion of the customs formalities applicable to the relevant import regime. The fair prices of goods are determined by comparing the prices declared on import and those in the THESEUS web-based platform of the Joint Research Centre of the European Commission. With regard to the implementation of programmes co-financed by the European Structural and Investment Funds (ESIF), in the period 2014-2019 a total of 2 593 irregularities were established in Bulgaria. Out of these, a total of 344 or 13.3 % of all irregularities were reported to OLAF.<sup>19</sup>

After the first irregularities in the use of ESIF were detected in 2016, a period of rapid increase in the number of established irregularities followed, corresponding to the rate of implementation of the programmes and projects as shown in the chart below.



<sup>19</sup> The number of irregularities reported to the European Commission is lower than the number of the irregularities detected at national level on account of the threshold set in Article 122 of Regulation (EU) No 1303/2013 according to which only irregularities that exceed EUR 10 000 in contribution from the Funds have to be reported.

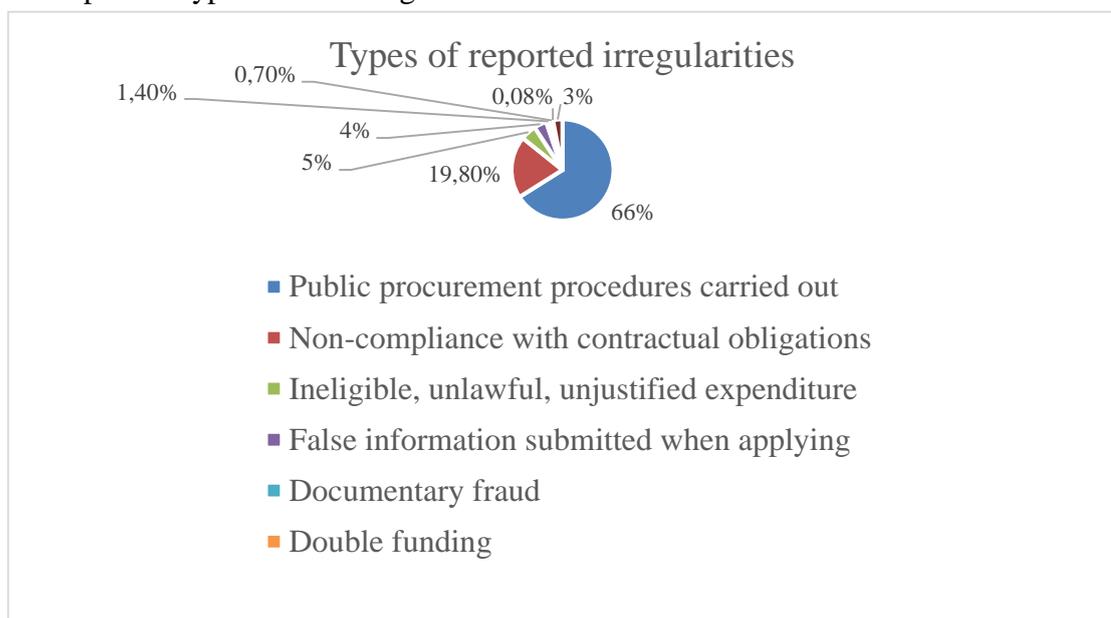


**Chart No 1:** Total number of irregularities affecting the European Structural and Investment Funds detected in the period 2014-2019.

Out of the total number of irregularities affecting expenditure financed by the ESIF, 43 irregularities or 1.7 % out of the total have been qualified as suspected fraud. Fraud has been confirmed in three cases or less than 1 % out of the total number of irregularities. A total of 2 119 irregularities or 82 % out of the total number are currently active and administrative checks or judicial proceedings are under way. The administrative investigations or judicial proceedings in respect of the remaining 474 irregularities or 18 % out of the total have concluded. A total of 23 cases have been closed on account of no irregularities being found.

A breakdown of the types of irregularities detected during the six-year period (2014-2019) is set out below.

- 66 % of irregularities involved infringements of procedures for the award of public procurement contracts;
- 19.9 % of irregularities involved non-performance of contractual obligations;
- 5 % of irregularities involved ineligible, unlawful or unjustified items of expenditure;
- 4 % of irregularities involved making false representations at the time of submitting applications for grant assistance;
- 1.4 % of irregularities involved attempted documentary fraud;
- 0.7 % of irregularities involved attempts to obtain double financing;
- 0.08 % of irregularities involved conflicts of interest. The actual number of this type of irregularity may be higher as conflict of interest is suspected to be an element of other types of irregularities;
- 3 % of irregularities involved other infringements or available information is insufficient to determine the precise type of the infringement.



**Chart No 2:** Types of irregularities reported in the (six-year) period 2014-2019



The number of irregularities reported during the first six years of programming period 2014 – 2020 decreased compared to the first six years of the programming period 2007 – 2013. The same applies to the amount of funds affected by irregularities.

The decrease in the number and the amounts affected by irregularities is attributable to a combination of the experience gained by all actors in the process and improvements in the management and control systems and legislation. However, as irregularities may be detected after the end of the programming period, these conclusions should be seen as tentative and subject to change.

Most irregularities involve infringements of the procedures for the award of public procurement contracts and that trend remains compared to the previous programming period 2007-2013.

## **2.2. Anti-fraud recommendations of the European Court of Auditors and the European Commission**

In the last three years, the European Commission has presented new strict and ambitious anti-fraud rules and initiatives in a clear demonstration of its determination to protect taxpayers' money. This has been achieved with the adoption of the dossiers on the PIF Directive, the EPPO Regulation and the Directive on the protection of persons who report breaches of Union law, with the Commission's reports to the European Parliament and the Council under Article 325 of the TFEU (Annual Report on the protection of the European Union's financial interests, PIF Report) also playing a role. The reports of the European Court of Auditors that aim to assess the fight against fraud at EU and national level add value to the anti-fraud procedures from a control and audit perspective. The recommendations set out in the reports are primarily addressed to the Member States and, in certain cases, to the European Commission.

In light of Bulgaria's obligation to act on the findings of the European Court of Auditors and the European Commission, these should be included in the Strategy as actionable points.

### **2.2.1. Special Report No 6/2019 of the European Court of Auditors sets out the following recommendations:**

**Recommendation 1: Formal strategies and policies to combat fraud against EU funds to be developed by the Member States. The strategies should at least:**

1. be based on the assessment of existing risks and involve knowledgeable actors from different areas (managers of EU funds, competent fraud investigation and prosecution bodies, etc.) in their preparation;
2. outline concrete measures for fraud prevention, detection, investigation and prosecution, and recovery and sanctions;
3. contain specific arrangements for monitoring the implementation of anti-fraud measures and measuring results;



4. explicitly assign responsibilities for the implementation, monitoring, coordination and comparative evaluation of anti-fraud measures.

**Recommendation 2: The managing authorities in the Member States should make fraud risk assessment more robust by involving relevant external actors in the process.**

[The] managing authorities, in particular those in charge of programmes with particularly high risk and high financial volume, should seek to involve relevant external actors with proven experience in combating fraud (e.g. representatives from prosecution bodies) in the evaluation of risks and of the suitability of existing anti-fraud measures.

**Recommendation 3: Improve fraud detection measures by generalising the use of data analytics tools and promoting the use of other ‘proactive’ fraud detection methods.**

1. Managing authorities that do not currently use fraud data analytics tools, in particular ARACHNE, should take them on for their potential to identify fraud risks in a systematic and cost-efficient manner;

2. Bulgaria should support the Commission’s efforts to promote the use of ‘proactive’ and other new fraud detection methods, including by regularly disseminating specific cases of best practice; and

3. In cooperation with the AFCOS units of other Member States, Bulgaria should cooperate with the Commission in establishing minimum arrangements for monitoring and evaluating the implementation and effectiveness of fraud prevention and detection measures.

**Recommendation 4: Monitoring of the fraud response mechanisms by the European Commission to ensure it is consistently applied**

The recommendation is addressed to the European Commission, meaning that the Member States should support the Commission's efforts to fulfil its commitment and implement the following activities:

1. The Commission should establish clear fraud reporting requirements for the Member States’ bodies in general and managing authorities in particular. These should be based on the standard interpretation of fraud affecting the EU’s financial interests in the new PIF Directive;

2. The Commission should require managing authorities to systematically assess the horizontal implications of suspected fraud in their management and control systems;

3. The Commission should encourage managing authorities to communicate all suspicions of fraud to criminal investigation or prosecution bodies.



4. To ensure deterrence is effective, managing authorities should take proportionate measures to recover public funds from perpetrators of fraud and not just decertify the expenditure from EU funding.

**Recommendation 5: Member States to support the expansion of the AFCOSs' function aimed at improving the coordination**

In order to fulfil this recommendation, the European Commission should encourage Member States to expand the AFCOSs' role of coordination with managing authorities to liaising with all national bodies charged with the investigation and prosecution of suspected fraud.

The functions of the AFCOSs could at least include the following:

- liaising between managing authorities (and the other programme authorities) and other Member State bodies involved in combating fraud, in particular investigation and prosecution bodies;
- monitoring the status of individual cases and reporting to the Commission on the follow-up given by the responsible managing authorities, with due regard to the confidentiality of ongoing investigations;
- in connection with the European Commission's annual reports on the protection of the European Union's financial interest, certifying annually, with a view to the Commission's preparation of PIF reports, that the information recorded in the IMS is complete, reliable, accurate and up to date.

**2.2.2. Recommendations set out in the Annual Report from the European Commission to the European Parliament and the Council on the protection of the European Union's financial interest drawn up in accordance with Article 325 of the TFEU:**

In accordance with Article 325 of the TFEU the Commission draws up an annual report on the protection of the European Union's financial interests which outlines the anti-fraud measures taken at EU and national level, with the following annexes: Statistical data on the irregularities reported as fraudulent and the 'Article 325 Questionnaire' in which the Member States are asked to outline the specific undertaken anti-fraud measures. The detailed description of the level of fraud affecting the entire EU budget (on the revenue and expenditure sides) helps to identify the areas presenting the highest risk and therefore define the action needed at European and national level.

In its Report to the European Parliament and the Council on the Protection of the European Union's financial interests — Fight against Fraud — 2018 Annual Report, published on 11 October 2019, the Commission noted that the number of irregularities reported as fraudulent (which includes cases of suspected or established fraud) and the associated amounts were not a direct indicator of the level of fraud affecting the EU budget.

They merely showed how many cases of potential fraud were detected and reported by Member States and EU bodies.

It is also noted that although the number of fraudulent irregularities reported in 2018 remained stable as compared with 2017, the financial amounts involved increased by a significant



183 %<sup>20</sup>. In 2018, a total of 11 638 fraudulent and non-fraudulent irregularities were reported to the Commission, 25 % fewer than in 2017. They involved approximately EUR 2.5 billion, remaining stable in comparison with the previous year.<sup>21</sup> In order to improve financial discipline in the European Union, the trend toward an increase in the amounts affected by fraud and the flat trend in the number of reported irregularities must be addressed. For this reason, the Commission makes a number of recommendations to the Member States with a view to ensuring that the fight against fraud affecting the European Union's financial interests in the period 2021-2027 achieves its full effect. They are as follows:

**Recommendation 1:** Member States are asked to enhance and enforce their customs control strategies for cross-border e-commerce, particularly for the potential abuse of low-value consignments reliefs (LVCR) and to ensure proper TOR collection. Member States are therefore requested to ensure that:

- electronic customs systems (ECS) do not automatically apply claimed duty relief on goods with a declared intrinsic value above EUR 150, on commercial consignments declared as gifts and on goods ineligible for relief;
- electronic customs systems (ECS) systematically detect potentially undervalued or incorrectly declared goods under LVCR by means of risk profiles or randomly;
- specific control measures are in place to prevent artificial splitting of consignments, aiming to benefit from duty relief;
- ex-post controls include verifications to ascertain traders' compliance with customs duty relief for low-value consignments and the non-exclusion of authorised economic operators (AEOs) from compliance checks.

**Recommendation 2:** The Commission reiterates the appropriateness of Member States that have not already done so to adopt national anti-fraud strategies. These strategies should be developed in cooperation with all bodies and authorities which have a specific role and expertise in the protection of the EU's financial interests, including law enforcement and prosecution services. In line with the recommended from previous years, these strategies should take into account:

- the risk analysis conclusions contained in this and previous reports;
- the need to structure the coordination between administrative and criminal checks and investigations;
- The ways to incorporate tips from media and whistle-blowers in the control system;
- the opportunity to strengthen the risk analysis-based approach to detect irregularities and fraud,

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<sup>20</sup> p. 18, point 2.5.1 of the Report from the European Commission to the European Parliament and the Council under Article 325 [of the TFEU].

<sup>21</sup> p. 17, point 2.5 of the Report from the European Commission to the European Parliament and the Council under Article 325 [of the TFEU].



including the use of IT tools (such as ARACHNE).

### **2.3. Fraud Risk Assessment**

The comprehensive fraud risk assessment set out in Annex No 1 has been drawn up at national level in cooperation with AFCOS Council members on the basis of sectoral risk assessments, taking into account the relevant audit recommendations at EU and national levels. It covers the identified sectoral risks, vulnerabilities and factors relevant to the different operational programmes from the point of view of both revenue and expenditure sides of the budget. The risk assessment also reflects specific risks identified within the framework of individual operational programmes from the perspective of the competent managing authorities and control bodies. The risks identified have been categorised according to their specific features and effect on the system for the management and control of EU funds.

The following main areas that require optimisation to address identified deficiencies and vulnerabilities have been defined:

1 The processes of selecting operations and verifying expenditure, and more specifically the system for contract award and performance by beneficiaries and contractors in accordance with the Law on the Management of the Financial Assistance from the European Structural and Investment Funds and the Public Procurement Act;

2 The functioning and adaptation of management and control systems, particularly the internal control systems of the managing authorities, the optimisation of which should prioritise the fight against conflicts of interest<sup>22</sup> and staff integrity and compliance measures.

Process optimisation in these areas will reduce the risks of non-implementation of projects and programmes, lower ineligible expenditure and minimise the risks of inefficiencies and breaches of public procurement law and infringements in budgetary, financial and economic operations.

At the same time, addressing deficiencies is a prerequisite for the effectiveness of the fight against irregularities and fraud and guarantees that the evidence presented to the managing authorities in respect of the progress achieved in the implementation of approved financial operations is fact-based and will, in particular, prevent the financing of ineligible projects and operations (wrongful pricing, fictitious implementation of activities, lack of compliance with eligibility criteria or other red flags indicating irregularities and fraud on the part of beneficiaries and contractors).

The identified deficiencies, vulnerabilities and factors with the strongest negative impact on the areas subject to optimisation are:

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<sup>22</sup> In point [5.3] *Integrity and compliance* of Document SWD/2019/171 final to the Commission Anti-Fraud Strategy (2019), the Commission has ranked undeclared conflicts of interest as a vulnerability that requires particular attention 5.3. because of its potential to harm the institutions' reputation in a particularly serious way.



- the dynamic development of legislation in recent years and the resulting changes in the rules for the activities performed, which creates difficulties for the officials directly engaged in the implementation of the activities concerned and for beneficiaries and contractors;
- the insufficient knowledge and shared use of the capabilities of information systems, data analytics IT tools and platforms, including web-based tools, taking into account their potential vulnerability to cyberattacks;
- the implementation of incomplete procedures for limiting the risks of conflict of interests in the selection of project proposals and verification of expenditure;
- insufficient cooperation, interaction and sharing of information, experience and practices between the bodies within the management and control system.

The introduction of measures for protection of the EU financial interests, including anti-fraud measures to safeguard traditional own resources (TOR), in connection with anti-dumping and countervailing duties, under declaration, use of incorrect tariff codes and the origin of imported goods is within the remit of competence of the Bulgarian customs authorities.

The new trends in financial fraud, the challenges posed by the growing volume of e-commerce, etc. require that the authorities focus their efforts on the application of a single approach to fighting fraud across the EU through common standards for Financial Risk Criteria (FRC) to be implemented by customs administrations at national level. There is a strong potential for improvement in the use of IT tools by the customs authorities, particularly to further expand the scope of application of automated risk analysis. The continually evolving approaches and instruments used to address risks require further strengthening of administrative capacity with regard to the latest customs control strategies and enhancing cooperation with all other actors in the field of protection of the EU's financial interests.

The timely identification, analysis, prioritisation and provision of the resources necessary to address the risks related to organised VAT fraud schemes are essential for the protection of the revenue side of the republican budget, which funds part of Bulgaria's own resources contribution to the EU General Budget.

Despite the trend which indicates a significant decrease in the damages resulting from VAT fraud and in the number of cases and taxable persons involved, several risks that jeopardise the efforts to counter organise VAT fraud can be highlighted. These are: the non-systematic application of the selected risk management approach; lack of sufficient resources and/or the inefficient management of available resources; inadequate communication of the strategy of the National Revenue Agency (NAP), and in particular the incentives for voluntary compliance; deficiencies in interaction with interested third parties in the field of preventing and combating irregularities and fraud.



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The risks related to the recovery of public funds, in cases of wrongly paid and overpaid amounts and unduly paid or incorrectly used amounts under projects financed by EU funds, are also taken into account in the implementation of the National Revenue Agency's strategy and the achievement of the main goals set out therein.



### **3 VISION FOR PROTECTION OF THE FINANCIAL INTERESTS OF THE EUROPEAN UNION IN THE REPUBLIC OF BULGARIA IN THE PERIOD UNTIL 2027 AND PRINCIPLES OF STRATEGY IMPLEMENTATION**

Bulgaria needs to be able to make a strong case in the negotiation of adequate financing from the EU budget in the future that will enable it to defend its position. To this end, it must demonstrate consistently good results in the effective and efficient protection of the Union's financial interests. The National Strategy for Preventing and Combating Irregularities and Fraud affecting the financial interests of the European Union is a logical step in policy action to protect the financial assistance from the EU budget, which Bulgaria will disburse in the programming period 2021-2027.

The societal and institutional vision for the period until 2027 entails:

- Effective and lawful disbursement of EU funds reflected by higher living standards for Bulgaria's citizens.

- Lower level of irregularities and fraud, including the affected amounts, as compared to the programming period 2014-2020 through prevention and imposing sanctions in a timely manner.

- Effective prosecution by means of criminal law of the offences envisaged in the PIF Directive and transposed into Bulgaria's Criminal Code.

- Lower corruption perception level in society as measured by the Annual Corruption Perception Index of Transparency International<sup>23</sup> and other relevant indices.

- Stronger position in negotiating the EU budget financial assistance to be allocated to Bulgaria in the programming period 2028-2034.

The national strategy fully recognises the importance of the following principles identified during the programming period 2014-2020: integrity, transparency, prevention of irregularities and fraud, effective investigation, sanctions and effective cooperation, and need to gear these to effectively address irregularities and fraud. During the new programming period 2021-2027 these principles will be even more relevant to preventing and combating irregularities and fraud.

Principles of strategy implementation:

- transparency in the use of EU funds;
- zero tolerance towards fraud involving EU funds;
- countering fraud as an element of internal control systems;
- enhanced prevention of irregularities and fraud;
- efficiency and effectiveness of the control of anti-fraud measures;

<sup>23</sup> <https://www.transparency.org/cpi2019>



- honesty, integrity and professional competence of the officials responsible for the management and control of EU funds;
- conditions for effective investigation and timely exchange of relevant and significant information in cases under investigation;
- proportionate corrective actions — recovery of funds and imposition of sanctions on perpetrators.
- cooperation based on mutual trust among stakeholders — citizens, economic operators and institutions.

#### **4 PROBLEM AREAS AND CHALLENGES IDENTIFIED**

##### **4.1. Problems and challenges in the area of prevention**

###### **4.1.1. Need for all managing authorities to adopt or update a concrete and clearly formulated anti-fraud policy, including a policy on combating conflicts of interest.**

At the level of operational programmes, the European Commission recommends that the managing authorities develop a structured approach to tackling fraud based on the four elements of the anti-fraud management process — prevention, detection, correction and prosecution.

During its audits in the Member States, the European Court of Auditors found<sup>24</sup> that ‘very few [of these] policies actually constitute formal reference documents summarising the measures to be implemented at each stage of the anti-fraud management process in response to identified fraud risks’. In the countries in which audits were performed, including Bulgaria, the ECA found examples of formalised anti-fraud policies only in Latvia, at specific intermediate bodies in Spain, and in France (where the policy has not been made public). In all other cases, in order to obtain a full description of anti-fraud measures the European Court of Auditors needed to consult multiple management documents and manuals of procedures, which demonstrates the absence of single, formalised and public anti-fraud policies.

The latter limits Member States’ ability to plan, supervise and coordinate anti-fraud measures and evaluate their effectiveness.

The handling cases and the actions taken to substantiate and correct irregularities and fraud arising from conflicts of interest involving EU funds in accordance with Article 61 of Regulation (EU, Euratom) 2018/1046 present an additional challenge. Although conflicts of interest pose problems in almost all Member States, only a handful of irregularities involving conflict of interest have been reported to OLAF. This demonstrates the need for a structured approach to combating conflict of interest involving European Union funds on the part of

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<sup>24</sup>See paragraph 20 of Special Report No 6/2019 of the European Court of Auditors.



the managing authorities and for a clear differentiation of their competence from that of other national bodies using definitions of conflict of interest applicable solely under national law.

#### **4.1.2. Need to enhance the reliability of fraud risk assessment, including by involving appropriate external actors**

Article 125(4)(c) of Regulation (EU) No 1303/2013 applicable to programming period 2014-2020 creates an additional requirement for the managing authorities to ‘put in place effective and proportionate anti-fraud measures, taking into account the risks identified’. The Member States use not only the mitigating actions proposed by the Commission in its guidance, but have additionally developed their own measures. These additional controls per risk area operate at system and at project level and further include investigations by the competent national investigative authorities. The requirement to put in place effective anti-fraud measures has also been included in the Commission's proposal for a new regulation laying down general provisions for the period 2021-2027.<sup>25</sup>

According to the recommendations of the European Court of Auditors the Member States have improved fraud prevention measures but have not made significant progress towards proactive fraud detection. Hence the recommendation to make fraud risk assessment more robust, including by involving relevant external actors in the process.

#### **4.1.3. Expanding AFCOSs’ functions to ensure better coordination, prevention and detection of irregularities and fraud**

According to Recommendation No 5 set out in Special Report No 6/2019<sup>26</sup>, the European Court of Auditors supports the expansion of the AFCOSs’ capacity and powers in all Member States.

The managing authorities are one of a number of institutions responsible for anti-fraud measures at Member State level. In 2013, a requirement was introduced for each Member State to establish an anti-fraud coordination service (AFCOS) in order to facilitate effective cooperation and exchange of information, including information of operational nature, between the respective service and OLAF. In an additional Guidance Note<sup>27</sup>, the Commission notes that in Member States AFCOS should be responsible for the co-ordination of all legislative, administrative and operational aspects of the protection of the EU’s financial interests.

Recognising that Member States have flexibility to designate and make arrangements to enable the functioning of their [anti-fraud coordination] services in line with the principle of subsidiarity, the European Parliament and the Council, acting on a proposal from the European

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<sup>25</sup> See Article 68(1)(c) of the European Commission proposal at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018PC0375&from=EN>

<sup>26</sup> Recommendation 5 — Support the expansion of the AFCOSs’ function to improve coordination.

<sup>27</sup> Guidance note on main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS).



Commission, are currently working to determine a minimum set of functions of the anti-fraud coordination services of Member States to ensure that they play an effective role in coordination.

The European Court of Auditors also supports the expansion of the functions of anti-fraud coordination services in the EU in parallel to setting minimum requirements for AFCOSs as envisaged in the proposal for amending Regulation (EU, Euratom) No 883/2013 (OLAF Regulation).<sup>28</sup>

#### **4.1.4. Insufficient administrative capacity. Recruiting properly trained officials in the administration with sound knowledge of the functioning of the European Union**

An effective system for the fight against irregularities and fraud requires a sustained effort to hire a sufficient number of competent professionals and ensure that sufficient administrative capacity is available for the implementation of prevention measures. In accordance with Decree No 18/2003 of the Council of Ministers the members of the Council for coordination of the fight against infringements affecting the financial interests of the European Union are required to designate officials responsible for the fight against irregularities and fraud at their respective services. In the period up to 2013, legislation was adopted to enable the recruitment of the necessary personnel by modifying the rules on the structure and organisations of the relevant government bodies and judicial authorities. Investigating teams were set up and administrative capacity was enhanced through theoretical and practical training, exchange of experience, and study visits to the EU institutions and competent institutions in other Member States.

Despite the positive experience gained in the programming period 2014-2020, problems and challenges in this area continue to persist. At some institutions, responsibility for the fight against irregularities and fraud has been delegated to newly recruited officials without sufficient experience, in addition to the tasks envisaged in their job descriptions. This creates a need for further enhancement of the administrative capacity in order to ensure effective implementation of prevention measures. Capacity and skills need to be improved in the following areas: professional competence, foreign language proficiency, exchange of good practices and knowledge of the functioning of the European Union and Community law, with an emphasis on strengthening capacity in the area of disbursement of EU funds. Sound knowledge of the functioning of the European Union is an essential requirement for performing functions relating to the management and control of EU funds. The recruitment and training of staff with the necessary competence in this area will reinforce the positive trend in building sufficient administrative capacity.

#### **4.1.5. Need to improve transparency and access to information**

In recent years, significant investments have been made in ensuring that information about the initiatives and policies in the area of disbursement of EU funds is widely publicised. Websites of all institutions, represented in the Council have been developed, information campaigns and press conferences have been conducted and reports on activity and on the results achieved have been publicly presented. The funds disbursed on communication activities under operational programmes and from the national budget warrant the conclusion that although significant progress has been made in the efforts

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<sup>28</sup> [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2018/0170\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2018/0170(COD))



to raise the visibility of the work of public institutions, an optimal level of publicity is yet to be achieved. There is also a need to improve the mechanism for handling reports and complaints in order to win whistle-blowers' trust in the actions of the Bulgarian authorities. An effort to publicise the follow-up action taken in response to whistle-blowers' reports in the media is likely to have a positive effect. Interaction with media services and civil society organisations is another area where improvement is needed. The publicly available and transparent information on the disbursement of EU funds should be expanded to address enquiries received in accordance with the procedure stipulated in the Access to Public Information Act (ZDOI), which would lower the administrative burden of responding to individual enquiries. The promotion of the common minimum standards granting effective protection to persons who report offenses affecting the Union's financial interests, as envisaged in Article 325 of the TFEU and further specified in the relevant measures at Union level, along with publishing information about the number of reported infringements and the action taken to follow up on reports will increase citizens' confidence in the legal and institutional framework for reporting offenses. The low number of whistle-blowers is a key constraint with a detrimental effect on law enforcement and the application of Union law and may seriously harm public interest. The common minimum standards for protection, transparency and access to information need to be promoted in order to encourage citizens and public officials to report crimes, allowing Bulgaria to meet the requirements of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

#### **4.1.6. Need to maintain and further improve information exchange systems**

In connection with the protection of the European Union's financial interests, Union law requires that Member States provide information to the European Commission on detected irregularities, the affected amounts and the follow up actions. The Commission uses the information received for conducting effective analyses, overall monitoring of the management system for irregularities and the development of prevention and anti-fraud policies. The statistics on reported irregularities affecting TOR, the Structural Funds and the Cohesion Fund, the Agricultural Funds and the Instrument for Pre-Accession Assistance form an important part of the Commission's annual report on the protection of the EU's financial interests. This means that available systems must be properly maintained and, where necessary, further improved.

In addition to the system for reporting irregularities, an additional mechanism will be put in place after 2021 which Member States will use to provide the Commission with all relevant information about the reports received and the follow-up action taken as provided for in Article 27 of the Directive on the protection of persons who report breaches of Union law.



## **4.2. Problems and challenges in detecting and countering irregularities and fraud**

### **4.2.1. Need to improve fraud detection measures by generalising the use of data analytics tools and promoting the use of other 'proactive' fraud detection methods**

In order to be able to take adequate anti-fraud measures, the bodies concerned with the management and control of EU funds must be sufficiently proactive and technologically well advanced.

More specifically, they should proactively take up data analytics fraud detection tools, taking into account their potential to identify fraud risks in a systematic and cost-efficient manner. There is a need to introduce a single methodology for the use of ARACHNE, the European Commission's risk assessment system. The managing authorities that make use of ARACHNE may, at their own discretion, hire additional staff or modify their establishment plants in order to create IT-assisted data analytics jobs.

During the audits performed in the Member States, the European Court of Auditors found<sup>29</sup> that very few additional 'proactive' controls are used to detect fraud (e.g. specific checks for collusion in public procurement, such as the semantic analysis of bids received or the identification of abnormal bidding patterns).

[It also found that] data analytics is under-used for fraud detection. The Commission encourages managing authorities to use data analytics proactively to detect potential high-risk situations, identify red flags and refine the aim of measures to combat fraud. Data analytics should be used as a systematic part of project selection, management verifications and audits in order to enhance scrutiny and, where necessary, intensify control. In order to improve and enhance their practice, the managing authorities and other control bodies may use available good practices from audit authorities, certifying authorities and the European Commission.

The European Court of Auditors found that, except in Latvia, none of the managing authorities examines the effectiveness of fraud prevention and detection measures. [It also found that managing authorities] keep limited records of which measures are used and seldom link them to specific results, meaning that anti-fraud systems are not evaluated in terms of their actual results.

Anti-fraud prevention and detection measures and those seeking to correct their effects must be part of a clear and focused anti-fraud policy. A fraud prevention mechanism must be put in place, including a fully functional internal control system that goes hand in hand with an integrity enabling environment, staff training and clear separation of responsibilities. The managing authorities of EU funds must maintain and ensure the timely update of a system of measures for the detection, investigation and reporting of fraud and for taking appropriate corrective action.

### **4.2.2. Need to improve the protection of persons who report infringements affecting the EU's financial interests**

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<sup>29</sup>See paragraph 33 of Special Report No 6/2019 of the European Court of Auditors.



Many citizens are discouraged from reporting irregularities and fraud involving EU funds for fear of retaliation, including dismissal. By reporting breaches of Union law that are harmful to the public interest, such persons act as ‘whistle-blowers’ and thereby play a key role in exposing and preventing such breaches and in safeguarding the welfare of society.

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 requires that Member States put in place a properly functioning national mechanism for whistle-blower protection; that they carry out checks, take follow-up action and submit to the European Commission statistics on the reports; and that they designate authorities competent to receive, provide feedback and follow up on reports. The competent authorities are required to submit statistics to the European Commission on the number of reports received, the number of investigations and proceedings related to the breaches reported and their results, the estimated financial damage, if ascertained, and the amounts recovered following investigations and proceedings, related to the breaches reported.

Investigative journalism plays a key role in the detection of fraud and so does the possibility available to the national bodies responsible for the management and control of EU funds to launch investigations on the basis of published investigative materials containing sufficient indications of irregularities or fraud involving EU funds.

#### **4.2.3. Need to update cooperation agreements**

Actions in the field of preventing and combating irregularities and fraud affecting the EU's financial interests require an elaborate and comprehensive approach. They can never be limited to a single institution but require coordinated interaction and measures that fall within the area of competence of two or more institutions. The same is broadly applicable to detecting and countering irregularities and fraud. Hence, a number of bilateral and multilateral cooperation agreements have been signed and instructions on interaction and working programmes have been developed in recent years. The agreements are reviewed at regular intervals with a view to enhancing inter-institutional cooperation and ensuring that they are modified in a timely manner to reflect any changes that may occur in the structure and competence of the relevant institutions. The feasibility of concluding new bilateral and multilateral agreements with a view to achieving the goals of this Strategy should be considered.

#### **4.2.4. The challenges faced by tax and revenue administrations. Taking action to address potential abuse of low-value consignment reliefs (LVCR) and improve the collection of traditional own resources (TOR)**

The protection of the EU's financial interests is a serious challenge for the revenue agencies. The strongly competitive business environment and the economic crisis have led to an increase in the cases of attempted fraud against the EU budget, which translates into annual losses of revenue. Despite the measures taken by the customs administration to improve tax collection and increase revenue, further efforts are needed to



reduce the sizeable informal sector in Bulgaria. The need to establish close cooperation, improve coordination and enable the competent authorities to conduct joint inspections and controls remains a challenge. Detecting and countering tax fraud and cigarette smuggling requires making greater use of information systems for the exchange of risk-related information and improved coordination between revenue and law enforcement authorities in Bulgaria and between the national authorities and those of other Member States, third countries and international organisations.

The proper collection of traditional own resources requires consistency in strategy implementation and the use of customs control instruments in cross-border e-commerce, in particular with regard to low-value consignment reliefs.

#### **4.2.5. Need for joint action on the part of government institutions, private sector actors, NGOs and civil society**

The problems and challenges in detecting and countering irregularities and fraud imply first and foremost a need to enhance control, take joint action and improve communication between government institutions and private sector actors and NGOs. In order to address deficiencies and improve the effectiveness of the internal control systems of managing authorities on the basis of risk assessment, more robust ex-ante and ex-post controls may be introduced, at the discretion of the relevant authorities, in combination with annual analyses of frequently encountered irregularities and exchange of good practices in the area of detection between actors in this field. The managing authorities facing similar issues may also develop a mechanism for the exchange of information at their own discretion. Effective detection and prevention require better public awareness of irregularities and suspected fraud, including available reporting channels, and stronger civil engagement.

#### **4.2.6. Need for dedicated training of specialist bodies and appropriate training of the beneficiaries and officials concerned with the management and control of EU funds**

In recent years, the Commission has made major efforts to ensure that targeted anti-fraud training is delivered to the relevant competent bodies in Bulgaria. During the programming period 2014-2020 significant funding was available under various programmes for exchange of experience and good practices, and internships and workshops were organised to enable the staff of control and law enforcement authorities to acquire specialist skills and improve their competence in the field of detecting and combating fraud. At national level, special training is available for the staff of law enforcement agencies and judicial authorities from the Academy under the jurisdiction of the Ministry of Interior, the National Institute of Justice and the training centres of the National Revenue Agency and the Customs Administration.

Despite this, frequent amendments to the legislation, high staff turnover and the dynamic economic environment require continued delivery of specialist training. Fraud perpetrators and the members of organised criminal groups



are quick in adapting to the changes in the environment. The evolving forms and methods used to commit fraud pose a challenge and require a strong response by taking timely and adequate measures at all levels and stages of the anti-fraud cycle.

In addition to the training provided to the specialised bodies, appropriate training focusing on specific topics for the beneficiaries and officials of the bodies responsible for the management and control of EU funds should be conducted on a regular basis.

### **4.3. Problems and challenges in the area of investigation, recovery and sanctions**

#### **4.3.1. Investigations**

The Convention on the Protection of the European Union's Financial Interests of 26 July 1995, including the Protocols thereto of 27 September 1996, 29 November 1996 and 19 June 1997, have been replaced by the PIF Directive, which entered into force on 6 July 2019.

At the end of 2019, Bulgaria notified the Commission of the full transposition of the PIF Directive into national law, which is of major importance for the implementation of the Union's criminal law policy in Bulgaria and the detection and prosecution of crimes by the European Public Prosecutor's Office and the national authorities.

Following Bulgaria's accession to the EU, the Criminal Code and Criminal Procedure Code were amended, also to ensure that the reports of the European Anti-Fraud Office and the written evidence annexed to them have evidential value. The Customs Act and the Tax and Insurance Procedure Act were also amended with a view to enabling the effective investigation and combating of offenses affecting the revenue side of the budget. With the amendment of the Administrative Violations and Penalties Act, provisions were introduced in Article 83a for levying fines on legal persons which have profited from offenses, including offences involving EU funds. Specialised units and departments for administrative investigations have been established at the bodies concerned with the management of EU funds, the revenue agencies and the specialised criminal investigation units and departments of the Customs Agency, the Ministry of Interior and the Prosecution Office

The main challenges in investigation typically arise from the factual and legal complexity of tax and financial offenses and the significant number of documents and persons in respect of whom evidence is gathered. This prolongs investigations on account of the need to ensure their completeness and objectivity.

Further efforts are therefore needed to enhance the effectiveness of investigations and convince citizens that they are conducted independently; that proper procedure is followed; that and applicable law is rigorously applied.

#### **4.3.2. Sanctions**

The insufficiently deterrent effect of the sanctions and penalties imposed, including in cases of conviction for offenses involving EU funds in keeping with OLAF recommendations, was a persisting challenge during the first two programming periods (2007-2013 and 2014-2020). Hence the efforts of the national institutions to streamline and enhance the application of financial and/or



administrative sanctions. In line with Union law, Member States must guarantee that the investigation, prosecution and imposition of sanctions comply with the requirements laid down in the PIF Directive. The prosecutions and convictions must be proportionate to the committed offences. The successful implementation of the goals set in this Strategy is expected to ensure effective investigation as a condition for the imposition of timely and adequate sanctions in ascertained cases of irregularities and fraud, including by means of criminal law.

### **4.3.3. Recovery**

The prime responsibility of the Member States, when acting under shared management, is to investigate irregularities and fraud and recover unduly paid amounts, including through follow-up action to OLAF investigations. The problems and challenges in this area are related to the time of establishing irregularities and launching recovery procedures, the interaction between institutions, and the [need to] simplify procedures and improve the mechanisms for recovery of unduly paid amounts. The recovery statistics which the national authorities provide to the European Commission are important because they are subsequently included in the Commission's annual report on the protection of the EU's financial interests.

In view of the heavy workload of the revenue administration related to the recovery of amounts in connection with established irregularities and fraud involving EU funds, the possibility to use the services of private enforcement agents in the recovery procedure should be considered.

In Bulgaria, most financial corrections are applied in respect of infringements in the award of public procurement contracts. Other deficiencies include the failure to ensure an adequate audit trail, weaknesses in the control system and ineligible project expenditure. In order to preclude the application of financial corrections in the future, controls should be enhanced to enable the timely identification of infringements and strengthen project management capacity at the level of the beneficiaries.

## **4.4. Problems and challenges in cooperation at EU level**

### **4.4.1. Need for proactive involvement in the development of strategic EU documents and policies in order to ensure that Bulgaria's position is properly taken into consideration**

The recommendation for enhanced cooperation between OLAF and the competent national authorities stands out against the background of a number of anti-fraud initiatives and reports presented at EU level in recent years and is specifically noted in Special Report No 2/2011 of the European Court of Auditors. Presented as an objective for the amendment of the legal framework of OLAF, the recommendation is reiterated in the Commission's Anti-Fraud Strategy 2019 and requires action on the part of the Bulgarian authorities.

The proactive and more effective involvement of the competent national authorities in the development of strategic documents and the discussion of policies and joint



action in the field of protection of the EU's financial interests remains a major challenge. Cooperation with the competent authorities in other Member States and third countries must also be enhanced with a view to facilitating the implementation of joint initiatives, the coordination of positions and the development of common policies.

According to Special Report No 6/2019 of the European Court of Auditors<sup>30</sup>, in the area of fraud response, managing authorities, in coordination with other anti-fraud bodies, have not been sufficiently reactive to all detected cases of fraud. In particular, reporting arrangements are unsatisfactory, several managing authorities fail to systematically communicate suspicions of fraud to the competent bodies, the corrective measures have a limited deterrent effect, and the coordination of anti-fraud activities is insufficient, which requires stepping up cooperation at national level.

One of the latest policies at EU level involves the introduction of a methodology for the elaboration of country profiles in the field of combating fraud, which is currently tested within the framework of the fraud prevention subgroup of the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF). The initiative has been introduced in response to the European Parliament's requirement for the Commission to present annual reports on the protection of the EU's financial interests in accordance with Article 325 of the TFEU, which are based on a detailed analysis of the anti-fraud strategies and measures introduced by the Member States. According to the European Parliament<sup>31</sup> the significant variations in the information submitted by Member States to date require an explanation. This could be achieved by developing 27 country profiles, which illustrate the approach taken by the national authorities as regards specific features in the work of judicial authorities and investigating bodies and allow an assessment of the controls put in place. The implementation of the approved methodology in Bulgaria will entail an assessment of all controls put in place at national level, their effectiveness and the *modus operandi* of law enforcement and judicial authorities. As at the end of 2020, Bulgaria has not expressed interest in participating in the pilot project to test the draft methodology expected to be introduced during the programming period 2021-2027. Bulgaria intends to send its profile to the European Commission, along with an assessment of the controls put in place, taking into account the provisions laid down in current legislation, at the time when the methodology becomes mandatory.

The development of country profiles will entail gathering information about the active and correct use of ARACHNE, the risk assessment system of the European Commission, by each Member State, meaning that its functioning must be based on a single approach underlined by a standardised methodology applied by the national authorities that take into account sectoral specific features.

This will require proactive involvement in the development of strategic EU documents and policies in order to ensure that Bulgaria's position is properly taken into consideration.

#### **4.4.2. Cooperation at operational level**

<sup>30</sup>See paragraph 78 of Special Report No 6/2019 of the European Court of Auditors.

<sup>31</sup> European Parliament Resolution of 6 May 2010 on the protection of the Communities' financial interests and the fight against fraud – Annual Report 2008 (2009/2167(INI)) (P7\_TA(2010)0155)



In addition to the need to enhance cooperation in the legislative and political area at EU level, the strengthening of cooperation in operational matters and enhancing and expanding the scope of interaction are also essential in the fight against fraud. The experience gained in combating fraud should be applied and further developed in the context of joint operations with OLAF, the European Chief Prosecutor's Office, Europol, Eurojust and the competent authorities of other Member States. Contacts and interaction at operational level in the context of joint on-the-spot checks and exchange of information also need to improve, with the national authorities adopting a more proactive approach in requesting assistance from OLAF and the authorities of other Member States and third countries. The conclusion of bilateral (and multilateral) acts that create conditions for more effective and efficient cooperation and interaction with the specialised bodies at European level should be encouraged.

The problems and challenges identified warrant the conclusion that both Bulgarian citizens and the citizens and institutions of other Member States have high expectations of the fight against irregularities and fraud at EU level.

Coordinated effort at national level and strong cooperation with EU institutions and other Member States will be key to overcoming persisting challenges.

On the other hand, achieving success in this task will boost support for government positions and initiatives both at home and from a foreign policy and economic perspective. Operational cooperation that yields visible results is of material importance for a number of economic and other initiatives and for the relations between Bulgarian citizens and legal entities, organisations, institutions and the citizens of other Member States.

This underlines the importance of the assessment, made by the EU institutions as well as of the position of institutions and the general public in other Member States, particularly net contributors to the EU budget, on the effectiveness of the action taken by Bulgaria in the fight against irregularities and fraud affecting the EU's budget.



## **5 STRATEGIC GOALS AND OPERATIONAL OBJECTIVES**

The National Strategy for Preventing and Combating Irregularities and Fraud Affecting the EU's Financial Interests covers both the revenue and the expenditure side of the budget. The European Union's budget is funded by the taxpayers and finances policies, approved by the Union's legislative bodies and set out in the plans for sustainable growth of the EU until 2030, which seek to improve living standards for EU citizens and promote growth and job creation.

The National Strategy must therefore create conditions for making full use of available EU funds and for their lawful disbursement while seeking to increase revenue in the general budget of the Union.

The objective of the Strategy can therefore be better defined as follows:

The **main objective** of the National Strategy for Preventing and Combating Irregularities and Fraud affecting the EU's financial interests over the period 2021-2027 is to ensure effective and efficient protection of the EU's financial interests in Bulgaria in accordance with Article 325 of the TFEU.

The **complementary objective** of the National Strategy for Preventing and Combating Irregularities and Fraud Affecting the EU's Financial Interests over the period 2021-2027 is to ensure the implementation of the anti-fraud recommendations of the European Court of Auditors and the European Commission.

The implementation of the National Strategy should take into account the developments in the present legal and institutional environment as well as the problem areas and challenges identified and should seek to address them by targeted measures to be implemented in the future in order to ensure continuity and make adequate use of the experience already gained.

In order to achieve the main objective of the Strategy, concrete strategic goals and operational objectives for each goal, along with corresponding measures and actions need to be defined.

### **5.1. Strategic goal 1: Better prevention**

#### **5.1.1. Operational objective 1: Clearly formulated anti-fraud policies, including a policy on combating conflict of interest, to be adopted or updated by all managing authorities**

In connection with the recommendations of the European Court of Auditors to the Member States and the deficiencies identified in Bulgaria's system for the management and control of EU funds, structured action needs to be taken to ensure that concrete, clearly formulated anti-fraud policies, including a policy on combating conflict of interest, are adopted by all managing authorities.



The Managing Authorities should adopt formalised anti-corruption policies that clearly demonstrate their commitment to tackling this problem. As an element of their clearly formulated anti-fraud policies, the managing authorities must take action to address cases of conflict of interests by developing a structured approach to combating conflicts of interest affecting EU funds and ensure that their competence is clearly differentiated from that of other national bodies using other definitions of conflict of interest applicable solely under national law.

The objective will be achieved through the implementation of the following actions:

- Ensuring that the managing authorities update, develop and adopt concrete anti-fraud policies, including policies on combating conflict of interest;
- Setting up expert working groups at the managing authorities tasked with the development of anti-fraud policies and policies on combating conflicts of interest;
- Introducing rules setting out the order of actions that delimit the competence of the institution to handle cases of conflict of interest and clearly differentiate it from the competence of other national bodies that use definitions of conflict of interest applicable solely under the national law;
- Conducting a timely analysis of the entire scope of deficiencies identified in the management and control system of the respective operational programme and taking action to address these through the application of control mechanisms to rectify shortcomings in the functioning of the management and control system identified by national and EU control and audit bodies.

### **5.1.2. Operational objective 2: Greater reliability of fraud risk assessment, including by involving appropriate external actors in the process**

It should be ensured that the managing authorities conduct a robust and comprehensive assessment of the effectiveness and proportionality of anti-fraud measures,<sup>32</sup> taking into account the specific risks for the relevant programme. According to the recommendations of the European Court of Auditors the Member States have improved fraud prevention measures but have not made significant progress towards proactive fraud detection.

To ensure that the assessments are sufficiently robust, further action should be taken as follows:

- Enhancing the capacity for analysis of the risk of abuse of EU funds and the national budget.
- Streamlining monitoring, assessment and reporting procedures and compiling a summary of the fraud prevention and detection measures taken.
- Creating conditions for the involvement of external actors in the process.
- Conducting an analysis, as necessary, of the notification letters and prosecutorial injunctions received by the managing authorities from the Prosecution Office as well as the requests received from

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<sup>32</sup> During the programming period 2014-2020 in accordance with Article 125(4)(c) of Regulation (EU) No 1303/2013.



OLAF, the Ministry of Interior and the State Agency for National Security for the purpose of verifying that correct action has been taken in each case and ensuring that follow-up and corrective action is taken, if necessary.

- Conducting a timely analysis of the entire scope of deficiencies in the management and control system of the relevant operational programme identified by the national and EU control bodies and audit authorities with a view of taking action to rectify them through the application of improved control mechanisms.
- Performing ex-ante controls on procedures for the award of public procurement contracts financed, partially or fully, by EU funds and monitoring the contract performance.

### **5.1.3. Operational objective 3: Expanding AFCOSs' functions with a view to improving the coordination, prevention and detection of fraud and irregularities**

According to Recommendation No 5 set out in Special Report No 6/2019<sup>33</sup>, the European Commission strongly encourages the expansion of the AFCOSs' capacity and powers in all Member States.

Recognising that Member States have flexibility to designate and make arrangements to enable the fight against corruption in line with the principle of subsidiarity, the European Commission, the European Parliament and the Council of the European Union are currently working to determine a minimum set of functions of the anti-fraud coordination services (AFCOS) of Member States to ensure that they play an effective role in coordination.

The objective will be achieved through the implementation of the following actions:

- Proactive involvement of the AFCOS Directorate in legislative policy and the development of legislative initiatives affecting the EU's financial interests.
- Raising the visibility and expanding the functions of the AFCOS Directorate, in particular with regard to its coordination and control role and activities, especially in high-profile cases and offenses that have resulted in significant damage.
- Closer cooperation with the managing authorities and the revenue administration in cases of concurrent competence.

### **5.1.4. Operational objective 4: Strengthening of administrative capacity**

Sound administrative capacity in terms of the number and competence of staff is key to achieving the strategic aim of improving prevention. During the period 2021-2027, the implementation of measures to enhance the capacity and overall effectiveness of the bodies concerned with prevention should continue by further strengthening the capacity built in the period 2014-2020. This is particularly relevant to the capacity of existing units at the institutions represented in the Council. Dedicated efforts should be made to enhance the expert capacity of the staff through training for the development of key competencies. In order to address staff turnover, measures should be taken to ensure that newly recruited staff members are properly trained and also to enhance

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<sup>33</sup> Recommendation 5 — Support the expansion of the AFCOSs' function to improve coordination.



the motivation of the staff working in this field, including through training aimed at awareness raising, know-how building and improving the skills and knowledge.

The objective will be achieved through the implementation of the following actions:

- Recruiting properly trained officials in the administration with sound knowledge of the functioning of the European Union.
- Improving the organisational structure of the existing units and streamlining their activities to enable the implementation of prevention measures.
- Increasing the number of staff or modifying the establishment plan at the discretion of the managing authorities with a view to appointing or delegating responsibility to officials for the use of analytic tools and systems, including ARACHNE.
- Ensuring that at least two ‘irregularity officers’, who are interchangeable in terms of competence, are appointed at each competent institution.
- Updating the functions and tasks of irregularity officers as an element of the management and control system and raising the profile of irregularity officers at the managing authorities, including through better opportunities for career development.
- Arranging specialist training for the heads of the organisations referred to in Article 2(2)(6) of the ZFUKPS and the authorities under the ZUSESIF to ensure that their management concept and leadership style are appropriate in light of the requirement for countering irregularities and fraud.
- Familiarising the newly recruited staff with the internal rules of procedures and the Ordinance laying down the procedures for the administration of irregularities under funds, instruments and programmes co-financed by the European Union and the Ordinance on the administration of irregularities under the European Structural and Investment Funds. Staff training in Bulgaria, other countries and via electronic means in the area of EU and national law laying down the rules and requirements for the programming period 2021-2027, including the requirements for risk management and countering irregularities and fraud.
- Organising refresher training for the officials responsible for the award of and the controls performed on public procurement contracts and the disbursement of project expenditure to ensure that they are familiar with the findings and recommendations of the EU auditors and the national audit authority and therefore able to follow the approach outlined by the relevant findings in their work. Organising refresher training for staff in order to familiarise them with the case-law of the national courts and the Court of Justice of the European Union.
- Making use of mechanisms for presenting and discussing the most commonly encountered errors and reinforcing good practices in the administration of irregularities.
- Making use of the training opportunities available from the European Union Agency for Law Enforcement Training (CEPOL).



- Providing opportunities for exchange of experience by inviting officials with a wealth of experience as trainers at thematic workshops in Bulgaria and other countries.
- Encouraging and supporting members of staff who wish to improve their professional qualifications and career development prospects, including by providing access to specialised literature, participation in international networks and initiatives, research projects, further education, etc.

### **5.1.5 Operational objective 5: Enhancing transparency and improving public access to information**

In order to increase public trust and satisfaction with the work of the institutions tasked with the fight against irregularities and fraud, it is necessary to ensure transparency in the actions of institutions and introduce a set of monitoring and control instruments, including for the prevention of fraud and corruption.

The aim of improving prevention seeks to ensure greater transparency and better public access to information about the disbursement and utilisation of the EU funds, including matters relating to irregularities and fraud affecting the EU's financial interests. Making information available online is an important tool for enhancing transparency in the work of the civil service, particularly on matters that could potentially be of public interest and are therefore covered by the Access to Public Information Act (ZDOI). The information should be published on the websites of the relevant institutions in a searchable and easy-to-read format to enable public scrutiny in various forms. Transparency should further ensure that individual facts, specific acts and documents relating to conducted checks or other activities in this field are easily verifiable. This will expand the possibilities available to the general public to submit reports and keep track of the follow-up actions taken. The measures to be taken in order to achieve this objective are in line with those set out in the Integrated Strategy for Preventing and Combating Corruption and Organised Crime.

The objective will be achieved through the implementation of the following actions:

- Conducting information campaigns, organising public forums, press conferences, workshops, etc., intended for the general public, on matters relating to the fight against irregularities and fraud affecting the EU's financial interests.
- Organising joint training events for the beneficiaries and the bodies responsible for the management and control of EU funds in connection with the implementation of projects under the operational programmes on topics, such as prevention of errors and irregularities, including application of corresponding public procurement legislation.
- Publishing information about the disbursement of EU funds in respect of which enquiries can be submitted under the ZDOI at the discretion of the bodies concerned with the management and control of EU funds.
- Maintaining e-mails, hotlines and other channels enabling the reporting of irregularities and fraud affecting the EU's financial interests.



- Raising public awareness of the existing channels for reporting irregularities; providing clarifications and raising awareness of the terms ‘irregularity’, ‘suspected fraud’ and ‘conflict of interest’; and creating conditions for proactive involvement of citizens with a view to detecting and effectively countering irregularities and fraud affecting the EU's financial interests.
- Introducing procedures and mechanisms for the protection of the persons who report the infringements affecting the EU's financial interests referred to in Article 325 of the TFEU and further specified in the relevant Union measures in accordance with Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019.
- Publishing information about the reports received and the nature of the follow-up actions taken on the websites of the relevant agencies in accordance with Article 13 of the Directive.
- Updating the information published online about the implementation of programmes financed by EU funds in a timely manner;
- Assessing the need to improve the functionalities of the Information System for Management and Monitoring of EU Funds in Bulgaria (ISMM) and develop new functionalities, as necessary, in order to improve public access to information following consultation with the working group on ISMM development.
- Publishing information on the relevant websites about the contracts concluded, financial assistance paid and established irregularities affecting EU funds and making use of, developing and promoting the Centralised Automated e-Procurement Information System, which provides access of the general public to the buyers’ profiles of all contracting authorities, respectively information about open procedures for the award of public procurement contracts, contracts awarded in the past, details about the contract performance, the amounts disbursed under awarded contracts, etc.

#### **5.1.6. Operational objective 6: Integrated databases and systems enabling exchange of information and reporting**

Achieving a high level of awareness of detected irregularities and fraud affecting the EU's financial interests among all actors involved in the process is an important condition for prevention. Alongside the adoption of the new legislative framework for reporting irregularities, it is important to ensure that practical steps are taken to ensure that the integrated databases and information exchange systems put in place in the programming period 2014-2020 are maintained and further developed.

During the period 2021-2027 Bulgaria will continue to use the ISMM and modify it, as necessary, to ensure that it complies with existing requirements and any new requirements that may be adopted. During the programming period 2021-2027 the interface enabling electronic data exchange between the ISMM and the IACS will be maintained and further developed and ISMM functionalities will be expanded with the possibility to generate reports for the purpose of preventing and combating fraud, including checks for double financing, monitoring, analysis and evaluation.



The objective will be achieved through the implementation of the following actions:

- Keeping uniform registers of irregularities affecting the EU's financial interests (reported and established during the course of the checks performed by the relevant administrations).
- Ensuring that the relevant administrations communicate registered cases of irregularities and fraud to the AFCOS Directorate.
- Ensuring that the AFCOS Directorate maintains and updates its database of irregularities affecting funds, instruments and programmes co-financed by the EU.
- Ensuring that the AFCOS Directorate performs controls on the quality of the information entered into the Irregularity Management System (IMS).
- Ensuring that the AFCOS Directorate reports registered irregularities to the European Commission within the time periods and in accordance with the requirements laid down by law.
- Ensuring that administrative checks and controls are performed to verify compliance with the procedures for the administration of reported and established irregularities and that appropriate action is taken by the relevant administrative units responsible for the management and/or control of EU funds, including by the responsible officials within the remit of their competence.
- Exchange of information about detected cases of irregularities and fraud with the authorities responsible for the management and control of EU funds, the European Anti-Fraud Office and the European Public Prosecutor's Office.
- Putting in place a system, establishing rules and designating competent authorities responsible for the statistics on reported breaches of Union law affecting the EU's financial interests to be provided to the European Commission on an annual basis in accordance with Article 27 of the Directive on the protection of persons who report breaches of Union law.
- Ensuring that all competent authorities make full and meaningful use of REGIX, the inter-institutional register exchange environment.
- Ensuring that the authorities concerned with the management and control of EU funds at national level proactively participate in international networks and initiatives for information exchange and analysis.

Results expected to be achieved under strategic goal 1:

- ❖ Concrete and clearly formulated anti-fraud policies, including a policy on combating conflict of interest, to be adopted or updated by all managing authorities.
- ❖ Enhanced control mechanisms at all stages of the EU funds management cycle.
- ❖ More robust fraud risk assessment, including by involving appropriate external actors in the process.
- ❖ Improved functionality of the ISMM, including to ensure that information is made available to the general public.
- ❖ Enhanced AFCOS functions with a view to improving the coordination, prevention and detection of fraud and irregularities.



- ❖ Published information on the disbursement of EU funds which may be of interest to other institutions and the civil society in Bulgaria.
- ❖ Enhanced administrative capacity through training to improve the functional competence of the staff and optimise the functional units of the institutions represented in the Council.
- ❖ Implemented initiatives to raise public awareness.
- ❖ Officials with sound knowledge of the functioning of the European Union appointed in the national administrations.
- ❖ Channels and methods for reporting breaches developed and controls put in place.
- ❖ Ensuring that the process of reporting irregularities to the EU conforms to a high standard in accordance with the applicable law.
- ❖ Ensuring compliance with the obligation to submit statistics to the European Commission on the reports received in respect of infringements affecting the EU's financial interests as referred to in Article 325 of the TFEU and further specified in the relevant Union measures.
- ❖ Lowering the number of irregularities and fraud as a result of the implementation of prevention measures.

## **5.2. Strategic goal 2: Greater effectiveness in detecting and countering irregularities and fraud**

### **5.2.1. Operational objective 1: Improving fraud detection measures by generalising the use of data analytics tools and promoting the use of other 'proactive' fraud detection methods**

All institutions concerned with the management and control of EU funds must be sufficiently proactive and technologically advanced in order to be able to take appropriate anti-fraud measures and implement the recommendations of the European Court of Auditors. The scope of such measures must be sufficiently broad and extend to the officials tasked with the award and the controls exercised on public procurement contracts. The Central Coordination Unit within the Council of Ministers administration transmits information to the risk assessment system ARACHNE in a timely manner. A single methodology for the use of the risk assessment system ARACHNE should be adopted at national level to ensure uniform use of the functionalities of the system, taking into account the specificities of each operational programme.

The following actions will be taken in order to achieve this objective:

- Introducing information and technological systems which facilitate the managing authorities in conducting risk assessments and handling information.
- Ensuring that information is systematically transmitted to ARACHNE and that the functionalities of the risk assessment system are used.
- Widening access to ARACHNE.



- Developing a single methodology for using ARACHNE.
- Ensuring the proactive use of data analytics to detect potentially high-risk situations, identify red flags and refine the aim of the measures to combat fraud. Ensuring that data analytics are used as a systematic part of project selection, management verifications and audits.
- Conducting checks to verify the effectiveness of the anti-fraud measures implemented by the managing authorities. Ensuring that anti-fraud systems are evaluated in terms of their actual results.<sup>34</sup>
- Ensuring wider use by the competent authorities of the Union's IT systems and platforms for analysis and exchange of information relevant to the revenue and expenditure sides of the budget and necessary for the detection of irregularities and fraud, including joint operations.
- Encouraging the proactive participation of representatives of the competent national authorities in the teams performing joint administrative checks in respect of potential irregularities and fraud involving EU funds, including cross-border VAT fraud schemes.

### **5.2.2. Operational objective 2: Better protection of persons who report breaches of Union law affecting the EU's financial interests**

The reports and public disclosures by persons who report irregularities provide the national and Union law enforcement systems with information leading to the effective detection, investigation and prosecution of breaches of Union law thereby strengthening transparency and accountability. In certain policy areas, breaches of Union law, regardless of whether categorised as administrative, criminal or other types of infringements/offences under national law, may seriously harm public interest, in that they create significant risks for the welfare of society.

Bulgaria will have to meet the requirements of Directive (EU) 2019/1937 by introducing common minimum standards ensuring that whistle-blowers are protected effectively with regard to the acts and policy areas where a need to strengthen enforcement has been identified and the procedures to provide all relevant information to the Commission as required by Article 27 of the Directive.

This objective will be achieved through the implementation of the following actions:

- Transposing Directive (EC) 2019/1937 into the national law.
- Introducing procedures and mechanisms for the protection of persons who report infringements affecting the EU's financial interests referred to in Article 325 of the TFEU and further specified in the relevant Union measures in accordance with Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019.

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<sup>34</sup> of Special Report No 6/2019 of the European Court of Auditors, paragraph 41.



Establishing common minimum standards for the protection of persons who report breaches of Union law.

- Putting in place internal and external reporting channels in accordance with Articles 7 and 10 of the Directive.
- Putting in place a procedure for annual reporting to the European Commission in accordance with Article 27 of the Directive.
- Designating one or several national bodies responsible for conducting checks to verify reported circumstances and ensuring compliance with the obligation to provide information to the European Commission.
- Publishing information about the reports received and the nature of the follow-up actions taken on the websites of the relevant agencies in accordance with Article 13 of the Directive.
- Putting in place a mechanism for review and assessment of the procedures for receiving reports at least once every three years.

### **5.2.3. Operational objective 3: Review and update of cooperation agreements**

In order to enhance effectiveness in detecting and countering irregularities and fraud, better coordination and stronger cooperation between institutions are needed. In connection with the amendments to legislation and the changes in the institutional environment in the programming period 2021-2027, existing agreements will be updated, or new agreements will be drawn up and signed. The same applies to instructions on institutional interaction, working programmes, memoranda of understanding between the competent institutions participating in the national coordination mechanism and other government bodies and acts on coordination and cooperation with the relevant European services.

### **5.2.4. Operational objective 4: Enhancing cooperation and interaction with revenue agencies and implementation of customs control strategies in the area of cross-border e-commerce, particularly as regards the potential abuse of low-value consignments reliefs (LVCR)**

In connection with the Commission's recommendation, in the period 2021-2027 a greater emphasis should be placed on improving the work of revenue agencies, particularly as regards the control of high-risk goods. Support will be provided to enhance the capacity of the relevant agencies to perform risk-based controls using appropriate IT tools, compile clear risk profiles and focus efforts and resources in the areas where the likelihood of non-compliance is the highest. Steps will be taken to strengthen cooperation and interaction between revenue and law enforcement agencies in the detection and combating irregularities and fraud.

The objective will be achieved through the implementation of the following actions:

- Ensuring that the Customs Information System for Import (CISI) is used to perform automated controls on low value goods for the purpose of import duty and VAT reliefs on an ongoing basis to preclude the automatic clearance of goods with a declared intrinsic value of



more than EUR 150 and consignments dispatched by one natural person to another with an intrinsic value of more than EUR 45.

- Modifying the relevant CISI functionality in line with the amendments to the VAT legislation on the levying of VAT in e-commerce.
- Performing controls on the process of artificial separation of consignments to benefit from customs reliefs.
- Performing ex-post controls on economic operators who declare low value goods for release for free circulation by verifying the invoice details and the corresponding entries in the accounts.
- Performing audits on the internal control systems of couriers and the holders of approved economic operator (AEO) authorisations as an element of the prevention and detection of unlawful or illegal operations, including potential irregularities in the declaration of low value goods for release for free circulation.
- Making arrangements for joint controls to be performed by the National Revenue Agency and the Customs Agency in sectors and on economic operators registered for VAT considered to present high risk by both institutions.
- Conducting checks and audits on taxable persons potentially involved in organised fraud schemes with an adverse impact on the republican budget.
- Taking steps to ensure the prosecution of the perpetrators of tax and insurance fraud by notifying the Bulgarian Prosecution Office.
- Conducting checks and audits on taxable persons at the request of the Bulgarian Prosecution Office.
- Conducting joint operations within the framework of cooperation with the Customs Agency and the relevant units of the MVR under the Plan for joint operations with Directorate-General National Police (GDNP), Directorate-General Border Police (GDGP), the district directorates of the Ministry of Interior and the Customs Agency with a view to countering smuggling, and infringements and crimes related to VAT and the intra-Community acquisition of goods.
- Prosecuting persons involved in VAT evasion or unlawful VAT refunds.
- Overview and familiarisation of the competent officials with customs control strategies in the area of cross-border e-commerce, particularly as regards the potential abuse of low-value consignments reliefs, and the efforts to ensure proper TOR collection.

#### **5.2.5. Operational objective 5: Enhancing internal control and interaction between government institutions and private sector actors, non-governmental organisations and the civil society**



Enhancing effectiveness in detecting and countering irregularities and fraud by strengthening internal control at all management levels and creating conditions that enable the detection of suspicious operations or operators through the use of specific indicators (red flags).

The Strategy on the fight against irregularities is not intended to alter the current architecture of the control system by creating additional layers of controls. However, it is necessary to ensure that the control systems already in place cover the risk of fraud in an appropriate manner. This requires coordination and interaction between the control bodies in conducting ex-ante, in-process and ex-post controls.

It is essential to ensure good communication between government institutions and private sector entities, non-governmental organisations and civil society in the detection and combating of irregularities and fraud affecting the EU's financial interests.

In order to achieve this objective, the following actions will be implemented:

- Conducting an annual analysis of the irregularities detected during system audits and audits of operations under the operational programmes co-financed by the EU funds.
- Drawing up and submitting preliminary and final reports on conducted audits under the operational programmes co-financed by the ESIF to the authority responsible for the accounting function.
- Providing information to the European Anti-Fraud Office on current and concluded investigations on a 'need to know' basis.
- Notifying the AFCOS Directorate of the outcome of checks conducted by OLAF at the respective administration and the administrative and criminal proceedings initiated as a result.
- Making arrangements for the exchange of information, experience and good practices between government institutions, private sector actors and non-governmental organisations on matters relating to the prevention, detection and combating of fraud involving EU funds.
- Making arrangements for the exchange of experience and good practices on the administration of the irregularities within the Permanent Working Group on the Irregularities to the Council. Discussing specific cases and issues within the working group.
- Ensuring that the bodies concerned with the management and control of EU funds respond to cases of irregularities and fraud involving EU funds reported in the media and conduct the necessary checks on their own initiative.

#### **5.2.6. Operational objective 6: Targeted training for the specialised bodies engaged in the investigation, prosecution and conviction of the perpetrators of irregularities and fraud involving EU funds.**

High professional competence and expert knowledge are an essential prerequisite for the effectiveness of specialised bodies in detecting and countering irregularities and fraud. There is a need to further enhance the capacity of



law enforcement authorities and judicial bodies to investigate organised crime. In addition to ensuring the continued operation and further development of specialised training centres, there is a need for the training programmes of the Public Administration Institute and the National Institute of Justice to be more closely aligned with practical problems encountered in the fight against corruption. A special emphasis will be placed on expanding the programmes related to the fight against fraud involving EU funds and to investigation and law administration practices. Efforts will be made to expand the scope and improve the quality of the training on the Criminal Procedure Code provided to the investigating bodies and other actors facilitating the trial phase of proceedings.

This objective will be achieved by implementing the following actions:

- Conducting specialised training and organising information and training campaigns for the specialised bodies responsible for detecting and countering irregularities and fraud, including prosecutors and investigation officers.
- Arranging training for judges, prosecutors, investigating magistrates and police officers, investigating customs officials and officers of the State Agency for National Security specialising in crimes against the EU's financial interests.
- Ensuring that opportunities are available for the exchange of experience and good practices in the detection and combating of irregularities and fraud between the bodies engaged in the investigation, prosecution and conviction of the perpetrators of irregularities and fraud involving EU funds.
- Ensuring the participation of specialised bodies in training events and workshops conducted by national and international organisations on the prevention and combating of irregularities and fraud affecting the EU's financial interests, with a special focus on detecting and establishing irregularities.

Results expected to be achieved under strategic goal 2:

- ❖ Improved fraud detection measures and generalised use of data analytics tools and promoting the use of other 'proactive' fraud detection methods.
- ❖ **Better protection of persons who report infringements affecting the EU's financial interests**
- ❖ Adopted minimum standards for the protection of persons who report infringements affecting the EU's financial interests
- ❖ Application of the customs control strategies in the area of cross-border e-commerce, particularly as regards the potential abuse of low-value consignments reliefs, and ensuring proper TOR collection.
- ❖ Improved bilateral and multilateral cooperation between the institutions participating in the national anti-fraud coordination mechanism.
- ❖ Improved revenue collection rates as a result of joint actions of the competent authorities and reducing the size of the informal economy.



- ❖ Effective risk management and assessment system put in place at all bodies with control and regulatory functions. Effective ex-ante, in-process and ex-ante control.
- ❖ Better interaction and cooperation between government institutions and private sector actors, non-governmental organisations and civil society in the detection and combating of irregularities and fraud affecting the EU's financial interests.
- ❖ Enhanced professional competence and expert knowledge gained by the staff of the specialised bodies.

### **5.3. Strategic aim 3: More effective investigations, recovery and sanctions**

#### **5.3.1. Operational objective 1: Effective coordination of legislative, administrative and operational action at institutional level**

The achievement of greater effectiveness and efficiency in the detection, recovery and imposition of sanctions in cases of irregularities and fraud affecting the EU's financial interests requires effective coordination in terms of the legislative, administrative and operational actions of the competent bodies and institutions at national level. More specifically, efforts to improve coordination between judicial authorities and the bodies of the executive branch of government are necessary to secure better results. Enhanced capacity for more effective investigation at the pre-trial phase should reduce the length of criminal proceedings in line with the Commission's recommendation to shorten the time for investigation and prosecution.

The offenses against the EU's financial interests have a strongly detrimental impact on the Union budget and jeopardise the implementation of the EU policies. Bulgaria supports the need for common Union action against fraud and other illegal activities affecting the EU's financial interests, which means that it must ensure that its national legal framework is better geared to the task.

This objective will be achieved through the implementation of the following actions:

- Discussing practical problems relating to the application of the Criminal Code, the Criminal Procedure Code, the Tax and Insurance Code and other statutory acts relevant to the fight against offenses against the EU's financial interests and drawing up proposals to address them by amending and supplementing the relevant statutory acts and implementing regulations or adopting new legislation.
- Taking steps, as necessary, to act on the conclusions from the Commission's assessment of the correct transposition of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.



### **5.3.2. Operational objective 2: Streamlining national rules on sanctions**

There is a need to streamline the national rules for the application of financial and/or administrative sanctions as well as for taking effective actions to deter irregularities and fraud to the Union's financial interests, including through exclusion from EU financing. In order to enhance the deterrent effect of disciplinary sanctions, the outcome of disciplinary proceedings should be made public while respecting the fundamental rights of the persons concerned, including data protection rules.

The following action will be taken to achieve this objective:

- Conducting an analysis of the application of the national rules for imposing administrative and/or financial sanctions (established infringements, sanctions imposed and their effect).
- Drawing up proposals to amend and supplement the national rules for the application of financial and/or administrative sanctions and taking effective action to deter irregularities and fraud to the Union's financial interests, including through exclusion from EU financing.
- Creating and maintaining an effective early warning database with a view to enhancing the monitoring and control of the applicants in the calls for EU grant assistance considered to pose a high risk.

### **5.3.3. Operational objective 3: Establishing shorter and clear recovery procedures**

Where the EU's financial interests have been adversely affected, the Member States must recover the unduly paid amounts in the same way in which they do when protecting their own financial interests. Recovery must be effected by means of administrative, civil or criminal proceedings.

In line with its commitments arising from the Commission's Anti-Fraud Strategy 2019 to achieve a higher level of protection of the EU's financial interests and the goals and objectives set out herein, Bulgaria will take steps to optimise the process and establish shorter and clear procedures for the recovery of unduly paid funds, including through follow-up actions following OLAF investigations.

This objective will be achieved through the implementation of the following actions:

- Taking actions to recover amounts due to executive agencies and managing authorities in connection with incorrectly used or unduly paid EU funds following the ascertainment of irregularities and fraud affecting the EU's financial interests.



- Making arrangements for the priority recovery of amounts constituting traditional own resources and forming part of Bulgaria's contribution to the general budget of the European Union.
- Making arrangements that are conducive to the timely detection and launch of recovery procedures.
- Establishing simplified procedures for interaction between the managing authorities and the National Revenue Agency with a view to enabling the recovery of amounts due after expiry of the voluntary repayment period. Providing feedback on recovery to the relevant contracting authority with a view to rendering assistance and enabling the update of reports on irregularities.

#### **5.3.4. Operational objective 4: More effective administrative and criminal proceedings**

The actions to be implemented in order to achieve the individual objectives for each strategic goal ultimately seek to enhance the effectiveness and efficiency of administrative and criminal proceedings. This outcome, both at national and EU level, is reflected in the Annual Report from the European Commission to the European Parliament and the Council on the protection of the EU's financial interests and in the Annual report of the European Anti-Fraud Office.

In the Judicial Monitoring section of its annual activity report, OLAF provides a summary of the completed investigations in which fraud affecting the EU's financial interests is suspected, which have been referred to the national law enforcement and judicial authorities with recommendations for follow-up action to be taken within their respective area of competence. In accordance with Article 11 of Regulation (EU, Euratom) No 883/2013 the national law enforcement and judicial authorities send to OLAF information on the action taken on the basis of the recommendations received. OLAF subsequently conducts an analysis and assessment to establish the number of cases in which the national authorities acted on the recommendations given and achieved a conviction. This requires continued efforts to raise the effectiveness of the administrative and criminal proceedings with a focus on achieving convictions. It also entails a need for continued efforts to enhance the effectiveness of the administrative and criminal proceedings related to the investigation of irregularities and fraud in order to ensure that timely and adequate sanctions are imposed on the perpetrators.

Both administrative and criminal proceedings must be effective and efficient. This requires sound linkages between them and good coordination with the national Prosecution Office.

This objective will be achieved by implementing the following actions:

- Ensuring that the institutions represented in the Council perform controls on the process of recovery of unduly paid amounts from the beneficiaries following the establishment of irregularities.



- Ensuring that internal rules for the programming period 2021-2027 are drawn up or that existing rules are updated by all managing authorities in connection with the requirement for the recovery of unduly paid amounts from the beneficiaries under the respective operational programmes.
- Administrative investigations conducted by the AFCOS Directorate, acting on its own initiative or at OLAF's request, to identify irregularities and fraud affecting the EU's financial interests.
- Opening, conducting and completing [investigations] with a decision, court judgment or conviction in the cases investigated and prosecuted by the competent law enforcement authorities.
- Increasing the rate of conducted investigations and the number of persons on whom sanctions/penalties are imposed.
- Ensuring that the national Prosecution Office provides summary information necessary for the statistical, coordination and control activities of the EU institutions in accordance with the applicable law and with the assistance of the Bulgarian Anti-Fraud Coordination Service.

Results expected to be achieved under strategic goal 3:

- ❖ Adopted, amended and supplemented/new statutory acts governing the administrative/criminal proceedings for the protection of the EU's financial interests.
- ❖ Updating the provisions of the Criminal Code on crimes against the EU's financial interests in the case of reasonable necessity. Shorter recovery procedures put in place.
- ❖ More effective administrative and criminal proceedings.
- ❖ Accurate information provided to the EU institutions on the national proceedings conducted in order to protect the Union's financial interests.

#### **5.4. Strategic goal 4: Enhancing cooperation with OLAF and EU institutions, Member States and other countries and active involvement in the development of the EU policies**

##### **5.4.1. Operational objective 1: Active involvement in the development of strategic documents and policies**

The European Commission, and more specifically OLAF, will continue to exchange good practices, assist and cooperate with the EU institutions, national institutions and other international organisations and expert bodies in the development of policies on the fight against fraud and corruption. Policy development actions will be aligned with the EU anti-corruption reporting mechanism. Expanded and enhanced cooperation between the Bulgarian institutions and OLAF, other EU institutions and agencies and the competent authorities of other Member States in the development of strategic documents and



policy discussions in this field is essential for the effective fight against fraud. Bulgarian institutions must be a proactive participant in the discussions at European level and capable of defending the national positions and initiatives at all stages of the policy planning, decision-making and application of the relevant legislation.

The objective will be achieved through the implementation of the following actions:

- Participating in meetings, conferences, workshops and forums in the development of strategic documents and policy discussions in the field of protection of the EU's financial interests.
- Presenting and defending Bulgaria's position in the meetings of the Anti-Fraud Coordination Council and its subgroups and those of the Anti-Fraud Working Group of the EU Council.
- Making arrangements for the preparation of Bulgaria's contribution to annual reports of the European Commission on the protection of the EU's financial interests in accordance with Article 325 of the TFEU.
- Presenting Bulgaria's experience at international events, and in particular the annual workshops of AFCOS units, improving interaction and replicating good practices.
- Making organisational arrangements, drawing up a national situation report and participating in the annual conferences of the Cigarettes Working Group organised by the European Anti-Fraud Office.

#### **5.4.2. Operational objective 2: Expanding operational cooperation**

In terms of concrete practical benefits, the proactive position of the competent national institutions is expected to expand operational cooperation with OLAF and the competent authorities of other Member States and third countries. Bulgaria should aim to engage in an active exchange of information, taking concrete actions and participating in joint operations to detect and counter irregularities and fraud affecting the EU's financial interests.

This objective will be achieved by implementing the following actions:

- Participation of the competent national institutions in joint anti-fraud operations organised and supported by OLAF and other EU institutions, services and agencies at European and regional level.
- Support for international projects financed under the Hercules Programme and the EU Anti-Fraud Programme for the period 2021-2027<sup>35</sup>.
- Participation in joint bilateral and multilateral investigating teams working on cases affecting the EU's financial interests.

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<sup>35</sup> [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633182/EPRS\\_BRI\(2019\)633182\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633182/EPRS_BRI(2019)633182_EN.pdf)



- Providing assistance to OLAF when requests are received for information and documents relating to investigations conducted in the context of detecting and combating irregularities and fraud affecting the EU's financial interests.
- Providing assistance and making arrangements for the participation of the AFCOS officials in on-the-spot checks conducted by OLAF in accordance with the applicable Union and national law.
- Providing timely assistance to the European Commission inspectors in obtaining access to premises and documents necessary to perform on-the-spot checks in accordance with Chapter 3a of the Public Financial Inspection Act.
- Improved operational cooperation between the Council members in the context of OLAF investigations conducted in Bulgaria.
- Establishing active cooperation and operational interaction with the AFCOS services of other Member States and candidate countries.
- Expanding operational cooperation with EU institutions and the competent authorities of other Member States with a view to the effective detection and combating of irregularities and fraud.

#### **5.4.3. Operational objective 3: Participation in trainings and exchange of experience**

The European Anti-Fraud Office promotes best practices and shares its operational experience in the protection of the EU's financial interests with the Member States. OLAF supports the actions taken by the Member States to counter fraud. At the same time, the Member States notify OLAF of detected cases of fraud at an early stage within the framework of the procedure for reporting irregularities and provide updates when follow-up actions are taken in accordance with the applicable law. The information provided is analysed and assessed as regards new types of fraud. It is therefore necessary to develop a more proactive approach to the participation in training events and exchange of experience at international level. It is also necessary to expand the forms of on-the-spot training through participation in cooperation and partnership networks and internships at EU institutions to acquire specific expert knowledge, including through making extensive use of the training opportunities offered by the European Union Agency for Law Enforcement Training (CEPOL). The training of trainers should also be enhanced to create more opportunities for sharing of experience and dissemination and replication of good practices at national level. It is also necessary to organise specialised training within OLAF for the staff with competencies to conduct administrative checks for the purpose of identifying irregularities and fraud affecting the EU's financial interests (administrative investigations). The interaction between the competent national authorities and institutions with a similar mandate in other Member States must be enhanced.

The objective will be achieved through the implementation of the following actions:



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- Participation in trainings on the reporting of irregularities, conducting administrative investigations, the use of new instruments in the fight against irregularities and fraud affecting the EU's financial interests and exchange of experience and good practices, with a possibility for involvement of the institutions represented in the AFCOS Council.
- Arranging training for the bodies investigating offenses at the pre-trial stage on the use of the instruments, available with regard to the international legal cooperation in criminal matters aimed at improving detection and ensuring the recognition of the evidence in the investigations of offenses affecting the EU's financial interests.
- Arranging internships for AFCOS officials in OLAF for the purposes of exchange of experience in the opening, conducting and completion of administrative investigations.
- Organising study visits for officials from the AFCOS Directorate to the AFCOS units of other Member States for the purposes of exchange of experience in the fight against irregularities and fraud affecting the EU's financial interests.
- Participating in conferences financed by the Hercules Programme and the EU Anti-Fraud Programme for the period 2021-2027.

Results expected to be achieved under strategic aim 3:

- ❖ Better cooperation between the institutions participating in the mechanism for fight against irregularities and fraud at national and EU level in the area of policy development and decision-making.
- ❖ Effectively conducted joint operations against smuggling and counterfeit cigarettes and the detection of fraud affecting the expenditure side of the budget.
- ❖ Dissemination of the experience gained through training events on the reporting of irregularities and the investigation of fraud for the purposes of exchange of experience with OLAF and the competent institutions in other Member States.
- ❖ Successfully implemented projects financed by the Hercules Programme and the EU Anti-Fraud Programme for the period 2021-2027.



## **6 COORDINATION, MONITORING AND REPORTING ON THE STRATEGY IMPLEMENTATION**

### **6.1. Reporting and implementation**

In accordance with Article 63 of the Public Administration Act, at the beginning of each year the ministries, commissions, government and executive agencies as well as the local administrations report to the Council of Ministers on the implementation of their strategic objectives in the previous year. The implementation of the National Strategy for Preventing and Combating Irregularities and Fraud over the period 2021-2027 must therefore fit in with the existing strategic planning and programming cycle in Bulgaria, which comprises a full set of planning, monitoring and reporting mechanisms.

The National Strategy and the Action Plan for its implementation are drawn up by the AFCOS Directorate on the basis of the proposals received from the members of the Council and the Bulgarian Prosecution Office. After summaries are compiled and a consultation among Council members is conducted, the documents are adopted at a meeting of the Council. The AFCOS Directorate coordinates, monitors and reports on the implementation of the strategies and plans adopted by the Council of Ministers. The Directorate draws up a draft annual report on the activity of the Council in the previous year on the basis of information received from Council members and the Bulgarian Prosecution Office on the actions taken to achieve the strategic goals set in the National Strategy for Preventing and Combating Irregularities and Fraud affecting the EU's financial interests.

In the last year of implementation, the AFCOS Directorate, with the assistance of the Council members, draws up a joint report on the implementation of the National Strategy on the basis of the implementation of the annual action plans.

### **6.2. Action Plan**

The Action Plan to the National Strategy sets out the objectives, activities, responsible institutions, time periods as well as the performance indicators relevant to the achievement of the strategic goals and operational objectives. The plan is approved by the Council of Ministers.

In order to ensure that the National Strategy for Preventing and Combating Irregularities and Fraud Affecting the EU's Financial Interests is effectively implemented and that the strategic goals and operational objectives set out therein are achieved, the Council members make arrangements for the implementation of activities for the protection of EU's financial interests at their respective institutions.

Acting on a recommendation to eliminate quarterly reporting by replacing it with semi-annual monitoring, respectively reporting on the implementation of the plan in order to lower the administrative burden, the following arrangements have been made:

**Implementation period:** 1 year

**Reporting interval:** 6 months



### **6.3. Strategy communication and publicity plan**

The Council of Ministers has adopted the Strategy as a public document. The Strategy has addressed all the private actors, the national institutions responsible for the prevention, management and control of EU funds and the European Union institutions, including OLAF and the European Public Prosecutor's Office.

The Communication and Publicity Plan to the Strategy seeks to raise the awareness of the target groups of the vision, goals, priorities and the main measures set out in the Strategy.

#### **Main goal**

The goal of the Communication and Publicity Plan is to enhance the effectiveness of the institutional framework for protection of the EU's financial interests in Bulgaria and raise public awareness of the National Strategy for Preventing and Combating Irregularities and Fraud Affecting the EU's Financial Interests over the period 2021-2027, ensure coordination between institutions in line with the recommendation of the European Court of Auditors and transparency and openness in the Strategy implementation.

#### **Communication channels**

The main communication channels to be used in the course of implementation are as follows:

- Electronic media;
- Printed media;
- Online media;

The National Strategy should be translated into English and appropriately published online.

#### **The minimum set of communication methods of the Strategy include:**

- Publishing a communication from the Council of Ministers to the mass media;
- Publishing information on the strategic planning portal (strategy.bg), along with the complete set of accompanying documents;
  - Ensuring that information is published by the Ministry of Interior in its capacity of the responsible body pursuant to Article 33(1)(8) of the Ministry of Interior Act (ZMVR);
  - Ensuring that information is published on the website of the “Protection of the Financial Interests of the European Union” Directorate (AFCOS) of the Ministry of Interior;
  - Providing information to stakeholders — institutions, the academic community, non-governmental organisations, etc.

### **6.4. Financing of the Strategy**

The National Strategy for Preventing and Combating Irregularities and Fraud Affecting the Financial Interests of the European Union over the period 2021-2027 is financed by



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the national budget, EU funds and programmes and other eligible external and internal sources of financing.

Grant assistance may be provided under a dedicated budget heading to named beneficiaries (central government bodies) implementing activities related to ESIF management and control within the technical assistance budget of the respective programme in accordance with Article 43 of the Law on the Management of the Financial Assistance from the European Structural and Investment Funds.