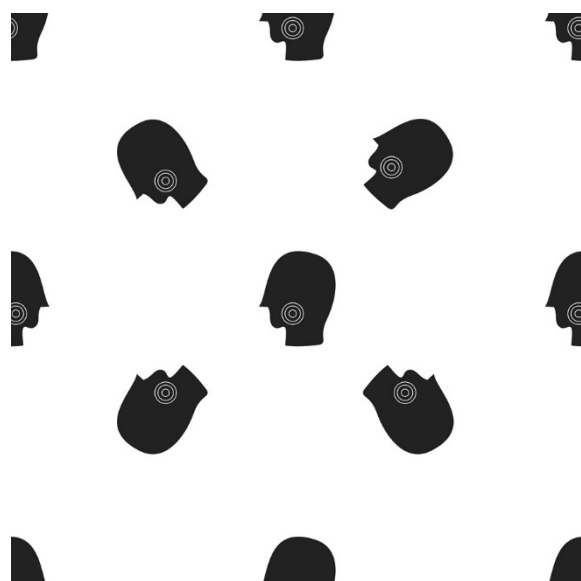




The institutional architecture of EU anti-fraud measures

Overview of a
network



IN-DEPTH ANALYSIS

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In the European Union, several institutions, agencies and other bodies (collectively referred to as 'EU authorities') are concerned with preventing and combating fraud related to the EU budget. These EU authorities, and the activities they carry out – including policy-making, monitoring and operational tasks – make up a multi-layered network in which Member States and international organisations are also included. At the domestic level, national authorities contribute by detecting, prosecuting and reporting fraudulent behaviour in the use of European Union funds to the European Commission. At the same time, a number of international organisations coordinate efforts across countries and legal systems to combat fraud. The present analysis offers an overview of this network, with a focus on the European Union institutional framework.

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Executive summary

Protection of the financial interests of the European Union (EU) is a key element of the EU policy agenda. Transparent use of public money is crucial for two separate reasons: first, for strengthening citizens' confidence in the activities of the EU; second, to facilitate better management and protection of the EU budget.

According to the European Commission, risks from fraud against the EU's financial interests amount to about €3 billion per year, roughly 2 % of the EU's annual budget. Cohesion policy is considered to be one of the most critical sectors, with regional development policy being the most affected by fraudulent behaviour.

Following the entry into force of the Treaty of Lisbon, the instruments available to protect the EU's financial interests have been substantially strengthened. A composite institutional architecture was designed to detect, prevent and combat fraud. This paper aims to describe the institutional architecture designed to tackle EU budget fraud, and its main features. The anti-fraud system related to the EU budget is based on a multi-layered network of cooperation. The first layer is composed of horizontal cooperation among EU authorities. The second and third layers are based on vertical relationships: between EU authorities and national authorities, and between EU authorities and international organisations.

Cooperation between EU authorities and national administrations consists of mutual efforts to prevent, detect and correct irregularities and fraud that might affect the use of EU funds. National authorities prosecute and report on cases of fraudulent use of EU funds to the European Commission. Cooperation between EU and international organisations is aimed at, first, coordinating efforts to monitor and combat fraud and, second, at encouraging harmonisation of legislation on fraud, corruption and mismanagement of public funds.

Ten EU authorities are specifically dedicated or entitled to carry out tasks concerned with detecting and countering fraudulent behaviour. These are: (1) the European Anti-Fraud Office (OLAF); (2) the European Commission; (3) the European Parliament (and specifically the Committee on Budgetary Control); (4) the Council; (5) the European Court of Auditors; (6) Eurojust; (7) the European Police Office (Europol); (8) the European Court of Justice; (9) the EU Ombudsman; and (10) the European Public Prosecutor's Office. These EU authorities perform four key tasks with regard to combating fraud: (1) policy-making; (2) scrutiny; (3) assistance; and (4) reporting.

Depending on which EU authorities are involved, the moment at which tasks are carried out (e.g. before a fraud is detected, or when fraudulent behaviour is addressed) and the typology of fraud concerned, cooperation, overlap, or even contrast may characterise the EU institutional architecture against fraud.

The debate as to how to improve the efficiency of the EU institutional architecture aimed at protecting EU financial interests continues. At the institutional level, the main topic of discussion concerns the establishment of the European Public Prosecutor's Office, which will take over the task of prosecuting fraud against the EU budget from the national authorities of 20 Member States after 2020. Further improvements are expected through the digitalisation of administrative procedures, and from closer interinstitutional cooperation.

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List of main acronyms used

AFCOS:	Anti-Fraud Coordination Service
ARO:	EU Asset Recovery Office
CARIN:	Camden Asset Recovery Interagency Network
CJEU:	Court of Justice of the European Union
COCOLAF:	Advisory Committee for the Coordination of Fraud Prevention
CONT:	European Parliament Committee on Budgetary Control
ECA:	European Court of Auditors
EJN:	European Judicial Network
EPPO:	European Public Prosecutor's Office
EU:	European Union
Europol:	European Police Office
FEC:	Financial and Economic Crime Team
GC:	General Court
GRECO:	Group of States against Corruption
JIT:	Joint Investigation Team
OECD:	Organisation for Economic Co-operation and Development
OLAF:	European Union's Anti-Fraud Office
PIF Convention:	Convention 95/C 316/03 on the Protection of the European Communities Financial Interests
PIF Regulation:	Council Regulation 2988/95 on the Protection of the European Communities Financial Interests
PIF report:	Commission annual report on the protection of the European Union's financial interests – Fight against fraud
TEU:	Treaty on European Union
TFEU:	Treaty on the Functioning of the European Union
WG:	Working group

1. Introduction

1.1. The boundaries of fraud

Protection of the financial interests of the European Union (EU) is a key element of the EU policy agenda. Transparent, correct and sound management of public money is crucial: firstly, to strengthen citizens' confidence in the EU's activities; and secondly, to offer companies fairer access to EU funds.

Following the entry into force of the Treaty of Lisbon, the instruments available to protect the financial interests of the EU were substantially strengthened. The Lisbon Treaty (Article 325 TFEU) includes the principles of deterrence, effectiveness and assimilation – principles that first appeared in the 1995 [Convention](#) on Protection of the European Communities' Financial Interests (hereinafter, the PIF Convention).

In the current legal framework, the EU and its Member States are involved in detecting, preventing and combating all forms of illegal activity affecting the financial interests of the EU. Moreover, the EU and the Member States participate, as observers or members, in international institutional networks against fraud and corruption.

This has two crucial consequences. The first and main outcome affects the **institutional architecture** designed to prevent and combat fraud. This can be described as a multi-layered network, i.e. a network composed of a number of authorities operating at EU, national and international levels. Their activities (e.g. policy-making, monitoring and operational tasks) are aimed at detecting and combating fraudulent behaviour that may negatively impact on the financial interests of the EU.

A second effect, to be discussed below, concerns the **concept of fraud**. In the EU legal framework, fraud is a vast concept. First, it is separate from the concept of mere irregularity; and, second, it ranges from competition policy, and common foreign and security policy, to state aid and taxation matters. This may also help to explain why an agreed definition of fraud did not exist for a long time at EU level.

1.1.1. The definition of fraud in EU law

Fraud was originally defined in the PIF Convention, which entered into force in October 2002, after it had been transposed into criminal law at the national level. The PIF Convention did not define 'suspected fraud', but only fraud affecting the financial interests of the European Communities.

This definition distinguished between two types of fraud: fraud affecting **expenditure** and fraud concerning **revenue**. In both cases, fraud is defined by Article 1 as an intentional act or omission relating to the use of, or the presentation of, false, incorrect or incomplete statements or documents. Fraud is also seen as the non-disclosure of information, in violation of a specific obligation, which causes the misappropriation or the wrongful retention of funds from the general budget of the EU. This also applies to budgets managed by, or on behalf of, the European Commission. Furthermore, in the case of expenditure, fraud was defined as including the misappropriation of funds, for purposes other than those for which they were originally granted. In the case of revenue, fraud may

include the misappropriation of a legally obtained benefit.¹ The same definitions are used in the PIF Regulation and Directive (to be analysed below).

1.1.2. The definition of irregularity in EU law

To complete the overview of the definition of financial fraud at EU level, one should also consider the concept of **irregularity**. This is defined in [Council Regulation 2988/95](#) on the Protection of the European Communities Financial Interests (hereinafter, the PIF Regulation).

Irregularity is defined in Article 1 of [Council Regulation 2988/95](#) on the Protection of the European Communities financial interests, in the PIF Convention and the subsequent regulatory acts as an infringement of a provision of EU law. The infringement must result from an act or an omission by an economic operator. Furthermore, the infringement must have the effect of prejudicing the general budget of the EU or budgets managed by the EU, either by reducing or losing revenue accruing from own resources collected directly on behalf of the EU, or by an unjustified item of expenditure.

The same definition was included in the regulations concerning EU funding programmes for the 2007-2013 and [2014-2020](#) periods.

1.2. The economic dimension of fraud

According to the [European Commission](#), risks from fraud against the EU's financial interests amount to about **€3 billion per year**, roughly **2 %** of the EU's annual budget. Cohesion policy is considered to be one of the most critical sectors, with regional development policy the most affected by fraudulent behaviour.²

When considering these data, it must also be taken into account that more than **80 %** of the EU budget is managed at the national level. The Member States have full responsibility for setting up management and control systems, verifying their performance through auditing, and for preventing, detecting and correcting irregularities and suspected fraud. Yet not all systems established at the national level have the same level of performance and efficiency, which inevitably has a direct impact on the number of cases of fraud detected and reported by the Member States to the European Commission.³ In 2016, the European Commission [reported](#) that suspected cases of fraud from Member States amounted to **€391 million**.

According to the European Commission, the estimated level of recoveries made by the Member States in confirmed instances of fraud, lies below **10 %**. Criticism of national governments points to a lack of diligence in investigating fraud, prosecuting offenders and recovering EU funds. Criticism directed at the EU mentions the fragmentation in the enforcement regime and the limited powers of the authorities.

¹ While the PIF Convention did not explicitly touch upon this point, the Court of Justice of the European Union has clarified that fraud must be interpreted as 'encompassing not only revenue and expenditure covered by the Community Budget, but also, in principle, revenue and expenditure covered by the budget of other bodies, offices and agencies established by the EC Treaty'. See CJEU [Case C-11/00 Commission of the European Union v European Central Bank](#).

² See European Commission staff working document, SWD(2013) 274 final, Impact assessment accompanying the proposal for a Council Regulation on the establishment of the European Public Prosecutor's office, 2013.

³ [Regulations \(EC\) 1681/1994](#) and [1831/1994](#) establish a two-month deadline for reporting any irregularities that are the subject of initial administrative or judicial investigations to the Commission.

1.2.1. Fraud and public procurement

The area of **public procurement** is particularly affected by risks of financial fraud. The Organisation for Economic Co-operation and Development (OECD) considers public procurement the 'governmental activity most vulnerable to waste, fraud and corruption'.⁴ The accrued vulnerability of public procurement accounts for approximately **13 % of GDP** in the OECD member countries. The OECD states the following reasons to explain the increased exposure of the area:

- 1) size of financial flows generated by public procurement directs attention towards the area and makes it attractive for fraudsters;
- 2) the complexity of the rules governing the sector creates an administrative burden for investigators;
- 3) the close interaction between public and private sectors.⁵

Of the **12 000 irregularities**⁶ that the Member States reported to the European Union's Anti-Fraud Office (OLAF) in the 2007-2013 period, **38 %** were related to public procurement. In the 2016 [Report on fight against fraud](#), it is reported that, over the previous five years, **20%** of all reported irregularities were related to breaches of public procurement rules, accounting for **30 %** of all reported irregular financial amounts.

Between 2009 and 2013, the European Court of Auditors (ECA) examined more than 1 400 transactions co-financed from the EU budget through the European Regional Development Fund, the Cohesion Fund and the European Social Fund. The Court detected a total of **590 errors** relating to public procurement, concerning around **40 %** of the projects examined. Of these mistakes, **48 %** were estimated by the ECA as significant errors, whereas 29 % were labelled serious errors. The ECA states that 'failure to comply with public procurement rules has been a perennial and significant source of error'.⁷

1.2.2. Fraud and corruption

Financial fraud is frequently associated with **corruption**. In 2011 the European Commission adopted the communication on fighting corruption in the EU,⁸ establishing the EU Anti-Corruption Report, a report on Member States' efforts in fighting corruption and fostering political engagement to address corruption effectively. This was originally to be published by the Commission every two years. In 2016, however, the Commission informed the chair of the EU Parliament's Civil Liberties Committee of the decision not to issue a follow-up.⁹ According to the Commission the 2014 report provided sufficient ground for future work in combating corruption. For future endeavours in the fight against corruption, the Commission suggested to adopt a more versatile approach, to complement the activities carried out at Member State level. The 2014 report sets out a broad definition of corruption: defined as any abuse of power for private gain, corruption may also include

⁴ See Organisation for Economic Co-operation and Development, [Fighting corruption in the public sector: integrity in procurement](#).

⁵ On the risk of conflict of interests in public-private partnerships, see G. Sgueo, [Addressing conflicts of interest in public-private partnerships](#) (PPPs), European Parliamentary Research Service, 2015.

⁶ Including irregularities related to suspicions of fraud.

⁷ See European Court of Auditors, Special report No 10/2015, [Efforts to address problems with public procurement in EU cohesion expenditure should be intensified](#), 2015.

⁸ See European Commission, Communication to the European Parliament, the Council and the European Economic and Social Committee: Fighting corruption in the EU, [COM\(2011\) 308 final](#) of 6 June 2011.

⁹ See the letter from Vice President of the Commission, Frans Timmermans, to the Chair of the European Parliament Committee on Civil Liberties, 25 January 2017, [ARES \(2017\) 455202](#).

financial fraud. The first [Anti-Corruption Report](#) was published in 2014, and estimated the cost of corruption as amounting to **€120 billion a year** for the EU. It also reported on European citizens' expectations of the EU as a player in fighting corruption, including fraud.¹⁰

The perception of corruption in EU public procurement is widespread among companies and citizens. A 2013 Eurobarometer survey¹¹ among European businesses and citizens revealed that **32 %** of companies operating in an EU Member State, and that had participated in a public procurement procedure, thought that corruption prevented them from winning a contract. Nearly **70 %** of the respondents to the survey believed that corruption affected the EU institutions. In the most recent [Eurobarometer survey](#) on business attitudes towards corruption in the EU, published in 2017, the proportion of respondents who think corruption has prevented them from winning a public tender has remained the same: 31 %.

A 2013 study, focused on national governments,¹² reported that in 2010, European governments spent **€2 046 billion**, which amounts to around **20 %** of EU gross domestic product (GDP), on public works, goods and services. The study reported a direct public loss encountered in corruption and 'grey cases'¹³ amounting to **18 %** of the projects' budgets. The cases attributed to corruption amount to **13 %**.

1.2.3. Costs related to preventing, detecting and investigating fraud

When calculating the economic impact of fraud, costs related to improving prevention, detection and investigation of offences against EU financial interests are also to be considered. The total cost of the budget heading 'Fight against fraud' in the 2018 General Budget of the EU amounts to **€82.2 million**.¹⁴

Costs include two different, but related, sources. First and foremost are the EU funding programmes aimed at supporting all activities concerned with combating fraud. The main programme, '**Hercule III**', is managed by the European Anti-Fraud Office (OLAF). Begun in 2004, 'Hercule I' was funded with an €11.8 million budget until 2006. 'Hercule II' was extended with new objectives and a €98.5 million budget for 2007-2013. 'Hercule III' entered into force on 21 March 2014, with a **€104.9 million** budget to support Member States in fighting fraud, for the 2014-2020 period.¹⁵ In 2018, the Hercule budget amounts to **€15.3 million**. The cost of other programmes such as the **Anti-Fraud Information System** (AFIS), is **€7.6 million** in 2018. The same year, the **Pericles** programme (protecting euro banknotes and coins against counterfeiting and related fraud), will cost **€1 million**.

The second source of costs is concerned with management expenditure for the bodies and institutions involved in combating fraud at EU level. The administrative budget for OLAF in the

¹⁰ The European Commission also recognises the progresses made through the Public Procurement Directives in achieving greater transparency and higher levels of competition. However, the report stresses the importance of further simplification of procedures and further strengthening of anti-fraud measures. Among the Commission proposals, the following are of particular relevance: (1) stricter controls on procurement in water, energy, transport, and postal services sectors; (2) reduced uncertainty in the sector of contract awards, to be enshrined in a new directive on concessions.

¹¹ See 2013 [Flash Eurobarometer 374](#).

¹² See PwC, Ecorys and the University of Utrecht, [Identifying and reducing corruption in public procurement in the EU](#), 2013.

¹³ Grey cases are those cases in which weaker indications of corruption are present.

¹⁴ See [General budget of the EU, Section 3 Commission](#), Official Journal of the European Union, February 2018.

¹⁵ On 30 May 2018, the Commission adopted a [proposal](#) for a new EU Anti-Fraud Programme, under the next multiannual financial framework. The Commission proposes a total financial envelope of €180.2 million for the 2021-2027 period.

current year 2018 amounts to **€59.2 million (€200 000 for the OLAF Supervisory Committee)**. In addition to the costs of OLAF and the programmes it supports, expenditure also concerns other bodies involved in combating fraud, such as the EU's Judicial Cooperation Unit (Eurojust) and the European Police Office (Europol). For the year 2018 the Eurojust and Europol operational costs were budgeted at **€38.4 million** and **€120.3 million**, respectively.

2. The legislative framework

The legislative framework to tackle fraud at EU level is based on a combination of primary and secondary legislation. Over the last few years, legislation and recommendations on fraud and the protection of the EU's financial interests have multiplied. This could be explained in various, complementary, ways: first, it could be a consequence of increased effective action to protect the financial interests of the EU. Another explanation, however, could be the growing necessity perceived by EU institutions to respond to the demand of European citizens for the transparent use of money.

2.1. Primary and secondary legislation

The primary source of EU legislation concerning fraud is **Article 325** of the Treaty on the Functioning of the European Union (TFEU). Article 325 states that the EU shall counter fraud and any other illegal activities affecting the financial interests of the EU.

A large body of **secondary legislation** at the EU level addresses the different facets of fraud. A non-exhaustive list includes:

- 1) The PIF Convention, the PIF Regulation and the PIF Directive (to be analysed later) mentioned above;¹⁶
- 2) Council Regulation No 2185/96 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities;¹⁷
- 3) Council Regulation No 883/2013 concerning investigations conducted by OLAF;¹⁸
- 4) Regulation No 966/2012 on the financial rules applicable to the general budget of the Union;¹⁹
- 5) Regulation (EU) No 1303/2013 on common provisions, laying down common provisions on a number of EU funds;²⁰

¹⁶ For further information, see the Parliament's [Legislative Train Schedule](#).

¹⁷ See [Council Regulation \(Euratom, EC\) No 2185/96](#) of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

¹⁸ See [Regulation \(EU, Euratom\) No 883/2013](#) of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999.

¹⁹ See [Regulation \(EU, Euratom\) No 966/2012](#) of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

²⁰ See [Regulation \(EU\) No 1303/2013](#) of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down

- 6) Directive 2013/43 on the common system of VAT (which introduced an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud);²¹
- 7) Directive 2013/42 concerning a quick reaction mechanism against VAT fraud.²²

2.1.1. Interinstitutional agreements

In addition to primary and secondary EU legislation, fraud is also addressed by Interinstitutional agreements, international agreements and policy documents.

Interinstitutional agreements are meant to increase cooperation among EU institutions to combat fraud against the EU budget. The [first agreement](#) of this kind was signed in 1999 by the European Parliament, the Council and the European Commission. The agreement, signed in connection with the regulations on the OLAF investigations, aimed at regulating internal investigations. According to this agreement, each EU institution should establish common internal rules to ensure that OLAF's investigations run smoothly.

These rules were later incorporated into the [Staff Regulations of Officials of the EU](#). These require staff to cooperate with OLAF and provide a degree of protection for staff members who reveal possible fraud or corruption.²³ In 2013, [an Interinstitutional Agreement](#) was signed by the EP, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management. Albeit not directly linked to anti-fraud efforts, this agreement aimed at improving cooperation between the institutions on budgetary matters, and ensuring sound financial management. This new agreement brings several improvements, including verification of EU funds spent through international organisations, an area that will be covered more fully in the next section.

2.1.2. International agreements

International agreements may be concluded between the EU (or its Member States) and international organisations. The international organisations with which the EU cooperates to combat fraud include, inter alia, the OECD, the UN and the World Bank. Agreements are meant to establish standards of cooperation among signatories on transparency, good governance, exchange of information, mutual administrative assistance and the combating of corruption and fraud. In 2015, according to the PIF report - a report aimed at covering measures taken by the Commission and the Member States in the fight against fraud, and their results - **48 agreements** that include provisions of mutual administrative assistance in customs matters for **71 third countries** were in force, and negotiations were under way with **49 countries**, including major trading partners, such as the United States and Japan. In 2016, the list of mutual administrative

general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

²¹ See [Council Directive 2013/43/EU](#) of 22 July 2013 amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud.

²² See [Council Directive 2013/42/EU](#) of 22 July 2013 amending Directive 2006/112/EC on the common system of value added tax, as regards a Quick Reaction Mechanism against VAT fraud.

²³ The protection of 'whistleblowing' – as reporting or disclosing information on acts and omissions in the workplace that represent a serious threat or harm to the public interest is known – is a topic widely discussed at EU level. Since 2004, the EU Staff Regulations stipulate that all EU institutions' staff must report (suspected) cases of fraud or corruption immediately. Since the entry into force of revised Staff Regulations, on 1 January 2014, EU institutions must create a procedure to ensure adequate protection for whistle-blowers. The EU Ombudsman has raised attention to the issue of whistleblowing since 2013. See N. Atanassov, [The European's Ombudsman activities in 2013](#), EPRS, 2015.

assistance agreements was expanded to include Kazakhstan, Ivory Coast, Ghana and Kosovo. In addition, explains the [PIF report 2016](#), negotiations to update the previous agreement were finalised with Armenia, while progress has been made in negotiations with Mercosur (Argentina, Brazil, Paraguay and Uruguay).

There are numerous examples of international agreements set up to counter fraud and corruption, such as the [International Financial Institutions Anti-Corruption Task Force](#), operating since 2006 to harmonise approaches to combat corruption in the activities and operations of member institutions (the World Bank, the International Monetary Fund, the European Bank for Reconstruction and Development, and the European Investment Bank). Other examples include the [Deep and Comprehensive Free Trade Area](#) with Ukraine, and the cooperation agreements negotiated by OLAF, on behalf of the EU, with governments outside the EU, such as Kazakhstan and Malaysia.

2.1.3. Recent developments on regulation

The EP has repeatedly called for an integrated approach towards fraud, tax avoidance and corruption, as well as for strengthening multidimensional cooperation and coordination between the Member States and the EU institutions.²⁴ Examples of this kind include the Parliament's [resolution of 20 November 2008](#) – drawn up in collaboration with a working group of the Budgetary Control (CONT) Committee; the [reports on the Protection of the EU's financial interests](#), published by the Commission every year since 1989; the European Commission [anti-fraud strategy](#), released in 2011, and the [Action Plan](#) to strengthen the fight against tax fraud and tax evasion of 2012.

On 25 April 2017, the Council adopted its first reading of the PIF Directive. The directive provides common definitions of a number of offences against the EU budget. Those offences include cases of fraud and other related crimes such as active and passive corruption, the misappropriation of funds, money laundering, amongst others. On 22 June 2017, at second reading, the European Parliament approved the Council's position at first reading. The directive was published in the Official Journal of the EU on 28 July 2017, and entered into force in August of the same year.

Provisions on protection of the Union's financial interests included in the directive cover infringements of the common VAT systems, where they are linked to the territory of two or more Member States and involve losses totalling at least **€10 million**. The definition of criminal offences covers active and passive fraud, as well as the misuse of funds. Minimum penalties are laid down for natural persons, and limitation periods are established that make it possible for the law to apply over a sufficient time to ensure that infringements can be addressed in an effective way. The directive also introduces an obligation for the Member States, the Commission, the agencies and the Court of Auditors to cooperate.

Finally, the directive sets out the legal basis for the powers of the European Public Prosecutor's Office (EPPO), provided for by **Article 86 TFEU**.²⁵ According to the directive, the EPPO will be a decentralised prosecution office of the EU with exclusive competence for investigating, prosecuting and bringing to judgment crimes against the EU budget. It will have uniform investigation powers throughout the Union, based on and integrated into the national law systems of the Member States.

²⁴ See, for instance, European Parliament, [2013/2107\(INI\), Resolution of 23 October 2013 on organised crime, corruption and money laundering](#), 2013; European Parliament, [2014/2144\(INI\), Resolution of 25 March 2015 on the Annual Tax Report](#), 2015.

²⁵ Article 87 TFEU lays down that: 'In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust'.

The European Parliament welcomed the proposal for a regulation on the establishment of the EPPO, and stressed the need to establish a consistent, complementary system for protecting the Union's financial interests. It also urged the Commission to provide a clear EU-level definition of the roles of the future EPPO, Eurojust and OLAF, delimiting their respective remit. The regulation establishing the EPPO was [adopted in October 2017](#) by the 20 Member States that have joined the enhanced cooperation, namely: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Spain, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia and Slovakia. In an informal meeting of justice ministers in Bulgaria, held on 26 January 2018, Commissioner Vera Jourová confirmed the Commission's intention to have the EPPO up and running by the end of 2020. On 23 May, the Commission proposed [new rules](#) for OLAF as a close partner of the European Public Prosecutor's Office.

3. The institutional architecture

3.1. A multi-layered network of cooperation

The institutional architecture designed to tackle financial fraud at the EU level is based on a **multi-layered network of cooperation**. The first layer is composed of **horizontal** cooperation among EU authorities. The second and third layers are based on **vertical relationships**: between EU authorities and national authorities, and between EU authorities and international organisations.

This analysis focuses primarily on the first layer of the network of cooperation against fraud, and provides a brief account of the institutional linkages and the cooperative efforts established by EU actors with national and supranational authorities.

3.1.1. Cooperation between EU and national authorities

As far as cooperation between EU authorities and national administrations is concerned, Article 59(2) of the financial rules applicable to the general budget of the EU establishes that Member States 'shall take all necessary measures, including legislative, regulatory and administrative measures, to protect the EU's financial interests'; namely by preventing, detecting and correcting irregularities and frauds. Member States are also required to report any case of fraud concerning EU funds to the European Commission.²⁶ The [new set of rules](#) is due to be voted in plenary in July 2018.

Over the years, the EU and Member States have made constant efforts to ameliorate their coordination in fighting fraud. Two examples may be used as an illustration. At the institutional level, the [Advisory Committee for the Coordination of Fraud Prevention](#) (COCOLAF), set up in 1994, is composed of two representatives from each Member State, as well as European Commission representatives. COCOLAF functions as a forum for information exchange between the Member States and OLAF, information that is then used to produce the annual PIF report. The Committee advises OLAF on matters of fraud, and reports on the measures undertaken by national administrations to prevent fraud and protect the financial interests of the EU. Furthermore, each Member State is required to designate an Anti-Fraud Coordination Service, to facilitate effective cooperation with OLAF. These services form a subgroup under COCOLAF.

²⁶ See Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

At the operational level, examples of tools available include [ARACHNE](#) and the [Anti-Fraud Information System](#) (AFIS). ARACHNE is a data-mining tool available to managing authorities, capable of identifying projects which might be susceptible to risks of fraud, conflicts of interest, and irregularities. The European Commission considers ARACHNE a benchmark for fraud-combating measures, when assessing the adequacy of current controls in place. Yet it has not been adopted by all Member States. In February 2015, the European Commission reported that 17 Member States had ARACHNE in place, or had expressed the intention to do so (whereas the others were still considering adoption in their legal systems, but had not taken steps towards implementation). In a 2017 follow-up from the Commission, it is reported that some Member States make use of some of these tools combined with national tools, whereas, some other Member States reported that they mainly make use of their own established alternative tools. In particular, some Member States have incorporated ARACHNE into their manuals of procedure and some other Member States are currently evaluating its potential use or are in the process of implementing ARACHNE. The Irregularity Management System (IMS) is widely used by all Member States that have provided detailed information regarding this recommendation. Lastly, nine Member States reported that they have made use of the Fraud Risk Assessment Tool.²⁷ The AFIS is a tool designed to facilitate exchange of fraud-related information between national and EU administrations, especially in the areas of customs matters and irregularities management on the expenditure side of the budget.²⁸

3.1.2. Cooperation between EU and international organisations

Cooperation between EU and international organisations may include monitoring fraud or encouraging regulatory harmonisation.

In the case of the **International Financial Institutions Anti-Corruption Task Force**, for instance, cooperation among international institutions aims at harmonising legislation. The cooperation agreements established with other governments and international institutions may include legislative tools adopted by the signatories.

In other cases, cooperative efforts at the supranational level aim at providing stronger protection against fraud or corruption in the use of public funds. In 2014, for example, the European Commission signed administrative arrangements with international organisations such as the World Bank and the UN Development Programme, to strengthen monitoring of the implementation of EU funds.²⁹

²⁷ See European Commission, [Protection of the European Union's financial interests - Fight against Fraud Annual Report 2016](#), 2017.

²⁸ See European Commission, [Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures](#), 2014.

²⁹ For additional information, see [Privacy statement for AFIS user register](#).

4. The anatomy of a network (Part I – key tasks)

Cooperation established at EU level includes a vast array of EU institutions and bodies, and may take different forms. Indeed, while all **EU bodies** are potentially affected by risks of fraud, only ten of them are specifically dedicated to, or entitled to act on, tasks concerned with detecting and countering fraudulent behaviour. These are: (1) OLAF; (2) the European Commission; (3) the European Parliament (and specifically the Committee on Budgetary Control (CONT)); (4) the Council; (5) the ECA; (6) Eurojust; (7) the European Police Office (Europol); (8) the European Court of Justice (CJEU); (9) the EU Ombudsman; and (10) EPPO.

Although these bodies perform a vast array of **tasks**, four are key with regard to combating fraud:

- 1) Policy-making;
- 2) Operational scrutiny (i.e. monitoring and investigative functions);
- 3) Assistance;
- 4) External reporting (e.g. mandatory reporting activities, in favour of other institutional stakeholders).

Indeed, this taxonomy is only aimed at providing a simplified picture of a complex situation. To begin with, EU authorities may be entitled to exercise the same tasks (e.g. providing assistance to other bodies); or they may only be able to exercise a task in cooperation with other institutions (as in the case of external reporting of the European Commission with OLAF and the Council). Furthermore, the different bodies are not always clearly defined in such a way as to make clear which tasks are assigned to which part of the EU network – OLAF being a case in point. Formally, OLAF is a directorate-general of the European Commission. Thus, when assisting the Council or the European Parliament, OLAF operates as part (and in representation) of the European Commission. However, when exercising investigative powers, OLAF enjoys full independence (and for this reason it may be separated from the Commission).

Table I below summarises the main roles played by the different authorities within the EU network of cooperation against fraud.

European Union bodies	Types of cooperation against fraud affecting the financial interests of the European Union			
	Policy-making	External reporting	Scrutiny	Assistance
European Union Anti-Fraud Office (OLAF)	No <i>In the Commission</i>	No <i>In the Commission</i>	Yes <i>With (assistance from) Europol and Eurojust</i>	No <i>In the Commission</i>
European Commission	Yes <i>With the EP and the Council</i>	Yes	No	Yes
Council of the EU and WG on combating fraud	Yes <i>With the Commission</i>	No	No	No
European Parliament	Yes <i>With OLAF and the Council WG</i>	No	No	No
European Court of Auditors	No	Yes	Yes	No
Eurojust	No	Yes	No	Yes <i>With Europol in 50 % of Coordination Meetings</i>
Europol	No	Yes	No	Yes
Court of Justice of the European Union	No	No	Yes	No
European Ombudsman	No	Yes	Yes	No
European Public Prosecutor's Office	?	?	?	?

4.1. OLAF

Established in 1999,³⁰ the Anti-Fraud Office of the European Union (OLAF) is charged with three tasks. The first concerns **administrative investigations** on fraud against the EU budget, as well as on corruption and serious misconduct within the EU institutions. Furthermore, OLAF helps the European Commission in **drafting anti-fraud policies**; helps the authorities responsible for managing EU funds, both inside and outside the EU, to understand fraud types and risks; and provides information to MEPs upon request, but without disclosing information on ongoing investigations. Finally, OLAF **reports** on its activities to the European Parliament, mainly through its annual activity report.

In order to guarantee full independence of its conduct, OLAF has budgetary and administrative autonomy. However, a number of bodies are involved in evaluating OLAF's activities. These include the Council's Working Group on combating fraud and a [Supervisory Committee](#). Like other bodies of the Union, OLAF is subject to ECA and EP Budgetary Control Committee scrutiny.

Cooperation between OLAF and other EU bodies is ensured through working arrangements with Eurojust and Europol; and through administrative agreements with other bodies; such as the 2016 arrangement with the European Economic and Social Committee.

4.1.1. Investigation and coordination cases

OLAF plays a crucial role in the EU institutional architecture on combating fraud, which is demonstrated by the steady increase in the number of incoming 'allegations of potential investigative interest' received in the past five years. In 2014, the number of incoming items, allegedly falling within OLAF's powers of investigation, amounted to **1 417**.³¹ In 2016, OLAF analysed incoming information in 1 157 selections.³²

OLAF can open two types of cases: **own investigations** and **coordination cases**. In the former, OLAF can perform a number of different activities, such as interviews; inspections of premises; on-the-spot-checks; forensic operations; and investigative missions in non-EU countries. Until 2012, the number of own investigations had remained steady at around **150 per year**. Following a reorganisation aimed at increasing performance,³³ in 2013 and 2014, the numbers of own investigations conducted by OLAF increased to **254** and **234**, respectively. In 2016, the reported number of investigations opened by OLAF is **219**. Through conducting coordination cases, OLAF fosters joint action to gather and exchange information and contacts. Therefore, in coordination cases no investigations are involved, with the aim of adding value in providing expert knowledge on fraud practices at the EU level.

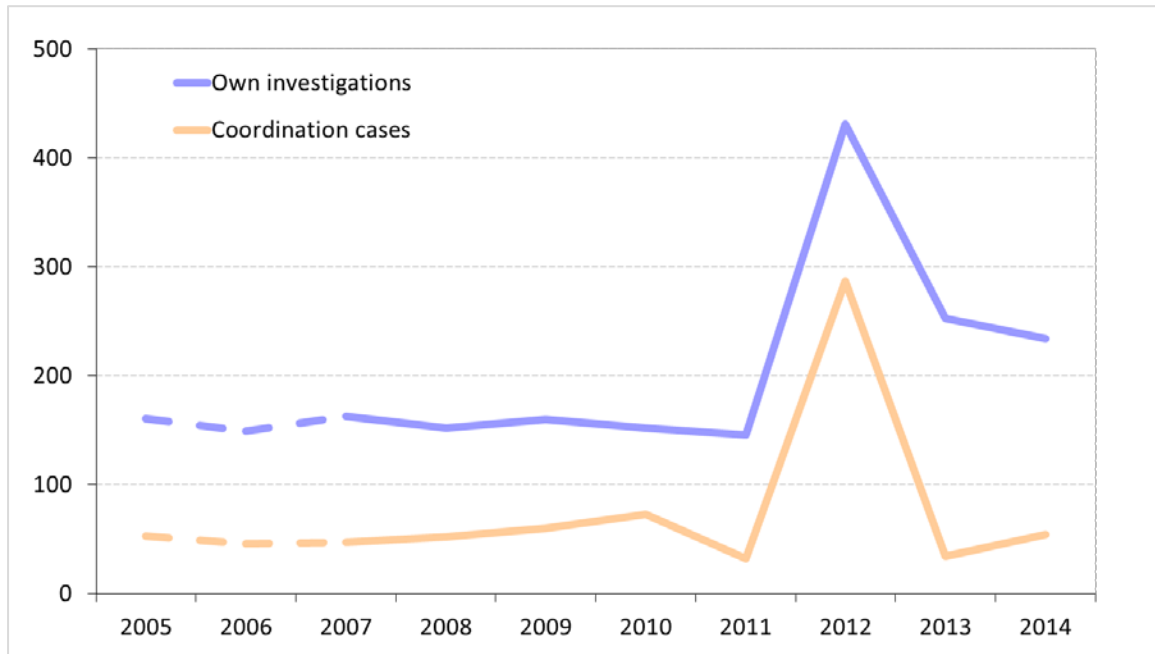
³⁰ See Commission decision of 28 April 1999 [establishing the European Anti-Fraud Office \(OLAF\)](#) (1993/352/EC, ECSC, Euratom).

³¹ See [OLAF Annual Report](#) 2014. OLAF has a selection procedure in place, on whether the received information falls within its competences; whether it is sufficient to open an investigation; and whether it falls within investigation policy priorities. It is only when all these points are answered in the affirmative that the Director-General may decide to open a case.

³² See [OLAF Annual Report](#) 2016 - in this document it is reported that OLAF opened 219 investigations after a detailed process of analysing incoming information in 1 157 selections. It concluded 272 investigations pursuant to which it issued 346 recommendations to the competent authorities at EU and national level. As a result of its investigations concluded in the year, OLAF recommended the recovery of €631 million to the EU budget.

³³ To increase performance, OLAF has worked on reducing the average duration of the selection phase. Efforts have resulted in a higher capacity for processing allegations of potential investigative interest (from roughly six months per item in 2011, to three months per item in 2014). See [OLAF Annual Report](#), 2014.

Figure II below shows the increase in the number of investigation and coordination cases conducted by OLAF between 2005 and 2014.³⁴



Data source: EPRS elaboration from OLAF's public data.

4.1.2. Recommendations

Based on the results of the investigations that OLAF performs, the Director-General may issue **recommendations** to the parties involved; such as EU institutions, bodies, offices, agencies or authorities in Member States. These recommendations can be classified as financial, judicial, disciplinary or administrative. Judicial, disciplinary and administrative recommendations are aimed at taking corresponding action when weaknesses have been discovered. **Financial recommendations** are aimed at recovering EU funds, and are directed to the relevant EU body or national authority (through an internal structure known as the Anti-Fraud Coordination Service) in charge of managing the funds.

Since OLAF has a mandate to perform administrative investigations, but lacks the power to perform criminal investigations, when an administrative investigation leads to discoveries of a criminal nature, OLAF can pass the case on to national prosecutors, either directly (through the Anti-Fraud Coordination Service) or through Eurojust.

4.2. European Commission

While OLAF acts independently in the exercise of its investigative function, it also operates as part of the European Commission when it comes to policy-making functions; i.e. drafting anti-fraud legislation for the Commission; or coordinating the position of the Commission when the competent EP's committees discuss matters relevant to fraud prevention. For the sake of clarity, in this section OLAF is considered as an operating **part** of the European Commission.

³⁴ NB. Information concerning the number of coordination cases is only available until 2014. After 2012 OLAF strengthened investigative functions, which helps to explain the spike in the number of cases reported after that year. In 2012 alone, OLAF received 1 264 incoming information items of possible investigative interest, an increase of 21 % compared to 2011.

The European Commission is involved in a number of tasks aimed at preventing, detecting and combating fraudulent behaviour. First and foremost is **policy-making**, in cooperation with the Council and the European Parliament. A second task assigned to the European Commission consists of providing **assistance** to national authorities (e.g. in providing the computer program ARACHNE). Finally, the Commission issues [annual reports](#) on the protection of the EU's financial interests, in cooperation with the Council and the EP. These reports have a dual aim. The first is to summarise the advances in protection of the financial interests of the EU; the second consists of suggesting policy initiatives to be implemented in order to strengthen efforts taken against fraud and corruption.

4.3. European Parliament

The main European Parliament committee concerned with protection of EU financial interests is the Committee on Budgetary Control (CONT). According to the [Rules of Procedure](#) of the EP, the CONT committee is mandated with the tasks of sustaining relations with OLAF; and of considering fraud and irregularities in the implementation of the EU budget; as well as the adoption of all measures aimed at preventing and prosecuting such cases. More generally, the CONT committee is involved in cross-cutting aspects of EU legislation; monitoring implementation of the EU budget; scrutinising legislation designed to prevent fraud and other irregularities; and adopting a resolution in response to the European Commission's annual fight-against-fraud report. Furthermore, the CONT committee reports to OLAF and the European Investment Bank, as the case illustrated below will show.

In the [report](#) debated during the May 2018 plenary session,³⁵ the CONT committee expressed concerns about the growing value of fraud affecting the EU's traditional own resources (increased from **€445 million** to **€537 million** from 2015 to 2016), and the fact that the total amount is **13 %** higher than the average for 2012-2016. One reason for concern is violations of customs law, especially an intensification of tobacco smuggling representing an annual loss of **€10 billion** for EU and national budgets. CONT urged Member States to exchange more information about fraud, and highlighted the importance of whistle-blowers and investigative journalism. An area of particular concern is VAT fraud and public procurement irregularities, which could be eliminated, inter alia by amending the legislation.³⁶

4.4. Council

Together with the European Commission and the EP, the Council exercises legislative functions concerning regulation of fraud. The main body in charge of matters related to the protection of the financial interests of the EU, and the fight against fraud is the [Working Group on Combating Fraud](#).³⁷ Its tasks include cooperation with OLAF in drafting anti-fraud legislation. The working group also supervises the accountability of OLAF's activities.

4.5. European Court of Auditors

Established in 1975, the European Court of Auditors (ECA) functions as an external and independent auditor, scrutinising the sound management of EU financial resources. ECA audits are therefore not

³⁵ See R. Manko, [2016 report on protection of the EU's financial interests](#), EPRS, April 2018.

³⁶ See Committee on Budgetary Control, [Report on the 2016 Annual report on protection of the EU's financial interests - fight against fraud \(2017/2216\(INI\)\)](#).

³⁷ Also referred to as the Working Party on Combating Fraud.

principally focused on searching for fraud in EU funds. In accordance with its mandate, audits are designed to examine the reliability of accounts, legality and regularity of payments, and efficiency, effectiveness and economy of EU spending programmes. In fact, most errors in the EU general budget come from irregularities, while only a small part can be attributed to fraud. In 2014, the ECA reported a rate of **4.4 %** in errors on the payments side in the EU budget.³⁸ The overall level of error for EU spending in 2015 was estimated at **3.8 %**, and in 2016 at **3.1 %**.

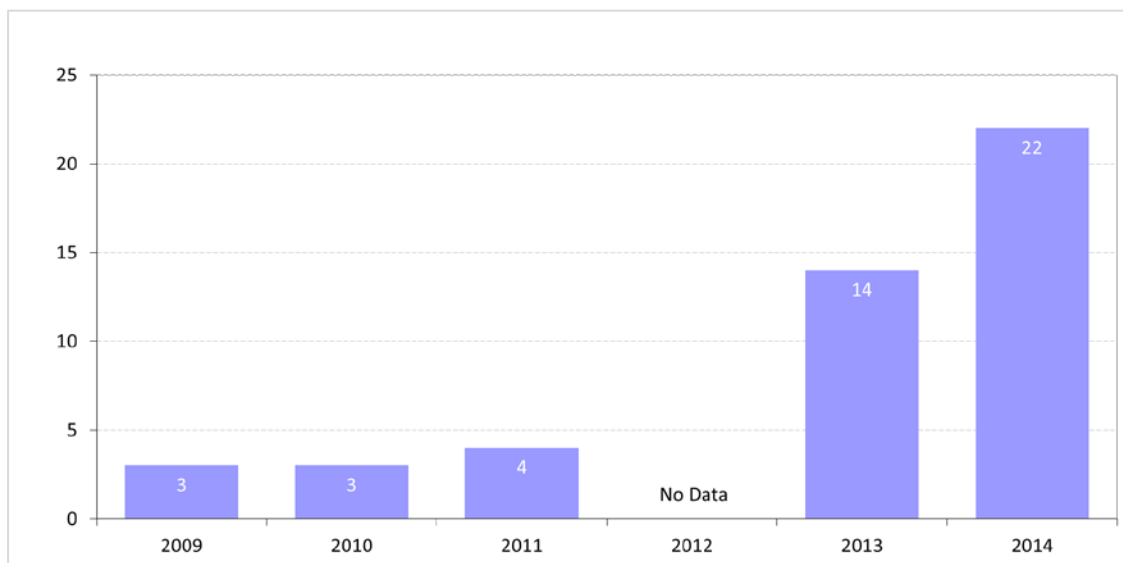
Besides carrying out audits, the ECA deliver **special reports** and **opinions** on a range of subjects. Inter alia, these serve to strengthen the financial system's resilience against fraud, and to prevent fraud by reducing the underlying risk factors.³⁹

4.5.1. Cooperation between the ECA and OLAF

When an audit detects the possibility of fraud, corruption or any other illegal activity, OLAF is informed. According to ECA Decision 35-2014, on cooperation with OLAF, OLAF provides feedback on the follow-up action it takes. OLAF also provides the ECA with any information it needs for its audit work.

In its 2014 annual report, the ECA published the precise number of suspected instances of fraud transmitted to OLAF in 2013 and 2014. For earlier years, figures are presented intermittently. **Figure III** below shows the drastic increase in cases of suspected fraud sent by ECA to OLAF in 2013 and 2014. It should be noted that the ECA does not attribute the difference between the years to any one specific factor.

Figure III – Cases of suspected fraud



Data source: EPRS elaboration from OLAF's public data.

4.6. Eurojust

Eurojust was established in 2002 to reinforce the fight against serious organised crime. It was created to support and strengthen coordination and cooperation between national investigating

³⁸ See European Court of Auditors, [Annual report](#), 2014.

³⁹ See for instance, ECA, [Audit brief – Fighting fraud in EU spending](#), October 2017.

and prosecuting authorities in relation to serious crime affecting two or more Member States. Eurojust considers fraud a priority crime.

The number of fraud cases each year is growing, both in absolute and relative terms. In 2014, for instance, the number of fraud cases (**560** in total, of which **141** related to VAT fraud) amounted to almost **one third** of total Eurojust cases.

Eurojust number of cases

	Fraud	VAT-fraud	PIF offences
2016	654	No data	41
2015	647	No data	69
2014	560	141 (25 %)	70
2013	449	89 (20 %)	31
2012	382	58 (15 %)	27

Source: Eurojust Annual Reports, 2012-2014.

In order to fulfil its objective, Eurojust has a number of tools at its disposal: **coordination meetings** are held in order to prepare operations in cross-border crime cases. During **joint action days**, Eurojust supports the opening of coordination centres, acting as operational hubs dealing with both police and judicial matters, such as house and company searches and witness interviews.

Furthermore, Eurojust fosters **Joint Investigation Teams (JIT)** through funding from within the regular Eurojust budget.⁴⁰ A JIT is set up for a limited time with a special purpose, through written agreement between the participating Member States. It is made up of prosecutors, judges and law enforcement authorities, and enables smoother functioning of cross-border criminal investigations. To further accentuate the notion that fraud is considered a priority crime, the number of JITs assigned the task of combating fraud in 2014 amounted to 32. This corresponds to **71 %** of the total number of JITs.

Joint Investigation Teams (JITs)

	Total established	Fraud	PIF offences
2016	69	35	5
2015	46	34	5
2014	45	32	2
2013	42	21	1
2012	47	11	1

Source: Eurojust Annual Reports, 2012-2014.

⁴⁰ For additional information, see Eurojust, [Networks of Experts of Joint Investigation Teams](#).

The JIT tool is also applicable to Europol. Together with Eurojust, the two bodies run the JIT project, which aims to support the setting up of JITs, by providing manuals, a model agreement for setting up a JIT, a webpage, etc.

A point worth noting is the fact that the competences of OLAF and Eurojust may sometimes overlap.⁴¹ To avoid doing the same work twice, the bodies have signed mutual agreements on **cooperation and sharing of information**.⁴² A similar cooperation agreement has also been signed between Eurojust and Europol. Looking at some key figures, it is possible to get an idea of the level of cooperation, for example by examining the number of coordination meetings (mainly a Eurojust tool) the different bodies attend.

Coordination Meetings of Eurojust

	Total	with Europol	with OLAF
2016	249	87	4
2015	274	99	5
2014	197	98	3
2013	206	75	1
2012	194	85	5

Source: Eurojust Annual Reports, 2012-2014.

4.7. Europol

Europol was formally established as an EU agency in 2009. Whilst Eurojust supports and coordinates Member States' investigative and prosecution authorities, Europol performs similar tasks, but in relation to law enforcement.

The agency is competent to combat fraud when it affects two or more Member States and requires a common approach. In these cases, the Europol mandate is to collect, store and process, analyse and exchange information and intelligence, with the concerned Member States and their competent authorities. Europol also fosters the setting up of Joint Investigation Teams (JIT) in specific cases, in which it can also participate. Europol actively participates in joint customs operations organised by OLAF. Furthermore, Europol prepares threat assessments, strategic analyses and general situation reports relating to its objective.

4.8. European Court of Justice

Established in 1952, the CJEU is the highest judicial authority of the Union. The CJEU works together with the national courts of the Member States, who refer questions on EU law (reference for a preliminary ruling) to the CJEU. The rulings of the Court have a major impact on the possibilities for fighting fraud within the EU. Firstly, stemming from the principles of supremacy and direct effect of EU law, the Court can find national legislation to be potentially incompatible with EU law. A national

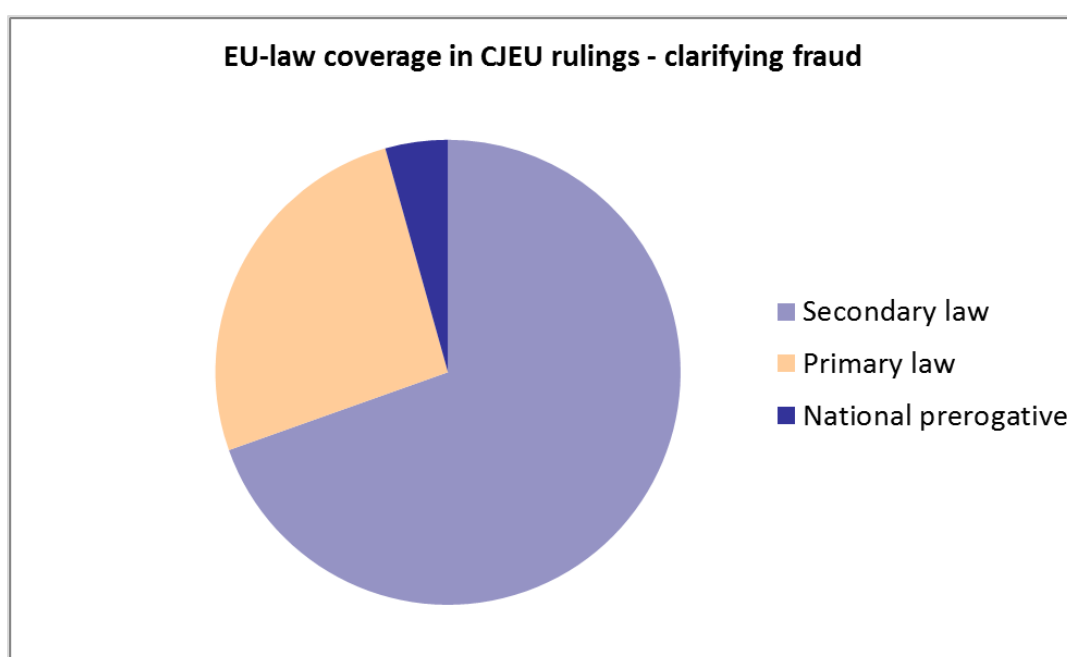
⁴¹ In its 2013 Annual Report, Eurojust reported that: 'The involvement of Eurojust and/or OLAF in a PIF case is subject to a case-by-case assessment and requires careful consideration of a number of parameters. ... Good communication among Eurojust, OLAF and the national authorities is essential to explain and understand the non-involvement of Eurojust or OLAF in cases where their participation might at first appear relevant.'

⁴² See the [Memorandum of Understanding](#) between the Commission and Eurojust.

court is not allowed to apply incompatible provisions.⁴³ As early as 1989, the Court established that the Member States must combat infringement of EU law with the same diligence as that which they bring to bear in implementing corresponding national laws.⁴⁴

The CJEU clarifies the interpretation of EU law. One of the measures the CJEU has evolved is known as **justification**. It means a national provision that would otherwise be incompatible with Union law can in some cases be justified. Justification can only be used in cases where the CJEU rules on primary law.⁴⁵ Another method the CJEU has developed can be referred to as the **doctrine of abuse of rights**. This means that abuse of the rights given by EU law is not permitted, and can be understood as an anti-fraud doctrine. The doctrine can be used in cases where the CJEU rules on secondary law.⁴⁶

Figure IV below illustrates the level of EU law on which the CJEU has ruled when dealing with cases of fraud.



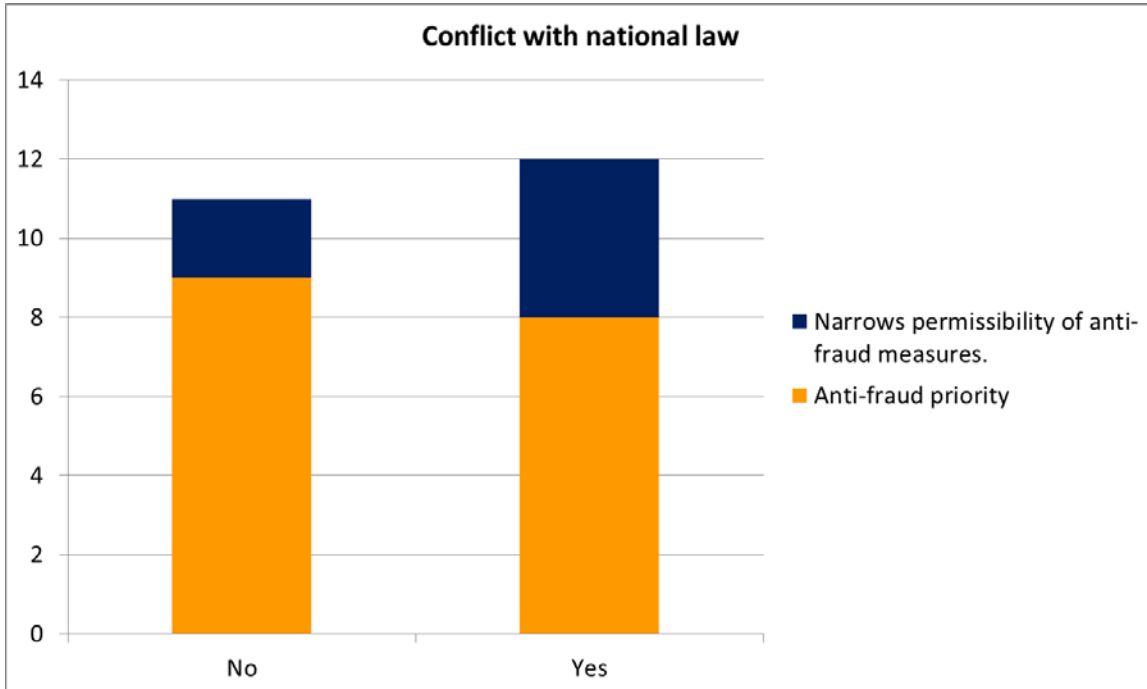
⁴³ In C-105/14 – *Taricco & Others*, the CJEU found that the national provisions, providing certain limitation periods for criminal offences, could be liable to have an adverse effect on the imposition of effective and dissuasive penalties in a significant number of cases of serious fraud affecting the financial interests of the EU.

⁴⁴ Case 68/88 *The Greek Maize Case*.

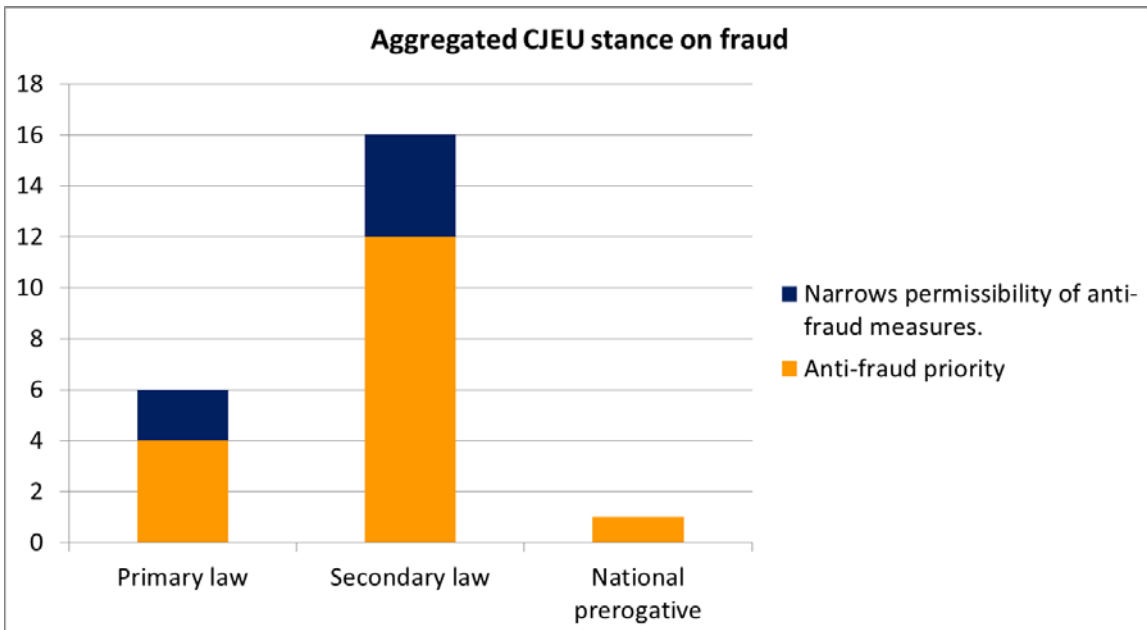
⁴⁵ In C-42/07 – *Liga Portuguesa de Futebol Profissional*, the CJEU found that the Portuguese monopoly for managing games of chance, and the laws against online gambling (which otherwise would have been unlawful due to breach of the fundamental freedom to provide services), could be justified. Inter alia, this was because the aim of the monopoly was legitimate, in that it represented action against the risk of fraud.

⁴⁶ In C-155/13 – *SICES and Others*, the CJEU disallowed a scheme that caused damage to the financial interests of the Union. A banana importer – bananas being a product subject to tariff quotas and certificates of origin – had exhausted its own reduced rate import licences. The importer then bought bananas in a foreign country, and sold them to another operator, who imported them. The bananas were then bought back at a reduced price. Even though this scheme would have been allowed, following the wording of the secondary legislation in place, the Court ruled against the importer, stating that it constituted an abuse of EU law. The CJEU found the scheme artificial and that the importer through this had benefited from a preferential rate of duty.

Figures V and VI further clarify the outcomes on fraud rulings from the CJEU.



Data source: EPRS elaboration of CJEU's public data.



Data source: EPRS elaboration of CJEU's public data.

4.9. European Ombudsman

[Established in 1995](#), the European Ombudsman is an independent and impartial body that investigates complaints of maladministration in EU institutions and other EU bodies. Though lacking formal powers, the compliance rate of the bodies investigated is high, at around 86 %.

In at least five cases,⁴⁷ the Ombudsman has processed complaints regarding maladministration following allegations of fraud affecting the financial interests of the EU. The outcome of these enquiries has been mixed, with several resulting in the Ombudsman making critical remarks. All cases regard the work of either the Commission or OLAF. As its mandate is limited to investigating maladministration in EU bodies, the Ombudsman cannot investigate complaints of maladministration in national institutions. When such complaints are received, they are transferred to the relevant national or regional ombudsman or a similar body. The Ombudsman also transfers complaints to the European Parliament's Committee on Petitions, the Commission, as well as to other bodies in the Union.

5. The anatomy of a network (Part II – phases)

As illustrated above, the EU network of cooperation to combat fraud is complex. To conclude the analysis of this network, **Table VII** (below) summarises the array of interactions among the ten EU bodies competent to combat fraud.⁴⁸ The table categorises these tasks according to the policy phases and the tasks attributed to EU bodies. It should be read in combination with Table I above, in which the four main tasks (policy-making; operational scrutiny; assistance; and external reporting) of the EU bodies involved in combating fraud are illustrated.

There are four main phases. The **prevention phase** includes all activities intended to strengthen the prevention or deterrence of fraud (e.g. policies of simplification). The **investigation phase** includes oversight and detection activities of fraudulent behaviour. This phase is divided into two sub-phases. The *controlling and risk assessment* sub-phase includes auditing, risk assessment and customs controls. The second sub-phase (*investigating*) follows the concrete suspicion of fraud and includes both criminal and administrative investigations concerned with evidence-gathering. The **prosecution phase** draws on the results of investigation and takes place when fraud is declared. This phase includes all legal actions aimed at prosecuting (criminally and administratively) fraud. In some cases, the prosecution phase can conclude with a verdict (e.g. CJEU judgment or Ombudsman decision) that leads to the application of sanctions. Finally, the **sanction phase** concerns the execution of the sanctions brought from the previous phase (including financial recoveries).

⁴⁷ The figure has been obtained by reviewing closing summaries of cases that the Ombudsman has published. Cases of a European body not being as diligent as it should in combating fraud are not the only cases where the topic is addressed by the Ombudsman. Naturally, the Ombudsman also receives complaints from persons who feel their guaranteed rights have not been properly considered. Recommendations from these enquiries can be interpreted as increasing the functionality of administration, reducing errors of law, and thus resulting in a more effective way of combating fraud. However, figures on these cases are more indirect and are as such outside the scope of this paper.

⁴⁸ The list includes the EPPO, although it is not yet operational. In Figure VII, EPPO is placed together with Eurojust since, according to Article 86 TFEU, it is upon Eurojust that the EPPO will build.

Table VII – EU institutions' anti-fraud architecture

Bodies involved in protecting the financial interests of the European Union	Phases of combating fraud				
	Prevention Phase	Investigation Phase		Prosecution Phase	Sanctions Phase
		Controlling & risk assessment	Investigating		
European Anti-Fraud Office (OLAF)		scrutiny			
European Commission		assistance			
		reporting			
		policy making			
Council of the EU and the WG on combating fraud		policy making			
EP and the CONT Committee		policy making			
European Court of Auditors (ECA)		scrutiny			reporting
		reporting			
Eurojust		assistance			
		reporting			
The European Public Prosecutor's Office (EPPO)*		scrutiny*			
European Police Office (Europol)		assistance			
		reporting			
Court of Justice of the European Union (CJEU)				scrutiny	
The European Ombudsman		scrutiny			
		reporting			

Source: EPRS, based on data available on websites of EU institutions and bodies.

6. Outlook

The EU has made constant efforts to improve the tools in place to combat fraud and protect the financial interests of the EU. In May 2018, the Commission proposed to make available a total of [€181 million](#) to strengthen the fight against fraud affecting the EU budget in the next EU MFF. Moreover, a number of long-debated proposals were finally approved in the recent past. These include the digitalisation of administrative procedures (especially in the field of public procurement); the establishment of the European Public Prosecutor's Office; and, on a more general level, the improvement of the accountability of EU institutions and bodies.

6.1. The digitalisation of administrative procedures

In a 2015 report on public procurement, the ECA published a number of recommendations to the European Commission on how to reduce the margin of error in public procurement. Of these recommendations, two are particularly relevant to the field of fraud. The first concerns the development of a **database of irregularities** – aimed at building a basis for analysis of public procurement errors. The ECA also suggested that relevant authorities in Member States should develop their own databases on irregularities in public procurement. The second recommendation

involved the creation of a **high-level group** to provide leadership in tackling the problem of public procurement errors.

The intensification of electronic procedures has also been addressed as a key factor in the context of reducing the risk of fraud.⁴⁹ For example, in public procurement, **e-procurement** means the introduction of electronic processes to support the different phases of a procurement process, from the publication of tenders to the invoicing and payment, which help to detect and prevent irregularities, corruption and fraud.⁵⁰ According to a 2014 estimate of the European Commission, on average **10 %** of EU public procurement was already conducted electronically.⁵¹ The European Commission included an action to increase the use of e-procurement in its 2013 action plan. Since then the EU has made significant progresses with the use of e-procurement, for example with the adoption, in April 2014, of the E-Invoicing Directive 2014/55/EU.⁵²

More progress remains to be made. In 2016, only four EU countries relied on digital technologies for all the main steps of the procurement process. [The Commission aims to improve the use of e-procurement tools](#) such as eCertis, the European Single Procurement Document (ESPD), and European standards for e-Invoicing. This will help EU countries make use of new technologies to simplify and accelerate their procurement procedures.

6.2. European Public Prosecutor's Office

Further improvement in detecting and combating fraud at the EU level is expected with the establishment of a **European Public Prosecutor's Office** (EPPO). The Commission proposed a [regulation](#) on the establishment of an EPPO, based on Article 86 TFEU, in 2013. [According to the Impact Assessment](#), the EPPO is supposed to respond to problems, inter alia due to delays in Member States' judicial systems, encountered in retrieving funds that have been wrongfully paid out. According to the Commission, the EPPO will have the authority to investigate and prosecute EU fraud and other crimes affecting the Union's financial interests, which represents a new power for an EU body. According to Article 86, the EPPO would build upon Eurojust. How the other EU bodies involved in the fight against fraud would fit into this context is still not settled.

Under the regulation adopted by 20 Member States, following enhanced cooperation (as explained above), the EPPO will operate as one single office with a decentralised structure organised at two levels. The Central Office will be composed of the European Chief Prosecutor, the College (with one European Prosecutor per participating Member State), the Permanent Chambers, and the Administrative Director. The decentralised level will consist of the European Delegated Prosecutors located in the Member States and with a double role, acting on behalf of the EPPO and exercising functions as national prosecutors. In order to ensure effective coordination and a uniform approach throughout the EU, their work will be supervised by the central level. In this respect, the EPPO will not primarily function as a harmonising instrument, but rather as a multinational body with a stronger focus on EU goals.

⁴⁹ On the importance of digitalisation of administrative procedures in the budgetary field, see G. Sgueo, [Electronic budgeting. Innovative approaches to budgeting](#), European Parliamentary Research Service, 2015.

⁵⁰ See PwC, Ecorys and the University of Utrecht, [Identifying and reducing corruption in public procurement in the EU](#), 2013.

⁵¹ See European Commission SWD(2014) 262 final of 1 August 2014, '[Annual public procurement implementation review 2013](#)'.

⁵² See Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on [electronic invoicing in public procurement](#).

6.3. Accountability

Accountability is one of the most frequently debated topics when addressing the issue of fraud. This is partly due to the fragmentation of the EU accountability system in which responsibilities are often dispersed among authorities operating at different levels (supranational and national), and not always coordinated.

The ECA indicates **six areas** at EU level which face accountability challenges. Among these are the following: EU funds managed in partnership (the partner being a third country, an international organisation, or a private partner) and the financial and performance management of the EU budget.⁵³ In the case of funds managed by the EU in partnership, the ECA envisages a risk of imbalance between democratic and audit processes in place at the EU level and those used by partners. Instead of the EU institutional arrangements, the ECA noted that different accountability and audit arrangements apply to groups of EU bodies. These differences in accounting, audit and discharge agreements, notes the ECA, may lead to 'disproportionate levels of scrutiny, gaps and overlaps'. In the case of financial performance, the challenges addressed by the ECA concern the weakness in Member States' accountability systems, that constitute obstacles in identifying and correcting errors.

To solve these problems, the ECA suggests increased cooperation in the system of scrutiny among EU institutions and between the EU and Member States, accompanied by a more consistent and comprehensive set of arrangements across all EU policies, instruments and funds managed by EU institutions and bodies.⁵⁴

⁵³ See Court of Auditors, [Gaps, overlaps and challenges: a landscape review of EU accountability and public audit arrangements](#), 2014.

⁵⁴ See Court of Auditors, [Gaps, overlaps and challenges: a landscape review of EU accountability and public audit arrangements](#), 2014.

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In the European Union, several institutions, agencies and other bodies (collectively referred to as 'EU authorities') are concerned with preventing and combating fraud related to the EU budget. These EU authorities, and the activities they carry out – including policy-making, monitoring and operational tasks – make up a multi-layered network in which Member States and international organisations are also included. At the domestic level, national authorities contribute by detecting, prosecuting and reporting fraudulent behaviour in the use of European Union funds to the European Commission. At the same time, a number of international organisations coordinate efforts across countries and legal systems to combat fraud. The present analysis offers an overview of this network, with a focus on the European Union institutional framework.

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