

FRAUDULENT USE OF EU FUNDS IN THE FIELD OF AGRICULTURE: CURRENT STATE, INVESTIGATION AND CHALLENGES

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The European Union adopts various policies which enhance the integration process with the common goal of improving the lives of its citizens. All policies, however, require certain financial resources, acquired through Member States' net contributions to the EU budget. Infringements, intentional or not, concerning the EU budget, namely **irregularities** and **fraud** with EU funds, have a detrimental impact on the execution of those policies and consequently on the resources allocated for their execution. With a 2018 payment budget of **144.7 billion EUR** and commitments amounting to **160.1 billion EUR**,¹ any disruption affecting the allocated amounts would have a significant detrimental effect, paid for by the citizens of the EU.

In the past 50 years since its inception, the Common Agricultural Policy (CAP) has established itself as one of the most important policies for the EU and its citizens. Though CAP's financing over the years has declined in terms of percentage of the total EU budget, its importance remains particularly high. This is due to the fact that as of 2018 there are **510 million** consumers in the EU, of whom **12 million** are the farmers themselves. They cultivate **48 % of the EU's surface area** and provide 44 million jobs within the food supply chain, with some 113 million people currently living in rural areas.² CAP's significance is all the greater for countries with traditional agricultural commit-

KEY POINTS

- The CAP **2014 – 2020** budget amounts to a total of **408 billion EUR**, while 40 % of the EU annual budget is earmarked for agriculture.
- In 2013 – 2017 the EC received reports of a total of 18 281 cases on counts of fraud and other irregularities in agriculture, amounting to a total of **1.360 billion EUR**.
- The amount of fraud and irregularities in the field of EAFRD is greater than that in the field of EAGF, despite the more substantial financial impact fraud has on the EAGF.
- EU funds fraud can be committed through **other acts constituting an infringement**, such as corruption, falsification of documents, influence peddling, circumvention of the law, conflict of interests, bribery, making false statements and others.
- The establishment of a **European Public Prosecutor's office** will aid the effective investigation of agricultural fraud on a supranational level.
- It is crucial to employ **innovative methods** in the fight against fraud, such as satellite and thermal imaging, automated prevention systems and multi-channel civil society monitoring.

¹ <https://www.consilium.europa.eu/en/press/press-releases/2017/11/30/2018-eu-budget-adopted/>.

² <https://epthinktank.eu/2016/07/20/how-the-eu-budget-is-spent-common-agricultural-policy/>.



ments such as Bulgaria, which covers a surface area of 110,900 square km, 81 % of which are so-called rural areas, of which 46.1 % is agrarian land and 37.4 % forested areas. Romania is in a similar situation, with 50 % agrarian land and 31 % forested areas. In comparison, Belgium only has 14.5 % agrarian land while forests make up 24 % of the territory.

Also indicative of the significance of the policy is the fact that in 1985, CAP accounted for 73 % of the entire Community budget. In 2016 and 2017 this percentage decreased to 40 %, ³ while in 2018, to around 38 %. This drop is attributed to CAP reforms as well as the financing of other policies of public significance. Regardless of the decline, the CAP budget continues to account for almost half of the total EU budget. The total CAP 2014 – 2020 budget is **408 billion EUR**.⁴ Of these, **58.82 billion EUR** were allocated for farmer aid, consisting of: **41.74 billion EUR** for direct payments, **14.37 billion EUR** for rural development measures and **2.7 billion EUR** for market measures.

The CAP financing, derived from the total budget, comes as direct financing or under shared management by Member States and is comprised of two main components: **direct support**, through direct payments to farmers and market support measures, financed by the European Agricultural Guarantee Fund (EAGF) – around 80 % of the CAP budget; and **rural development** (RD), financed mainly by the European Agricultural Fund for Rural Development (EAFRD) – the remaining 20 % of the CAP budget.

In view of the sheer volume of funds allocated, the CAP is subject to a **high risk of fraud** which is why protection of the financial interests of the European Union is an integral part of both its executive functions and the agenda of Member States, which are responsible for the management of over 70 % of the European funds. Thus, article 325 of the *Treaty on the Functioning of the European Union* (TFEU) requires

the EU and the Member States to counter fraud and any other illegal activities affecting the financial interests of the Union through measures which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies. Furthermore, Member States should, at the bare minimum, take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

These activities encompass the so-called “**anti-fraud cycle**” which includes prevention, detection, investigation, correction and sanctioning of fraud. This can be achieved through a wide array of administrative, punitive, organizational and other measures within the current anti-fraud policy framework at a European or national level.

In order to analyze the issue of EU funds fraud, one must take into account **the current state of policies, the prospects for investigating fraud as well as the challenges it presents**, in particular, the legal, institutional and political measures necessary for the identification, investigation and prosecution of fraud. In view of ensuring higher visibility and further empowering the investigative bodies, overcoming the identified challenges will be dependent on introducing and employing innovative methods for evaluating and combating fraud, corruption and other irregularities in the field of agriculture.

Agricultural Fraud

Fraud in the field of agriculture takes the form of a wide array of criminal offenses, made possible by exploiting the weaknesses in the existing regulatory framework and the internal systems for financial management and control of the responsible authorities. Therefore, European lawmakers have to combat

³ https://ec.europa.eu/agriculture/sites/agriculture/files/cap-post-2013/graphs/graph1_en.pdf and Reports under Art. 325 TFEU for 2016 and 2017.

⁴ <http://www.europarl.europa.eu/factsheets/bg/sheet/106/%D1%84%D0%B8%D0%BD%D0%B0%D0%BD%D1%81%D0%B8%D1%80%D0%B0%D0%BD%D0%B5-%D0%BD%D0%B0-%D0%BE%D1%81%D0%BF>.

not only fraud, but also *'any other illegal activity affecting the European Union's financial interests.'*

In this particular case, this means that fraud in agriculture can be committed through other acts constituting an infringement such as corruption, active or passive bribery, money laundering, embezzlement, omission of information, making false statements, falsification of documents, influence peddling, circumvention of the law or conflict of interest. Furthermore, in many of the cases CAP fraud **directly infringes on the interests of bona fide third parties** (see Figure 1). Examples include the false declaration of land ownership; coercing tenants in order to lease arable lands; impossibility to apply for a subsidy because all subsidies go to the largest landowners; rigged public procurements in favour of certain candidates; collusive bidding etc. Irregular public procurement practices are often facilitated through influence peddling and fraud, for example, market redistribution, counterfeiting specifications, bid in-

formation leaks, bid manipulation, breaking down procurement orders, etc. Keeping in mind that the idea behind European subsidies is primarily to aid small and medium sized farmers, in some Member States such as Bulgaria, for example, one can observe the phenomenon of land ownership consolidation on the part of groups of farmers under common control, which once again leads to infringement on the interests of bona fide third parties.

In order to **effectively prosecute** CAP fraud, efforts had to focus on harmonizing the definition of 'fraud'. This was achieved with the Convention on the protection of the European Communities' financial interests of July 26th, 1995 (PIF Convention),⁵ drawn up on the basis of Article K.3 of the Treaty on European Union. The adoption of a common definition of fraud was necessary since in some cases, fraud concerning EU funds is committed by **organised criminal groups** with a strong cross-border dimension.⁶ On this basis, it was agreed that the protection of the EU's financial interests calls for the **criminal prosecution of fraudulent conduct** injuring those interests. Consequently, the Convention has two main goals:

- to oblige Member States to adopt the common definition of EU funds fraud;
- to oblige Member States to make such conduct punishable by criminal law.

In order to be prosecuted as agricultural fraud, the committed fraud has to adversely affect the EU budget. The term **financial interests of the European Union** encompasses the EU budget revenue, expenditure and assets, also the budgets of the institutions, bodies, offices and agencies, as well as the budgets they in turn monitor. Any **fraud in the field of agriculture** needs to have certain factual elements present and requires the following prerequisites: a deliberate act or an omission by an economic operator, covered by European Union law or the respective national laws, which affects or jeopardizes the EU budget (see Figure 2).

Figure 1. Committing agriculture fraud through other acts constituting an infringement

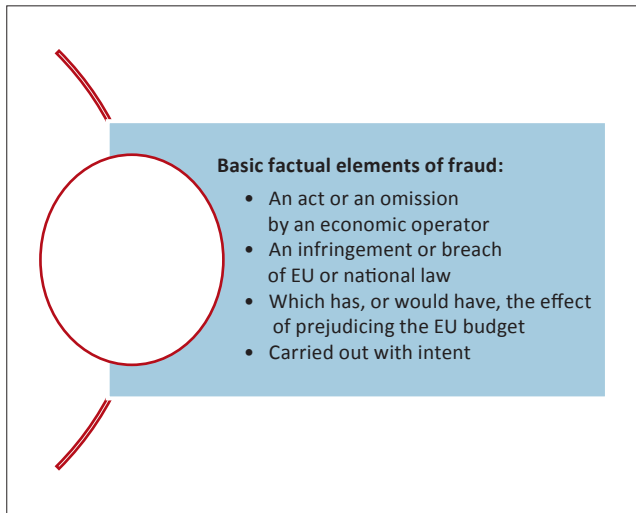


Source: Center for the Study of Democracy.

⁵ [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41995A1127\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41995A1127(03)).

⁶ A commonly used scheme involves a public procurement issued in one country, which is then awarded to a legal entity registered in another country and once payment is received, said entity ceases all action.

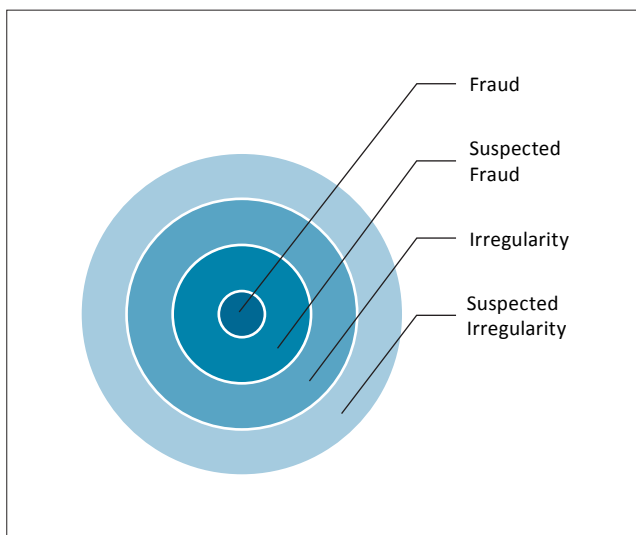
Figure 2. Basic factual elements of fraud



Source: Center for the Study of Democracy.

When it comes to fraud, one must distinguish between the following terms: suspected irregularity, irregularity, suspected fraud and fraud (see Figure 3).

Figure 3. Functional differentiation of EU and national law breaches affecting the EU budget



Source: Center for the Study of Democracy.

Suspected irregularity takes the form of an irregularity signal and constitutes information about the existence of an irregularity which contains a reference to a project, financing program, or administrative body and a description of the irregularity; on the other hand, the **irregularity** itself is an objective infringement of a European Union provision or na-

tional law, established by a primary administrative or judicial finding.

In the field of agriculture, **the term “suspected fraud”** was introduced by the 2015 Commission Delegated Regulation (EU) 2015/1971 which encompasses EAGF and EAFRD – it is 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. This means that any suspected fraud in the field of agriculture, established at a national level, must be reported to the European Commission, without prejudice to the reporting country’s right to subsequently revise or withdraw this conclusion. For example, a paying agency (PA) or a managing authority (MA), responsible for managing CAP funds, reports information regarding suspected fraud to the Prosecutor’s Office. In case the Prosecutor’s Office declares that there is not sufficient evidence that a criminal offense was committed, the PA/MA would reclassify the previously reported to OLAF “suspected fraud” as an “irregularity”.

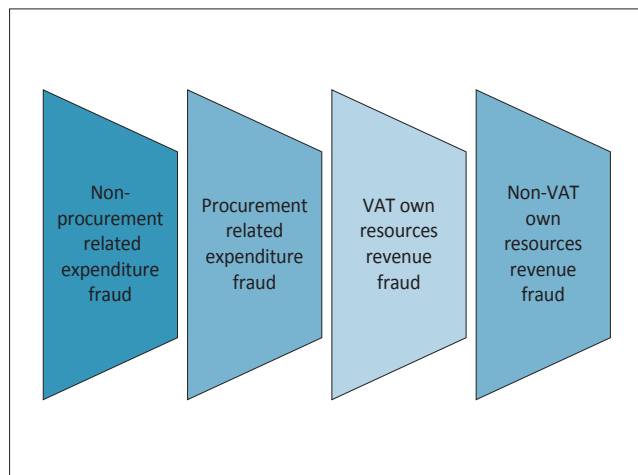
As a result of the extensive measures undertaken to harmonize the definition of fraud and to guarantee the implementation of EU policies, the process of converging Member States’ **criminal law** practices continues mainly through two legal acts adopted by the EU in 2017:

- **Directive 2017/1371 on the fight against fraud** to the Union’s financial interests by means of criminal law (PIF Directive);⁷
- **Regulation 2017/1939** on the establishment of a **European Public Prosecutor’s Office**.

With the adoption of the PIF Directive and the establishment of a European Public Prosecutor’s Office, competent in investigating fraud and prosecuting through the functions of its European Delegated Prosecutors, control measures in the fields of fraud and agriculture in particular are becoming increasingly sophisticated. The PIF Directive shall be transposed into national law by Member States by the 6th of July 2019 which will further change anti-fraud

⁷ PIF – “protection of the financial interests”.

Figure 4. Differentiating between the types of fraud based on the definition in the Directive on the fight against fraud to the Union’s financial interests by means of criminal law



Source: Center for the Study of Democracy.

efforts in a number of ways: a more detailed definition of fraud will be adopted (see Figure 3); legal entities will be liable for criminal offences, the term “public servant” will be adopted, which ensures stricter responsibilities for persons who take part in the management and control of EU funds, including natural persons. It is imperative that all acts covered by the PIF Directive and prosecuted by the European Public Prosecutor’s office be carried out with direct intent.

Anti-fraud and irregularities investigative bodies in the field of agriculture

The fight against fraud and irregularities is conducted in two different ways, according to the applicable law – administrative law or criminal law and on two different levels – national or European union level, pursuant to the application of the principles of subsidiarity, proportionality and conferral.⁸ (see Figure 5).

The authorities tasked with the **administrative** protection of financial interests include managing authorities, paying agencies⁹ in the field of agricultural funds, auditing authorities, certifying authorities, Anti-Fraud Co-ordination Services (AFCOS), the Court of Auditors and others. At a European level, they include the European Anti-Fraud Office (OLAF), the European Court of Auditors, Directorates-General of the European Commission and others. Thus, a distinction must be made between authorities **which carry out checks** (for example managing authorities, certifying authorities, auditing authorities, the Court of Auditors etc.) and authorities **which carry out investigations** (AFCOS bodies,¹⁰ police, the Prosecutor’s Office). The investigations themselves are split by type, into **administrative investigations**¹¹ and **criminal investigations**. The competent bodies tasked with carrying out criminal investigations and prosecuting fraud are the law enforcement agencies, in particular the Prosecutor’s Office at a national level and the European Public Prosecutor’s Office at a European level.

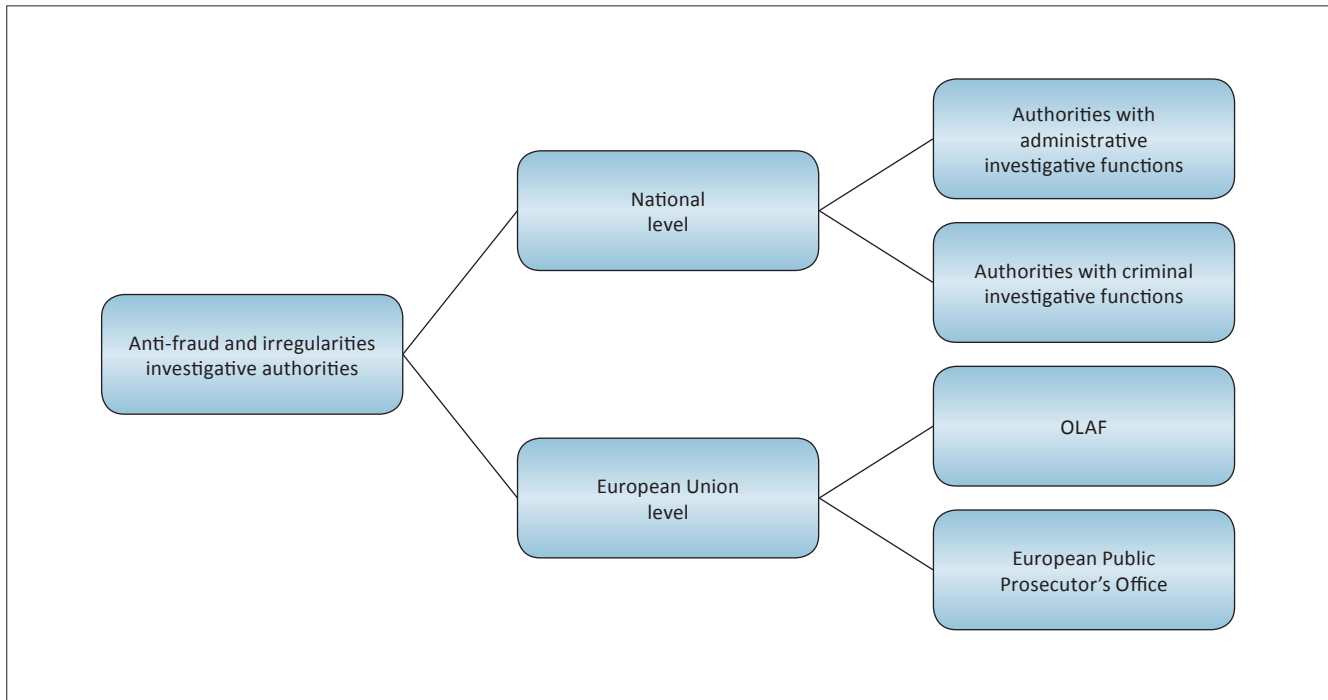
⁸ According to the **principle of subsidiarity**, the EU only takes action insofar as the objectives of said action cannot be achieved to a sufficient degree by the Member States themselves. Under the principle of **proportionality** on the other hand, the content and form of the action must be limited to what is necessary to achieve the objectives of the Treaties. Under the **principle of conferral**, the EU can only act within the limits of its competences as conferred on it by its Member States.

⁹ According to Regulation 1303/2013, only when using **paying agencies** accredited by the Member States, there is reasonable assurance that the necessary checks have been carried out before granting Union aid to beneficiaries. Thus, only expenditure effected by accredited paying agencies can be reimbursed from the Union’s budget.

¹⁰ Not all AFCOS bodies carry out administrative investigations. Such decisions must be made at national level in accordance with Ref. Ares (2013)3473285 – 13/11/2013, Guidance note on main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS), Brussels, October 2013; initial Guidance from 2002: http://www.afcos.bg/upload/docs/2013-03/20021202_AFCOS_tasks_resp.pdf. Bodies which carry out administrative investigations include AFCOS Bulgaria, AFCOS Malta, AFCOS Romania, etc.

¹¹ In some Member States, such as Malta for example, administrative investigations in the field of EU funds are called ‘financial investigations for the protection of the EU budget’.

Figure 5. Investigative competence in the field of CAP, in accordance with the applicable legal framework



Source: Center for the Study of Democracy.

It is of particular importance for the effectiveness of the measures for the protection of agricultural funds and the EU budget as a whole to **cover every single stage of the anti-fraud cycle**, namely: prevention, detection, investigation, prosecution, sanction and corrective measures. Such comprehensive scope is achieved through involving the listed authorities at a national and European level, while their specific contribution to the process is shown in Table 1.

The investigation of EU agricultural fraud is the legal responsibility of two bodies: the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office.

The European Anti-Fraud Office – OLAF, created in 1999, is a body within the European Commission with the status of a Directorate-General. It has the power to conduct independent **administrative investigations** with the aim of combating fraud, corruption and any other illegal activities infringing on the Union's financial interests. This means that no other EU institution, body, office or agency has the right to interfere with the conduct of investigations. Until the European

Public Prosecutor's Office starts functioning, OLAF will remain the sole body mandated with conducting European level investigations with the aim of protecting the EU's financial interests.

There are two types of OLAF investigations. Firstly, **external investigations** which cover all EU expenditure, with a focus on ESIF and agricultural policy; direct expenditure and external aid, as well as some of the EU's revenue. Secondly, **internal investigations** into any allegations of misconduct involving staff and members of the EU institutions. Thus, in summary, OLAF has two main goals:

- To conduct investigations with the aim of protecting the EU's financial interests;
- To develop anti-fraud policy.

Figure 6 presents the fields most heavily investigated by OLAF, according to the criterion – **number of investigations**¹² still open in 2017. The fields subject to most active investigation in 2017 are: structural funds,

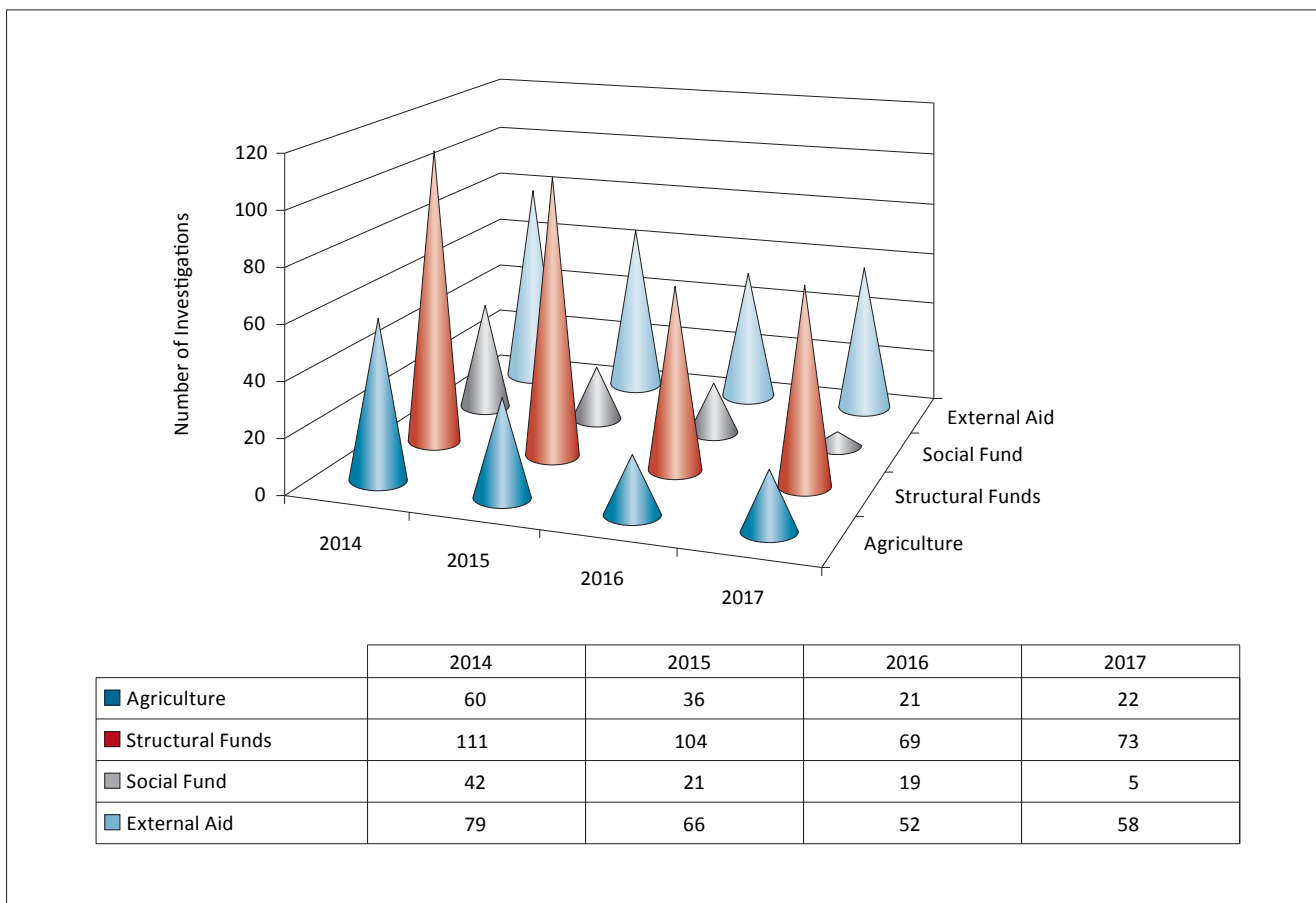
¹² OLAF 2017 report, p. 13.

Table 1. Competence in carrying out investigations in the field of CAP in accordance with the applicable law

Control Authorities in the field of Agriculture	Fraud Prevention (risk assessment, anti-fraud strategy, management)	Fraud Detection (internal control systems)	Fraud Investigation (administrative and criminal)	Sanctions, corrective measures, criminal prosecution
	Anti-fraud cycle			
National administrative authorities	✓	✓	✓	✓
National pre-trial and judicial authorities			✓	✓
OLAF	✓	✓	✓	
European Commission	✓	✓		✓
European Public Prosecutor's Office			✓	✓

Source: Center for the Study of Democracy.

Figure 6. OLAF-led investigations in the field of agriculture for the 2014 – 2017 period, as compared to other fields of investigation



Source: OLAF Report 2017.

agricultural funds, direct payments and external aid, while the least investigated are the expenditure in the social fund, new financial instruments and tobacco and counterfeit goods. This means that the investigations conducted in the field of agriculture¹³ represented 12.7 % of all ongoing investigations in 2014; 9 % in 2015; 6.1 % in 2016 and 6 % in 2017. The statistical tendency of decline in the number of investigations conducted in the field of agriculture doesn't indicate an analogous decline in the amount of fraud and irregularities in the same field, as seen in Figure 8.¹⁴ Thus, adopting anti-fraud measures in the field of agriculture should retain its priority status on the agendas of the European Union and Member States.

Criminal investigations at EU level are the responsibility of the **European Public Prosecutor's Office** which is tasked with carrying out investigations, prosecuting and bringing to justice the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the EU, as outlined in the PIF directive. The functions of the European Public Prosecutor's Office will **transform** the fight against fraud since until Regulation 2017/1939 came into force, only Member States' authorities could criminally investigate fraud and bring charges in cases concerning EU funds, albeit with limited territorial and functional competence.¹⁵ Once the European Public Prosecutor's Office starts working, it will carry out investigations and criminal prosecution. It will also act as a prosecutor before the competent Member States' courts pending the final settlement of the case.

Evaluation of financial damages

The key considerations are the **annual cost** to citizens resulting from budget losses attributed to irregularities, fraud, corruption and any other illegal activities affecting the financial interests of the European Union, and the volume of agricultural fraud. In this regard, some of the possible indicators are the OLAF

recommendations for the recovery of funds, on the one hand, and on the other, the total material cost attributed to fraud and irregularities reported to the European Commission.

Analysis of the 2017 European Anti-Fraud Office (OLAF) annual report shows that recommendations for the recovery of EU budget funds, as a consequence of the investigations carried out in 2017 amount to the total sum of 3.095 billion EUR. For the 2010 – 2017 period, the total sum amounted to an impressive **6.6 billion EUR** as a result of 1,800 completed investigations and over 2,300 recommendations for taking judicial, financial, disciplinary and administrative measures.

Apart from an examination of the amounts recommended by OLAF for financial recovery, an analysis of the fraud and irregularities cases officially reported to the European Commission **between 2013 and 2017** is also necessary. As previously noted, the EU agricultural policy is financed by two funds – EAGF and EAFRD. However, it is the Member States who are responsible for payments and not the European Commission, whose role is to reimburse the expenditure of paying agencies, while Member States' role is to accredit paying agencies' capacity to attest to the expenditure claimed by beneficiaries.

In view of the existence of two agricultural funds that finance the common agricultural policy, reported **fraud and irregularities** cases can also be classified based on the fund which finances them, as follows:

- Direct 'support to agriculture' (SA), which includes direct payments and market support measures from the EAGF.
- Rural development (RD), measures financed primarily by the EAFRD.

For greater accuracy of the analysis, a certain number of cases are classified as:

¹³ The total number of ongoing investigations for 2014 is 474, 398 for 2015, and 344 for 2016.

¹⁴ This is attributed to various reasons, such as: OLAF case selection criteria related to higher material interest; investigative responsibilities of Member States; compliance with annual investigation priorities; CAP budget cuts etc.

¹⁵ EC, OLAF, Eurojust and Europol cannot conduct criminal investigations.

- mixed SA/RD, where they concern both types of expenditure or there is not enough information to assign the case to RD or SA.

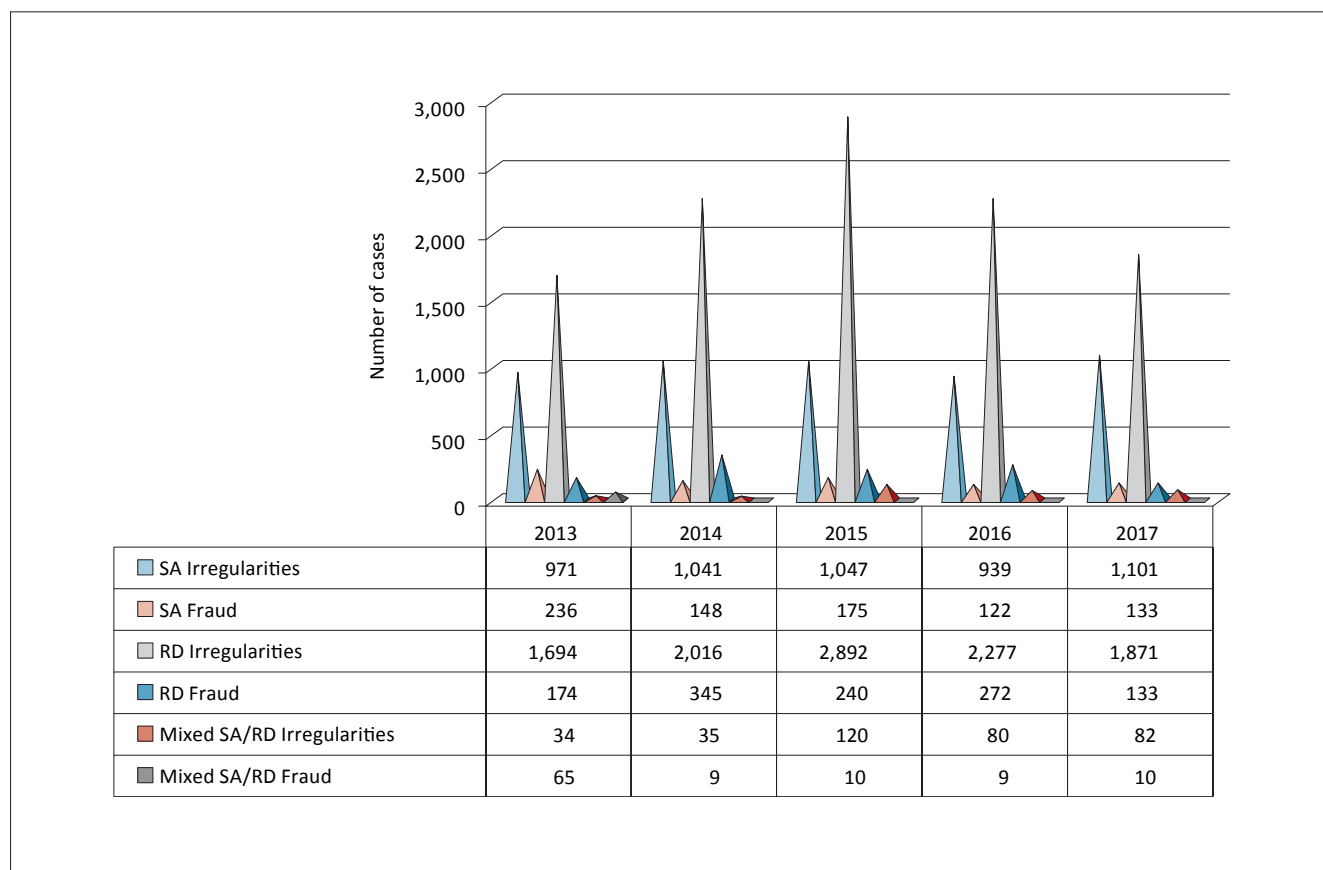
The **irregularities analysis** (Figure 7) yields the following statistical data: in 2013 – 2017 the EC received 5,099 reported SA irregularities, 10,750 RD irregularities, and 351 mixed irregularities, which brings the total to 16,200 irregularities. This means that the number of reported irregularities in the **field of agriculture**, for the said 5 year period, was made up of 66 % RD, 32 % SA, and 2 % mixed cases. It is worth noting that the number of reported irregularities is unevenly spread between the 28 EU Member States. For example, in 2017, the irregularities reported by Italy, Romania, Portugal, Spain, Hungary, Poland and France accounted for 75 % of the total number of reported irregularities.

The **fraud analysis** (Figure 7), in turn, presents the following statistical data: in 2013 – 2017 the EC received 814 reported SA fraud cases, 1,164 RD fraud cases, and 103 mixed fraud cases, which brings the total to 2,018 fraud cases. This means that the number of reported fraud cases in the field of agriculture, for the said 5 year period, was made up of 56 % RD, 38 % SA and 5 % mixed cases. The number of reported fraud cases in the EU for 2017 was similarly unevenly distributed. In this particular case, three countries – Poland, Romania and Italy, account for 65 % of the total number of reported fraud cases.

Several initial conclusions can be drawn:

- The number of fraud cases reported to the EU Commission is directly proportional to the number of reported irregularities for the respective period;

Figure 7. Number of agricultural fund fraud and irregularities cases reported to the European Commission in 2013 – 2017



Source: 29th Annual Report on the Protection of the European Union's financial interests Fight against fraud Brussels, 3.9.2018. COM(2018) 553 final, Statistical evaluation of irregularities reported SWD(2018) 386 final.

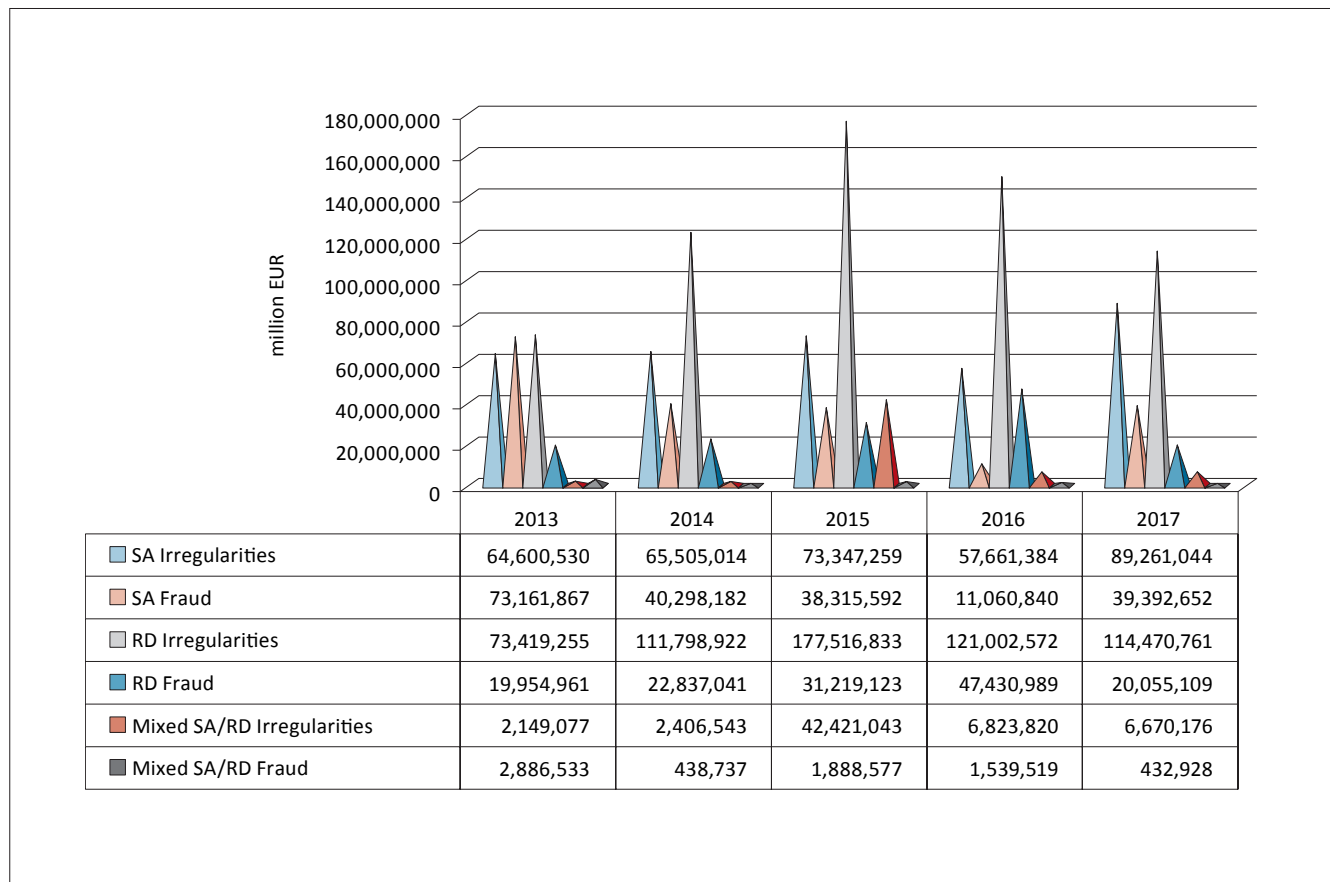
- The number of fraud and irregularities cases in the field of RD is higher than that in the field of SA, yet the financial impact of SA fraud cases is more significant;
- The number of fraud and irregularities cases increases around the middle and towards the end of the respective programming period and decreases in the beginning of the next. This is a logical consequence considering the elevated number of controls and payment requests upon the conclusion of a given programming period. At the same time, right in the beginning of a project application and execution cycle, the confirmed incidence of fraud and irregularities is lower.

The analysis of the 2013 – 2017 fraud and irregularities case distribution by fund (EAGF or EAFRD) also calls for an evaluation of the **financial damage** they

have caused. It is important to note that the reported (registered) cases account only for part of the actual number of committed fraud and irregularities. This is attributed to various reasons: some fraud and irregularities are never detected; there are cases which can't be proven in court; and there are cases which are never reported.

The statistical analysis shows that the reported irregularities (fraud not included) in the EU in 2013 – 2017, in the field of agriculture alone, amount to **1,009,054,234** EUR. SA account for **350,375,231** EUR, RD for **598,208,343** EUR, while **60,470,660** EUR are attributed to mixed SA/RD cases. The number of cases (Figure 7) is directly proportional to their financial impact and is distributed in the following way: RD – 59 %, SA – 35 %, mixed SA/RD – 6 %.

Figure 8. Financial impact of agricultural fund fraud and irregularities cases reported to the European Commission in 2013 – 2017, in EUR million



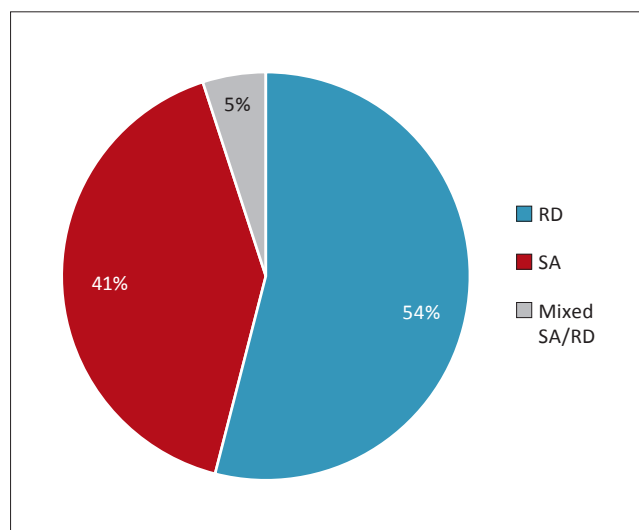
Source: 29th Annual Report on the Protection of the European Union’s financial interests Fight against fraud Brussels, 3.9.2018. COM(2018) 553 final, Statistical evaluation of irregularities reported SWD(2018) 386 final.

The reported agricultural fraud cases in 2013 – 2017 amount to **350,912,651** EUR, distributed in the following way: SA accounts for **202,229,133** EUR, RD for **141,497,223** EUR, while **7,186,295** EUR are attributed to mixed SA/RD cases. Unlike the financial impact of irregularities (where RD accounts for the biggest chunk), the financial impact of fraud cases is distributed in the following way: SA – 58 %, RD – 40 %, mixed SA/RD cases – 2 %.

Based on the analysis of the combined financial impact of agricultural fund fraud and irregularities reported to the EC, the following conclusions can be drawn:

- In 2013 – 2017, the EC received reports of 18,281 fraud and irregularities cases, amounting to a total of 1,359,966,885 EUR;
- More than half of the cases – 54 % are attributed to RD, followed by SA with 41 %, and mixed SA/RD fraud and irregularities accounting for 5 %. (see Figure 9);

Figure 9. Financial impact on CAP in 2013 – 2017



Source: 29th Annual Report on the Protection of the European Union's financial interests Fight against fraud Brussels, 3.9.2018. COM(2018) 553 final, Statistical evaluation of irregularities reported SWD(2018) 386 final.

- The total financial impact of irregularities is higher than that of fraud cases which is attributed to the significantly higher number of cases.

Most common *modi operandi* in EU agricultural funding fraud

The most recurrent *modi operandi* in agricultural fraud in 2013 – 2017 include false or falsified documents and false or falsified requests for aid. There are also **various other ways of committing fraud:** overestimation, declaration of quantities exceeding the permitted limits and quotas, conflicts of interest, bribery, corruption, creation of artificial conditions,¹⁶ counterfeiting specifications and goods, bid information leaks, breaking down procurement orders, etc. **Typical examples of fraud**, identified in the course of investigations, include: purchasing second-hand goods and subsidising them as new; breach of the three quote rule; subsidising a guest house which is then used as a principal residence; circumventing the limits on maximum aid (for example a mother and two daughters apply separately and subsequently build a joint property); altering the business purpose of an entity in order to form two separate entities so as to apply for subsidies under two different programmes; subsidising a certain number of crops or animals which are in fact nonexistent or falsely classifying breeds so as to receive a larger subsidy (for example a rare horse breed) etc. The variety of ways to commit fraud require specific expertise on the part of investigative bodies since the complexity of fraud is often directly proportional to the magnitude of the financial impact.

The total financial impact of the agricultural fraud and irregularities reported to the EC amounts to approximately 0.5 %¹⁷ of the total CAP budget. The fact that the financial impact constitutes a rather small

¹⁶ 2017 EC report on Article 325 TFEU, point 3.3.1.1.

¹⁷ For example, in 2017, the CAP budget was 55.6 billion EUR which amounts to 41.3 % of the total EU budget. In 2017, the EC received reports of 3,330 fraud and irregularities cases with a total financial impact of 270,282,670 million EUR which amounts to 0.48 % of the total CAP budget.

share of the total budget can be explained in one of two ways: either the controls set up at both EU and Member State level work sufficiently well,¹⁸ or **the values officially reported to the EC represent merely a fraction of the fraud actually committed in Member States**. There's a number of possible justifications in support of the latter:

- A large number of fraud and irregularities are never detected.
- Some of the detected fraud cases can't be proven in court. This presents a problem since on the one hand, unproven fraud can lead to evasion of responsibility and possible economic loss, and on the other, to bad practices when it comes to reporting and terminating irregularities. Such an issue could arise if, for example, managing authorities close a registered irregularity solely on the grounds of being notified of the prosecutor's office' decision to decline initiating of pre-trial proceedings. In this case, the complete closure of an irregularity is a bad practice since the lack of a criminal offence does not necessarily mean a lack of irregularity.
- Member States are obliged to report irregularities above the 10,000 EUR threshold, thus the number of irregularities involving less than 10,000 EUR is unknown. The simplest of examples shows that if 20,000 irregularities of 8,000 EUR each are committed in the EU, those cases alone would amount to a financial loss of **160 million EUR**.
- In order to accurately assess the value of reported fraud and irregularities, the European Commission relies on the information provided by the Member States themselves, who have to report fraudulent irregularities as either "suspected fraud" or "fraud". Often, the practice of reporting suspected fraud differs and Member States report suspicions at different stages of investigations, which affects the total number of suspected fraud cases.¹⁹

- Member States themselves have no incentive to maximise the number of reported fraud and irregularities considering that the bigger the number of reported cases, the bigger the risk of financial corrections (including financial corrections of the programme itself). This, in turn, has direct impact on the country's reputation and the prospects of more funds being allocated for future programming periods.

In conclusion, it must be pointed out that the number of irregularities reported as **fraudulent** (which includes the cases of fraud and suspected fraud) and the amounts associated with them are not a direct indicator of the level of fraud impacting the EU budget. **These figures solely indicate the number of potential fraud cases discovered by Member States and EU authorities.**²⁰

Anti-fraud measures and challenges or the need for zero tolerance to fraud

The protection of the financial interests of the European Union in agriculture, and in general, calls for the coexistence of an institutional and a legal framework, both functioning within an active anti-fraud policy.

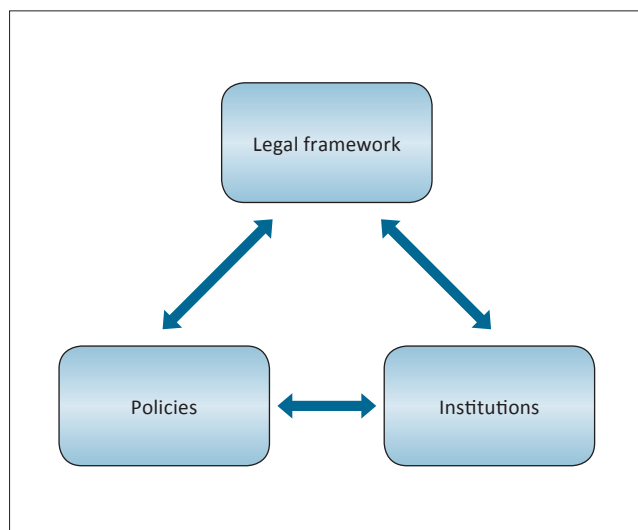
Three main components are in place – an **institutional framework** consisting of OLAF, the European Public Prosecutor's Office, the European Court of Auditors, the European Commission through its Directorates-General and other institutions, bodies, services and agencies of the EU, and at a national level – the national administrative and court authorities shown in **Figure 5**.

¹⁸ As claimed, for example, in the Directorate-General for Agriculture and Rural Development study: "Assessment of the risk of fraud and other serious irregularities to the detriment of the CAP budget".

¹⁹ For example, it is possible for MA to report a certain irregularity as suspected fraud after it's sent to the prosecutor's office, while another – only after the prosecutor's office rules on initiating pre-trial proceedings (regardless of the possibility that said proceedings might later be terminated). In the first instance, the number of reported suspected fraud cases is significantly higher.

²⁰ The European Commission itself also believes that it's possible that the number of reported fraud and irregularities (and the amounts associated with them) has no direct bearing on the actual level of EU fund fraud.

Figure 10. Fundamental components of the fight against fraud



Source: Center for the Study of Democracy.

The **legal framework** at a European level is defined by two types of regulatory documents:

- Regulatory acts on the functioning of CAP²¹ – Regulation 1306/2013 on the financing, management and monitoring of CAP; Regulation 907/2014;²² Regulation 908/2014;²³ Regulation 809/2014²⁴ and others; the financial regulations 2018/1046 and 966/2012, as well as the acting sector-specific regulations.
- Anti-fraud regulatory acts – Art. 325 TFEU, PIF Convention, PIF Regulation, Regulation on European Public Prosecutor’s Office, Regulation 2988/95 on the protection of the European Communities financial interests; Regulation 2185/96 concerning on-the-spot checks and inspections carried out by the European Commission, Regulation 883/2013 concerning investigations conducted by OLAF, and others.

An intersection of the regulations on the functioning of CAP and those concerning the protection of financial interests in agriculture is found in **Article 58 of Regulation 1306/2013**, according to which, **in the field of agriculture**, Member States shall adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Union, in particular to:

- check the legality and regularity of operations financed by the Funds – EAGF and EAFRD;
- ensure effective prevention against fraud, especially in areas with a higher level of risk, having regard to the costs and benefits as well as the proportionality of the measures;
- prevent, detect and correct irregularities and fraud;
- impose penalties which are effective, dissuasive and proportionate in accordance with Union law, or failing this, national law, and bring legal proceedings to that effect, as necessary;
- recover undue payments plus interest, and bring legal proceedings to that effect, as necessary.

The European legislation explicitly obliges Member States to put in place efficient systems of EU funds management and control able to guarantee the successful implementation of CAP and support schemes, in particular.

Regarding the third element – **policies**, there are several notable types of policies that cover the full anti-fraud cycle. Essentially the goal of an anti-fraud policy is to raise awareness of fraud within Member States and European institutions and to improve the effectiveness of the different steps of the anti-fraud cycle.

²¹ It should be noted that each programming period updates/replaces the legal acts in force. The currently acting ones apply to the period 2014 – 2020.

²² Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euros.

²³ Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency.

²⁴ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance.

The policies encompass strategies at the European level – Commission Anti-Fraud Strategy (CAFS),²⁵ Joint Anti-Fraud Strategy (JAFS),²⁶ and at the national level – the National Anti-Fraud Strategies (NAFS).²⁷ The adoption and effective implementation of these policies have several notable objectives: to raise public awareness of fraud; to reinforce prevention; to improve risk assessment; to strengthen relations with OLAF and the European Public Prosecutor's Office; to successfully complete the anti-fraud cycle with corrective and sanctioning measures on the part of the competent authorities.

According to **the fraud triangle**,²⁸ three elements are conducive to fraud perpetration: **opportunity** (typically weaknesses in control systems); **rationalization** (justification for criminal behaviour) and **motive of a financial nature** ("need or greed"). The main goal of anti-fraud policies and more specifically, of prevention and control bodies, is **breaking the fraud triangle**, which is most easily achievable in the **opportunity** element, i.e. with stronger internal control measures. **Ultimately, the stronger and more adequate the internal controls, the less likely the perpetration of fraud.**

Challenges facing the Common Agricultural Policy

In 2013 the Directorate-General for Rural Development with the European Commission identified²⁹ the **general challenges** in agriculture in three main areas: 1. economic; 2. environmental and 3. territorial. In terms of **the economic challenges**, CAP needs to address food security, a declining rate of productivity growth, pressures on production costs due to

high input prices, and the deteriorating position of farmers in the food supply chain. **Environmental challenges** are related to resource efficiency, soil and water quality, threats to biodiversity, climate change, pollution and the use of illegal additives. **Territorial challenges** include the need to ensure balanced development of the different regions in the EU, including with regard to agriculture, the demographic problems and depopulation, as well as young people's withdrawal from farming.

Specific challenges identified within the present study and which need to be addressed in the period 2021 – 2027 are:

- The **functioning of the forthcoming European Public Prosecutor's Office** and the way in which investigations will proceed within CAP and how they will be coordinated with investigations by OLAF and the national authorities.
- The new **multiannual financial framework** for the period and setting a budget in position to meet needs in agriculture.
- The level of irregularities and fraud with a focus on more complex fraudulent schemes involving **acts classified under other crimes**, such as corruption, bribery, conflict of interest, money laundering, circumvention of the law, and others.
- The **concentration of subsidies** in the agriculture sector, particularly within the so-called large-scale farmer families. Thus, for instance, data by the Center for the Study of Democracy indicate that in the period 2007 – 2013 in Bulgaria, 75 % of direct payments for cultivated farmland were awarded to 3,700 natural and legal persons. However, according to unofficial data, up to 100 % of the subsidies may have been received by 100 con-

²⁵ https://ec.europa.eu/anti-fraud/sites/antifraud/files/docs/body/ec_antifraud_strategy_en.pdf, Commission Anti-Fraud Strategy (CAFS).

²⁶ Ref. Ares (2015)6023058 – 23/12/2015, <https://ec.europa.eu/sfc/sites/sfc2014/files/sfc-files/JOINT%20ANTI-FRAUD-STRATEGY%202015-2020.pdf>.

²⁷ There is no formal requirement but the EC encourages all Member States to adopt their own national anti-fraud strategies.

²⁸ See Information Note on Fraud Indicators for ERDF, ESF and CF, COCOF 09/0003/00: http://ec.europa.eu/regional_policy/en/information/publications/cocof-guidance-documents/2009/information-note-on-fraud-indicators-for-erdf-esf-and-cf.

²⁹ Agricultural Policy Perspectives, Policy brief № 5 by Directorate-General for Agriculture and Rural development of 2013, https://eige.europa.eu/resources/05_en.pdf.

nected persons. It is also worth noting the challenge faced by paying agencies when it comes to assessing the truthfulness and the prospective activities listed in the project proposals of the beneficiaries.

- **Inadequate administrative capacity** and functional capabilities of the investigative authorities in Member States. For example, the European Commission encourages AFCOS services in Member States to conduct both administrative and criminal investigations. Nevertheless, some AFCOS services do not engage in any investigations at all, while others only take on administrative ones.

Innovative methods for fighting fraud

In order to meet the challenges in CAP, rulemaking and the functioning of the institutions in the field of investigations need to be constantly brought up-to-date. The fight against fraud is directly dependent on the way offenses or crimes are committed. It is typically assumed that fraud perpetrators are always one step ahead of the responsible institutions and the established approach in the historical context of the fight against fraud follows the formula: perpetration → investigation → attempt to recover funds.

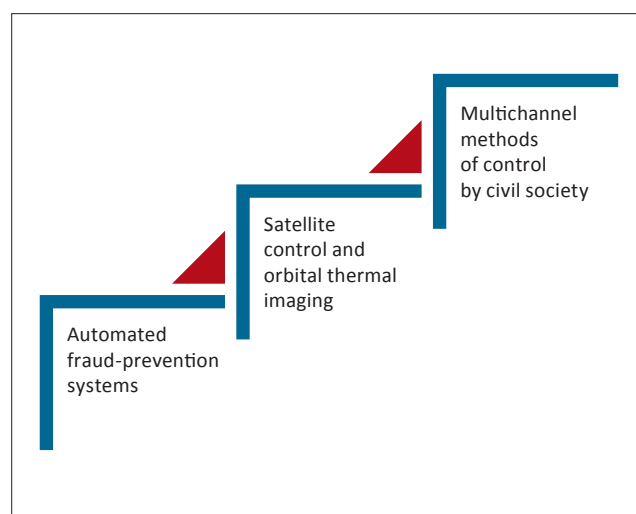
The profiling of fraudsters³⁰ is one of the methods of identifying categories in which fraud perpetrators act and hence, of taking coordinated measures and adopting uniform standards in the fight against fraud. It should be noted that EU institutions and Member States can formulate and undertake innovative anti-fraud measures to make sure that in the future the **institutions keep one step ahead of fraudsters** or to set as a goal the so-called **perfect prevention**. In practice, Member States are required to implement as a minimum the same set of measures for the protection of the European budget as those in place for the national one, giving free rein to national measures to be ever more up-to-date, with ever greater added value

and above all, with innovativeness outstripping that of fraud committers.

It is for this reason that special attention needs to be devoted to the measures that Member States could adopt in the fight against fraud and for better protection of agricultural policy by tapping into the potential of the so-called **innovative anti-fraud methods in agriculture** (see Figure 11), which have been grouped together under three categories in the present study:

1. **Automated systems for reporting suspicious circumstances** – with the development of IT technologies and AI, the introduction of electronic control and automated systems identifying red flags, potential risk situations and conflicts of interest would carry substantial added value and a high level of prevention. The implementation of such a measure could make use of currently working prevention systems (e.g. EDES), data bases in the field of agriculture (e.g. IACS) and the fight against fraud (e.g. IMS), data-mining with the aim of identifying deviant (involving corruption, fraud, etc.) models of behavior. A case in point is *Prevent* – a similar computerized system used by the Romanian Integrity Agency, which identifies and prevents the occurrence of conflicts of interest in real time in the

Figure 11. Innovative anti-fraud methods



Source: Center for the Study of Democracy.

³⁰ <https://www.oreilly.com/library/view/profiling-the-fraudster/9781118929766/>.

area of public procurement with European funds.³¹ An important role could also be played by possible incorporation into automated reporting systems of digital forensic tools used by investigative authorities.³²

2. **Satellite control³³ and orbital thermal imaging** – the potential of orbital technology is already being explored, incl. satellite images of weather conditions and areas (e.g. the satellite system under the Copernicus Programme). Broadening access to such technology to include the investigative authorities (incl. the possibility to backtrack thermal images in chronological order) would allow establishing certain objective circumstances. In many cases, an audit or inquiry in agriculture encounters the problem of alleged violations (use of prohibited substances, specific types of crops, amount of crops grown, etc.), which are supposed to have occurred in the warm half of the year, but need to be investigated months later when it is practically impossible to objectively prove them.
3. **Innovative multichannel methods of control by civil society** – this method is based on the principle of control exercised by EU citizens and on fostering a national approach of **zero tolerance to fraud**. This could be achieved in several ways:
 - Via social campaigns and the use of metadata tags – the so-called hashtags. One example of such a campaign **FraudOff!**, conducted by the Latvian authorities and bringing together more than 20 public bodies and private partners under the #Fraudoff hashtag, which makes each and every report or piece of information accessible to all participants at the same time.
 - By conducting promotional and awareness-raising events targeted at a young audience. The Republic of Malta has conducted one such educa-

tional campaign in secondary schools. It involves a short quiz of 10 questions related to the fight against fraud, while participants who answered correctly enter a sweepstakes.

- By developing a centralized application for Android and iOS that allows receiving information about any project with a QR code, as well as reporting of irregularities and fraud with user-generated photo, audio or video materials.
- Promoting and developing investigative journalism.³⁴

Recommendation for a more effective and efficient framework for the fight against fraud

Even though the development of EU anti-fraud policy is at its peak since the creation of the European Union, the perpetration of fraud and irregularities with European funds continues to pose a problem that concerns all Member States. This is evident from the investigated number of irregularities and cases of fraud in the field of CAP, the small number of persons convicted of fraud in agriculture, and the extent of the adverse impact on the CAP budget. With this in mind, there is a call for:

1. First and foremost, the adoption of the so-called **innovative methods of fighting fraud**. The use of technological advancements for attaining optimal levels of prevention and minimised risk should primarily be aimed at determent of any fraudulent intent.
2. The adoption of an **effective set of internal controls** within the agriculture fund managing bodies so as not to allow incursions into the fraud triangle.

³¹ <https://www.uti.eu.com/business-lines/information-technology-and-communications/smart-government-solutions/portfolio/prevent-national-integrity-agency-ani/>.

³² Such activities are carried out by OLAF, AFCOS and investigative authorities and aim at collecting evidence in the form of digital image evidence (documents, photos, files, correspondence, etc.).

³³ Cf. Art. 26 “Acquisition of satellite images” in Regulation 908/2014 in the field of agriculture <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0908>.

³⁴ E.g. the Rise Project in Romania <https://www.riseproject.ro/> or Bivol in Bulgaria <https://bivol.bg/>.

The most susceptible element is the very **opportunity** to commit fraud, which is facilitated precisely by inadequate internal controls.

3. Developing and using information modules for early detection, reporting, reference,³⁵ public systems for funds granted, transparency and monitoring, for automatic extraction of impact and progress indicators, etc. This includes taking steps to implement an integrated information system in agriculture accessible to all stakeholders and containing information about all operators in a control system, as well as all production units in the economy.
4. Involvement of **civil society**, such as non-governmental organizations, with the aim of fostering awareness and zero tolerance to fraud. It is necessary to enhance transparency and access to information, to raise awareness of the irregularities and frauds in agriculture, and to introduce the so-called voice from the top.³⁶ It is also essential to promote a mentality of zero-tolerance to fraud.
5. **Simplifying CAP** and avoiding the fragmentation of the legal framework on both the European and national levels. Frequent changes in the regulatory framework or its fragmentation into a multitude of legal acts impede prevention activities and the work of the competent authorities in the field of prevention and control, especially in the most affected area within the EU – public procurement.
6. Taking sufficient measures to achieve **the main goals of CAP**, among which: raising production through the use of technological advancement; ensuring a fair living standard of farmers by increasing their income; market stabilization; guaranteed food supply; guaranteed reasonable prices for consumers.
7. **Strengthening the investigative functions** of the competent authorities on the European and national levels and giving them access to technologies related to satellite and thermal imaging surveillance, chronological functions, use of common databases for risk assessment, e.g. EDES and Arachne. The first line of defense of the financial interests of the EU are in most cases the managing authorities and the respective paying agencies, as they are the only ones accredited to receive EU funds under the EFRD and EAFRD and to make payments. That is why they need to develop their own **internal anti-fraud strategy** based on risk assessment.
8. It is necessary to **conclude cooperation agreements** between the authorities responsible for the prevention, detection, and investigation of fraud in agriculture. This would facilitate a quicker flow of information and more timely and coordinated operational actions. For the effective performance of their role as defined in Regulation 883/2013, AFCOS services should not be circumvented by OLAF in communications with the competent national authorities. Equally important will be the communication between OLAF and the European Public Prosecutor's Office when conducting investigations of fraud all while remaining within their respective competence.
9. Adoption of **effective whistleblower policy** with adequate protection of whistleblowers' procedural rights. It is recommended that the responsible bodies accept and initiate investigations based on anonymous reports. The example has been set by OLAF, which acts on anonymous allegations of fraud, as do some national services. In many cases the acting administrative regulations do not allow initiating proceedings if the information comes from an anonymous source. In cases like this, if the MA/PA cannot handle anonymous reports, it is recommended for them to forward the information to an institution that works with anonymous signals about fraud.
10. Increasing the **administrative and staff capacity of institutions**, which would improve the cycle of the fight against fraud; implementation of **national strategic documents** for SA and RD development and conducting **regular risk and control system assessment**.

³⁵ As of the present time there is no unified system notifying the European Commission of court decisions issued on a national level relating to convicted persons or funds restored to the CAP budget.

³⁶ I.e., paying agencies should formally commit themselves to a policy of zero tolerance to irregularities and fraud.

Putting the above recommendations into practice is by no means an easy task for either the EU or the Member States and attaining highest standards of protection of financial interests should therefore be a political and legal priority on the agenda of the Un-

ion. It is the only way to put in place working mechanisms and sufficient guarantees that the money of European citizens is spent properly and reaches its intended beneficiaries for the purposes for which it was allocated.

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