

ANNEX

Requested by the CONT Committee



# Impact of Organised Crime on the EU's Financial Interests

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## Annex C: Country Factsheets



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PE 697.019– July 2021

EN

This document was requested by the European Parliament's Committee on Budgetary Control. It designated Ms Caterina CHINNICI MEP to follow the study.

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Manuscript completed in July 2021

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## Bulgaria

### Scale of the problem and types of organised crime most common in Member State

In Bulgaria between 2015-2019 the European Anti-Fraud Office (OLAF) has detected **fraudulent and non-fraudulent irregularities** in 1 126 cases under the **European Structural and Investment Funds and Common Agriculture Policy, which is similar to the number of cases in other Eastern European states, while only** in 8 cases in the area of traditional own resources (TOR), which is lower than in other cases in Eastern Europe (Slovakia 45, Czechia 384, Hungary 121). The number of cases in the two areas of shared management combined, and the financial impact of 1.70 percent of payments, is similar to other Eastern European countries within the EU.<sup>1,2</sup>

**In 2019 alone, the number of irregularities reported as fraudulent in Bulgaria affecting the EU's financial interests accounted for 6 in the agriculture sector and for 1 in the context of cohesion policy and fisheries, with the two combined amounting to more than EUR 685,000 together.** Non-fraudulent activities are even higher with 184 in agriculture and 57 within cohesion policies and fisheries, amounting to more than EUR 13.9 million together in expenditure.<sup>3</sup>

According to a report<sup>4</sup> published by the NGO Center for the Study of Democracy, EU funds fraud in Bulgaria is comparable to other organised crime activities such as human or drug trafficking. The report states that EU fund-related abuses range between BGN 70-300 million yearly. The abuses in EU programmes vary between 5% and 50% of the funded project value<sup>5</sup>. With a total budget of BGN 23.2 billion (€11.7 billion), the potential damages for the programming period of 2014-2020 are between BGN 1.16 billion (€0.59 billion) and BGN 3.48 billion (€1.78 billion).<sup>6</sup>

In the case of Bulgaria, EU expenditures fraud appears to be more concentrated among white collar criminals (not typically organised crime groups) through bribery, document fraud, abuse of power and conflict of interest. Most violations have been identified in the field of agricultural funding, especially in the area of subsidies for agricultural crops, as well as the construction of 'fake' guest houses that are in fact used as private homes. Frequently used practices for abusing EU funds are among others:<sup>7</sup>

In the area of rural development and agriculture: false declaration of land ownership, false claims of owning cattle or poultry, subsidies for fictitious fruit and veg gardens

In the area of guest houses: false claims of targeted financing, abuse of power. Violations have been found at 88 % of the 288 inspected guest houses.

In the area of energy efficiency: overcharging by construction companies, cartel agreements.

According to the Report, irregularities in the area of guest houses was estimated to reach BGN 46 million, with a total subsidy value of BGN 81 million.

<sup>1</sup> [https://ec.europa.eu/anti-fraud/sites/default/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2019_en.pdf)

<sup>2</sup> *Ibid.*

<sup>3</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>4</sup> [https://csd.bg/fileadmin/user\\_upload/publications\\_library/files/2020\\_10/ORGANISED\\_CRIME\\_2020\\_ENG\\_FINAL.pdf](https://csd.bg/fileadmin/user_upload/publications_library/files/2020_10/ORGANISED_CRIME_2020_ENG_FINAL.pdf)

<sup>5</sup> [https://csd.bg/fileadmin/user\\_upload/publications\\_library/files/2020\\_10/ORGANISED\\_CRIME\\_2020\\_ENG\\_FINAL.pdf](https://csd.bg/fileadmin/user_upload/publications_library/files/2020_10/ORGANISED_CRIME_2020_ENG_FINAL.pdf)

<sup>6</sup> [https://www.euractiv.com/section/politics/short\\_news/eu-funds-fraud-in-bulgaria-is-comparable-to-largest-markets-for-organised-crime/](https://www.euractiv.com/section/politics/short_news/eu-funds-fraud-in-bulgaria-is-comparable-to-largest-markets-for-organised-crime/)

<sup>7</sup> [https://csd.bg/fileadmin/user\\_upload/publications\\_library/files/2020\\_10/ORGANISED\\_CRIME\\_2020\\_ENG\\_FINAL.pdf](https://csd.bg/fileadmin/user_upload/publications_library/files/2020_10/ORGANISED_CRIME_2020_ENG_FINAL.pdf)

## Legal Frameworks to tackle organised crime, policies and strategies

In 2017 and 2018, Bulgaria carried out a comprehensive reform of its legal and institutional anti-corruption frameworks. Through the merging of several existing structures, the reform established the Commission for Counteracting Corruption and Illegal Assets Forfeiture (hereinafter the **Anti-corruption Commission**). The competence for high-level corruption cases was transferred to the Specialised Criminal Court while the investigation of such cases is carried out under the supervision of the **Specialised Prosecutor's Office** (European Commission, 2020: 10).

The current anti-corruption strategy covers the period 2015-2020 and a **new strategy for 2021-2027 is under preparation**. The fight against corruption has been declared a main priority of the Government in its 2017-2021 programme<sup>8</sup>.

The National Strategy for Preventing and Countering Corruption covers the period 2015-2020. The implementation of the strategy is monitored and coordinated by the **National Council on Anti-Corruption Policies**. The latest report on the implementation of the strategy for the period until 31 January 2019<sup>9</sup> notes the continuous upgrading of the institutional framework, the improved authority of the inspectorates and anti-corruption trainings of public administration.

A new Code of Conduct for Public Administration was adopted in April 2020<sup>10</sup>. The new code puts an emphasis on anti-corrupt behaviour in the administration.

Corruption and related crimes are regulated in the **Special Part of the Bulgarian Criminal Code**. According to the European Commission's Rule of Law Report on Bulgaria, the overall implementation of the Council Framework Decision 2003/568/JHA on combating corruption in the private sector can be considered satisfactory.

Only natural persons can bear criminal responsibility in Bulgaria. Legal entities can only be subject to administrative (non-criminal sanctions) pursuant to the Administrative Offences and Penalties Act. The complex and formalistic Bulgarian system of criminal procedural law has been highlighted by different reports and analyses over the years as an obstacle to the effective investigation and prosecution of high-level corruption<sup>11</sup>. This has also been raised by the Anti-Corruption Fund Foundation, which pointed out that the formalism of the criminal proceedings prevents the development of innovative and original investigation strategies. The contribution of the national authorities highlights several deficiencies in the legal framework, including the encouragement of bona fide procedural behaviour by excluding criminality or imposing lighter sentences in the cases where the persons committing a bribery offence voluntarily report it and cooperate with the investigating authorities (European Commission, 2020: 11).

## Institutional framework and role played by national authorities

Through the merging of several structures, the **2018 Act on Counteracting Corruption** and on the **Forfeiture of Illegally Acquired Property** (hereinafter 'the anti-corruption law') established the new Commission for Counteracting Corruption and Illegal Assets Forfeiture. The **Anti-corruption Commission** has a broad remit of responsibilities, including (European Commission, 2020: 10):

- the implementation of preventive anti-corruption activities;
- the gathering, analysis and verification of information where there is reason to believe that senior public office holders have committed acts of corruption;

<sup>8</sup> Management Program of the Government of the Republic of Bulgaria for the period 2017-2021

<sup>9</sup> Report on implementation of the national anti-corruption strategy 2015 – 2020 for the period until 31 January 2019.

<sup>10</sup> Available at <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=147322>

<sup>11</sup> Technical report on Bulgaria accompanying the Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism SWD(2019) 392 final.

- the verification and analysis of declarations of assets and interests by senior public office holders;
- ascertainment of conflicts of interest of senior public office holders;
- the initiation of confiscation proceedings for illegally acquired assets; and
- preparation of analyses and development of methodologies for corruption risks.

The chairperson of the Anti-corruption Commission, his or her deputy and the three members are elected by simple majority in the National Assembly. Stakeholders have raised concerns about this election procedure, noting that it creates possible risks for the political independence of the Anti-corruption Commission's work.

Amendments to the Criminal Procedural Code in 2017 transferred the jurisdiction for high-level corruption cases, committed by senior public office holders, from the remit of the Sofia City Court to the **Specialised Criminal Court**. The investigation of such cases is carried out by investigating magistrates from the investigation department of the **Specialised Prosecutor's Office**. Outside of these cases, the detection and investigation of corruption offences committed by persons who are not senior public office holders falls under the competence of the **Ministry of Interior** (European Commission, 2020: 10).

The Anti-corruption Commission has faced a number of challenges since its establishment. A series of highly publicised scandals took place in the spring of 2019, involving the purchase of private properties at below market value by high-level officials. The Anti-corruption Commission did not find any evidence for conflicts of interests. The scandal, referred to as 'Apartmentgate', led to the resignation of a number of high-level officials, including the former chairman of the Anti-corruption Commission. The latest annual report of the Anti-corruption Commission highlights challenges in the area of human resources with 100 vacancies out of 477 staff in total (representing more than 20%)<sup>12</sup>(European Commission, 2020: 10).

The **Internal Security Directorate** investigates offences committed by officials of the Ministry of Interior and conducts integrity tests. Over the course of the past six months, the Directorate has played a key role in a number of operations for the arrest of high-level law enforcement and customs officers accused of bribery (European Commission, 2020).

In 2012, Bulgaria put in place a **civil confiscation regime**. The procedure is initiated by the Anti-corruption Commission when a person is charged with crimes listed in the anti-corruption law. The Anti-corruption Commission verifies declarations of assets and interests by senior public office holders and ascertains conflicts of interest. The anti-corruption law defines the term 'senior public office holder'. The declarations of the senior public office holders are accessible via the Register of Senior Public Office Holders<sup>13</sup>. The anti-corruption law enables senior public office holders to request that the information of their spouses or de facto cohabitants and their children below the age of 18 is not made publicly available (European Commission, 2020).

Recent legislative amendments **enhanced the role and functions of the General Inspectorate and the inspectorates in the ministries**. Their competencies include the exercise of control and checks as regards conflicts of interest and the content of the mandatory asset declarations, submitted by civil servants, advisors and experts and the alerting of the prosecution authorities in cases where evidence is found for a committed offence (European Commission, 2020).

The anti-corruption law introduced measures to ensure **whistleblower protection** and encourage the reporting of corruption. The Bulgarian Institute for Legal Initiatives pointed out that a possible weakness of the existing regime is that it does not allow the submission of

<sup>12</sup> Report on the activity of the Anti-corruption Commission for counteracting corruption and forfeiture of illegally acquired assets for 2019

<sup>13</sup> RegisteroftheAnti-corruptionCommission.<https://register.caciaf.bg/>.

anonymous alerts. The Anti-corruption Fund raised similar concerns as regards the requirement that the whistleblower discloses their personal identification number.

### Estimates of the loss to the EU budget

The financial impact of fraud and other illegal activities affecting EU's financial interest in Bulgarian territory amounts to **over €685,000 in total expenditure and to €653,000 in revenue**<sup>14</sup>.

According to the latest figures by the European Commission, **Bulgaria lost BGN 1,2 billion to Value-Added Tax (VAT)** to fraud and evasion, tax avoidance, bankruptcies, financial insolvencies and miscalculations in 2018.<sup>15</sup> This figure has fallen by approximately 11 percentage points between 2014-2018 of the VAT total tax liability (VTTL) amounting to approximately 10.8 % in 2018.

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<sup>14</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>15</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1579](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1579)

## Czechia

### Scale of the problem and types of organised crime most common in Member State

In Czechia between 2015-2019 the European Anti-Fraud Office (OLAF) has detected **fraudulent and non-fraudulent irregularities** in 2 159 cases under the **European Structural and Investment Funds and Common Agriculture Policy**, and in 384 cases in the area of traditional own resources (TOR). The number of cases in the two areas of shared management combined, and the financial impact of 2.22 percent of payments, is similar to other Eastern European countries within the EU.<sup>16,17</sup>

**In 2019 alone, the number of irregularities reported as fraudulent in Czechia affecting the EU's financial interests accounted for 11 in the agriculture sector and for 46 in the context of cohesion policy and fisheries, with the latter amounting to more than 18 million Euros.** Non-fraudulent activities are even higher with 91 in agriculture and 132 within cohesion policies and fisheries, the latter amounting to more than 16 million Euros.<sup>18</sup>

There are ongoing investigations and audits at national and European level into potential conflicts of interest and the use of EU funds. The management of EU funds in Czechia has been raised as a potential concern in recent years. In June 2020, the European Parliament adopted a Resolution (2019/2987(RSP)) concerning the situation in the Czech Republic and expressed concerns in relation to the issue of conflicts of interest and the use and distribution of public and EU funds. Following an investigation between 2016 and 2017 by the European Anti-Fraud Office (OLAF), which found serious irregularities as regards the use of EU funds, a criminal investigation in a high-profile case is at present ongoing at national level, and further Commission audits have been launched to examine issues of possible conflicts of interest in relation to the use of EU funds (European Commission, 2020: 8).

### Legal Frameworks to tackle organised crime, policies and strategies

The Czech **Criminal Code** criminalises the offences of acceptance of a bribe, bribery, trading in influence and arranging advantage in commission of a public contract, public tender and public auction<sup>19</sup>. The bribery provisions do not cover all categories of employees in the public sector, as they are limited to "persons deciding or co- deciding on the affair in the public interest"<sup>20</sup>. Foreign bribery is not specifically criminalised by the Criminal Code<sup>21</sup> (European Commission, 2020: 7).

The **Act on Nominations<sup>22</sup> to State-owned Companies** was adopted by the Parliament in December 2019 and entered into force in January 2020. The Act lays down new rules for the selection of members of statutory and management bodies of state-owned companies, as well as companies with partial state ownership. The Act aims to prevent political nominations and to further increase the transparency of the selection process as candidates will have to pass a selection procedure, run by a Government committee.

The **Act on Conflict of Interest** contains rules on conflict of interests and disclosure of assets<sup>23</sup> and applies to cabinet members, members of Parliament, regional governors and deputies,

<sup>16</sup> [https://ec.europa.eu/anti-fraud/sites/default/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2019_en.pdf)

<sup>17</sup> *Ibid.*

<sup>18</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>19</sup> Chapter X, Division 3, Special section 'Corruption' of Act No. 40/2009 Coll., Criminal Code.

<sup>20</sup> GRECO Third Evaluation Round - Second Compliance Report on the Czech Republic

<sup>21</sup> Implementing the OECD anti-bribery convention: The latest Phase 4 follow-up report for the Czech Republic on the implementation of the OECD anti-bribery convention notes that there are several recommendations that have either been partially addressed or not addressed at all.

<sup>22</sup> Act on the Selection of Persons to the Management and Supervisory Bodies of Legal Entities with State Ownership Participation (Nomination Act).

<sup>23</sup> Act no. 159/2006 Col.

senior public officials, mayors and local council members, as well as members of statutory, management, supervisory or control bodies. The Act establishes a central register of notifications, administered by the Ministry of Justice. Persons covered by the Act have to submit their declarations on personal interests, assets, activities, income, gifts and liabilities. GRECO has highlighted that more effective sanctions could be required as regards the declaration requirements. The failure to submit a declaration or to declare all assets may trigger a financial sanction between CZK 1,000 (EUR 40) to CZK 50,000 (EUR 1,850). Equally, it has been highlighted that Czechia should consider widening the scope of declarations to cover information on spouses and dependent family members of Members of Parliament.<sup>24</sup>

A number of measures provide for **whistle-blower protection** and encourage the reporting of corruption. Government Regulation No. 145/2015 Coll. lays down a framework for internal reporting for civil servants who are at present the only group of employees protected as whistle-blowers. Mechanisms for police officers and civil employees to submit a notice of suspicion of corruption have also been put in place (European Commission, 2020.)

### Institutional framework and role played by national authorities

The competence to fight corruption is shared between several authorities. **The National Organised Crime Agency**, in cooperation with the **Public Prosecutors' Office**, investigates corruption related crimes. Within the administrative framework, in the **Supreme Prosecutor's Office** the **Dept. of Serious Economic and Financial Crime** is responsible for financial irregularities, whereas within the penal framework the **General Directorate of Customs** is responsible to monitor the income side of the EU budget.

**Czechia's AFCOS office is located in the Ministry of Finance**, in a unit called Central Contact Point for AFCOS with eight employees. CZ AFCOS plays a role in coordination and has no investigative powers:

- It is in charge of reporting the irregularities to OLAF (ensures the co-operation with the Managing Authorities and Local Points of AFCOS); reporting for all programming periods, for all funds (pre-structural, structural, ESIF, AMIF and ISF, FEAD, CAP) via IMS.
- In connection with Resolution of the Government of the CR of July 20, 2009 no. 941 all the Czech courts are having sent to CZ AFCOS the final judgements as to breaching of sect. 260 of Penal Code (40/2009 Coll. Act) - Infringement of the Financial Interests of the EU.
- **The Financial Analytical Office** was established as an independent administrative office in 2017 and acts as a financial intelligence unit.
- **The Supreme Audit Office** reviews the state's management of public revenue and expenditure, and its findings may contribute to the identification of corruption risks<sup>25</sup>. It also carries out independent inspections pursuant to the relevant provisions of Act No 166/1993 Coll., on the Supreme Audit Office.

There is an ongoing debate regarding a draft bill extending the powers of the Supreme Audit Office, listed as one of the priorities in the new Government Programme Statement. The draft bill aims to expand the mandate of the Office to audit the regularity and performance of public spending at local and regional level. The Act would also cover state-owned enterprises and companies with majority ownership of the state and/or municipalities (European Commission, 2020: 8).

According to the European Commission's Rule of Law report, Czechia has a well-established strategic anti-corruption framework. Since 1999, the Government has adopted consecutive **anti-corruption strategies**. The current strategy covers the **period 2018-2022** and envisages the preparation of three one-year action plans, which will be monitored by the **Government's**

<sup>24</sup> GRECO Fourth Evaluation Round – Interim Compliance Report Czech Republic

<sup>25</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0308&from=EN>, page 5

**Anti-Corruption Council. This council** was established in 2014 and acts as an advisory body to the Government. It is supported by the **Conflict of Interests and Anti-Corruption Department of the Ministry of Justice**, which drafts anti-corruption strategic documents and is in charge of the anti- corruption agenda.

The core of the National Strategy is the setting of control mechanisms to ensure the prevention of irregularities in the area of financial control, including internal audit, fight against corruption, reporting and investigation of irregularities and their correction, including the recovery of funding affected by irregularities and ensuring the return of the recovered EU funds to the EU budget (National Strategy for the Protection of the EU's Financial Interests, 2014-2020).

In the public administration there is an **internal anti-corruption programme framework**<sup>26</sup> in place, which sets out a regular evaluation of corruption risks and internal risk management within ministries, other central authorities and subordinate bodies and agencies. Each authority is obliged to establish a framework that includes a code of ethics, integrity trainings, internal whistleblowing procedures and procedures for cases of suspected corruption. The implementation of the framework is assessed at least every two years (European Commission, 2020: 8).

Working groups on fraud-related issues have been also created facilitating cooperation and information exchange. Under this scheme regular meetings are held by the Working Group Control, Audit, Irregularities (PS KAN) under the auspices of the Ministry of Finance<sup>27</sup>.

There are three key points of communication with the OLAF: within the Ministry of Finance: the Department of Reporting and Analyses of Irregularities has two units the Central Contact Point of AFCOS, and the Irregularities Analysis (state budget) unit.

### Estimates of the loss to the EU budget

The financial impact of fraud and other illegal activities affecting EU's financial interest in Czech territory amounts to **over €23 million in total expenditure and to 0 in revenue**<sup>28</sup>. **In terms of recovery rate, in Czechia the entire established amount (100%) has been already recovered**<sup>29</sup>, which puts the country among the most successful EU countries in fund recovery.

According to the latest figures by the European Commission, **Czechia lost CZK 56 billion to Value-Added Tax (VAT)** to fraud and evasion, tax avoidance, bankruptcies, financial insolvencies and miscalculations in 2018<sup>30</sup>. Between 2014-2018 this figure has fallen by approximately 4.8 percentage points of the VAT total tax liability (VTTL) amounting to approximately 12 % in 2018.

<sup>26</sup> Established by Government resolution from 2 October 2013, No. 752.

<sup>27</sup> [https://www.eprc-strath.eu/public/dam/jcr:dbcfcfde-e024-44a0-a11b-b12456ffe0c5/EPRP%20121%20-%20IQ\\_Net\\_Thematic%20paper%2047\(2\).pdf](https://www.eprc-strath.eu/public/dam/jcr:dbcfcfde-e024-44a0-a11b-b12456ffe0c5/EPRP%20121%20-%20IQ_Net_Thematic%20paper%2047(2).pdf)

<sup>28</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

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## France

### Scale of the problem and types of organised crime most common in Member State

France is one of the larger recipients of EU funds and the largest beneficiary of CAP funds with a total of EUR 79,704m allocated between 2014 and 2020<sup>31</sup>. According to the European Anti-Fraud Office (OLAF), there were **1,208 fraudulent and non-fraudulent irregularities reported between 2015 and 2019**<sup>32</sup>. This places France just below the EU-27 average of 1,693 irregularities detected by Member State.

In 2019, there were 4 irregularities reported as fraudulent regarding agricultural policy amounting to a potential loss of €853,075. 4 further irregularities were also reported as fraudulent in funds dedicated to internal policy (representing €3,166,046), while no fraudulent irregularities were reported in cohesion policy and fisheries. Similar to the majority of other Member States, the number of non-fraudulent irregularities in the same year was significantly higher: 179 irregularities reported regarding agricultural policy (€6,599,191), and 22 non-fraudulent irregularities reported in the area of cohesion policies and fisheries (€2,207,560). Only 1 non-fraudulent irregularity was reported in the area of internal policy, amounting to a sum of €48,182<sup>33</sup>. It should be noted that these figures are likely to be underestimations.

According to Interpol, most organised crime activities in France take place in 5 main urban centres, namely, Lille, Paris, Lyon, Grenoble, Marseille as well as on the island of Corsica<sup>34</sup>. In recent years, concerns have emerged regarding possible fraud regarding CAP funds disbursed to Corsican beneficiaries, with an OLAF report suggesting that irregularities took place between 2007 and 2015 in the form of fraud and/or forgery of documents<sup>35</sup>.

### Legal Frameworks to tackle organised crime, policies and strategies

France is a signatory of the Council of Europe's **Civil and Criminal Law Conventions against Corruption**, the **OECD Anti-Bribery Convention**, and the **United Nations Convention Against Corruption (UNCAC)**.

In addition, France also adopted in 2016 a **national anti-fraud strategy**, as encouraged by the European Commission<sup>36</sup>. This national strategy was implemented to coordinate the fight against fraud affecting public finances and was adopted by the national committee against fraud (**CNLF**), after having been developed by the national delegation for the fight against fraud (**DNLF**). It offered a roadmap aimed at combating fraud affecting national and EU funds, and as such integrated the issue of fraud against EU funds within a comprehensive national strategy.

More recently, in 2020 the French government created an inter-ministerial anti-fraud coordination mission (**MICAF**) tasked with the coordination of public administrations and other public bodies in the fight against fraud in public finances (compulsory tax and social deductions, social benefits) at the national and local levels<sup>37</sup>. MICAF also facilitates cooperation with the European bodies responsible for protecting the financial interests of the European Union and in particular operational exchanges with the European Anti-Fraud Office (OLAF)<sup>38</sup>.

Another organisation worth mentioning for the purpose of this case study is the "*Office central pour la répression de la grande délinquance financière*" (**OCRGDF**), a French law enforcement

<sup>31</sup> [https://ec.europa.eu/info/sites/default/files/about\\_the\\_european\\_commission/eu\\_budget/pre-allocations-mff-2014-2020\\_en.pdf](https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/pre-allocations-mff-2014-2020_en.pdf)

<sup>32</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>33</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>34</sup> <https://www.interpol.int/en/Who-we-are/Member-countries/Europe/France>

<sup>35</sup> <https://www.reussir.fr/des-fraudes-aux-aides-pac-constatees-en-corse-par-loffice-antifraude-de-lue>

<sup>36</sup> [http://www.senat.fr/rap/r18-674/r18-674\\_mono.html#toc71](http://www.senat.fr/rap/r18-674/r18-674_mono.html#toc71)

<sup>37</sup> <https://www.economie.gouv.fr/micaf>

<sup>38</sup> <https://www.economie.gouv.fr/micaf>

agency tasked with combating fraud, money-laundering, and the financing of terrorism<sup>39</sup>. OCRGDF is also responsible for the promotion, facilitation and coordination of police and gendarmerie activities in the fight against suspected offenses but also conducts research relating to these types of offenses and collaborates with Interpol at the international level.

Regarding the transposition of the PIF directive, **ordinance No 2019-963 of 18 September 2019**<sup>40</sup> **transposes the European directive into national law**. While French criminal law partially met the requirements of the PIF directive, the full transposition of this directive required the adoption of provisions relating to the jurisdiction of the courts, the aggravation of certain offenses and finally, the creation of an offense relating to intentional customs fraud. Article 1 of ordinance No 2019-963 extends the jurisdiction of French courts to hear offenses falling within the scope of the PIF directive committed abroad by French nationals or residents or other individuals exercising an economic activity on French soil. Article 2 aggravates the repression of offenses of breach of trust, embezzlement of public funds and corruption when they affect the revenue, expenditure, or assets of the EU budget or of its institutions and creates aggravating circumstances when these offenses have been committed by organised crime groups. Lastly, Article 3 creates an offense punishing export and import customs fraud for intentional acts of smuggling, importation, and exportation without any declaration or with false declarations. It also modifies the offense of customs laundering by establishing an aggravating circumstance for organised crime groups and reinforces its applicability to cases detrimental to the financial interests of the EU<sup>41</sup>.

In addition, the French government also issued an ordinance (No 2020-115)<sup>42</sup> in order to transpose the EU Directive (2018/843) of 30 May 2018 of the European Parliament and of the Council, known as the **"5th Anti-Money Laundering Directive"**. This ordinance provides additional provisions in the fight against money laundering and the financing of terrorism in France and reinforces the French national framework against illicit financial transactions to thwart the possible risks and threats they pose to the French economy.

### Institutional framework and role played by national authorities

The **CICC** is the audit authority in France for the EU structural and investment funds and several other EU funds subject to the rules of shared management between the European Commission and Member States. The missions of the CICC are described in Article 127 of EU Regulation 1303/2013 of the European Parliament and of the Council of December 17, 2013. In short, the CICC's overarching mission is to protect the financial interests of the EU by ensuring that EU funds are used in accordance with EU and national rules<sup>43</sup>. It also contributes to the prevention and punishment of fraud. To this end, the CICC implements an audit strategy and carries out by its network of auditors various types of auditing activities relating to the management of EU-funded programmes. In addition, CICC also draws up annual control reports and issues audit opinions which conditions the reimbursement of EU funds to the Member State.

In addition, the Commission for the certification of the accounts of the bodies paying expenditure financed by the European agricultural funds (**CCCOP**) is the certification body established by France in application of Council Regulations (EC) n ° 1290/2005 and n ° 885/2006 of the Commission<sup>44</sup>. CCCOP carries out audits of the paying bodies (PO) which results each year in the drafting of audit reports for each paying body and by Fund (EAGF and EAFRD), which contain an assessment of the PO's procedures, possible proposals for financial corrections as well as findings leading to recommendations.

<sup>39</sup> <https://www.police-nationale.interieur.gouv.fr/Organisation/Direction-Centrale-de-la-Police-Judiciaire/Lutte-contre-la-criminalite-organisee/Office-central-pour-la-repression-de-la-grande-delinquance-financiere>

<sup>40</sup> (<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000039110172&dateTexte=&categorieLien=id>)

<sup>41</sup> <https://kiosque.bercy.gouv.fr/alyas/rss/letter-daj.xml?letter=DAJ&date=2019-09-18>

<sup>42</sup> <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041566891/>

<sup>43</sup> <https://www.economie.gouv.fr/cicc>

<sup>44</sup> <https://www.economie.gouv.fr/micaf/cccop>

Lastly, the Minister of the Economy and Finance in conjunction with the General Secretariat for European Affairs (SGAE) appointed the anti-fraud coordination service (**SCAF**) within the DNLF to coordinate its action aimed at acquiring a better understanding of how certain types of fraud affect the EU budget. SCAF does not, however, have any investigative powers, unlike the DNLF, at the national level. SCAF is first of all an essential partner of OLAF (acting as the French AFCOS) in facilitating its administrative inquiries or collecting information, by mobilising the national administrations concerned. The DNLF also contributes, in conjunction with the SGAE and the Permanent Representation of France, to the reporting on the protection of the EU's financial interests. The DNLF, in partnership with the national administration, promotes the development of specific actions on the management of European funds to be included in the multi-annual national plan to fight against fraud (PNLF) 2016-2018. In 2016, SCAF **initiated training and support for anti-fraud policies for national administrations** (DGFIP, CGET, General Directorate for Foreigners in France (DGEF) of the Ministry of the Interior, DIRECCTE and DIECCTE, CICC) and regions within the framework of their new competence as managing authority. More than 1,200 inspectors have been trained in this context by SCAF since 2016 across the metropolitan and overseas French territories. On average since 2016, around 10 training actions have been delivered to management authorities.<sup>45</sup>

### Estimates of the loss to the EU budget

The financial impact of fraud and other illegal activities affecting EU's financial interests in France was estimated to amount to **over €4m in total expenditure and over €6m in revenue.**<sup>46</sup> However, it should be noted that these estimates are likely to be underestimations.

According to the latest figures by the European Commission, **France lost €12.7bn of Value-Added Tax (VAT)** to fraud and evasion, tax avoidance, bankruptcies, financial insolvencies and miscalculations in 2018.<sup>47</sup> More recent estimates provided by the Court of Audits (Cour de Comptes) place the amount of losses incurred due to **VAT fraud to be in the neighbourhood of €15bn in 2019.**<sup>48</sup>

<sup>45</sup> <https://www.senat.fr/rap/r18-674/r18-67416.html>

<sup>46</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>47</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1579](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1579)

<sup>48</sup> <https://www.ccomptes.fr/system/files/2019-11/20191202-synthese-fraude-aux-prelevements-obligatoires.pdf>

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## Finland

### Scale of the problem and types of organised crime most common in Member State

As a Nordic country with long maritime borders, Finland's geographic location makes it an attractive place for organised crime groups (OCG) to attempt to smuggle goods into Europe either as destination or transit country.

Understood as a group that consists of at least three people who cooperate to commit serious crimes as stated in the Criminal Code<sup>49</sup>, the activities of OCG in Finland most often concern narcotics offences, and drug and alcohol smuggling with their associated financial crime, especially money laundering. In addition, the Nordic countries often serve as entry point to Europe for women and girls trafficked by organized crime groups operating from all over the world.

Despite the international characteristics of these crime areas and their close link to global crime networks, organised crime groups in Finland are mostly of domestic nature.<sup>50</sup> It is estimated that there are approximately 90 OCG operating in Finland with a total of about 900 to 1,000 members. In the last ten years, the number of OCG has increased and their activities have become more international, often working together with other groups located in Russia and in the Baltic region.<sup>51</sup> A special role is played by **criminal motorcycle gangs**, which first entered Finland in the 1980s and 1990s, and spread across Finland and strengthened their position since the 2000s, often opening with sub-branches or other activities in all major cities. This has been the case more broadly in all countries of the Baltic sea region, where outlaw motorcycle clubs consider themselves as existing outside of the rules of organised civil society.<sup>52</sup>

As for OCG infiltration in business, this occasionally takes place in relation to labour-intensive and low-tech business sectors. Other sectors affected by OCG infiltration are **construction and renovation, cleaning, restaurants, bars and clubs, and private security**.<sup>53</sup> These are often linked with large-scale tax fraud and accounting manipulation, aggravated fraud and bribery.<sup>54</sup> OCG have also attempted to extend their influence into societal structures and decision-making systems, among others by camouflaging criminal activity as charitable or recreational activities.

In relation to EU funds and the EU's financial interest specifically, Finland is among the EU countries with a lower number of irregularities reported as fraudulent affecting the EU's financial interest in 2019. The Europe Anti-Fraud Office (OLAF) reported 3 cases on the total expenditure side, including one case in the **context of the Common Agriculture Policy and the two in that of Cohesion Policy and Fisheries**, and 4 cases of irregularities reported as fraudulent on the revenue side. As for irregularities reported as non-fraudulent, a result of e.g. infringement of public procurement rules rather than fraudulent tampering with false documentary proof, OLAF registered a total of 37 cases on the total expenditure side and 54 on the revenue side, positioning Finland among the lower end of the ranking in this area as well.<sup>55</sup>

In the case of Finland, suspected persons involved in VAT fraud cases have included individuals from Finland as well as other countries such as Estonia, Lithuania, Latvia as well as Bulgaria indicating that organised crime groups involved are cross-border entities.

<sup>49</sup> <https://poliisi.fi/en/offences/crime-categories/organised-crime>

<sup>50</sup> <https://poliisi.fi/en/offences/crime-categories/organised-crime>

<sup>51</sup> <https://poliisi.fi/en/offences/crime-categories/organised-crime>

<sup>52</sup> <https://intermin.fi/en/police/organised-crime>

<sup>53</sup> [https://www.transcrime.it/wp-content/uploads/2018/12/MORE\\_FinalReport.pdf](https://www.transcrime.it/wp-content/uploads/2018/12/MORE_FinalReport.pdf)

<sup>54</sup> [https://www.transcrime.it/wp-content/uploads/2018/12/MORE\\_FinalReport.pdf](https://www.transcrime.it/wp-content/uploads/2018/12/MORE_FinalReport.pdf)

<sup>55</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

## Legal Frameworks to tackle organised crime, policies and strategies

**Finland does not currently have specific national legislation for combating organised crime.** Although membership of a criminal organisation is not criminalised, an offence committed as a member of an organised crime group may constitute grounds for increasing the severity of a punishment, according to the **Criminal Code**.<sup>56</sup>

Similarly, there is no specific legislation on anti-corruption measures; instead, different acts together build the framework laying down the different forms of corruption and their prevention. The **Criminal Code** addresses e.g. bribery in business and in the public sector, fraud, money laundering and abuse of public office or insider information.<sup>57</sup> Additional relevant legislation includes the Constitution of Finland, the Police Act, the Administrative Procedure Act and the Act on the Openness of Government Activities.<sup>58</sup>

In regard to EU law, the **current legislation on whistle-blower protection is limited**, as for example the identity of the reporting person is not necessarily protected when reporting allegations of fraud. Only few authorities including the police and the tax authority, currently offer anonymous reporting channels.<sup>59</sup> The fifth Anti-money laundering directive (EU Directive 2018/843) has been transposed.<sup>60</sup>

The **Police Department at the Ministry of the Interior** is responsible for outlining the necessary measures to be taken by the police.<sup>61</sup> These include traditional crime prevention based on criminal law as well as administrative crime prevention, so as to pre-emptively mitigate the damage done by crime through close cooperation with other authorities. In addition, following an initiative of the National Bureau of Investigations in 2018, members wishing to leave their OCG get individualised 'exit' support. Exit activities are, for example, support in ensuring personal safety and strengthening healthy social networks.

The **Anti-Corruption Cooperation Network**<sup>62</sup>, established by the Ministry of Justice in 2002 with the purpose of bringing together key governmental authorities and other stakeholders, e.g. from the private sector, civil society and the research community, is in charge of ensuring inter-institutional coordination, promoting anti-corruption efforts and preparing the anti-corruption strategy. As a result, the Government of Finland adopted its **first Anti-corruption strategy in May 2021**<sup>63</sup>, which focuses on fighting structural corruption as well as "building a society in which corruption has no chance of success". The strategy is supported by the **Action Plan 2021-2023** and measures include, among others, the improved cooperation among authorities, raising corruption awareness and examining the functioning of anti-corruption legislation.

Besides, the **Strategy and Action Plan for Tackling the Grey Economy and Economic Crime for 2020-2023** were adopted on 11 June 2020<sup>64</sup>. Their objectives are, in general terms, to prevent the grey economy and economic crime, develop measures to do so and improve the cooperation between relevant authorities.

As for efforts towards corruption and organised crime in regards to EU funds, a **reporting channel specific to fraud in European Structural and Investment Fund (ESIF)** was implemented on the country's website for structural funds<sup>65</sup> and became operational in May 2019, with the aim of providing the general public with the opportunity for anonymous reporting

<sup>56</sup> <https://intermin.fi/en/police/organised-crime>

<sup>57</sup> <https://korruptiontorjunta.fi/en/national-legislation>

<sup>58</sup> <https://korruptiontorjunta.fi/en/national-legislation>

<sup>59</sup> <https://ec.europa.eu/antifraud-knowledge-centre/system/files/2021-03/3.1.26%20Reporting%20Channel%20for%20Structural%20funds%20EN.pdf>

<sup>60</sup> [https://ec.europa.eu/anti-fraud/sites/default/files/pif\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_en.pdf)

<sup>61</sup> <https://intermin.fi/en/police/organised-crime>

<sup>62</sup> <https://korruptiontorjunta.fi/en/combating-corruption-in-finland>

<sup>63</sup> <https://korruptiontorjunta.fi/en/anti-corruption-strategy>

<sup>64</sup> <https://intermin.fi/en/police/economic-crime-and-the-shadow-economy>

<sup>65</sup> Available in Finnish and Swedish, not via the English version of the webpage. It consists of a simple form where the reporting person can provide a title or subject for their report and then describe the allegation in text form.

of fraudulent actions relating to projects funded by ESIF. Reports are directly treated by the Managing Authority (MA). Since its launch, the channel has received a total of 4 report concerning labour costs and conflicts of interest, out of which 3 were investigated as linked to specific projects.

### Institutional framework and role played by national authorities

In Finland, the **National Bureau of Investigation (NBI)** is the national agency responsible for tackling organized crime. As a national unit of the Finnish police, the "Poliisi" in Finnish, it operates across Finland dealing with, among others, detecting and investigating organised and professional crime, conducting criminal investigations and producing criminal intelligence<sup>66</sup>. It is one of the two law enforcement units with national remit, with the second one being the Finnish Security Intelligence Service. In addition, the Finnish Police has 11 local police departments.

The **Financial Intelligence Unit**, located under the supervision of the National Bureau of Investigation, investigates suspicious transactions in connection to corruption and financing of terrorism. The Ministry of Finance and the Ministry of the Interior are the main responsible ministries in the prevention of money laundering and financing of terrorism, with other relevant Ministries being the **Ministry of Justice, the Ministry for Foreign Affairs, the Ministry of Economic Affairs and Employment, and the Ministry of Social Affairs and Health**.

The **Finnish Police** is part of the Ministry of the Interior and is responsible for crime prevention and investigations at national level, besides judicial, social and public order. All national police activities are directed and supervised by the **National Police Board (NPB)**. The Finnish Police works closely with **Finland's Border Guard and Customs** for national and transnational criminal investigations.<sup>67</sup>

As for the broader framework to prevent corruption, the **Finnish Tax Administration** is conducts tax supervisions, among others through tax audits, whereas the **Finnish Competition and Consumer Authority (FCCA)** supervises public procurement and monitors compliance, especially in relation to illegal direct procurements.

### Estimates of the loss to the EU budget

No estimate of the impact of organised crime towards the EU finances has been identified at national level.

As for irregularities reported as fraudulent affecting the EU's financial interest in Finland in 2019, the Europe Anti-Fraud Office (OLAF) estimates those on the expenditure side to amount to about 90,000€, including one case in the **context of the Common Agriculture Policy and the two in that of Cohesion Policy and Fisheries**. As for the revenue side, 4 cases of irregularities reported as fraudulent were registered by OLAF with an estimated value of about €230,000.<sup>68</sup>

In terms of **Value Added Tax (VAT) Gap**, Finland is with a 3.6% one the MS with the smallest gaps, together with Sweden (0.7%) and Croatia (3.5%). Finland's VAT gap has fallen gradually over the period of 2015 to 2018, from €1,233 million in 2015 to €807 million in 2018.<sup>69</sup>

<sup>66</sup> <https://poliisi.fi/en/national-bureau-of-investigationv>

<sup>67</sup> <https://www.interpol.int/en/Who-we-are/Member-countries/Europe/FINLAND>

<sup>68</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>69</sup> [https://ec.europa.eu/taxation\\_customs/sites/default/files/vat-gap-full-report-2020\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/default/files/vat-gap-full-report-2020_en.pdf)

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## Germany

### Scale of the problem and types of organised crime most common in Member State

**Organised crime (OC)<sup>70</sup> is considered to represent a “very high” threat and damage in Germany, as reflected by the number of investigations conducted against OC groups.** In 2019, a total of 579 investigations were carried out in relation to OC, up from the 535 investigations undertaken in 2018.<sup>71</sup>

**In terms of fields of activity, drug-trafficking and drug smuggling represented in 2019 (34.9%) - as well as in 2018 (37.6%) - the most common type of crime,** followed by crime associated with the business world (16.9%), in particular in form of fraud offences to the detriment of elderly people, and property crime (15.2%). Further areas of OC activity, as reported by the German Federal Criminal Police Office (BKA), are: facilitation of illegal immigration (10.4%), tax and customs crime (7.2%), violent crime (2.9%), money laundering (2.6%) and counterfeiting (2.1%). Corruption is generally considered to be below the international average with very rare links to organised crime in Germany, yet its link as risk factor for criminal infiltration, especially in public procurement, has long been recognised.<sup>72</sup>

**A total of 33.5 % of the OC groups were active in more than one field of crime (2018: 35.5 %).** Compared to groups focusing on one specific area of crime only, the groups dedicated to more than one area of crime had about the same average OC potential (40.6 points - 40.5 points)<sup>73</sup>. OC groups that are considered to present the greatest threat to exploiting legal economic structures for criminal purposes throughout 2018 and 2019 are Outlaw Motor-cycle Gangs (OMCGs), Italian OC (IOC) and Russian-Eurasian OC (REOC).<sup>74</sup>

According to the MORE report 2018, **the most popular business sectors in which legal entities operated with criminal purposes, most often in the form of limited liability companies, are wholesale and retail trade, transportation and storage, construction and real estate.** Emerging sectors are professional, scientific and technical activities. In over 50% of the cases, the entities were headquartered in Germany.<sup>75</sup>

As for irregularities reported as fraudulent affecting the EU’s financial interest in Germany in 2019, the European Anti-Fraud Office (OLAF) estimates those on the expenditure side to have taken place in the **context of the Common Agriculture Policy (9) and the Cohesion Policy and Fisheries (17)**, amounting to a total of 26 reported fraudulent cases.<sup>76</sup> The German AFCOS highlighted none of these to be related to organised crime and for the expenditure side of the EU budget to experience no cases of organised crime in Germany. As for the revenue side, 62 cases of irregularities reported as fraudulent were registered by OLAF.

Overall, Germany reported less than 10% of irregularities’ cases to be fraudulent, with non-fraudulent taking place in different categories: a total of 131 cases concerning the expenditure

<sup>70</sup> Definition of Organised crime by the BKA (1990): “Organised crime is the systematic commission of criminal offences motivated by the striving for profit or power which, individually or as a whole, are of considerable significance if more than two persons, each with his/her own assigned tasks, collaborate for a longer or indefinite period of time in the following way: a) by using commercial or business-like structures, b) by using violence or other means of intimidation, or c) by exerting influence on politics, the media, the public administration, the judiciary or the business sector.”

<sup>71</sup> <https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/OrganisierteKriminalitaet/organisiertekriminalitaetBundeslagebild2019.html;jsessionid=CE577782238E9F30EF763428765F0D98.live0611?nn=27988>

<sup>72</sup> [https://www.transcrime.it/wp-content/uploads/2018/12/MORE\\_FinalReport.pdf](https://www.transcrime.it/wp-content/uploads/2018/12/MORE_FinalReport.pdf)

<sup>73</sup> The “OC potential” assesses all OC groups in terms of their level of organisation and professionalism, and is calculated by counting and weighting the applicable indicators taken from the list of “General indicators for identifying OC-relevant cases”.

<sup>74</sup> <https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/OrganisierteKriminalitaet/organisiertekriminalitaetBundeslagebild2019.html;jsessionid=CE577782238E9F30EF763428765F0D98.live0611?nn=27988>

<sup>75</sup> [https://www.transcrime.it/wp-content/uploads/2018/12/MORE\\_FinalReport.pdf](https://www.transcrime.it/wp-content/uploads/2018/12/MORE_FinalReport.pdf)

<sup>76</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

part of the budget (58 under Agriculture, 2 under Internal policies, 71 under Cohesion Policy and Fisheries) and 1,470 in the area of Traditional Own Resources (Revenue).<sup>77</sup>

In Germany, as well as in eight other Member States<sup>78</sup>, more than 50% of all estimated and established amounts in fraudulent cases were detected by anti-fraud services.<sup>79</sup> As for non-fraudulent cases, voluntary admission was the main means of detection.<sup>80</sup>

### Legal Frameworks to tackle organised crime, policies and strategies

In its efforts to fight cross-border corruption, Germany is part of the **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**, the **UN Convention against Corruption (UNCAC)**, the **UN Convention Against Transnational Organised Crime (UNTOC)** as well as the **Criminal Law Convention on Corruption of the Council of Europe** and a supplementary protocol.

**As EU member, Germany has successfully transposed European legal instruments into national law.** This includes the Protocol of 27 September 1996 to the Convention on the Protection of the European Communities' Financial Interests and the Convention of 26 May 1997 on the Fight against Corruption Involving Officials of the European Communities or officials of Member States of the European Union<sup>81</sup>. More recently, **Germany transposed the EU Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive) into national law** (June 2019).<sup>82</sup> Although German law was considered to be broadly compliant with the requirements of the Directive at the time, the new law aimed to strengthen "the protection of the financial interests of the EU" (*EU-Finanzschutzstärkungsgesetz – EUFinSchStG*)<sup>83 84</sup>.

The German Federal Government further implemented the **EU's Sixth Anti-Money-Laundering Directive (AMLD6)** into German law in 2020 with the Draft Act for the Effective Prosecution of Money Laundering (*Gesetz zur Verbesserung der strafrechtlichen Bekämpfung der Geldwäsche, GWG*).<sup>85</sup> This law will make money laundering prosecution easier and more effective in an effort to capture profits derived from any criminal activity, also where multiple actors and activities are involved.

The key legislative provisions concerning money laundering and fraud in Germany are contained in the **Criminal Code (StGB) (Money laundering – section 261, Fraud - sections 263 to 265e)**.<sup>86</sup> Section 264 on subsidy fraud particularly penalises different types of cases, with e.g. serious cases being considered those in which offenders "acquire, out of gross self-interest or by using forged or falsified documentation, an unjustified, large subsidy for themselves or another" or "abuse their powers or position as a public official or European official". No explicit reference is made to EU subsidies or funds more broadly.

Besides the StGB, other pieces of legislation contributing to the national framework concerning prevention of corruption, fraud and money laundering, and asset recovery are: the German constitution, also known as the **Basic Law of Germany (GG)**, the **Federal Budget Code (Bundeshaushaltsordnung, BHO)**, the **Act on Federal Civil Servants (Bundesbeamtengesetz, BBG)**, the **Federal Civil Servant Status Act (BeamStG)**, the **Act against Restraints of Competition (GWB)**, the **Freedom of Information Act (IFG)**, and the **Act on International**

<sup>77</sup> [https://www.europarl.europa.eu/cmsdata/213109/COM\\_SWD\(2020\)0160\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213109/COM_SWD(2020)0160_EN.pdf)

<sup>78</sup> Ireland, Spain, France, Italy, Lithuania, Austria, Romania and Slovenia.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> <https://www.mondaq.com/germany/criminal-law/861122/anti-corruption-bribery-comparative-guide>

<sup>82</sup> <https://www.buzer.de/gesetz/13459/index.htm>

<sup>83</sup> <https://eucrim.eu/news/germany-legislative-draft-implementation-pif-directive-tabled/>

<sup>84</sup> The new law regulates the offences of misapplication of funds or assets from the European Union budget/budgets managed by the Union and those of illegal diminution of the resources of the Union budget/budgets managed by the Union. Further amendments in the context of corruption offences and adaptations to subsidy fraud will be implemented in the German Criminal Code.

<sup>85</sup> <https://www.dentons.com/en/insights/articles/2020/november/18/germany-implements-the-6th-anti-money-laundering-directive>

<sup>86</sup> [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html)

### **Legal Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*, IRG).<sup>87,88</sup>**

In addition to relying on the existing legal framework, Germany adopted the Federal Government **Directive concerning the Prevention of Corruption in the Federal Administration** (CPD) in July 2004. This strategy addresses both the Federal Administration as well as other agencies receiving federal funding and requires them to develop effective internal corruption prevention measures especially in those areas identified as especially vulnerable to corruption.<sup>89</sup>

Germany has not adopted a national anti-fraud strategy.<sup>90</sup>

**Joint initiatives between the Federal authorities, the private sector and civil society**, such as *Alliance for Integrity*<sup>91</sup>, bring together stakeholders for collective action against corruption risk also in third countries. The platform offers solutions to strengthen the compliance capacities of companies, fosters dialogue between public and private sectors and creates a system of incentives for companies to increase their efforts against corruption in their own business environments.

At EU level, **Germany is firmly committed to contributing to the EU priorities as established in the Serious and Organised Crime Threat Assessment (EU SOCTA) 2017** and forthcoming editions<sup>92</sup>. In the context of the Cohesion policy and fisheries, it reported adopting operational anti-fraud measures in the form of self-assessment of the fraud risk as regards the European Social Fund (ESF). On the administrative front, Germany updated its procedures related to the European Regional Development Fund (ERDF).<sup>93</sup>

### **Institutional framework and role played by national authorities**

The **Division for the Protection of EU Financial Interests under the Ministry of Finance** is the designated Anti-Fraud Coordination Service (AFCOS) in Germany<sup>94</sup>, in charge of the cooperation and information exchange with European institutions and other EU Member States.

In general terms, **the responsibility of enforcing the criminal laws regarding e.g. anti-money laundering and fraud legislation is with the general law enforcement authorities**.<sup>95</sup> This includes the public prosecutor's office and the police departments, mainly the **German Federal Criminal Police Office** (*Bundeskriminalamt*, BKA) as central office. At federal state level, most states have opted to centralize the prosecutor's offices that specialise in these investigations and count on special police task forces.<sup>96</sup>

In fact, although the prevention framework of corruption is included in several provisions at both federal and state level, implementation of repressive anti-corruption policies and prosecution of criminal cases lies with the *Länder*. At that level, the organisational structure on corruption offences varies: some *Länder* have specialised prosecution offices whereas others have specific corruption-related expertise distributed across all prosecution offices.<sup>97</sup>

<sup>87</sup> <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/17-18December2019/V1911805e.pdf>

<sup>88</sup> <https://www.ganintegrity.com/portal/country-profiles/germany/>

<sup>89</sup> [https://www.bmi.bund.de/SharedDocs/downloads/EN/themen/moderne-verwaltung/korruption-prevention-report-2018.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmi.bund.de/SharedDocs/downloads/EN/themen/moderne-verwaltung/korruption-prevention-report-2018.pdf?__blob=publicationFile&v=2)

<sup>90</sup> <https://op.europa.eu/webpub/eca/special-reports/fraud-in-cohesion-6-2019/en/>

<sup>91</sup> <https://www.allianceforintegrity.org/>

<sup>92</sup> <https://www.europol.europa.eu/socta/2017/conclusions.html>

<sup>93</sup> [https://ec.europa.eu/anti-fraud/sites/default/files/pif\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_en.pdf)

<sup>94</sup>

[https://www.bundesfinanzministerium.de/Content/DE/Downloads/Ministerium/Organigram\\_engl.pdf?\\_\\_blob=publicationFile&v=4](https://www.bundesfinanzministerium.de/Content/DE/Downloads/Ministerium/Organigram_engl.pdf?__blob=publicationFile&v=4)

<sup>95</sup> <https://www.lexology.com/library/detail.aspx?q=2df09da9-88a8-44b0-9d4f-3174b94368e6>

<sup>96</sup> <https://www.bmi.bund.de/DE/themen/sicherheit/kriminalitaetsbekämpfung-und-gefahrenabwehr/organisierte-kriminalitaet/organisierte-kriminalitaet-node.html>

<sup>97</sup> *ibid.*

As part of the Fourth European Money Laundering Directive implementation, Germany (and all other EU MS) introduced a dedicated centralised authority to control financial transactions: the **Financial Intelligence Unit (FIU)**. Under control of the German Federal Criminal Police Office (BKA, Ministry of Interior), the FIU is in charge of reporting suspected cases of money laundering or terrorist financing and supports the investigation of individual money-laundry cases.<sup>98</sup> Since 2017, the FIU is part of the Central Customs Authority under the Ministry of Finance, which is meant to allow for increased resource allocation.<sup>99</sup>

In terms of customs-related crimes and cross-border organised crime, the **German Customs Investigation Service (Zollkriminalamt, ZKA)** coordinates customs investigations nationwide in relation to foreign trade, subsidy fraud in the agricultural sector, drug trafficking and money laundering, among others. The Customs Investigation Service sits within the central Customs Authority falling under the Ministry of Finance and acts as link between the Ministry of Finance and local authorities, the 8 regional Customs Investigations Offices.<sup>100</sup>

Other authorities relevant in the context of prevention and asset recovery are the **Federal Ministry of Justice and Consumer Protection (BMJV), Federal Office for Justice (BfJ), Supreme Audit Institution (BRH), and the competent authorities (prosecution offices and courts) of the federal states**<sup>101</sup>, as mentioned above.

### Estimates of the loss to the EU budget

No estimate of the impact of organised crime specifically in terms of loss to the EU budget is available at national level, as confirmed by interviewees from the German AFCOS.

The total **impact of organised crime is estimated by the German Federal Criminal Police Office (BKA) at around €803 million in 2019 (€691 million in 2018)**. In financial investigations carried out in 2019, the German authorities managed to trace criminal income from 234 out of 579 OC groups, amounting to about €644 million (€ 675 million in 2018). Assets of around €116 million (~€72 million in 2018) were provisionally seized from 170 OC groups.<sup>102</sup>

The highest losses in terms of field of crime were identified in the area of crime associated with the business world (€552.4m, 68.8%), tax and customs crime (€161.9m, 20.2%) and property crime (€47m, 5.9%). One individual OC investigation into tax and customs offences (tax fraud) revealed the highest criminal proceed amounting to about €350 million (43.6% of total loss).<sup>103</sup>

As for the impact of irregularities reported as fraud and other illegal activities affecting the **EU's financial interest in Germany, it is estimated to amount to €2.9 million in total expenditure and slightly over €31 million in revenue.**<sup>104</sup> **Germany recovered, in absolute terms, the highest amount among Member States in 2019 including both fraudulent and non-fraudulent cases: €102 million.**<sup>105</sup>

The **Value Added Tax (VAT) Gap** has remained relatively stable at around 9% of the VAT total tax liability (VTTL) over the 2015-2018 period. Latest figures estimate that Germany **lost €22 million VAT** to fraud and evasion, tax avoidance, bankruptcies, financial insolvencies and miscalculations in 2018.<sup>106</sup>

<sup>98</sup> <https://www.lexology.com/library/detail.aspx?g=2df09da9-88a8-44b0-9d4f-3174b94368e6>

<sup>99</sup> <https://thelawreviews.co.uk/title/the-anti-bribery-and-anti-corruption-review/germany>

<sup>100</sup> <https://www.europol.europa.eu/partners-agreements/member-states/germany>

<sup>101</sup> <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/17-18December2019/V1911805e.pdf>

<sup>102</sup>

[https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/OrganisierteKriminalitaet/organisiert\\_eKriminalitaetBundeslagebild2019.html;jsessionid=CE577782238E9F30EF763428765F0D98.live0611?nn=27988](https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/OrganisierteKriminalitaet/organisiert_eKriminalitaetBundeslagebild2019.html;jsessionid=CE577782238E9F30EF763428765F0D98.live0611?nn=27988)

<sup>103</sup> *ibid.*

<sup>104</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>105</sup> *ibid.*

<sup>106</sup> [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/vat-gap-full-report-2020\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/vat-gap-full-report-2020_en.pdf)

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## Greece

### Scale of the problem and types of organised crime most common in Member State

By many metrics, the challenge of organised crime, fraud and corruption in Greece is significant. For instance, considering Transparency International's 2020 Corruption Perceptions Index (CPI), only five EU Member States had greater perceived corruption than Greece.

Similarly, in each year of the last decade, Greece has been one of the three lowest ranked EU Member States in the World Bank's 'Control of Corruption' indicator – part of the Worldwide Governance Indicators (WGI). In the years, 2012-2013 and 2018-2019, only two EU Member States (Bulgaria and Romania) ranked below Greece in this indicator; in 2014-2017, Bulgaria was the only EU Member State to rank lower than Greece.<sup>107</sup>

Although there are challenges related to perception-based surveys, such as the impact of external influences (e.g. economic situation, prominent ongoing investigations etc.) on respondents, these findings illustrate the findings of other more qualitative research on the topic. One such report, developed by the Hellenic Foundation for European and Foreign Policy, noted that a more useful indicator of a country's attitude to corruption might be the extent to which citizens perceive corruption as being acceptable. On this point, similar surveys were conducted in 2013 and 2019, looking at the extent to which respondents across the EU consider it acceptable to give a gift or money if they wanted to obtain something from a civil servant.

In both surveys, Greek respondents were much more likely than the EU average to consider these actions acceptable. Moreover, the attitudes of Greek respondents to these issues did not change markedly in the intervening years.

- **Acceptable to give a gift** if they wanted to obtain something from a civil servant. In 2013, 42% of Greek respondents considered this action to be acceptable (EU-27 average was 23%). The figure for 2019 was 41% (EU-28 average was 23%).
- **Acceptable to give money** if they wanted to obtain something from a civil servant. In 2013, 24% of Greek respondents considered this action to be acceptable (EU-27 average was 16%). The figure for 2019 was 19% (EU-28 average was 16%)

Furthermore, 95% of Greek respondents to the most recent Eurobarometer survey on corruption think that it is widespread in Greece (compared with an EU average of 71%).<sup>108</sup>

These data suggest that Greece faces significant difficulties tackling organised crime, fraud and corruption. However, within the last decade, research from Transparency International and the World Economic Forum has identified that there are differences in the perceived levels of corruption across public services. In particular, transport authorities issuing driver's licenses, town planning authorities, tax authorities, public hospitals<sup>109</sup> and customs offices<sup>110</sup> are considered to be more corrupt than other areas of public service. Considering the impact of organised crime and corruption specifically on the EU finances, these findings suggest issues of corruption are more commonly identified in relation to national level services.

In addition, due to significant legal and policy reforms over the past decade (discussed further below), Greece was the EU Member State with the most improved score in the CPI over the period 2012-2020.<sup>111</sup> As such, academic commentators have noted that progress has been made in

<sup>107</sup> World Bank. (2019). [Worldwide Governance Indicators](#): Data on Control of Corruption across all 27 EU Member States.

<sup>108</sup> European Commission. (2020). Commission Staff Working Document, 2020 Rule of Law Report: Country Chapter on the rule of law situation in Greece, SWD(2020) 307 final.

<sup>109</sup> Transparency International-Greece. (2012). National Integrity System Assessment – Greece.

<sup>110</sup> World Economic Forum. (2014). [Global Enabling Trade Report 2014](#).

<sup>111</sup> Transparency International. (2021). [CPI 2020: Western Europe & European Union](#).

relation to these issues, but its performance is poor compared to similar European countries and “it still has many hurdles to overcome”<sup>112</sup>.

Considering the most common forms of fraud found in Greece, the country’s Independent Authority for Public Revenue (IAPR) highlighted that excise goods smuggling and, in particular, smuggling of tobacco, oil and alcohol products.<sup>113</sup>

### Legal Frameworks to tackle organised crime, policies and strategies

From a legal perspective, a range of instruments exist to tackle fraud, corruption and organised crime that could impact the EU’s financial instruments. Most relevant is the transposition of Directive 2017/1371/EU of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law (the PIF Directive). However, this is supported by a range of additional provisions in the Greek Penal Code related to fraud and corruption, discussed below:

- The PIF Directive has been implemented in Greece through Law 4689/2020. More specifically, Articles 21-28 concern the transposition of subject matter and definitions, provisions related to bribery and corruption of an official related to the financial interests of the EU, cross-border VAT fraud, money laundering at the expense of the EU and auxiliary provisions for the criminal protection of the EU’s financial interests, as well as general provisions and provisions on the submission of statistical reports.<sup>114</sup>
- Concerning the Greek Penal Code more generally, regular amendments have been made in recent years. Beyond the changes implemented by Law 4689/2020, changes relevant to fraud and corruption were made on multiple occasions throughout 2019.

However, a number of challenges have been raised by international organisations, legal practitioners and academics with regard to the Greek legal system and its approach to tackling fraud and corruption. For instance, in 2020, GRECO produced its second compliance report on Greek measures to prevent corruption in respect of members of parliament, judges and prosecutors. This report followed up on the implementation of 19 recommendations made by GRECO to the Greek authorities in 2015. The report found that six of the 19 recommendations had not been implemented and seven of the recommendations had only partly been implemented.<sup>115</sup>

In a separate report, GRECO specifically focused on the June 2019 amendments to the Criminal Code. This report noted that Greek authorities had, through Article 236, reduced the severity of ‘active bribery’ as an offence from a felony to a misdemeanour.<sup>116</sup> Further changes were made in November 2019 to repeal this downgrading and, although these reportedly improved the Criminal Code, the Council of Europe still expressed reservations related to the Greek legal approach to tackling corruption.<sup>117</sup>

Similarly, academic commentary from the Hellenic Foundation for European and Foreign Policy noted that past reforms have created a sound, but incomplete, regulatory framework, albeit achieved through a circuitous route.<sup>118</sup> For instance, this report noted that reforms by Greek authorities in the decade following the economic crisis resulted in a “plethora of laws” and the establishment of “numerous anti-corruption agencies and ministerial and prosecutorial posts”<sup>119</sup>, considered by the author as over-regulation.

<sup>112</sup> Sotiropoulos, D. (2020). [Corruption and Anti-Corruption in Today’s Greece](#). Hellenic Foundation for European & Foreign Policy (ELIAMEP).

<sup>113</sup> Greek Independent Authority for Public Revenue (IAPR), Written contribution to this study.

<sup>114</sup> <https://www.lawspot.gr/nomikes-plirofories/nomothesia/nomos-4689-2020>

<sup>115</sup> Council of Europe. (2020). Group of States against Corruption (GRECO): Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors. [Second compliance report: Greece](#).

<sup>116</sup> Council of Europe. (2020). Group of States against Corruption (GRECO): [Follow-up Report to The Ad hoc Report on Greece \(Rule 34\)](#).

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<sup>118</sup> Sotiropoulos, D. (2020). [Corruption and Anti-Corruption in Today’s Greece](#). Hellenic Foundation for European & Foreign Policy (ELIAMEP).

<sup>119</sup> Sotiropoulos, D. (2020). [Corruption and Anti-Corruption in Today’s Greece](#). Hellenic Foundation for European & Foreign Policy (ELIAMEP).

Furthermore, legal practitioners have highlighted that “there is no clear legal definition of corruption”<sup>120</sup>, as it is inextricably linked in Greek legal theory with bribery crimes, which do not cover the social aspects related to corruption. This is highlighted in relation to the Greek Penal Code (Articles 235-237, 237A, 396, 159, 159A and 165) and the Penal Procedure Code (Articles 33-36).<sup>121</sup>

From a policy perspective, a key document that has evolved over many years is the National Anti-Corruption Action Plan (NACAP). First adopted in 2013 as the document ‘Transparency – A National Anti-Corruption Action Plan’, the NACAP was revised in 2015 and in 2017-2018. Between 2016 and 2018, over an 18-month period, the Greek authorities received support from the OECD, the European Commission and the Structural Reform Support Service (SRSS) via the Greece-OECD Technical Support Project on Anti-Corruption with the aim of improving its approach to tackling corruption.<sup>122</sup>

The current iteration of the NACAP covers the period 2018-2021.<sup>123</sup> Its main aim is to contribute to the progressive and consistent reduction of corruption, while strengthening integrity and public trust. The NACAP 2018-2021 presents four main themes, each of which relates to a range of general strategy objectives, specific objectives and actions/measures. It also details responsibilities for each action:<sup>124</sup>

- **Theme 1: Sectoral prevention of corruption.** Covers a large range of actions across ten general strategy objectives related to reducing corruption risks in the public and private sectors, the political sphere and local government.
- **Theme 2: Public integrity across administration and judiciary system.** Across two general strategy objectives, the NACAP includes five specific objectives and 24 actions / measures, including, for instance, the creation and adoption of a national public integrity system and the assessment of the code of conduct for judges and prosecutors.
- **Theme 3: Strengthening cooperation, coordination and collaboration across the public sector.** Across one general strategy objective, the NACAP includes 14 specific objectives and 60 actions / measures, including the implementation of the AFCOS Coordinating role and the establishment and operation of an internal network of national agencies for the implementation and monitoring of anti-fraud policies.
- **Theme 4: Education and awareness raising.** Across one general strategy objective, the NACAP includes two specific objectives related to devising and promoting integrity forming programmes in the Greek educational system and raising awareness in relation to public participation and ownership. Six actions / measures are detailed related to these objectives.

In addition, it has been highlighted that Greece makes limited use of ARACHNE. As highlighted by the ECA in its Special Report on ‘Fighting fraud in EU spending: action needed’, ARACHNE was not used by Greek authorities in relation to any Operational Programmes in the 2014-2020 period.<sup>125</sup> Considering other relevant EU information systems, representatives of the IAPR highlighted that, in particular, Greek authorities make use of the VAT Information Exchange System (VIES) and the European car & driving license information system (EUCARIS).

From a technical perspective, representatives of the IAPR noted that significant investment has been made in recent years to upgrade and modernise the technical equipment and facilities available to the Hellenic Customs Administration. More specifically, this includes mobile x-ray machines for the scanning of trucks and shipping containers, detection x-ray systems for the

<sup>120</sup> Global Legal Insights. (2021) [Bribery & Corruption 2021: Greece](#).

<sup>121</sup> Global Legal Insights. (2021) [Bribery & Corruption 2021: Greece](#).

<sup>122</sup> OECD. (2018). [Baseline Report on Greece’s National Anti-Corruption Action Plan Revision and M&E Processes](#). Greece-OECD Project: Technical Support on Anti-Corruption.

<sup>123</sup> National Anti-Corruption Action Plan (NACAP) of Greece, [Introductory Note](#).

<sup>124</sup> National Anti-Corruption Action Plan (NACAP) of Greece, [List of actions](#).

<sup>125</sup> European Court of Auditors. (2019). [Fighting fraud in EU spending: action needed](#). Special Report.

scanning of passenger luggage and parcels, sniffer dogs, anti-smuggling ships, narc-control facilities, and portable, flexible and fibre-optic endoscopes.<sup>126</sup>

### Institutional framework and role played by national authorities

In Greece, a range of different public organisations have a role and responsibilities in relation to combating fraud that affects EU funding. Until 2020, the competent authority for the coordination of the fight against fraud (AFCOS) in Greece, as per Law 4320/2015, was the General Secretariat Against Corruption (GSAC), part of the Ministry of Justice, Transparency and Human Rights.

However, 2019 saw “a radical organisational and operational modernisation of key public Audit Bodies”<sup>127</sup>. As per Law 4622/2019, five existing auditing bodies<sup>128</sup> and the GSAC were abolished in preference for a new, single authority, the **National Transparency Authority (NTA)**. The NTA took on all responsibilities of the abolished bodies, including designation as the Hellenic Anti-Fraud Coordination Service (i.e. the Greek AFCOS).

A key driver of this change was reportedly the need to address “organisation and operational dysfunctions”<sup>129</sup>. As such, the NTA describes itself as a “modern and innovative public organisation with a strong international presence that aims to make a decisive contribution to the defence of the public interest, the restoration of citizens’ trust in institutions and the development of an environment of equal opportunities for all”<sup>130</sup>. With this goal in mind, the NTA can conduct the following activities: carry out audits and inspections of a wide range of public bodies, companies and individuals; develop strategies and support policy coordination on tackling fraud and corruption; and raising awareness of the impacts of corruption amongst citizens and businesses. The NTA also holds responsibility for the implementation of the NACAP, as described above.<sup>131</sup>

In its role as the Greek AFCOS, the NTA has provided representation at a range of international and EU expert meetings, as well as playing a coordination role between key Greek authorities engaged in tackling corruption and fraud impacting the EU finances. Here, we describe the three key public bodies engaged in these activities:

The **Independent Authority for Public Revenue (IAPR)**, established in January 2017 by Law 4389/2016, is responsible for the determination, certification and collection of tax, customs and other public revenues across many areas. This includes actions to detect and tackle revenue fraud and corruption that could impact the EU financial interests, including tax evasion, smuggling, tax fraud and the informal economy. The IAPR holds operational independence and financial and administrative autonomy from government bodies and other administrative authorities, with oversight provided by parliamentary scrutiny.<sup>132</sup>

To guide its activities, the IAPR has developed a multiannual strategic and an analytical Annual Operational Plan according to which a wide range of anti-fraud measures are being deployed covering legal, regulatory, institutional, IT and field activities. In particular, regarding customs, the EU Customs Code is the basic legal document providing for customs procedures and competences and is complemented by the Greek National Customs Code.<sup>133</sup>

In discussions with the OLAF Anti-Fraud Communicators’ Network (OAAFCN) in February 2021, the IAPR representative highlighted two key challenges faced by the IAPR in 2020: COVID-19 and Brexit. The IAPR reported that it responded to both challenges with the implementation of new

<sup>126</sup> Greek Independent Authority for Public Revenue (IAPR), Written contribution to this study.

<sup>127</sup> National Transparency Authority of the Hellenic Republic. (2019). [Annual Report 2019](#).

<sup>128</sup> The five auditing bodies were the: Inspectors–Controllers Body for Public Administration; the General Inspector of Public Administration; the Inspectors Body for Health and Welfare Services; the Inspectors Body for Public Works; and the Inspectors-Controllers Body for Transport.

<sup>129</sup> National Transparency Authority of the Hellenic Republic. (2019). [Annual Report 2019](#).

<sup>130</sup> National Transparency Authority of the Hellenic Republic. (2019). [Annual Report 2019](#).

<sup>131</sup> National Transparency Authority of the Hellenic Republic. (2019). [Annual Report 2019](#).

<sup>132</sup> <https://www.aade.gr/sites/default/files/2017-04/IAPR.pdf>

<sup>133</sup> Greek Independent Authority for Public Revenue (IAPR), Written contribution to this study.

digital applications, including intensive communication on seizures of counterfeit goods, including PPE. Priorities for 2021 highlighted by the IAPR representative included participation in actions combatting smuggling and cooperation with other law enforcement authorities.<sup>134</sup>

The **Financial Police Division** (FPD) of the Hellenic Police was reorganised in 2014, via Law 4249/2014 and Presidential Decree 178/2014.<sup>135</sup> The FPD is responsible for tackling financial and economic crimes, including organised crime. The FPD can receive submission of corruption and other complaints but may only conduct investigative measures with authorisation of a judge or prosecutor and does not have the power to initiate investigations on its own.<sup>136</sup>

As per Presidential Decree 142/2017 (“Organisational structure of Ministry of Finance”), as amended by Law 4622/2019, the **Directorate General of Financial and Economic Crime Unit** (DG SDOE) is the law enforcement agency of the General Secretariat of Tax Policy and Public Property of the Ministry of Finance. Within DG SDOE, six key departments have a focus on the protection and safeguarding of EU and national interests in cases of funding and co-funding. These include:

- Three departments within the Central Service, relating to strategic planning, operational planning and support and asset recovery and mutual assistance; and
- Two departments in the Operational Directorate of SDOE Attika and one department in the Operational Directorate of SDOE Macedonia, relating to regional actions for the audit of national and EU expenses and combatting of fraud and corruption.

DG SDOE focuses on a range of different types of economic offences that could impact national and EU finances, including money laundering, corruption, fraud, violations related to provisions, grants, illegal stocks trading and other financial transactions. This remit also pertains to frauds conducted using electronic means, the internet and other new technologies.

In relation to these crimes, DG SDOE has the capability to investigate vehicles, business premises and residencies, conduct audits on company documentation and tax records, interrogate and arrest offenders, confiscate certain items and freeze bank accounts and other assets.

As illustrated through the above, there have been significant organisational changes over the last 10 years related to tackling fraud and corruption in Greece, including fraud and corruption that impact the EU finances. Changes included significant reorganisation to the AFCOS, as well as reorganisation of the police authorities and tax and customs authorities. Commentary from the Hellenic Foundation for European and Foreign Policy on the issue noted that, although some progress had been achieved through various reforms, “too many organizational changes in the field of anti-corruption as well as political interference have led to a deep implementation gap in anti-corruption policy”<sup>137</sup> and that, “compared to other countries which have undergone an economic crisis in the periphery of Europe, Greece is comparatively unable to control corruption”<sup>138</sup>.

However, the European Commission’s 2020 Rule of Law Report noted that “the cooperation and coordination among different audit authorities and inspection bodies has been strengthened”<sup>139</sup>.

<sup>134</sup> [https://ec.europa.eu/anti-fraud/sites/default/files/minutes\\_oafcn\\_30\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/minutes_oafcn_30_en.pdf)

<sup>135</sup> CSD. (2019). [Presentation of the Financial Police Division of the Hellenic Police Headquarters](#).

<sup>136</sup> OECD. (2017). [Mapping of Corruption Complaints Mechanisms in Greece](#). Greece-OECD Project: Technical Support on Anti-Corruption.

<sup>137</sup> Sotiropoulos, D. (2020). [Corruption and Anti-Corruption in Today's Greece](#). Hellenic Foundation for European & Foreign Policy (ELIAMEP).

<sup>138</sup> Sotiropoulos, D. (2020). [Corruption and Anti-Corruption in Today's Greece](#). Hellenic Foundation for European & Foreign Policy (ELIAMEP).

<sup>139</sup> European Commission. (2020). Commission Staff Working Document, [2020 Rule of Law Report: Country Chapter on the rule of law situation in Greece](#), SWD(2020) 307 final.

## Estimates of the loss to the EU budget

Although certain data is available on complaints and investigations into the use of EU funds, there is limited consideration of the related loss to the EU budget. For instance, the 2019 OLAF Report, which examined the investigative activities of the agency, highlighted some data on investigations related to Greece and the EU finances.<sup>140</sup> More specifically:

- In 2019, OLAF concluded a total of 7 investigations into the use of EU funds managed or spent in whole or in part in Greece, of which only 2 were closed with recommendations.
- In relation to traditional own resources (TOR), OLAF highlights the number of fraudulent and non-fraudulent irregularities detected by national authorities. From 2015-2019, 85 fraudulent and non-fraudulent irregularities were detected by Greek authorities. This is a small number compared to many other Member States. 16 OLAF investigations related to these irregularities were closed with recommendations.
- Considering the detection of irregularities in the areas of European Structural and Investment Funds (ESIF), Greece identified 2,144 fraudulent and non-fraudulent irregularities in the period 2015-2019. However, only 18 OLAF investigations related to these irregularities were closed with recommendations.<sup>141</sup>

In addition, the Annexes to the 2019 PIF Report summarise data on irregularities reported as fraudulent and non-fraudulent in 2019, by Member State and by policy areas/types. This Report highlights that, in Greece, no irregularities were reported as fraudulent in relation to expenditure, with 11 on the revenue side totalling EUR 1,966,743. Considering irregularities reported as non-fraudulent, Greek authorities reported a total of 179 expenditure irregularities covering agriculture (164 irregularities, EUR 2,494,533), internal policies (2 irregularities, EUR 1,060,287), and cohesion policy and fisheries (13 irregularities, EUR 3,385,165). On the revenue side, Greek authorities reported 34 irregularities as non-fraudulent, totalling EUR 1,589,471.<sup>142</sup>

In addition, the ECA report on 'Fighting fraud in EU spending' presented a figure on irregularity and fraud detection rates. It is clear from these figures that Greece has one of the highest irregularity detection rates, only lower than Slovakia, Czechia and Spain. However, the ECA highlight that correlation between the noted fraud detection rates and selected corruption risk indicators is weak. In this respect, Greece performs poorly, as its fraud detection rate is minimal compared to comparatively high perceptions of corruption, as detailed above.

Beyond EU level data, in its role as the Greek AFCOS, the NTA reported that it received 89 complaints in 2019 related to fraud cases involving co-financed projects.<sup>143</sup>

Given its written contribution to the study, the contributions of DG SDOE are also more concretely known. In 2020, DG SDOE concluded 97 investigations, recommending the recovery of more than EUR 22 million to the EU budget. In addition, DG SDOE is cooperating with 15 OLF joint investigations.

Considering the impact of EU actions on the ability of national authorities to tackle corruption and fraud affecting the EU finances, it has been highlighted that the frequent and multiple changes in the legal framework, which can differ across procurement procedures, create significant challenges and vulnerabilities for mitigating fraud and corruption risks. In this respect, DG SDOE noted that cross-checking and exchange of information and data between competent authorities at the funding stage would benefit the identification of fraud and complement ex post controls.

<sup>140</sup> OLAF. (2020). [The OLAF report 2019](#).

<sup>141</sup> OLAF. (2020). [The OLAF report 2019](#).

<sup>142</sup> European Commission. (2020). [Annex to the 31<sup>st</sup> Annual Report on the protection of the European Union's financial interests – Fight against fraud – 2019](#), COM(2020) 363 final.

<sup>143</sup> National Transparency Authority of the Hellenic Republic. (2019). [Annual Report 2019](#).

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## Hungary

### Scale of the problem and types of organised crime most common in Member State

In Hungary between 2015-2019 the European Anti-Fraud Office (OLAF) has detected **fraudulent and non-fraudulent irregularities** in 2 697 cases under the **European Structural and Investment Funds and Common Agriculture Policy, which is similar than the number of cases in other Eastern European states, and** in 121 cases in the area of traditional own resources (TOR). The financial impact of the irregularities detected by Hungary itself was 1.41% which, is similar than in other Eastern European countries within the EU (except Slovakia).<sup>144</sup><sup>145</sup> However, during the period 2015-2019, Hungary had the highest number of OLAF investigations (43) closed with a financial recommendation among Member States.

The **indictment rate based on OLAF recommendations is 47% in Hungary, which is above the EU average** (The OLAF Report 2019, Table 7). **OLAF's financial recommendations in the two main areas of shared management (European Structural and Investment Funds and agriculture) from 2015-2019 amounted to 3.93% of the total payments to Hungary for the years 2015-2019 (the highest of any Member State, with the EU-27 average at 0.36%).**

**In 2019 alone, the number of irregularities reported as fraudulent in Hungary affecting the EU's financial interests accounted for 0 in the agriculture sector and for 27 in the context of cohesion policy and fisheries, amounting to more than 7.7 million Euros.** Non-fraudulent activities are higher with 97 in agriculture and 206 within cohesion policies and fisheries, amounting to more than 34 million Euros together in expenditure.<sup>146</sup>

### Legal Frameworks to tackle organised crime, policies and strategies

The criminal anti-corruption legal framework is largely in place. The **Criminal Code** includes the relevant definitions of corruption and related offences and criminalises different forms of bribery and trading in influence, embezzlement, misappropriation of public funds and abuse of public authority.

Corruption prevention policies in Hungary have focused on **integrity in state administration and law-enforcement agencies**. Following the expiry of the previous anti-corruption programme in 2018, in June 2020 the Government adopted a new programme covering a two-year period (2020-2022)<sup>147</sup>. The strategy maintains the focus of previous strategic programmes on integrity in the public administration and contains actions related to strengthening e-administration and automated decision-making to prevent corruption.

The integrity framework gives a central role to internal integrity advisors<sup>148</sup> in public authorities. However, according to the Commission, the strategic anti-corruption framework does not include actions in other areas noted as relevant for corruption prevention, such as political party financing, asset disclosure, or regulation of lobbying and 'revolving doors'. It also does not address risks related to clientelism, favouritism and nepotism in high-level public administration or those arising from the interface between businesses and political actors (European Commission, 2020: 11).

The verification of assets and interests declarations may be improved as regards systematic checks and independent oversight. The issue of effective supervision and enforcement of rules of conduct,

<sup>144</sup> [https://ec.europa.eu/anti-fraud/sites/default/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2019_en.pdf)

<sup>145</sup> *Ibid.*

<sup>146</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>147</sup> Government Decision 1328/2020 of 19 June 2020 on Mid-term National Anti-corruption Strategy for 2020-2022 and the accompanying action plan

<sup>148</sup> As a result of the integrity control systems introduced by a Government Decree in 2013, all public institutions need to designate such an advisor.

conflict of interests and asset declarations for members of Parliament was subject to recommendations by GRECO, the implementation of which is pending<sup>149</sup>.

Hungary has specific legislation in place to protect whistle-blowers. The **Whistle-blowers Protection Act**<sup>150</sup> provides anonymity for whistle-blowers and enables the submission of complaints electronically, using a designated reporting channel, which is operated by the Ombudsman ('Commissioner for Fundamental Rights').

In the **field of VAT fraud** Hungary has introduced a system called EKAER (Electronic Trade and Transport Control System in Hungarian 'elektronikus közúti áruforgalom-ellenőrző rendszer'), which is designed to minimize the possibility of VAT fraud in Hungarian public road transit. EKAER was introduced in January 1st, 2015<sup>151</sup>. The system, which underwent a number of changes in the past few years, helps the Hungarian Tax and Customs Authority to monitor shipments in Hungary. The purpose of the EKAER system is to minimize potential tax evasion in the field of VAT<sup>152</sup>. The most recent changes of the EKAER system were published in Decree no.13/2020. (XII. 23) on 23 December 2020 and entered into force on 1 January 2021. According to the new legislation only those products should be reported that are listed in the Schedule to the Decree 51/2014 (Dec 31) of the Minister for the National Economy on the determination of risky products in association with the operation of the Electronic Public Road Transportation Control System<sup>153</sup>.

### Institutional framework and role played by national authorities

The competence to prevent, investigate and prosecute corruption is shared among different specialised authorities:

- The **National Protective Service under the Ministry of Interior** is in charge of coordinating anti-corruption policies.
- As of February 2019, following a reform of the Code of Criminal Procedure, criminal investigation and prosecution of corruption in the public sector fall under the exclusive competence of the **Investigation Division of the Central Chief Prosecution Office and five regional offices**. The Division investigates complex corruption cases committed by or involving persons enjoying immunity, foreign public officials, the President of the Republic, the Prime Minister, members of the Government, and high-ranking officials of the public security authorities.
- The prosecution service is supported by the **investigative forces of the police** and the **National Protective Service**.
- **The State Audit Office** also plays a role in the implementation of anti-corruption policies, notably through its control functions on finances of state institutions and political party financing. The State Audit Office also carries out regular national integrity surveys.
- According to the Rule of Law report, while the prosecution service has launched a limited number of corruption-related investigations against members of Parliament from the ruling party, there has been no prosecution of high-level government officials in recent years.

<sup>149</sup> GRECO Fourth Evaluation Round – Evaluation Report. In December 2019, Parliament amended Act XXXVI of 2012 regulating the functioning of Parliament and the status of its members as of 1 February 2020 aiming to implement GRECO recommendations (see Hungary's contribution to the Annual Rule of Law Report).

<sup>150</sup> Act CLXV of 2013.

<sup>151</sup> <http://ekaer.hu/en/>

<sup>152</sup> <https://www.intrastateu.com/en/changes-ekaer/>

<sup>153</sup> <https://ekaer.nav.gov.hu/>

### Estimates of the loss to the EU budget

The financial impact of fraud and other illegal activities affecting EU's financial interest in Hungarian territory amounts to **over € 7.7 million in total expenditure and to € 26,000 in revenue**<sup>154</sup>.

According to the latest figures by the European Commission, **Hungary lost HUF 379 billion to Value-Added Tax (VAT)** to fraud and evasion, tax avoidance, bankruptcies, financial insolvencies and miscalculations in 2018<sup>155</sup>. This figure has fallen by approximately 10 percentage points between 2014-2018 of the VAT total tax liability (VTTL) amounting to approximately 8.4 % in 2018.

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<sup>154</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>155</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1579](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1579)

## Italy

### Scale of the problem

Feedback to this research suggests that **there are no extensive data sets that allow to describe and quantify the real impact of organised crime on the EU's financial interest**. Carrying out a comprehensive analysis of this phenomenon at national level is extremely difficult due to its complexity and cross-border nature.

With regard to the **cases of irregularities and fraud against the EU's financial interests**, it is worth underlining that MS have adopted different legal measures and organizational arrangements. Furthermore, national approaches to tackle fraud and to collect/report data on suspicious cases considerably vary across the EU. Therefore, the available data on the number of irregularities and fraud cases reported at EU level cannot be used for comparison/benchmarking between MS.

In this sense, in the 2019 OLAF Report, a total of 4.415 **irregularities<sup>156</sup> and fraud cases<sup>157</sup> against the financial interests of the EU** were reported in Italy in relation to the European Structural and Investment Funds (ESIFs) and the Common Agricultural Policy (CAP) during the 2015-19 period. Compared to other EU MS, **Italy ranked fourth for number of detected<sup>158</sup> irregularities**, following Spain (11.029), Poland (5.017) and Romania (4.968). However, feedback to this research suggests that there is a certain agreement on the fact that the "number of irregularities reported as fraudulent **measures the results of Member States' work to counter fraud and other illegal activities** affecting the EU's financial interests. Therefore, the figures should not be interpreted as indicating the level of fraud in the Member States' territories."<sup>159</sup>

In 2019, the European Commission identified 30 fraudulent irregularities in the Italian agricultural sector (accounting for 13% of the total cases detected by the EU27 in the same sector) with an estimated value of approximately EUR2.7 million. With regard to the cohesion policy, the number of fraudulent irregularities reported to OLAF for the same year was 103 (with a decrease by -57% compared to the figures in 2017 and 2018). Looking at the trends since 2017, **there has been a steady decline in the number of reported irregularities and fraud cases against the EU funds** (namely in relation to the agriculture, cohesion and fisheries policies).<sup>160</sup> The number of reports sent to OLAF on irregularities relating to agriculture and structural funds has also sharply declined since 2015. One factor potentially explaining these downward trends is the development of effective anti-fraud prevention and management systems and the adoption of specific measures and tools by the Italian authorities to combat fraud.<sup>161</sup>

There is no comprehensive analysis of the **involvement of organised criminal groups in fraud cases**. However, it should be noted that public procurement is an area of strong interest for mafia-type groups such as the 'ndrangheta, Cosa Nostra and the Camorra'. Several investigations conducted by the Italian financial police ('Guardia di Finanza') have revealed that mafia-like organisations are frequently involved in fraudulent activities either through affiliated individuals or companies. Mafia groups exploit the vulnerabilities of the public administration and use corruption of civil servants as a way to secure public contracts and maintain control of the territory. In 2019, the Italian Guardia di Finanza operated capital checks on 10.750 individuals for

<sup>156</sup> OLAF 2019 Report, p 39.

<sup>157</sup> Irregularity is any infringement of an EU provision by an economic operator which has, or would have, the effect of prejudicing the EU's financial interests. Fraud is an irregularity committed with the intention of illicit gain which constitutes a criminal offence. The Member States are required to identify those reported irregularities in which they suspect fraud.

<sup>158</sup> This figure includes fraudulent and non-fraudulent irregularities detected by MS. For the same period, a total of 22 investigations were closed by OLAF with recommendations.

<sup>159</sup> Fight against fraud 2015 Annual Report, Annex 1, table text.

<sup>160</sup> COLAF 2019, Annual Report, p49.

<sup>161</sup> COLAF 2019 Annual Report, p26.

suspected criminal activities based on the anti-Mafia legislation (see below for further information about the common forms of fraud reported by the Guardia di Finanza). Few examples of recent anti-fraud operations against criminal groups are listed below:

- In October 2020, the Italian military police force ('Carabinieri') - supported by the OLAF - conducted a **successful operation code-named "Grande Carro"** in the southern Italian region of Puglia against a criminal network with close links to the mafia. The operation uncovered a transnational fraud and money-laundering scheme<sup>162</sup> against the EU and national funds worth over EUR16 million.<sup>163</sup>
- In May 2020, the Italian police dismantled a major criminal cartel involved in bid rigging and misappropriation of public resources managed by Calabrian contracting authorities and the EU Institutions. The **"Waterfront" operation** targeted the "Ndrangheta mafia", a criminal group mainly located in southern Italian region of Calabria. According to the investigators, 7 out of the 22 rigged public tenders between 2007 and 2013 involved EU funds. A total of EUR42 million were subtracted from the operational programme to redevelop urban and waterfront areas near Gioia Tauro, Rosarno and San Ferdinando.<sup>164</sup>
- In April 2021, Sicily hosted one of the biggest trials for fraud against the EU contributions in the agricultural sector. In particular, **"Mafia dei Nebrodi" operation** led by the Antimafia District Directorate of Messina (Sicily) targeted two Sicilian Mafia families that unduly obtained since 2012 a total of EUR 10.000.000 in contributions from the Italian Agricultural Payment Agency (AgEA). The crimes included, among others, participation and external partnership in mafia association, registration of fictitious company, fraud and extortion. The operation led to 94 arrests and the seizure of 151 companies linked to the mafia groups.

#### **Most common forms of fraud affecting EU funding<sup>165</sup>**

In the fight against fraud affecting the EU budget expenditure, the operational experience gained by the Guardia di Finanza's units allowed to identify **recurrent fraudulent schemes**, which are mainly connected to conducts aimed at circumventing the rules for the granting of funding. These include:

- **False self-certifications** on the progress of works
- **False statements** of expenditure produced to the Public Administration or to the granting banks, also by using invoices for non-existent transactions issued by compliant suppliers
- **Use of photocopies of credit instruments** issued by the beneficiary (usually bank cheques), which the beneficiary then shows to the granting bank 'as a guarantee for the investment'. Actually, the aforementioned securities are never collected by the compliant (if not corrupt) supplier of the goods or services
- **Use of (fictitious) suppliers based abroad**, in order to make the assessment difficult. These companies are often owned, also through nominees, by the same person as the owner of the grant; in such cases, payments are regularly made by bank transfer, but the same sums are subsequently returned to the same person in other bank accounts opened abroad

<sup>162</sup> The network involved fictitious companies in seven different EU Member States (Italy, Bulgaria, the Czech Republic, Germany, Ireland, Portugal and Romania).

<sup>163</sup> [OLAF helps anti-mafia bust by Italian authorities | European Anti-Fraud Office \(europa.eu\)](#)

<sup>164</sup> Question for written answer E-003286/2020

<sup>165</sup> Contribution from the Guardia di Finanza.

- **Use of false letters of bank references** which are submitted by the subsidised party to the granting bank, 'certifying' the possession of the financial and property means suitable to cover the financed investments.

Furthermore, other fraudulent phenomena detected in the field of EU contributions granted in agriculture concerned the **undue obtaining of payment entitlements** (so-called 'titles') on the basis of false declarations and the transfer of the same and the fraudulent receipt of benefits by persons (who had died before submitting the application or were subject to anti-mafia prevention measures).

#### **Most common forms of fraud affecting EU funding in the agricultural sector<sup>166</sup>**

Among the most **common types of criminal conduct involving fraud** that have been ascertained over the years in the area of EU funding in support of the agricultural sector are, in particular:

- **the fictitious constitution of farms, the false attestation of "titles" of conduction of agricultural areas**, also by means of undue access to the National Agricultural Information System (SIAN), aimed at the illicit receipt of the "Single Premium" or illicit access to the distribution of aid "titles"
- **the simulation of the existence of a real right** relating to the agricultural areas declared as available to the company, by means of the ad hoc packaging of false legal transactions (lease or loan contracts, purchase contracts) and public concessions
- **the attestation of non-compliant activities and non-existent operations** relating to the construction or modernization of company structures, to the transfer of products to producers' organizations or to the overestimation of production, land and costs for the purchase of machinery and the realization of plants;
- the unlawful management of land for civic use, on which European and national contributions have been requested, granted and illegally received
- **the unlawful receipt of contributions** granted as compensation for the lack of marketing of fruit and vegetable production or as payment for the delivery of agricultural products to charitable organizations
- **the undue receipt of contributions** granted in relation to particular declared production methods, such as, for example, organic farming, which then turned out to be non-compliant and untrue following checks.

#### **Most common forms of fraud committed by organised crime<sup>167</sup>**

One of the characteristics of the modern criminal organizations, also of the mafia-type, is the capacity **to adapt to the evolution of the times and of the social and economic contexts**. In fact, over the years, they have been able to transform themselves from **parasitic and violent organizations to a real "entrepreneurial system", an integral part of the economy**.

This entrepreneurial system often uses schemes typical of 'traditional' tax evasion, also involving experts and specialists (lawyers, accountants) who are able to create a connection between the interests of criminal organizations and the great world of finance and the economy.

In this renewed structure, in an attempt to infiltrate the economic-financial and social fabric, organized crime has immediately seized the opportunities offered by the Community regulations concerning, for example, support to agriculture, to obtain illicit advantages through sophisticated fraud mechanisms.

<sup>166</sup> Contribution from the Carabinieri Command for the Protection of Agri-foodstuffs.

<sup>167</sup> Contribution from the Guardia di Finanza.

The countering action carried out by the Guardia di Finanza in this specific context shows how organized crime, also of mafia type, has, over time, shown interest in grabbing land and farms, in order to illegally intercept the funds intended to support agriculture, putting in place various and articulated fraud mechanisms that consist of:

- **in the fictitious registration to nominees, through falsification of documents, of land and farms actually referable to mafia subjects**, with the dual purpose of avoiding any eviction measures and access to contributions in support of agriculture. This emerged, for example, from the results of the operation "TERRE EMERSE", carried out in May 2019 by the *Nucleo P.E.F.* (Economic Financial Police Unit) / *G.I.C.O.* (Group of Investigation on Organized Crime) of Caltanissetta, and the *S.C.I.C.O.* (Central Service of Investigation on Organized Crime), which carried out a precautionary measure against 12 subjects for mafia association, fraudulent transfer of values and aggravated fraud to the detriment of the State, unveiling the fraudulent mechanism set up by the Mafia families "VIRGA" of the San Mauro Castelverde (PA) district and "DI DIO" of Capizzi (ME);
- **the illegal occupation of land for the free exercise of agricultural activity aimed at the undue receipt of EU contributions**, as emerged from the results of the operation called "TERRA NOSTRA", carried out in October 2019 by the *Nucleo P.E.F.* of Vibo Valentia, which led to the seizure of a large asset, worth a total of € 20 million, including 92 lands and 2 farms, against leading members of the 'ndrangheta cosca "MANCUSO" of Limbadi (VV). Specifically, the investigated criminal association, exploiting the hegemony on the territory and thanks to the power of intimidation had acquired, by usucaption or through usurious activities, several lands, taking advantage of the state of need and inertia of the legitimate owners who, for fear of being threatened and retaliated against, renounced the possibility of filing civil lawsuits aimed at regaining possession of the lost lands;
- **the use of invoices for non-existent transactions certifying the incurring of expenses, which were in fact fictitious, in order to submit the documentation to the relevant bodies and obtain European grants**. This emerged, inter alia, from the operation called "LADYBUG", under which the Guardia di Finanza Unit in Patti (ME) carried out a preventive seizure for a value of about one million euro against a company that had accounted for non-existent invoices to justify alleged works specially commissioned by the client companies under the "Rural Development Programme Sicily 2007/2013", co-financed by the E.A.R.D.F., with the aim of unduly obtaining the grant of contributions from AGEA, amounting in total to over 971,000 euros.

Moreover, in the context of the above-mentioned unlawful phenomena, **corruption cases** have often emerged involving public employees, engineers, agronomists and officials who, often, in agreement with the criminal associations, have signed repeated false acts or certifications to their advantage, in many cases preparatory to obtaining various contributions of EU origin.

#### **Other criminal activities affecting EU funding beyond fraud<sup>168</sup>**

The link between illegal and apparently legal activities is the **laundering of money of illicit origin by means of economic and financial transactions that give rise to parallel phenomena of tax evasion, avoidance and fraud, both national and international**.

With reference to the latter criminal phenomena of a fiscal nature, one fact should make us reflect more than others: the intrinsic danger of invoicing for non-existent transactions that have become the preferred 'tool' of the mafias and of entrepreneurs willing to come to terms with them for reasons of mutual benefit.

<sup>168</sup> Contribution from the Guardia di Finanza.

In a few words, false invoices can be used to reduce taxable income, accumulate off-balance sheet cash and launder dirty money; they are the lowest common denominator in the realisation of the illicit interests of mafia criminality and dishonest entrepreneurs who - in order to compete on the market - do not shy away from collusive forms of adaptation with the mafia power.

As is well known, one of the main sources of EU funding is precisely the Value Added Tax, which, in the fictitious commercial triangulations typical of the so-called "carousel fraud", is not paid to the Treasury, causing considerable damage to the Community budget.

**Fraud in the oil sector** is becoming increasingly frequent and has taken on significant dimensions and characteristics in terms of lost tax revenue and distorting competition in the relevant markets.

In this context, different types of illegal conduct are emerging, such as, for example:

- **issuing and recording invoices for non-existent transactions** aimed at evading VAT on purchases and sales of energy products, including through the creation of missing traders, set up for the sole purpose of implementing the fraud mechanism and, consequently, favouring the 'final customers' of the product, enabling them to purchase large quantities at competitive prices;
- the fraudulent use of **false declarations of intent for the VAT-free** supply of motor vehicle products outside the Community, while in reality the product is unduly supplied in Italy in **evasion of tax**;
- **the use of fictitious accompanying documents falsely certifying the destination of the product to companies** based in other EU countries or a different destination of use within the national territory but, instead, illegally released for consumption in Italy for automotive purposes in total or partial evasion of excise duty and VAT.

### Legal Frameworks to tackle organised crime, policies and strategies

The Italian authorities have established a **sophisticated legal framework to fight organised crime** and designed advanced prevention and control systems to tackle different types of criminal offences.

The first law aiming to fight against mafia-type criminal organizations dates back to 1982<sup>169</sup>. It introduced the **concept of "mafia-type organisation"** that is characterised by the use of violence for intimidation, the associative bond and of the condition of subjection to commit crimes<sup>170</sup>. Since then, the legal framework has evolved to address different forms of organised criminal groups<sup>171</sup>, the techniques used and impose tighter sanctions and penalties to both individuals and companies affiliated with mafia-type networks. In 2017, the Italian Parliament adopted a **new Anti-Mafia Code**<sup>172</sup> that defines the procedures for the management, destination and allocation of seized goods. This framework also includes more specific provisions and measures at regional level that take into account the specificities of organised crime in the Italian Regions.<sup>173</sup>

The Italian legal framework to counter fraud is mainly defined by **provisions of the Criminal Code**. The principles on the protection of financial interests of the EU laid down in the EU legislation have been reflected in the national law, including with regard to the sanctioning regime. Pursuant Art. 325 of the TFEU, Italy adopts the same measures to counter fraud affecting the financial interests of the Union as to protect its own financial interests ('principle of

<sup>169</sup> Law no. 646 of 13 September 1982.

<sup>170</sup> Art. 416 bis Criminal Code.

<sup>171</sup> Including the nature and structure of the four Italian Mafia-type groups: Sicilian Mafia, Calabrian 'Ndrangheta, Neapolitan Camorra and Apulian Organised Crime.

<sup>172</sup> <https://www.altalex.com/documents/codici-altalex/2014/07/24/codice-antimafia-edizione-giugno-2014>

<sup>173</sup> An overview of the regional interventions is available here: [avvisopubblico\\_doc\\_normativa-regionale-antimafia-sintesi.pdf](#)

assimilation'). In particular, the **Law n. 898 of 23 December 1986**<sup>174</sup> contains a specific provision on the protection of the EU's financial interests. This law introduced urgent measures to ensure the effective control over the management of EU resources supporting the olive oil production sector. The scope of the law was broadened over the years to reflect the evolution of the EU financial instruments supporting the agricultural sector.<sup>175</sup> The **Legislative Decree n. 75 on 14 July 2020** transposed the EU Directive 2017/1371 (the 'PIF Directive') on the fight against fraud to the Union's financial interests by means of criminal law. The Decree became effective on 30 July 2020. It introduced changes concerning the Criminal Code, sanctions for crimes against the EU's financial interests<sup>176</sup>, smuggling crimes – increasing the criminal sanctions for some cases considered particularly serious – fraud in agriculture, tax crimes pursuant to the Legislative Decree n. 74/2000 and the liability of legal entities deriving from a crime pursuant to Legislative Decree n. 231/2001. With regard to the changes to the Criminal Code, this Decree modified: artt. 316, 316-ter (on the unlawful appropriation of funds to the detriment of the State) and 319-quater c.c.; artt. 322-bis (on the embezzlement, extortion, undue induction to give or promise benefits and corruption of the members of the International Criminal Court, bodies of the European Union, EU and Third Countries officials); 640 (2.1) whose scope of application has been extended. Finally, it is worth recalling art. 322-ter (on confiscation of property and goods) and art. 640-bis of the Criminal Code (on aggravated fraud for obtaining public grants, with reference to grants, financing, subsidised loans or any similar disbursements however denominated, granted or issued by the State, other public entities or by the European Community).

Italy has also adopted a **National Anti-fraud Strategy** and recently issued some **Guidelines on how to communicate to the European Commission irregularities and fraud against the European budget** that addresses possible critical elements in the communication of data concerning cases of irregularity/fraud against the EU budget to OLAF.<sup>177</sup> The purpose of the guidelines is to improve the reporting process by competent authorities and in particular, the quality of the information, also in light of the possible uses of this information for the purposes of the *Early Detection and Exclusion System – EDES* established by the EU.<sup>178</sup> As remarked by the Commission, a high number of reported and detected irregularities might be linked to a more developed audit strategy, tailor made audits, higher number of performed audits, better trained or instructed auditors and so forth.<sup>179</sup> To provide an overview of the situation of fraud in Italy, the COLAF submits every year a **Report to the Parliament** that specifies the priorities in the fight against fraud, the measures taken, the results achieved and the anti-fraud action to protect the economic and financial interests of the EU.<sup>180</sup>

Finally, in recent years, the Italian authorities have adopted **specific anti-fraud measures** to protect public resources and the interests of the Union. These include for instance:

- Specific anti-fraud measures to strengthen the anti-fraud structure of an agricultural paying agency.<sup>181</sup>
- Specific operational plans adopted by the Guardia di Finanza to combat embezzlement, undue requests for and/or receipt of EU funds and VAT fraud.<sup>182</sup>

<sup>174</sup> Converting the decree law n. 701 of 27 October 1986.

<sup>175</sup> First with art. 73 of law n. 142 of 19 February 1992, then art. 10 of law n.300 of 29 September 2000. Finally, also with art. 18 of the law n. <sup>88</sup> of 7 July 2009 and art. 29 of the law n. 96 of 4 June 2010.

<sup>176</sup> Article 5 (2).

<sup>177</sup> [Dipartimento per le Politiche Europee - Linee guida sulle modalità di comunicazione alla Commissione europea di irregolarità e frodi](#)

<sup>178</sup> [Dipartimento per le Politiche Europee - Linee guida sulle modalità di comunicazione alla Commissione europea di irregolarità e frodi](#)

<sup>179</sup> COM (2011) 595 final.

<sup>180</sup> The 2019 Annual Report was presented on 18 November 2020 ([link](#)).

<sup>181</sup> Commission 30<sup>th</sup> Annual Report. Fight against fraud 2018. p22

<sup>182</sup> Commission 30<sup>th</sup> Annual Report. Fight against fraud 2018. p35

- Implementation and use of the ARACHNE tool and other operational measures to detect irregularities/fraud and combat financial and organised crime.<sup>183</sup>
- Cooperation project between administrative agencies and the judicial authorities to enhance the anti-fraud action in the agriculture and fisheries sector.<sup>184</sup>
- On the revenue side, IT applications to combat VAT fraud (tax fraud).<sup>185</sup>

### Institutional framework and role played by national authorities

The **National Committee to combat fraud against the European Union** (“COLAF”) is responsible for the direction and coordination of all national activities to fight fraud and irregularities relating in particular to tax, CAP and structural funds. Established in 1992<sup>186</sup>, the mandate and composition of the Committee was amended with Presidential decree (D.P.R.) n. 91 of 14 May 2007. It is based in the Presidency of the Council of Ministers, Department for European Policies, in a *super partes* position compared to the centralized and peripheral administrations. The Committee is chaired by the Minister for European Affairs and consists of: representatives of the Department for European Policies; the Commander of the body the Guardia di Finanza responsible for combating fraud; representatives of the administrations concerned with fraud appointed by the Minister for European Affairs; members designated by the Unified Conference.<sup>187</sup> It is also supported in its functions by Technical Secretariat consisting of members of the body of the Guardia di Finanza responsible for combating fraud (see below). The Committee serves as anti-fraud coordination structure (**AFCOS**)<sup>188</sup> for OLAF and as liaison office between all the institutions in charge of combating fraud. It also ensures a constant communication with the Commission about irregularities and fraud against the EU funds. Finally, it is the contact point of the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF) of the Commission and the Working Group on combating Fraud of the European Council.

The **Italian Economic and Financial Police “Guardia di Finanza”** is responsible for the prevention and investigation of all forms of economic-financial crime affecting public resources. The legal economy and the competitiveness of honest businesses are seriously endangered by the attempt of the mafias to take root in the economic and financial fabric and in the strategic productive sectors. Therefore, the fight against the economic/property aspects of organized crime and its effects on the productive system becomes the key element of a modern and effective anti-mafia strategy.

In particular, the attack on assets constitutes the principal objective of the action of the Guardia di Finanza in the attempt to remove wealth and money from organized crime. To be equal to such a delicate responsibility, the Corp, as a modern force of economic-financial Police, relies on an articulated system of prevention and counteraction to organized crime, also of the mafia type, which sees at the summit, under the strategic direction of the General Command, the Central Service of Investigation on Organized Crime (S.C.I.C.O.) and the 26 Groups of Investigation on Organized Crime (G.I.C.O.) supported by the territorial and air-naval Units. It’s a cohesive and unitary system which also avails itself of all the specialized components of the Corps, enhanced by further extremely performing instruments such as:

- a) the "economic-financial investigators", i.e. military personnel in possession of specific technical-professional skills in the legal and economic fields and endowed with great investigative intuition in the search for evidence through the analysis of budgetary, fiscal and

<sup>183</sup> COM(2020) 363 final.p11

<sup>184</sup> COM(2020) 363 final.p22

<sup>185</sup> COM(2020) 363 final.p20

<sup>186</sup> Art. 76, paragraph 2, law of 19 February 1992, no. 142. The composition, role and name of the Committee has been amended with Decree of the President of the Republic of 14 May 2007, no. 91 and, with Law of 24 December 2012, no. 234.

<sup>187</sup> Pursuant to Article 8 of Legislative Decree No 281 of 28 August 1997.

<sup>188</sup> Art. 3, par. 4 of the Regulation (EU, EURATOM) no. 883/2013 of the European Parliament and the Council of 11 September 2013.

banking documents, constantly updated and qualified to know the best of the multiple sectors of investment which could be the prerogative of the criminal organizations;

- b) the application called "Molecola", an extremely effective and ductile IT tool developed by the Central Service of Investigation on Organized Crime, which allows the acceleration of the execution of the patrimonial investigations, also placing at the disposal of the economic-financial investigators a wealth of information characterized by precise indicators of risk.

This set-up allows for an effective action of aggression against the illicitly accumulated assets, both from a preventive and criminal point of view.

A **specific Unit of the Guardia di Finanza** ("Nucleo della Guardia di Finanza per la repressione delle frodi nei confronti dell'UE") focuses namely on fraud against the EU and serves as technical secretariat to the COLAF. This Unit fulfils an advisory role for the coordination of anti-fraud activities relating to tax, CAP and structural funds. It collaborates with the Italian Ministry of economy and finance and monitors the exchange of data on irregularities and cases of misappropriation of EU funds with the Commission (through the IMS). It also ensures the institutional communication in relation to specific anti-fraud actions and measures adopted at national level. The Commander of this body is member of the COLAF in Italy and of the COCOLAF at EU level.

The **Carabinieri Command for the Protection of Agri-foodstuffs**, in accordance with paragraph 1 of art. 6 of the Decree of the President of the Council of Ministers n.179, of 5 December 2019, carries out extraordinary controls on the disbursement and perception of public aid in the agri-food, fishing and aquaculture sectors, on the withdrawal and sale operations of agri-food products, including aid to developing and needy countries. With reference to the institutional competences and the fight against fraud connected with the undue receipt of EU and national funds provided in support of the agricultural sector by the Ministry of Agriculture, Food and Forestry Policies (MIPAAF), the Agency for Agricultural Disbursements (AGEA) and the other regional paying agencies currently in place, in recent years, the activities of the Carabinieri Department for the Protection of Agro-foodstuffs have been primarily aimed at carrying out extraordinary controls on the regularity of Common Agricultural Policy (PAC) funding, especially that provided by its two main instruments: the European Agricultural Guarantee Fund (FEAGA), fed entirely by European funds, whose main function is to support farmers' income (direct aid) and markets (storage, overproduction, market withdrawals); the European Agricultural Fund for Rural Development (FEASR), fed by European and national funds, which supports agriculture as a provider of public goods in its environmental, climatic, territorial component and encourages the development of rural areas in order to avoid depopulation and create the conditions for the settlement of economic activities.<sup>189</sup> The Carabinieri Command for the Protection of Agri-foodstuffs, for the purposes of recovering the considerable European contributions in support of the agricultural sector that have been unlawfully obtained, the following institutes are constantly pursued by the Command: the "preventive seizure also for equivalent" of assets for a value similar to the undue receipt; the "report for erarial damage" to the Court of Auditors, considering that, according to consolidated case law, the misuse or misappropriation of funds destined for agricultural development causes evident patrimonial damage to the public disbursing body; the administrative sanctions which must be imposed independently from the penal sanction. The **Court of Auditors** ("Corte dei Conti") is also a key institutional player in the fight against fraud. The Court is responsible for: coordinating the exchanges of data on irregularities and fraud detected at national level; monitoring the cases of irregularities/fraud reported to OLAF by national administrations through the IMS (the Court accesses the system as observer); examining the communications on the fraud topic released by different institutions and authorities (European Court of Auditors, Italian Finance Police, Public Prosecutor's Office, Management

<sup>189</sup> Contribution from the Carabinieri Command for the Protection of Agri-foodstuffs.

Authorities); recording fraudulent cases worth less than EUR 10,000.<sup>190</sup> The Court can also delegate powers to conduct inspections, seizures, hearings relating to specific cases to the Guardia di Finanza.

Different administrations are responsible for reporting fraud and irregularities (even suspected) depending on the type of EU fund. Namely: the **Customs and Monopolies Agency** reports irregularities related to the 'own resources' (revenue side); the **Ministry of Agricultural, Food, Forestry and Tourist Policies** is competent on irregularities and fraudulent cases in the agricultural sector (CAP); the **Department for European Policies Presidency of the Council of Ministers** mainly focuses on cases relating to Structural funds.<sup>191</sup> Other **Ministries** are involved, to a different extent and in their areas of competence, in combating fraud against public and EU funds, for instance: Ministry of Justice; Ministry of Infrastructure and Transport; Ministry of Foreign Affairs. At regional level, the **Managing Authorities** are responsible to ensure the proper management of the operational programmes supported by EU funds and to establish effective and proportionate anti-fraud measures, in line with the risks identified.

## Good practices

### a) Interinstitutional cooperation and joint actions

COLAF launched **innovative partnerships and strategic actions**, also co-financed by the Commission under "HERCULE III" program (2014-2020), to enhance the institutional capacity in the fight against fraud. Among the main partnerships, it is possible to recall:

- *Institutional collaboration for the creation of the integrated National Anti-Fraud Platform (PIAF-IT)*. PIAF-IT is a new anti-fraud project, unique in the European landscape, co-financed by the European Commission/OLAF under the "Hercules III" program and developed in partnership by the Ministry of Economy and Finance- General Accounting Office of the State and the Italian AFCOS. The PIAF-IT is a "business intelligence" platform that will make it possible to centralise, in a single database, data from different national and European sources and relevant information relating to beneficiaries of EU funds (both before the certification of expenditure and during the ex-post controls). The strategic objective of PIAF-IT is to facilitate the collection of heterogeneous data in a telematic, structured, secure and integrated way. PIAF-IT provides the national administrations / regional authorities with a comprehensive picture of the phenomenon and enhances their anti-fraud prevention capacity.
- *Cooperation Agreements and Training on Objectives and New Experiences (CATONE) to combat fraud against the EU*. This project was co-financed by the European Commission/OLAF under the "Hercules III" program and developed in partnership with the Public Prosecutor's Office at the Court of Auditors. It aimed to promote a closer collaboration of all Public Prosecutors' Offices in order to strengthen the prevention and investigation of fraud and other illegal activities and improve the transnational and multidisciplinary cooperation (also in the field of justice and security). In particular, the project explored the topic of combating fraud affecting the EU budget and current and potential synergies between the different actors involved in the protection of the EU's financial interests. It also investigated possible measures, both regulatory and organizational, in order to effectively recover any unduly paid sums.<sup>192</sup> The project led to an international training event that took place online via videoconference on 25-28 May 2021<sup>193</sup>. Prosecutors of the Courts of Auditors, judges and representatives of the AFCOSs from Italy, France, Greece, Portugal and Spain, as well as delegates of OLAF, the EPPO and the Judicial Police of the five countries took part in the event.

The Guardia di Finanza also actively collaborates with other institutions to tackle organised crime

<sup>190</sup> Further information about the Court is available [here](#).

<sup>191</sup> 2015 COLAF Report to the Parliament.

<sup>192</sup> "[Progetto Catone](#)", to counter fraud against the EU funds - (eurocomunicazione.eu).

<sup>193</sup> Further information is available at: "[Cato Project](#)", to combat fraud against the EU - (eurocomunicazione.eu).

and fraud:

- The Guardia is a member of the **EU policy cycle EMPACT (European Multidisciplinary Platform against Criminal Threats)**. EMPACT is a permanent cooperation platform established in 2010 to identify, prioritise and address criminal threats and develop specific operational action. In particular, EMPACT aims to ensure continuity in the fight against international organised crime by facilitating cooperation between national law enforcement agencies, EU institutions and agencies and other relevant partners. To this end, Europol can allocate specific funds to support transnational investigative activities between MS. In the programme cycle for the 2018-2021 period, the Guardia di Finanza held the role of coordinator ('driver') of the EU-level initiatives to combat intra-Community VAT fraud (MTIC fraud).
- The **cooperation between the Guardia di Finanza and the EU institutions**, especially with OLAF, is part of a well-established practice. In 2012, the Guardia di Finanza and OLAF signed an operational agreement to enhance the practical cooperation in the fight against EU frauds. The Corps is responsible for supporting OLAF in carrying out many activities (such as "on-the-spot checks" pursuant Reg. 2185/96, or activities requested through the Reg. 883/2013 and following updates). As requested by Reg. 515/97, the Guardia di Finanza has established direct cooperation with other EU MS, using the Anti-Fraud Information System (AFIS) as the main channel of direct communications and for the information exchange.

In recent years, the Carabinieri Command for the Protection of Agri-foodstuffs has also cooperated fruitfully with OLAF on a national and transnational level in the area of the misappropriation of public funds in support of the agricultural sector.

## b) Training

The COLAF frequently organises **training, study visits, bilateral meetings** with the competent anti-fraud authorities and bodies of other MS, with the aim to encourage the collaboration and exchange good practices. The Italian authorities also share insights deriving from the use of PIF Report findings in their fraud risk assessments.<sup>194</sup> With regard to the collaboration with EU institutions, the Italian authorities ensure constant exchange of information about identified cases of irregularities and fraud. **In 2019, the OLAF Director General met the Italian AFCOS** (and its President, the Minister for European Affairs) and other **Italian national authorities** (Ministry of Justice, Court of Auditors, Guardia di Finanza and Carabinieri) as part of the ongoing cooperation on investigative and policy matters. OLAF's visit to Italy was regarded as beneficial to enhance the investigative cooperation and improve reporting and investigation of irregularities and fraud.<sup>195</sup>

## c) Use of tools

**Italy has been a pioneer in using the Irregularity Management System (IMS) managed by OLAF.**<sup>196</sup> The IMS is a dedicated web application that allows MS to report detected irregularities to OLAF and the Commission. The Court of Auditors has established a collaborative exchange with OLAF and accesses the IMS as 'observer'.

To better fulfil its audit and jurisdictional functions,<sup>194</sup> the Court of Auditors has also created **the SIDIF-CONOSCO** (Community irregularities and fraud information system), an independent database to collect data about irregularities and errors. The SIDIF-CONOSCO provides detailed information about the reported cases such as: the authority that identified the fraud or irregularity, the funds involved (EU or national/regional), the type of error (e.g. fraud, suspicion of fraud), the programming period, the amounts recovered/to be recovered, the ongoing litigation

<sup>194</sup> COM (2020) 363 final. p.12

<sup>195</sup> OLAF report 2019 p. 32.

<sup>196</sup> [GP fiche\\_17.pdf \(europa.eu\)](https://ec.europa.eu/euipo/gp/fiche_17.pdf)

procedures, precautionary measures undertaken, data on the beneficiary and other statistical data. The database is a useful tool for monitoring public procurement audit errors and irregularities, as well as to perform analysis and identify trends.

Another database is the **SIAF (Anti-Fraud Information System)**, which is used by the operational departments of the Guardia di Finanza. It is a business intelligence tool, systematically consulted, which contributes to the initial direction of the work of the departments, that, equally systematically, corroborates the info-operational and investigative elements which, as usual, feed operational initiatives with all other available databases (including those from police, judicial background, etc.).

Other databases have been developed in specific sectors. For instance, in the agricultural sector, the **national Paying Agency (AGEA)** has set up a national database ("Registro Nazionale Debitori di AGEA Coordinamento") that collects information about suspended requests for payment (through national and EU funds) because of suspected irregularities and fraud. Recently, AGEA and the Paying Agency for the Calabria Region (ARCEA) have also launched an anti-fraud system that aims to strengthen the anti-fraud prevention and coordination action in specific Regions with the highest number of suspended payments for irregularities<sup>197</sup> by developing digital tools that will help detect fraudulent practices and corruption.

Looking at the future challenges and the evolution of the criminal activities in the territory, it is **key for Italy to further develop innovative anti-fraud tools** in order to allow managing authorities to ensure the effective implementation of funding programmes. Access to additional information - for instance, regarding perspective final beneficiaries and past/pending criminal records- is regarded as a key step of the prevention strategy and to avoid cases of 'double funding'.<sup>198</sup>

### Estimates of the loss to the EU budget

During the 2014-2016 period, **Italy reported 644 irregularities and fraud cases relating to ERDF and the ESF funds**. The table below shows the amount of EU funding affected by these cases per type of fund.

| Fund  | COLAF Report 2014 | COLAF Report 2015 | COLAF Report 2016 |
|-------|-------------------|-------------------|-------------------|
| ERDF  | €49.637.000       | €199.529.572      | €45.460.693       |
| ESF   | €45.460.693       | €51.741.629       | €1.709.299        |
| Other | €560.000          | €2.774.804        | €2.980.876        |
| Total | €58.803.000       | €254.046.005      | €50.150.868       |

Table 1 COLAF Reports (2014, 2015, 2016)

During the same period (2014-2016), the cases of misappropriation/ unduly requested amounts from the CAP accounted for EUR735.690.609.<sup>199</sup> The substantial public incentives provided by the CAP (reformed every 7 years) absorb about 45% of the EU budget. For the seven-year period 2014-2020, Italy has benefited from about 7 billion euros per year. Organized crime has progressively turned its attention towards the agricultural and food production entrepreneurial system and has become a **real economic and business crime**.

The IMS provides recent data about the irregularities detected in relation to the Structural Funds, CAP and the area of traditional own resources. The CAP is traditionally a critical sector for the number of reported irregularities. In 2019, approximately 65% of detected irregular and

<sup>197</sup> Basilicata, Campania, Puglia, Sicilia, Calabria.

<sup>198</sup> COLAF 2019 Annual Report.p.3.

<sup>199</sup> <https://www.senato.it/service/PDF/PDFServer/BGT/01068773.pdf>.

fraudulent cases were related to the agricultural sector with a slight increase (two percentage points) compared to 2018. In terms of financial impact, the cases reported in relation to the CAP account for almost 52% of total impact. The Cohesion policy has also been severely impacted from irregularities and fraud cases in Italy. The total value of irregularities is equal to **EUR 16.117.839** and represents the sum of the 103 reports entered in the IMS database during 2019. In line with the overall trend described in the declining number of reports, also in financial terms the amount reported shows a substantial decrease compared to 2018 equal to -74%. Italy is also below the European average (about EUR 30 million). Looking at the breakdown by type of fund, the ERDF has reported the highest number of irregularities (71%).<sup>200</sup>

### **Estimated impact of VAT fraud<sup>201</sup>**

The 'Report on the Non-Observed Economy' quantifies a VAT tax gap of €33.259 billion in 2018, a decrease of €3.664 billion compared to 2017. This reduction can be attributed both to the split payment mechanism, which provides for the payment of VAT by the public administration for goods and services purchased by it, and to the gradual entry into force of the generalised electronic invoicing obligation.

In-depth analysis of STRs and tax and judicial police investigations confirm the versatility of tax offences, which are often instrumental in pre-constituting funds to be re-injected into the economy or in facilitating more complex criminal conduct. In fact, connections are not infrequently ascertained between the offences in question and contexts of organized crime or with money laundering, extortion, corruption, bankruptcy and undue receipt of public financing.

The action of the Corps is primarily oriented towards intra-Community VAT fraud, carried out with the involvement of entities which often lack effective organisation or economic consistency (so-called missing traders), set up *ad hoc*, usually in systems characterised by more flexible regulations and less rigid controls, and put into liquidation or ceased shortly after their establishment.

These missing traders, taking advantage of the principle that in intra-Community trade VAT is applied in the State of destination, purchase goods from a person residing in another European country without applying tax and, subsequently, resell them to another national operator. This supply takes place at prices lower than market prices and is linked to the conduct of the supplying missing trader which does not pay the VAT charged to the transferee, with serious prejudice to both the tax authorities and competition.

The fraud described above may also be more complex, since the goods which have been the subject of an intra-Community purchase, in addition to entering the domestic market, may, after several steps, be resold to the first supplier resident in an EU country, following a circular pattern ("carousel fraud"): in this case, the illicit advantage may also consist in the creation of a credit position for VAT purposes for the economic trader who resells abroad, as a result of the non-taxable treatment related to intra-Community supplies. Moreover, the scheme could involve several corporate structures (so-called 'buffer' companies) in order to create a network of intermediate companies, aimed at making controls and recovery of evaded tax more difficult.

A further way of carrying out the fraud in Italy, involves traders who qualify as regular exporters, issuing falsified letters of intent in order to benefit from the non-taxable treatment applicable to their purchases, in the absence of the relevant conditions. This undue benefit allows the false usual exporter, in the subsequent supplies made with national operators, to offer prices lower than the average market prices; moreover, he behaves like a missing trader and does not pay any

<sup>200</sup> COLAF 2019, Annual Report,p53.

<sup>201</sup> Contribution from the Guardia di Finanza.

amount of VAT, collecting part of the tax applied to those supplies as illegal income recognised for his role in the fraudulent<sup>202</sup> scheme.

From a market point of view, fraud can concern any type of product. However, the goods most frequently introduced into fraudulent circuits, in addition to being of high unit value and usually non-perishable, are often of a technological nature and, more generally, easily transportable and widely consumed (e.g. motor vehicles, fuel and oil products, computer products, mobile phones, household appliances); moreover, these goods are mainly subject to ordinary VAT rates, so as to allow the fraudsters to maximise the illegal profit.

Aggregated information on fraud and irregularities affecting European financial interests is available in the OwnersWeb application, for the 'own resources' sector and the I.M.S. for budget expenditure.

### **Estimated impact of fraud in the Italian agricultural sector<sup>203</sup>**

The Tables below provide data on the investigations carried out by the Carabinieri Command for the Protection of Agri-foodstuffs in the three-year period 2018-2020.

| <b>Year 2018</b>                                   |          |
|--|----------|
| Controlled agricultural enterprises                | 277      |
| Companies proposed for suspension of EU aid        | 4        |
| Contributions unduly received in €                 | € 2.135m |
| Value of assets seized in €                        | € 4.007m |
| Value of confiscated goods in €                    | € 5.000m |
| Criminal violations                                | 53       |
| Administrative Violations                          | 3        |
| Arrested   | 11       |
| Reported   | 61       |
| Persons involved in Organized Crime investigations | 32       |

| <b>Year 2019</b>                            |     |
|---|-----|
| Controlled agricultural enterprises         | 278 |
| Companies proposed for suspension of EU aid | 4   |
| People reported to the Court of Auditors    | 2   |

<sup>202</sup> In order to counter these offences, the 2021 Budget Law (see paragraphs 1079 to 1081 and 1083 of Article 1 of Law No. 178 of 30 December 2020) provides for the performance by the tax authorities of both specific risk analyses, to verify the compliance with the conditions established to acquire the status of usual exporter, and substantive control activities, aimed at preventing the issuance and invalidating unlawful declarations of intent. If such controls reveal irregularities, the person in question is prevented from submitting new declarations of intent to the Revenue Agency. In addition, an automatic mechanism has been established to block the issuance of electronic invoices in suspension of taxation by suppliers of usual exporters who have sent to the Agency declarations of intent recognised as invalid, based on the circumstance that the details of the protocol of receipt of the declarations of intent by the IT systems of the Agency must be reported on the suppliers' invoices. In particular, if the supplier, in order to issue an electronic invoice without the application of VAT, communicates to the interchange system the protocol number of an invalidated declaration of intent (as transmitted by a person without the status of habitual exporter), the interchange system itself does not issue such an invoice. The operating modalities of the above arrangements will be established by a provision of the Revenue Agency Director.

<sup>203</sup> Contribution from the Carabinieri Command for the Protection of Agri-foodstuffs.

|  |           |
|--|-----------|
| Contributions unduly received in €                 | € 21.445m |
| Value of assets seized in €                        | € 1.281m  |
| Criminal violations                                | 160       |
| Administrative Violations                          | 22        |
| Arrested   | 1         |
| Reported   | 175       |
| Persons involved in Organized Crime investigations | 127       |

### Year 2020

|  |           |
|--|-----------|
| Controlled agricultural enterprises                | 275       |
| Companies proposed for suspension of EU aid        | 46        |
| People reported to the Court of Auditors           | 14        |
| Contributions unduly received in €                 | € 5.922m  |
| Value of assets seized in €                        | € 14.727m |
| Criminal violations                                | 192       |
| Administrative Violations                          | 18        |
| Arrested   | 28        |
| Reported   | 178       |
| Persons involved in Organized Crime investigations | 47        |

### Future perspectives<sup>204</sup>

The complex situation that Italy is facing following the epidemiological emergency from COVID-19 constitutes a scenario of undoubted interest for big economic-financial organized crime and for the "business-based" mafias. During the COVID-19 pandemic, the mafias have shown, once again, **their entrepreneurial side**, attempting to infiltrate both the productive sectors benefitting from the pandemic and the relevant restrictive measures, as well as the sectors rendered more vulnerable due to the strong decline of sales and the cash crisis.

In this complex scenario, the **Guardia di Finanza has remodelled the deployment of its resources**, directing them towards combating possible illegal and fraudulent conduct related to the health emergency and the risk of infiltration of organised crime into the economic fabric.

In fact, in the initial phase of the pandemic, the service action of the Units of the Corps was directed to stem, also on the side of the economic-financial criminality, the increase of speculative phenomena that were gravely inappropriate, anti-competition and criminally relevant, concerning,

<sup>204</sup> Contribution from the Guardia di Finanza.

for example, the production, importation and marketing of individual protection devices and hygienic products, also associated and favoured by cases of corruption and embezzlement.

Furthermore, the **Corps has immediately reinforced the investigative initiatives to detect possible signs** of penetration by organized crime into the economic fabric, directing the investigation activities towards contexts which, on based on the preventive analysis of the illicit phenomena present in the single territorial realities, were marked by concrete and qualified risk profiles.

Therefore, in a scenario of generalized difficulty, there is a concrete risk that the organizations may diversify the laundering of the capitals derived from the traditional illicit activities, not only re-employing them in the expanding productive sectors and in the essential services which, during the pandemic, have not interrupted their activities, such as, for example, waste disposal, transport and sanitation, but also in the trade sectors that have suffered the most significant losses in turnover.

At the same time, the extent of the public intervention in favour of the productive and commercial sectors affected by the anti-Covid measures makes it essential, for the Guardia di Finanza, to continue to monitor the economic-financial system so as to avoid that the mafias can illicitly drain public resources, both national and European, destined to the future needs related to the relaunching of the national economy, through modi operandi similar to those used by economic-financial crime to defraud the Treasury, such as, for example, the production of false tax documentation and the setting up of fictitious companies to benefit from the many forms of economic support. As for the of the protection of the expenditure, the Guardia di Finanza has given further impulse to the control activities, orienting them towards the countering of cases of undue receipt, fraud and embezzlement to the detriment of the most important measures of financial support.

Examples of this include **non-repayable grants, bank loans backed by state guarantees, employment protection measures and wage subsidies or one-off allowances** granted to certain categories of enterprises, employees and the self-employed affected by the crisis.

In the perspective of **Next Generation EU**, the Guardia di Finanza, as a police force responsible for preventing, detecting and suppressing offences to the detriment of the EU budget, will play important role in the national anti-fraud system. In this regard, the National Recovery and Resilience Plan provides for a verification system that is broader and more elaborate than the ordinary and existing administrative controls, within which the control activities are the responsibility of the Ministry of Economy and Finance and of the central Administrations in charge of measures. In addition, specific audit activities are carried out by the Audit Board of the PNRR, established at the MEF.

In this context, the need is envisaged to **conclude specific memoranda of understanding** with, among others, the Guardia di Finanza, in order to strengthen the aforementioned audit activities.

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## Latvia

### Scale of the problem and types of organised crime most common in Member State

Latvia's strategic geographical location, at the crossroad between Asia and Europe, makes this Member State attractive to regional organised crime groups wishing to carry out smuggling operations between the two continents, particularly in relation to drugs, stolen weapons, human trafficking, and contraband activities including alcohol and cigarettes<sup>205</sup>.

Feedback gathered from stakeholders indicates that the most common type of fraudulent activities committed by organised crime in Latvia and affecting the EU budget are falsification of documents and the funding of products, programmes, projects and/or activities not eligible under EU funds.

According to the European Anti-Fraud Office (OLAF), there were **36 fraudulent and 96 non-fraudulent irregularities reported between 2015 and 2019**<sup>206</sup>. This places Latvia well below the EU-27 average of 1,693 irregularities detected per Member State.

In 2019, there was one irregularity reported as fraudulent regarding agricultural policy amounting to a potential loss of €19,302. 10 further irregularities were also reported as fraudulent in funds dedicated to cohesion policy and fisheries, representing €9,475,407<sup>207</sup>. It should be noted that these figures are likely to be undercounts as several stakeholders consulted have raised doubts on the accuracy of the above-mentioned figures.

More recent data shared by the Latvian AFCOS revealed that **in 2020, several fraudulent irregularities were reported amounting to a sum of €5,543,226**, of which the following breakdown was provided:

- €3,468,980 affecting the European Regional Development Fund;
- €218,381 affecting the European Social Fund;
- €1,259,702 affecting the European Agricultural Fund for Rural Development; and,
- €596,163 affecting the European Maritime and Fisheries Fund.

The following overview of the number of cases affecting the EU budget for the period 2013-2020 was provided by the AFCOS:

| Action undertaken   | Number of cases             |      |      |      |      |      |      |      |
|---|-----------------------------|------|------|------|------|------|------|------|
|   | 2020                        | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 |
| Applications received by the State Police and by the Corruption Prevention and Combating Bureau | 17                          | 22   | 12   | 10   | 35   | 26   | 40   | 25   |
| Decision to start criminal investigation  | 7                           | 15   | 10   | 3    | 19   | 24   | 32   | 11   |
| Rejection to start criminal investigation   | 4                           | 3    | 5    | 0    | 5    | 12   | *    | *    |
| Appeals   | 2                           | 0    | 2    | 0    | -    | 3    |      |      |
|   | * information not available |      |      |      |      |      |      |      |

<sup>205</sup> <https://www.interpol.int/en/Who-we-are/Member-countries/Europe/LATVIA>

<sup>206</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>207</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

## Legal Frameworks to tackle organised crime, policies and strategies

The PiF directive has been transposed into Latvian criminal law<sup>208</sup>.

A second national antifraud strategy has been approved by the Latvian government for the period 2020-2022 and includes following main lines of action<sup>209</sup>:

- Exchange of information and cooperation between AFCOS, competent authorities and OLAF.
- Representation of AFCOS and participation in events and meetings organised by OLAF and the European Commission.
- Measures to improve the co-operation among Latvian authorities
- Fostering of the cooperation with the European Public Prosecutor's Office
- Implementation of the law "On Support to the European Anti-Fraud Office".
- Development of a manual of procedures for the effective implementation of the law on support for the European Anti-Fraud Office
- Raising awareness of the competent authorities and the public about the law "On Support to the European Anti-Fraud Office".

Other provisions include preventive measures, public awareness promotion and capacity building including the development and implementation of e-learning modules<sup>210</sup>.

The current national antifraud strategy is mostly focusing on the cooperation and exchange of information between different institutions involved in the fight against fraud thus strengthening the national measures implemented separately by each institution.

In addition, Latvian law enforcement agencies are also involved both in multilateral and in bilateral activities against organised crime, including the investigation of cases. Latvia takes part in a number of Europol programmes, such as "EEOC TOP 100" (Eastern Europe organised crime), "Sustrans" (money laundering), "Soya" (euro forgery), "Copy" (copyright infringements) etc<sup>211</sup>.

Latvia also participates in the task force made up of Baltics countries collaborating against organised crime. "The Baltic Sea Task Force" (BSTF) is a platform where all the EU Member States from the region, as well as Iceland, Norway, Russia, the European Commission, Europol, and Interpol cooperate in the fight against organised crime. BSTF thus supports its participating countries, their governments and enforcement authorities in delivering a coordinated set of activities to meet both the operational and political needs in preventing and combating crime in the Baltic Sea region.

## Institutional framework and role played by national authorities

According to stakeholders consulted as part of this study, the main actors involved in the fight against organised crime affecting the EU budget are the State Police and the Corruption Prevention and Combating Bureau, who jointly undertake investigations of criminal cases in relation to EU finances.

<sup>208</sup> <https://likumi.lv/ta/en/en/id/88966-criminal-law>

<sup>209</sup> <https://likumi.lv/ta/id/315061-par-eiropas-savienibas-finansu-interesu-aizsardzibas-koordinacijas-dienesta-afcos-darbibas-strategiju-un-pasakumu-planu>.

<sup>210</sup> [https://ec.europa.eu/antifraud/sites/default/files/11012017\\_afcos\\_latvia\\_operational\\_strategy\\_approved\\_en.pdf](https://ec.europa.eu/antifraud/sites/default/files/11012017_afcos_latvia_operational_strategy_approved_en.pdf)

<sup>211</sup> Loskutovs, A. (2016). Transnational Organized Crime – Latvian Challenges and Responses. Connections: The Quarterly Journal. 15(3), 33-39.

The underpinning legal framework is mainly derived from Criminal Law<sup>212</sup> and Criminal Procedure Law<sup>213</sup>. Both of these law areas are also applied in relation to EU-funded projects, but do not foresee any specific provisions in relation to EU finances.

In addition, State Police and Corruption Prevention and Combating Bureau have their own policies and strategies aimed at tackling organised crime and fraud, but these do not specifically relate to EU finances.

### Estimates of the loss to the EU budget

The financial impact of fraud and other illegal activities affecting EU's financial interests in Latvia was estimated to amount to **over €9m in total expenditure and over €700,000 in revenue.**<sup>214</sup> However, it should be noted that these estimates are likely to be underestimates.

In addition, according to stakeholders consulted, the proportion of EU funding in Latvia that has been affected by fraud (including VAT fraud) and other criminal activity is monitored via fraud detection rates, calculated by OLAF. **The average detection rate in 2020 was 0.39% (from the eligible expenditure, including all EU funds) accounting for a sum of €5,543,226.**

Complementary figures were provided regarding the evolution of the fraud detection rate since 2007. For the programming period 2007-2013 the detection rate was 0.71%, which subsequently decreased in the following programming period (2014-2020) and reached 0.51%. Lastly, estimates for Rural Development Funds were also provided for the period stretching between 2016 and 2020 and amounted to 0.17%.

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## Luxembourg

### Scale of the problem and types of organised crime most common in Member State

Due to its financial position within the European Union, as well as central geographic position among other prominent Member States, Luxembourg is prone to forms of organised crime surrounding money laundering, fraud, drug crime, and motor vehicle trafficking.<sup>215</sup> On a contributor-based crime rating website, people using or dealing drugs was rated at 48.76/100 (moderate), while corruption and bribery were at 33.06/100 (low).<sup>216</sup>

As for public perception of crime and the efficacy of the judicial system, Luxembourg scores quite well. "In the latest Corruption Perceptions Index by Transparency International, Luxembourg scored 80/100, and ranked 5th in the European Union and 9th globally. Amongst the respondents, while 42% perceive corruption as widespread (EU average 71%), only 6% declared that corruption affects their daily life (EU average 26%). As regards business perception, 26% of companies perceive corruption as widespread (EU average of 63%) and 41% of companies believe that corruption is a problem when doing business (EU average 37%). 25% people consider that there are enough successful prosecutions to deter people from corrupt practices (EU average of 36%), while 57% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average of 31%)."<sup>217</sup>

### Legal Frameworks to tackle organised crime, policies and strategies

In terms of implementing a National Anti-Fraud Strategy, as of the 2019 PiF report, Luxembourg's was in preparation. "There is ongoing cooperation between national stakeholders and the competent Commission services. In addition, several managing authorities have already implemented internal policies describing the steps to follow in case of fraud detection. In cases of suspected fraud followed by an investigation, AFCOS is kept informed on the exchanges the managing authority has with OLAF and the Public Prosecutor's Office."<sup>218</sup>

To prevent the incidence of fraud, an alert system has been set up in the framework of Article 58 of regulation 1306/2013. This alert system "detects facts that may indicate fraud or attempted fraud."<sup>219</sup>

Article 506-1 of the Criminal Code sets out the definition and related matters surrounding money laundering, such as 27 predicate offences that would constitute money laundering. The public prosecutor is responsible for prosecuting such crimes, as is the Financial Intelligence Unit (FIU). For individuals convicted of money laundering offences, the penalties are imprisonment of one to five years, and/or a fine between €1,250 and €1.25 million. Imprisonment can increase to a period of 15-20 years if the offence was committed as part of an association or organisation.<sup>220</sup>

For bribery and corruption, Luxembourg ratified the OECD Anti-Bribery Convention in 2001, introducing relevant provisions into the Criminal Code. Luxembourg has also ratified several international conventions on anti-corruption from the EU, Council of Europe, and UN. Corruption is considered a criminal offence whether it is active (instigating a bribe) or passive (receiving a

<sup>215</sup> INTERPOL. (n.d.). *Luxembourg*. INTERPOL. [online] Available at: [interpol.int/Who-we-are/Member-countries/Europe/LUXEMBOURG](https://www.interpol.int/Who-we-are/Member-countries/Europe/LUXEMBOURG)

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<sup>219</sup> Ibid.

<sup>220</sup> Bena, M., Carmon, F., Thieltgen, B. (n.d.). *Financial Crime in Luxembourg: overview*. Thomson Reuters Practical Law. [online] Available at: [https://uk.practicallaw.thomsonreuters.com/w-020-0651?contextData=\(sc.Default\)&transitionType=Default&firstPage=true#co\\_anchor\\_a527292](https://uk.practicallaw.thomsonreuters.com/w-020-0651?contextData=(sc.Default)&transitionType=Default&firstPage=true#co_anchor_a527292)

bribe), but is specifically defined as a **predicate offence**, or a component of a more serious crime.

<sup>221</sup>

To safeguard the conduct of investigations, Luxembourg draws upon provisions from the European Court of Human Rights and the Criminal Procedure code. These include the rights of the accused, conditions under which an improper/invalid investigation can be confirmed, and the appeals process for criminal decisions.<sup>222</sup>

### Institutional framework and role played by national authorities

“The power of the **Minister of Justice** to order the prosecution of a specific case is not used in practice and is accompanied by safeguards. While the prosecution service is recognised as independent, the prosecution is exercised formally under the authority of the Minister of Justice.”<sup>223</sup>

In terms of government bodies, “the Ministry of Justice is the main authority in charge of policy coordination and overall corruption matters. Within the Ministry, an intergovernmental committee, the **Corruption Prevention Committee (COPRECO)**, acts as a consultative forum and supports the overall national policy to fight corruption. While there is no specialised anti-corruption prosecution authority as such, the **Economic and Financial section of the Prosecutor’s Office** has specific competences to investigate criminal cases of economic and financial nature, including corruption cases.”<sup>224</sup> Within this section is the **Financial Intelligence Unit (FIU)**, which, “with the Economic and Financial department investigate corruption-related offences stemming from financial crimes. As far as resources of the prosecution are concerned, shortages have been reported in the past year. Issues regarding insufficient resources are aggravated by the increasingly complex nature of financial crimes.”<sup>225</sup>

In an accompanying document to the 2019 PiF report, “Luxembourg reported that in addition to the general electronic customs clearance system and its rules engine applicable for electronic customs declarations, **Customs** deployed an IT solution (DAKOTA) especially dedicated to electronic risk analysis of structured pre-arrival consignment-level data related to low value shipments.”<sup>226</sup>

Luxembourg also reported that “the managing authority of the European Regional Development Fund (FEDER), **the Ministry of Economics**, the managing authority of the European Social Fund (ESF), the **Ministry of Labour**, as well as the **INTERREG programme, managed by the Ministry for Spatial Planning**, all implemented the ARACHNE tool” to manage fraud risk analysis.” In addition, “in 2016, following a fraud discovery, the Ministry of Agriculture, the managing authority for FEAGA and FEADER, created the ‘Procedure and Special Investigations service...’ whose mission is to prevent fraud cases.”<sup>227</sup>

Luxembourg has an **INTERPOL National Central Bureau (NCB)**, which is part of the International Relations Department and the national police force, and enables global police investigations involving Luxembourg. The head of the NCB is the Police Chief. It “enables police officers across

<sup>221</sup> Ibid.

<sup>222</sup> Ibid.

<sup>223</sup> European Commission. (2020). *2020 Rule of Law Report: Country Chapter on the rule of law situation in Luxembourg*. European Commission. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0315&from=EN>

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> European Commission. (2020). *Follow-up on recommendations to the 30th annual report on the protection of the Union’s financial interests and the fight against fraud – 2018*. European Commission. Available at: [https://ec.europa.eu/anti-fraud/sites/default/files/pif\\_report\\_2019\\_follow\\_up\\_recommendations\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_follow_up_recommendations_en.pdf)

<sup>227</sup> European Commission. (2020). *Follow-up on recommendations to the 30th annual report on the protection of the Union’s financial interests and the fight against fraud – 2018*. European Commission. Available at: [https://ec.europa.eu/anti-fraud/sites/default/files/pif\\_report\\_2019\\_follow\\_up\\_recommendations\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_follow_up_recommendations_en.pdf)

Luxembourg to detect, investigate and prevent the flow of illicit goods along trafficking routes in and around the country.”<sup>228</sup>

### **Estimates of the loss to the EU budget**

According to the 2019 OLAF report, in Luxembourg, 2 fraudulent and non-fraudulent irregularities were detected in the ESIF area between 2015 and 2019. These resulted in a financial impact of 0.02% of payments.<sup>229</sup>

<sup>228</sup> INTERPOL. (n.d.). *Luxembourg*. INTERPOL. [online] Available at: [interpol.int/Who-we-are/Member-countries/Europe/LUXEMBOURG](https://www.interpol.int/Who-we-are/Member-countries/Europe/LUXEMBOURG)

<sup>229</sup> OLAF. (2020). *The OLAF report 2019*. European Commission. Luxembourg: Publications Office of the European Union. Available at: [https://ec.europa.eu/anti-fraud/sites/default/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2019_en.pdf)

## Malta

### Scale of the problem and types of organised crime most common in Member State

Due to Malta's geographic position—at the crossroads between European, African and Asian markets—it is especially prone to organised crime networks acting within its borders. According to Interpol, “the most widespread crimes to affect the region are human trafficking, people smuggling and drug crime...engaging also in money laundering and fraud.”<sup>230</sup> While Malta often falls below the EU28 average on major crime categories, the degree of fraud-related crimes that take place within its borders is still significant. According to interviewees from the **Financial Intelligence Analysis Unit** (FIAU), the most common cases involve VAT fraud carousels. The IRD built upon this point, stating that these perpetrators acted primarily as conduit companies—those that participate in transactions connected to tax evasion in another member state—in triangular transactions where the goods were never actually delivered to Malta.

Other forms of organised crime that affect EU funding include forgery, insider trading and market manipulation, cybercrime, embezzlement, drug trafficking, dishonest business dealings, degeneration of the competition system, and environmental crime. The FIAU added a caveat that this list is based on information from reporting entities, and may not be conclusive underlying offences affecting EU funding.

Regarding general corruption, “Malta scores 54/100 in the Transparency International Corruption Perception Index and ranks 14th in the EU and 50th globally. 89% of Maltese respondents to a Eurobarometer survey perceive corruption in Malta to be widespread (EU average 71%) and 54% of people feel personally affected by corruption in their daily lives (EU average: 26%). As regards businesses, 76% of companies consider corruption to be widespread (EU average 63%), while 60% of companies consider that corruption is a problem when doing business (EU average: 37%). At the same time, 37% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average: 36%) while 45% of companies consider that people and businesses caught for bribing a senior official are appropriately punished (EU average: 31%).”<sup>231</sup>

These ratings point to a wider trend of mistrust, deceit and insufficient preventative measures. Between 2017 and 2018, fraud increased by 31%, or by 245 additional cases. The total for 2018 was 1,032 cases of fraud, the most common category being fraudulent gains. In terms of victims, the most common demographics were 60+ and male.<sup>232</sup>

The FIAU carried out a strategic analysis on organised crime using information submitted to its team between 2018 and 2020. This analysis demonstrated that Maltese bank accounts and e-money accounts were used in the layering process to create distance between the proceeds and the source/jurisdiction; in other words, these accounts were used to make it harder to identify the proceeds of a crime. The transactions examined “do not make economic sense, as funds have been unnecessarily routed through different jurisdictions.” In some cases, loans are provided as justification for unusual transactions, or as an explanation for moving funds between jurisdictions, “as the companies have no commercial activity and are ultimately controlled by the same person.” The number of suspicious reports per year was provided:

2018: 23; 2019: 100; 2020: 67; 2021: 57.

<sup>230</sup> Interpol. (n.d.). *Malta*. Interpol. Available at: <https://www.interpol.int/en/Who-we-are/Member-countries/Europe/MALTA>

<sup>231</sup> European Commission. (2020). *2020 Rule of Law Report: Country Chapter on the rule of law situation in Malta*. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0317&from=EN>

<sup>232</sup> Formosa, S. (2019). *CrimeMalta Annual Report 2018*. University of Malta. DOI: 10.13140/RG.2.2.35875.50724

Interviewees stated that two investigations in this area have been conducted; one resulted in criminal prosecution and the offender was found guilty. The Executive Police carried out investigations of offences.

### Legal Frameworks to tackle organised crime, policies and strategies

In terms of legal frameworks, the Maltese Criminal Code<sup>233</sup> has several articles defining and outlining punishment protocol for various forms of organised crime. Some articles are tied to cases of fraud. For example, Section 28H makes a provision for victims of theft or fraud, where the offender must “make restitution to the injured party of anything stolen or knowingly received or obtained by fraud or other unlawful gain”. Section 191 addresses cases of fraudulent bankruptcy, in which a trader conceals or falsifies his books or assets, simulates fictitious debts, or “fraudulently acknowledges himself debtor of any sum which is not due.”

Most important is Subtitle III, which contains articles all defining types of fraud, as well as the duration of imprisonment or other forms of punishment to fit the crimes. Most relevant to this study are Section 293 (**Misappropriation**), 295 (**Insurance Fraud**), Section 298 (**Commercial Fraud**), Section 298A (**Fraudulent access to telecommunications systems**), Section 298B (**Violation of copyright**), Section 307 (**Excise Fraud**), Section 308 (**Obtaining money or property by false pretences**), and Section 309 (**Other cases of fraudulent gain**).

Finally, Section 310 delineates the scale of punishment according to the amount of damage incurred in Euros.

In April 2020, the President officially instated an Amendment (No. 2) to the Criminal Code, containing key updates to provisions within the Code. Under Subtitle III, this Amendment transposes the provisions of the PiF directive. According to this amendment, “in respect of revenue arising from VAT own resources...offences against the common VAT system shall be considered to be serious where the intentional acts...are connected with the territory of Malta and another Member State or Member States of the European Union and involve a total damage of at least ten million euro (€10,000,000).”<sup>234</sup> Those who commit fraud affecting the EU’s financial interests “shall be liable, on conviction to imprisonment for a term of six (6) months to four (4) years.” This applies to both civilians and, as outlined in 190D and 190E, public officials. The types of fraud in this respect include:

- The use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the European Union budget or budgets managed by the European union or on its behalf;
- Non-disclosure of information in violation of a specific obligation;
- The misapplication of such funds or assets for purposes other than those for which they were originally granted.

Furthermore, this amendment outlines that where fraud is committed to benefit a corporation, either by “a person acting individually or as part of an organ of the body corporate”, the body will be liable to a fine of between €20,000 and €2,000,000.<sup>235</sup>

In the follow-up on recommendations from the 2018 PiF report, Malta stated that it had adopted a “National Anti-fraud and Corruption Strategy”, tabled in Parliament in 2008. It also confirmed that this strategy has taken into account the need to structure to coordination between administrative and criminal checks and investigations. Malta has fully implemented the recommendation to strengthen its risk analysis to detect irregularities and fraud, and tailored this

<sup>233</sup> Government of Malta. (ed. 2015). *Criminal Code*. <https://justice.gov.mt/en/pcac/Documents/Criminal%20code.pdf>

<sup>234</sup> Vella, G. (2020). *ACT No. XVIII of 2020: AN ACT to further amend the Criminal Code, Cap. 9*. Government of Malta. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=NIM:282908>

<sup>235</sup> Ibid

analysis to different types of expenditure.<sup>236</sup> According to interviewees, this Strategy will be revised in 2021.

In terms of money laundering, Malta has criminalized this act via the Prevention of Money Laundering Act, Cap. 372, established in 1994. It defines money laundering primarily as “the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity...for purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity,” and provides additional definitions for different scenarios and actors. It also states that anyone found guilty of money laundering shall be liable to a of up to €2,500,000 and/or imprisonment of up to 18 years.<sup>237</sup> There is also the Prevention of Money Laundering and Funding of Terrorism Regulations (Subsidiary Legislation 373.01). These have transposed the Fourth AML Directive (Directive (EU) 2015/849) and the Fifth AML Directive (Directive (EU) 2018/843). According to interviewees, the changes introduced by the Sixth AML Directive are already in Maltese Law.

According to interviewees, the eventual transposition of Directive (EU) 2019/1153 will extend the FIAU’s ability to exchange information, including with national law enforcement agencies and EUROPOL, and enable the FIAU to exchange any information it holds, regardless of whether it is for a money laundering investigation or an investigation on any crimes against the EU’s financial interests. Interviewees also pointed out another recent legislation, The Proceeds of Crime Act, Act no. V of 2021, “which provides for the identification, tracing, freezing and confiscation of proceeds of crime including laundered property, income and other benefits derived from such proceeds held by criminal defendants, property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations”. It also establishes the **Asset Recovery Bureau** as an independent body for non-conviction based confiscation of proceeds of crime and other related matters.

### Institutional framework and role played by national authorities

According to the 2020 Rule of Law Report on Malta, “the duration of court proceedings remains among the longest in the EU...The average length of first-instance money laundering cases (more than 2,000 days) is also a particular concern and continued to deteriorate in 2018.”<sup>238</sup> Long trials may connote inefficiency in dealing with crimes, leaving victims without compensation or other outcomes unreported for significant periods of time. However, Malta has experienced a recent shift in responsibility within its judicial system. Before, “the majority of prosecutions [before the Inferior Courts] was carried out by the police, while the office of the Attorney General was prosecuting directly only the most serious crimes [before the superior courts]. Moreover, the Attorney General was combining prosecutorial functions with the role of legal adviser to the Government, representing the State in judicial proceedings, which raised concerns regarding the separation of powers. In 2019, the Government announced its intention to create a separate Prosecution Service, responding to Venice Commission recommendations. As a first step, the **Office of State Advocate** was created to take over the non-prosecutorial functions that the Attorney General performed in the past. The State Advocate acts as the legal adviser of the Government. The Attorney General will be responsible for the prosecution of all offences. The

<sup>236</sup> European Commission. (2020). *Follow-up on recommendations to the 30th annual report on the protection of the Union’s financial interests and the fight against fraud – 2018*. European Commission. Available at: [https://ec.europa.eu/anti-fraud/sites/default/files/pif\\_report\\_2019\\_follow\\_up\\_recommendations\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_follow_up_recommendations_en.pdf)

<sup>237</sup> Government of Malta. (1994, ed. 2020). *Chapter 373: Prevention of Money Laundering Act*. Government of Malta. Available at: <https://legislation.mt/eli/cap/373/eng/pdf>

<sup>238</sup> European Commission. (2020). *2020 Rule of Law Report: Country Chapter on the rule of law situation in Malta*. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0317&from=EN>

Government is planning to table a Bill in Parliament in October 2020 to extend the prosecutorial functions of the Attorney General to less serious offences as well.”<sup>239</sup>

Within the government, there are specialised tribunals, such as the Consumer Claims Tribunal, The Information and Data Protection Appeals Tribunal, and the Competition and Consumer Appeals Tribunal.<sup>240</sup> **The Anti-Fraud Coordination Service (AFCOS)** is located in the Internal Audit and Investigations Department (IAID). It “conducts internal audits and investigations within all governmental departments and agencies.”<sup>241</sup>

**The Permanent Commission Against Corruption (PCAC)** “is responsible for corruption prevention and administrative inquiries into corruption-related reports...Under the previous system, the PCAC reported its investigation findings to the Minister of Justice and the law did not require follow-up enforcement or prosecution...the new legislation foresees that, where in the opinion of the PCAC, the conduct investigated is corrupt or connected with or conducive to corrupt practices, the report of the results of the investigation shall be transmitted to the Attorney General.”<sup>242</sup>

Meanwhile “the **Ombudsman** has the function to investigate actions taken by the Government or any other authority as provided by law, and may conduct investigations on his own initiative or on the basis of a complaint.”

**The Malta Police Force (MPF)** is responsible for law enforcement and, inter alia, crime prevention and crime investigation on the main island of Malta and its neighbouring islands Gozo and Comino. MPF is headed by a Commissioner of Police and operates under the command of the Ministry for Home Affairs and National Security.”<sup>243</sup>

Within the police force, there are two relevant subdivisions: the **Economic Crimes Unit** was “set up in the mid-1980s and was originally known as the Fraud Squad...The Squad is responsible to investigate crimes such as fraud, misappropriation, forgery, embezzlement, bounced and stolen/forged cheques, plastic card fraud, foreign counterfeit currency, usury, intellectual property rights infringements, VAT fraud and misappropriation cases, computer and internet fraud, extortion and money laundering amongst other related crimes.”<sup>244</sup>

The **Cyber Crimes Unit** is a section within the police force that “provides technical assistance in the detection and investigations of crime wherein the computer is the target or the means used...in coordination with the Community and Media Relations Unit, members of the Cyber Crime Unit regularly visit schools, youth organisations, local councils and other activities held in the community to promote responsible internet use as well as provide tips on how to lessen the chance of being victimised over the Internet.”<sup>245</sup>

The Prevention of Money Laundering Act establishes a **National Co-ordinating Committee on Combating Money Laundering and Funding of Terrorism** (Article 12A), which would draft, implement and review national policies and strategies to combat these crimes. The Committee would be comprised of the Governor of the Central Bank of Malta, the Commissioner for Revenue, the Chairman of the Malta Financial Services Authority, the Chairperson of the Malta Gaming

<sup>239</sup> European Commission. (2020). *2020 Rule of Law Report: Country Chapter on the rule of law situation in Malta*. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0317&from=EN>

<sup>240</sup> European Commission. (2020). *2020 Rule of Law Report: Country Chapter on the rule of law situation in Malta*. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0317&from=EN>

<sup>241</sup> European Commission. (2020). *2020 Rule of Law Report: Country Chapter on the rule of law situation in Malta*. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0317&from=EN>

<sup>242</sup> European Commission. (2020). *2020 Rule of Law Report: Country Chapter on the rule of law situation in Malta*. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0317&from=EN>

<sup>243</sup> Interpol. (n.d.). *Malta*. Interpol. Available at: <https://www.interpol.int/en/Who-we-are/Member-countries/Europe/MALTA>

<sup>244</sup> The Malta Police Force. (n.d.). *Economic Crimes Unit*. The Malta Police Force. [online] Available at: <https://pulizija.gov.mt/en/police-force/police-sections/Pages/Economic-Crimes-Unit.aspx>

<sup>245</sup> The Malta Police Force. (n.d.). *Cyber Crime Unit*. The Malta Police Force. [online] Available at: <https://pulizija.gov.mt/en/police-force/police-sections/Pages/Cyber-Crime-Unit.aspx>

Authority, Commissioner of Police, the Attorney General, the Chairman of the Unit, the Chairperson of the Asset Recovery Bureau, and Permanent Secretaries from the following Ministries: Finance, Home Affairs, and Justice.<sup>246</sup>

This Act also establishes the **Financial Intelligence Analysis Unit**, a government agency that has the following functions:

- Receiving reports of transactions or activities suspected to involve money laundering or funding of terrorism or property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity. Also analysing these reports alongside additional information.
- Sending these reports to the Commissioner of Police
- Monitoring compliance by subject persons and to cooperate and liaise with any authority in or outside Malta having supervisory or regulatory functions to ensure such compliance.
- Gathering information on the financial and commercial activities in Malta for analytical purposes to detect areas of activity that may be vulnerable to money laundering.
- Compiling statistics and records, disseminating information, making recommendations and issuing guidelines and advice relevant to preventing, detecting and investigating money laundering.
- Promoting the training of, and providing training for, those working in prevention of these crimes.
- Providing assistance, physical or legal, and establishing effective measures and programmes to prevent money laundering.
- Preparing annual reports on its activities<sup>247</sup>

The FIAU has access to the centralised bank account register, which enables it to conduct extensive financial analyses. According to interviewees from the FIAU, criminal activity should result in a Suspicious Transaction Report (STR). An STR that presents evidence that the case may be related to organised crime and/or fraud would result in the STR being prioritised for more in-depth consideration. If an analysis of the STR establishes reasonable grounds to suspect proceeds of crime, an analytical report is transmitted to the Police for further investigation. An STR presenting cross-border elements is shared with the Financial Intelligence Units of other Member States, as well as with other law enforcement agencies that may be conducting a money laundering investigation.

The FIAU established a **Financial Intelligence Reporting Partnership** with the six largest credit institutions in Malta. This committee serves as a platform for the joint analysis of large scale and complex money laundering/financial crime cases and facilitates the gathering and sharing of intelligence. In addition, the **Financial Crime Task Force (FCTF)**, comprised of the FIAU, Malta Police Force, and Malta Security Services, conducts joint investigation of high-profile, complex money laundering cases and to pursue and prosecute these cases in a more timely manner. Additional participants in the FCTF include representatives from foreign law enforcement authorities (such as the US, Italy, UK, and EUROPOL). This helps reflect the cross-border nature of such crimes.

<sup>246</sup> Government of Malta. (1994, ed. 2020). *Chapter 373: Prevention of Money Laundering Act*. Government of Malta. Available at: <https://legislation.mt/eli/cap/373/eng/pdf>

<sup>247</sup> Government of Malta. (1994, ed. 2020). *Chapter 373: Prevention of Money Laundering Act*. Government of Malta. Available at: <https://legislation.mt/eli/cap/373/eng/pdf>

Within the Ministry of Finance, the **Tax Compliance Unit** is responsible for addressing tax evasion and tax fraud. Its work complements the investigative functions of the VAT, Income Tax, Customs Department, and Department for Social Security.<sup>248</sup>

### Estimates of the loss to the EU budget

According to the 2019 OLAF report, in Malta, 75 fraudulent and non-fraudulent irregularities were detected in the ESIF area between 2015 and 2019. These resulted in a financial impact of 2.57% of payments.<sup>249</sup> In terms of Traditional Own Resources, or customs duties, between 2015 and 2019, only 4 irregularities were detected, with a financial impact of 0.74% of TOR collected.<sup>250</sup>

According to the 2019 PIF report, “Malta did not communicate any fraudulent case exceeding an amount of EUR 10,000” in 2019.<sup>251</sup>

In the follow-up to the most recent PiF report, Malta stated it did not make any assessment of the impact of its National Anti-Fraud Strategy on protecting the EU’s financial interests from fraud.<sup>252</sup>

The FIAU informed us that while it holds data on individual cases that may indicate the total turnover of activity carried out in bank accounts, these figures do not necessarily equate the amount of EU funding that has been affected. Money laundering cases, for example, involve a comingling of funds that can obscure which funds directly affect EU funds.

<sup>248</sup> Office of the Commissioner for Revenue. (n.d.). *Tax Compliance Unit*. Gov.mt. [online] Available at:

<https://cfr.gov.mt/en/inlandrevenue/tcu/Pages/Tax-Compliance-Unit-%28TCU%29---About-Us.aspx>

<sup>249</sup> OLAF. (2020). *The OLAF report 2019*. European Commission. Luxembourg: Publications Office of the European Union. Available at:

[https://ec.europa.eu/anti-fraud/sites/default/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2019_en.pdf)

<sup>250</sup> OLAF. (2020). *The OLAF report 2019*. European Commission. Luxembourg: Publications Office of the European Union. Available at:

[https://ec.europa.eu/anti-fraud/sites/default/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2019_en.pdf)

<sup>251</sup> European Commission. (2020). *Statistical evaluation of irregularities reported for 2019: own resources, agriculture, cohesion and fisheries policies, pre-accession and direct expenditure; Accompanying the document: 31st Annual Report on the protection of the European Union’s financial interests: Fight against fraud – 2019*. Brussels. Available at: [https://ec.europa.eu/anti-fraud/sites/default/files/pif\\_report\\_2019\\_statistical\\_evaluation\\_1\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_statistical_evaluation_1_en.pdf)

<sup>252</sup> European Commission. (2020). *Follow-up on recommendations to the 30th annual report on the protection of the Union’s financial interests and the fight against fraud – 2018*. European Commission. Available at: [https://ec.europa.eu/anti-fraud/sites/default/files/pif\\_report\\_2019\\_follow\\_up\\_recommendations\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_follow_up_recommendations_en.pdf)

## Slovakia

### Scale of the problem and types of organised crime most common in Member State

In Slovakia between 2015-2019 the European Anti-Fraud Office (OLAF) has detected **fraudulent and non-fraudulent irregularities** in 1 947 cases under the **European Structural and Investment Funds and Common Agriculture Policy**, and in 45 cases in the area of traditional own resources (TOR).

Although the number of cases in the two areas of shared management combined, is not outstandingly high in comparison to the other Central and Easter European countries, the 1 947 cases detected include 21.03 percent of payments, which is substantially higher than in any other counties in the EU<sup>253,254</sup>. 13 investigations closed with recommendations.

**In 2019 alone, the number of irregularities reported as fraudulent in Slovakia affecting the EU's financial interests accounted for 1 in the agriculture sector and for 17 in the context of cohesion policy and fisheries, with the latter amounting to more than 283 million Euros.** Non-fraudulent activities are even higher with 37 in agriculture and 118 within cohesion policies and fisheries, the latter amounting to more than 256 million Euros<sup>255</sup>.

Although these figures are by far the highest among member states, especially in relation to the cohesion and fisheries policies, it is notable that according to the European Commission, these high figures are, to a great extent, the result of a single case of high financial value, which may be due to a precautionary reporting policy applied in Slovakia<sup>256</sup>.

Nevertheless, it is interesting that among the fraudulent irregularities that have been reported in 2019 are disproportionately more fall into the expenditure-related category than the revenue-related one.

During the programming period 2007-13, the following irregularities were reported most frequently and produced the most significant financial impact in the Slovak Republic: lack of transparency in the selection and evaluation of projects to be carried out within Operative Programmes, infringement of procurement rules and procedures, declaration of expenditure not in line with the actual works performed, failure to ensure fair competition. The country has experienced repeated deficiencies in relation to public procurement at the level of beneficiaries and insufficient verification by managing authorities<sup>257</sup>.

The National Strategy for the Protection of the European Union's Financial Interests in the Slovak Republic states that based on the analysis of irregularities in the past, the irregularities with the biggest financial impact are among others non-transparent conduct in the selection and evaluation processes, breaches of public procurement rules and procedures (e.g., discriminatory selection criteria for technical or professional ability in tendering procedures, shortening of deadlines for the submission of tenders documents in the above-threshold procedures), statements of expenditure in invoices not corresponding to the actual work done; failure to ensure fair competition, failure to return unaccounted-for balances of advance payments by the deadline<sup>258</sup>.

<sup>253</sup> [https://ec.europa.eu/anti-fraud/sites/default/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2019_en.pdf)

<sup>254</sup> *Ibid.*

<sup>255</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>256</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf), page 2

<sup>257</sup> <https://www.oecd.org/publications/tackling-fraud-and-corruption-risks-in-the-slovak-republic-6b8da11a-en.htm>, page 14.

<sup>258</sup> [https://www.olaf.vlada.gov.sk/data/files/7839\\_ns\\_pfi\\_eu\\_national-strategy-en.pdf](https://www.olaf.vlada.gov.sk/data/files/7839_ns_pfi_eu_national-strategy-en.pdf) page 14

### Legal Frameworks to tackle organised crime, policies and strategies

The Government approved a National Strategy for the Protection of the European Union's Financial Interests in the Slovak Republic in 2015, amended in 2019. This document provides a description of the individual parts of the antifraud cycle: prevention, detection, investigation and prosecution, and recovery of unduly paid amounts, and sanctions<sup>259</sup>. It sets out general tasks to ensure that fraud risk management systems are put in place but does not contain specific procedures relating to FRM of ESI Funds<sup>260</sup>. For Slovakia, the current programming period marked the first steps in the development of an anti-fraud culture introducing new procedures and methods that were improved over time and resulted in increased attention to fraud risk across authorities and implementation levels. According to the Strategy each year - in cooperation with the Working Group for Irregularities- the OLAF office prepares an annual report on irregularities which is submitted for information to the Slovak Government by the end of June of the following calendar year. The report contains:

- information on all irregularities registered in the IMS during the year. Based on the analysis
- of irregularities and identification of the areas posing the highest risk, the relevant AFCOS
- network partners take appropriate measures to reduce the occurrence of risks<sup>261</sup>.

The fight against corruption has been identified as one of the key priorities in the political programme of the new government, which announced a range of reforms in this area. This responded to public outcry over the revelations made in the context of investigations into the murder of journalist Ján Kuciak and his fiancée Martina Kušnírová that a top oligarch exerted significant influence over politicians, law enforcement and the judiciary (European Commission, 2020).

As part of its work to help countries battle fraud and corruption, the OECD assisted the government of the Slovak Republic in modernising its risk management strategy for ESI Funds. Recognising the existing, robust normative and policy frameworks, the OECD focused on overcoming implementation challenges.

The criminal legal framework for fighting corruption is broadly in place and specialised institutions have been set up. All forms of active, passive, direct and indirect corruption are criminalised. As a result of the third evaluation round of implementation of the OECD Anti-Bribery Convention<sup>262</sup>, national provisions on foreign bribery offences have been amended. Slovakia adopted **new legislation on criminal liability**<sup>263</sup>, which regulates sanctions applicable to legal persons.

According to Slovakia's 2020 Rule of Law report, **new legislation concerning asset declarations and conflict of interests** of members of the Government and other public office-holders took effect on 1 January 2020. The new law<sup>264</sup> extended the scope of assets to be declared by public officials (to include the use of movables and immovables belonging to third parties, and the specification of gifts received). The control of asset declarations is currently performed at national level by a parliamentary committee and, at the local level, by a local council committee (European Commission, 2020).

<sup>259</sup> [https://www.olaf.vlada.gov.sk/data/files/7839\\_ns\\_pfi\\_eu\\_national-strategy-en.pdf](https://www.olaf.vlada.gov.sk/data/files/7839_ns_pfi_eu_national-strategy-en.pdf), page 8

<sup>260</sup> [https://www.eprc-strath.eu/public/dam/jcr:dbcfcfde-e024-44a0-a11b-b12456ffe0c5/EPRP%20121%20-%20IQ\\_Net\\_Thematic%20paper%2047\(2\).pdf](https://www.eprc-strath.eu/public/dam/jcr:dbcfcfde-e024-44a0-a11b-b12456ffe0c5/EPRP%20121%20-%20IQ_Net_Thematic%20paper%2047(2).pdf), page 9

<sup>261</sup> [https://www.olaf.vlada.gov.sk/data/files/7839\\_ns\\_pfi\\_eu\\_national-strategy-en.pdf](https://www.olaf.vlada.gov.sk/data/files/7839_ns_pfi_eu_national-strategy-en.pdf) page 15

<sup>262</sup> OECD (2012) Slovakia: Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the Slovak Republic

<sup>263</sup> Act No. 91/2016 on the Criminal Liability of Legal Persons

<sup>264</sup> Act no. 66/2019 amending Constitutional Act no. 357/2004 Coll. on the protection of the public interest in the exercise of the functions of public officials, as amended by Constitutional Act no. 545/2005 Coll.

Integrity systems for the public administration have been improved by way of an amendment to the **Civil Service Act**. This concerns state employees, including ministers, secretaries of state and heads of central state administration bodies. These legislative changes include a state employee **Code of Ethics**<sup>265</sup>, and a **system to assess compliance** of a state employee's actions with the code. The code anchors the basic ethical values for a state employee: political neutrality, impartiality, public interest, dignity and respect in interpersonal relations.

The 2019 **Whistle-blower Protection Act** aims to increase the protection measures by establishing an independent office for complaints, but its implementation is being delayed. The new law aims at addressing concerns raised by the previous framework, notably the uncertainty arising from the requirement to report in good faith, the discrepancies in the protection accorded to different categories of officials, and the absence of simultaneous internal and external channels for reporting misconduct<sup>266</sup>.

### Institutional framework and role played by national authorities

The competences for the prevention, detection and prosecution of corruption are shared between several authorities.

The **Office of the Government** is the central body for the co-ordination of the prevention of corruption, including sectoral anti-corruption coordinators who have been put in place at each central administration body since 2019. In December 2019, the Office of the Government introduced a dedicated software tool to increase the effectiveness of corruption risk management.

**The National Crime Agency** of the **Presidium of the Police Force** is in charge of the detection and investigation of corruption offences with the exception of corruption crimes committed by members of the police itself and certain law enforcement agencies falling under the remit of the **Bureau of Inspection Service**.

**The Special Prosecutor's Office** has jurisdiction over the investigation of criminal offences under the substantive jurisdiction of the Specialised Criminal Court (SCC).

The **National Crime Agency (NAKA)** has been reorganised in 2019, but its resources were not increased. And hence its capacity to find the first indications of corruption is hampered by the lack of resources and specific expertise.

**The Supreme Audit Office of Slovakia** is another key body tasked with supervising the accountability, quality and work of public authorities. The purpose of the Supreme Audit Office is to point out uneconomical, inefficient and ineffective use of funds in state and local government organisations, state-owned enterprises, state-owned joint-stock companies or entities, in which the state has an equity interest, or which fulfil the public interest. Over the last years, the Supreme Audit Office has improved the frequency and quality of its performance audits, but their impact has been limited so far because it can enforce only limited changes. The Government has indicated the intention to strengthen its competencies and it considers the possibility of imposing sanctions in the event that the inspection body does not eliminate the deficiencies identified by the inspection (European Commission, 2020).

The Financial Administration is responsible for detecting irregularities and fraud in the area of traditional own resources (TOR). The irregularities and fraud concerning TOR are reported to the Commission through the OWNRES system<sup>267</sup>.

Other authorities that are responsible for European Structural and Investment (ESI) Funds management or oversight are the:

<sup>265</sup> Decree no. 400/2019 on State Employee Code of Ethics.

<sup>266</sup> European Commission, Country Report Slovakia 2020, SWD(2020) 524 final, p. 51.

<sup>267</sup> [https://www.olaf.vlada.gov.sk/data/files/7839\\_ns\\_pfi\\_eu\\_national-strategy-en.pdf](https://www.olaf.vlada.gov.sk/data/files/7839_ns_pfi_eu_national-strategy-en.pdf) page 15.

- **Certifying authority,**
- the **Anti-Fraud Co-ordination Service (AFCOS),**
- the **audit authority (Ministry of Finance),** and
- the **Corruption Prevention Office.** The Managing authorities (MAs) in the Slovak Republic are required to conduct risk assessments and to introduce adequate anti-fraud measures based on risk identification (OECD, 2019: 14).
- The **Central Co-ordination Body (CCB),** which sits in the Slovak Republic Deputy Prime Minister's Office for Investments and Informatisation (DPMO-II), also plays a critical role in ensuring the principles of integrity, accountability and transparency in ESI-funded programmes<sup>268</sup>. The Central Coordination Body also prepared methodological guidance on how to determine conflict of interest in public procurement, and an additional guideline from OLAF is provided to employees. A specific document has also been adopted by the CBB, with instructions on the use of the ARACHNE data analysis tool, among others, for the purpose of identifying conflicts of interest (Dozdheva and Mendez, 2020).

#### Estimates of the loss to the EU budget

The financial impact of fraud and other illegal activities affecting EU's financial interest in Slovakian territory amounts to **over €283 million in total expenditure and to €15,000 in revenue.**<sup>269</sup> **In terms of recovery rate, in Slovakia the entire established amount (100%) has been already recovered**<sup>270</sup>, which puts Slovakia among the most successful EU countries in fund recovery.

According to the latest figures by the European Commission, **Slovakia lost €1.5 billion to Value-Added Tax (VAT)** to fraud and evasion, tax avoidance, bankruptcies, financial insolvencies and miscalculations in 2018<sup>271</sup>. This figure has fallen by approximately 10 percentage points between 2014-2018 of the VAT total tax liability (VTTL) with just below 20 % of the VTTL in 2018.

<sup>268</sup> <https://www.oecd.org/publications/tackling-fraud-and-corruption-risks-in-the-slovak-republic-6b8da11a-en.htm>, page 15.

<sup>269</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>270</sup> [https://www.europarl.europa.eu/cmsdata/213109/COM\\_SWD\(2020\)0160\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213109/COM_SWD(2020)0160_EN.pdf)

<sup>271</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1579](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1579)

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## Spain

### Scale of the problem and types of organised crime most common in Member State

Spain is among the countries in which the European Anti-Fraud Office (OLAF) has consistently detected a **high number of fraudulent and non-fraudulent irregularities** in the past years. This is the case both in the area of traditional own resources (TOR) and, especially, under the two main areas of shared management, the **European Structural and Investment Funds and Common Agriculture Policy**, where Spain is ranked as top country in terms of detected fraudulent and non-fraudulent irregularities for the period 2015-2019. For the two areas of shared management combined, Spain is with 11,000 detected cases of irregularities well ahead of the next top ranked countries like Poland (5,017), Romania (4,968) and Italy (4,415).<sup>272</sup> This is estimated to correspond to a financial impact of about 2.70% of payments.<sup>273</sup>

**In 2019 alone, the number of irregularities reported as fraudulent in Spanish territory affecting the EU's financial interests accounted for 15 in the agriculture sector and for 8 in the context of cohesion policy and fisheries.** Non-fraudulent activities are much higher: 309 in agriculture and 18 within cohesion policies and fisheries.<sup>274</sup>

Spain is ranked number 30 in the ranking of 198 countries in the Corruption Perception Index 2019, published by Transparency International, and has a rating of 62 points out of 100 (scale from 0, "very corrupt", to 100, "very clean"). According to the CIS (Centre for Sociological Research) Barometer, corruption and fraud occupied the fifth place among the main problems for Spaniards with 17,9% in January 2020 ("Perception of the main problems of Spain").

As for **organised crime and serious crime in Spain**, the Ministry of Interior rates the risk in general terms to be at a medium level<sup>275</sup>. A total of 280 criminal groups were dismantled in 2019, out of which almost 70% were involved in criminal activity internationally, and over 5,000 people arrested. The Intelligence Centre against Terrorism and Organized Crime (CITCO) reports almost 300 interventions taking place in the context of drug trafficking and 54 within the fight against fraud.<sup>276</sup> According to stakeholders interviewed, the most common forms of fraud detected are: fraud of EU grants and funding, VAT fraud in the terms set out in article 2.2 of PIF Directive (Directive EU 2017/1371), customs import fraud and excise fraud.

Specific examples of fraud affecting EU funding committed by organised crime highlighted by stakeholders are, on the one hand, **frauds committed on the occasion of the subsidies/funds (e.g. Common Agricultural Policy (CAP) subsidies** as identified through some investigations, thus affecting the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD)) that the EU grants to different beneficiary entities throughout the national territory. On the other, the Spanish Guardia Civil and the National Anti-Fraud Service have provided support to different OLAF investigation cases on expenditures fraud affecting programmes such as the Erasmus programme Capacity building in the field of higher education (CBHE), Framework Programme 7, and Horizon 2020. Regarding VAT fraud (in the terms set out in article 2.2 of PIF Directive, Directive EU 2017/1371), numerous investigations have been carried out by Spanish Law Enforcements Bodies<sup>277</sup> to dismantle international criminal organizations dedicated to establishing complex networks of companies with the purpose of

<sup>272</sup> [https://ec.europa.eu/anti-fraud/sites/default/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2019_en.pdf)

<sup>273</sup> *Ibid.*

<sup>274</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>275</sup> <https://www.dsn.gob.es/en/actualidad/sala-prensa/estrategia-nacional-contra-crimen-organizado-delincuencia-grave>

<sup>276</sup> <https://www.dsn.gob.es/es/actualidad/seguridad-nacional-ultima-hora/nacional-%E2%80%93lucha-contra-crimen-organizado-269>

<sup>277</sup> Concept which also includes the actions of the Spanish Tax and Customs Agency (*Agencia Tributaria*).

avoiding the payment of VAT in the trade of different products that are significantly taxed by the EU Member States, such as electronics, alcohol and mineral oil/fuel.

Indeed, Spain's geographic location makes it a key transit point to the entire EU for **drug trafficking** from Latin America and North Africa.<sup>278</sup> Since the 1980s, drug trafficking has been a major issue in Spain, in most cases exclusive to organised crime groups. In 2018, over 450 tonnes of cannabis resin were seized in Spain alone, accounting for more than two thirds of the total quantity seized in the European Union in the same year. As for the increasing cocaine market in Europe, Spain is, with 48 tonnes of cocaine intercepted in 2018, a key country along with the Netherlands and Belgium.<sup>279</sup>

Spain also serves, together with Portugal, as important hub for **trafficking of human beings**, both as destination and as transit point to other parts of Europe.<sup>280</sup> In recent years, the shift has been towards sex trafficking, often also within Spain, of women mainly from Nigerian, Romanian and Chinese origin. Latest official figures from 2016 report 348 people arrested for sex trafficking that year, involving 36 different criminal groups, and a total of 443 victims. Nine of these were minors.

Over 1 million counterfeited products were confiscated by Spanish customs authorities for intellectual property right violations, reflecting the attractiveness of the Spanish market to **counterfeit**.<sup>281</sup> Although this constitutes a slight decrease from the previous year, counterfeited goods and fake audiovisual content are estimated to cost about €6.8 billion in sectors vulnerable to intellectual property infringement, which corresponds to 10.6% of sales.<sup>282</sup>

Additional types of organised crime happening in Spanish territory are **money laundering, corruption** both institutional and sports corruption with the involvement of organised crime groups in gambling and match fixing, **cybercrime, Treasury fraud and illicit arms trafficking**.<sup>283</sup> As an example on measures to tackle these, the Spanish Law Enforcement Bodies (Civil Guard and National Police) are currently cooperating in different cases with other EU Member States to investigate money laundering in Spain linked to VAT fraud in other EU countries (e.g. Poland), having the support and coordination of the Analysis Project MTIC of Europol.

### Legal Frameworks to tackle organised crime, policies and strategies

Spain is a signatory to the Council of Europe's **Civil and Criminal Law Conventions against Corruption**, the **OECD Anti-Bribery Convention**, and the **United Nations Convention Against Corruption (UNCAC)**. The Spanish anti-corruption criminal legal framework is considered to be largely in place, according to the UNCAC implementation review in 2011<sup>284</sup>, and the criminalisation of bribery, trading in influence and abuse of function in the Spanish Criminal Code is in line with Council of Europe standards<sup>285</sup>. Other relevant legislation includes the **Regulation of Conflicts of Interests Law**, which makes it mandatory high-ranking officials including members of government and parliament to disclose their assets and interests, as well as the **Anti-Money Laundering and Terrorist Financing Act**, which ensures compliance with the **EU Money Laundering Directive**.<sup>286</sup>

Spain has further strengthened its anti-corruption framework in recent years to expand on previous initiatives, such as the Public Sector Procurement Act (Law 30/2007) and the Statute for

<sup>278</sup> [https://www.emcdda.europa.eu/system/files/publications/13236/TDAT20001ENN\\_web.pdf](https://www.emcdda.europa.eu/system/files/publications/13236/TDAT20001ENN_web.pdf)

<sup>279</sup> *Ibid.*

<sup>280</sup> [https://ec.europa.eu/anti-trafficking/member-states/spain\\_en](https://ec.europa.eu/anti-trafficking/member-states/spain_en)

<sup>281</sup> [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2019-ipr-report.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2019-ipr-report.pdf)

<sup>282</sup> [https://english.elpais.com/elpais/2019/06/07/inenglish/1559905894\\_250503.html](https://english.elpais.com/elpais/2019/06/07/inenglish/1559905894_250503.html)

<sup>283</sup> <https://www.dsn.gob.es/sites/dsn/files/IASN2018%20WEB.pdf>

<sup>284</sup> [Microsoft Word - b8acd389-49a3-4192-a735-0922cba5210e\\_in\\_for\\_PDF\\_printing.doc \(unodc.org\)](#)

<sup>285</sup> [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en)

<sup>286</sup> <https://www.ganintegrity.com/portal/country-profiles/spain>

public and civil servant (Law 7/2007). Legislative measures have been taken to strengthen control over public spending, for example through a law on budgetary stability and financial sustainability (Law 2/2012) which reinforces fiscal discipline at all levels of government.<sup>287 288</sup>

In relation to fraud of EU funds specifically, these were included in 2019 in the **Spanish Criminal Code (LO 1/2019, Title XIV, art. 308)**, as a result of transposing the EU Directive 2017/1371 on the Protection of the European Union's financial interests (EU "PIF" Directive)<sup>289</sup> into national law. As such, fraud of public aid and subsidies for both national as well as European funds is now jointly regulated in one same article<sup>290</sup>. This same legislation regulates the application of administrative sanctions and establishes the possible criminal proceedings and the sanctions that can be imposed.

For easier reference and overview, the **Code for the Fight against Fraud and Corruption**<sup>291</sup> brings together a compilation of the main legislation on the topic overall.

Besides, in order to strengthen the collaboration with citizens and to formalize channels through which to allow for the reporting of irregularities to the relevant authorities, the **National Anti-fraud Coordination Service (SNCA)** opened an online communication channel in 2017 in relation to projects or operations financed with EU funds. This aims to serve as additional means of identifying irregularities and to allow public authorities to carry out the corresponding investigations.<sup>292</sup>

In terms of strategies at national level, the **National Strategy against Serious and Organised Crime 2019-2023** sets the objective of dismantling criminal structures and reducing their impact on society by reducing their activity, while preventing the set-up of new groups and improving inter-agency cooperation, e.g. between the Police and the Civil Guard<sup>293</sup>. It is linked to the **National Security Strategy 2017** as the main overall national framework, which highlights organised crime and its destabilising force as of one of the main threats to national security.

The **National Anti-Fraud Strategy** is expected to be developed from June 2021 onwards, led by the National Anti-Fraud Coordination Service with the technical assistance from the Organisation for Economic Co-operation and Development (OECD). Funded by the European Commission through the Technical Support Instrument, the aim is to thereby to provide coherence to the actions to fight against fraud and corruption to the financial interests of the EU.

In addition, the General Directorate of the Civil Guard through the Judicial Police Headquarters and the General State Inspection (IGAE, under which the Spanish Antifraud Coordination Service is integrated) signed a **General Action Protocol in October 2020 for the coordination and cooperation in matters of prevention, detection and investigation of fraud**, corruption and any other illegal activity that affects the EU's financial interests.<sup>294</sup> This legal instrument allows enhancing cooperation with OLAF. Likewise, the National Police maintains a close relationship with the Spanish AFCOS and is planning to draw up an action protocol in similar terms.

<sup>287</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0308&from=EN>

<sup>288</sup> <https://www.dsn.gob.es/en/actualidad/sala-prensa/estrategia-nacional-contra-crimen-organizado-delincuencia-grave>

<sup>289</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>

<sup>290</sup> [https://www.mapa.gob.es/es/pesca/temas/fondos-europeos/politica-antifraude\\_tcm30-509960.pdf](https://www.mapa.gob.es/es/pesca/temas/fondos-europeos/politica-antifraude_tcm30-509960.pdf)

<sup>291</sup>

[https://www.boe.es/biblioteca\\_juridica/codigos/codigo.php?id=322\\_Codigo\\_de\\_Lucha\\_contra\\_el\\_Fraude\\_y\\_la\\_Corrupcion&tipo=C&modo=2](https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=322_Codigo_de_Lucha_contra_el_Fraude_y_la_Corrupcion&tipo=C&modo=2)

<sup>292</sup> <https://www.igae.pap.hacienda.gob.es/sitios/igae/es-ES/snca/Paginas/ComunicacionSNCA.aspx>

<sup>293</sup> *Ibid.*

<sup>294</sup> <https://www.hacienda.gob.es/Documentacion/Publico/PortalVarios/Protocolo-firmado.pdf>

## Institutional framework and role played by national authorities

In recent years, the link between the main authorities responsible to fight organised crime, such as the AFCOS, the Public Prosecutor's Office, the Police, and the Tax Agency have been strengthened in order to join forces in the same direction.

The **National Anti-Fraud Coordination Service (SNCA)**<sup>295</sup>, dependent of the **General State Inspection (IGAE)**<sup>296</sup> within the Ministry of Finance is the entity in charge of coordinating actions aimed at protecting the financial interests of the European Union against fraud in Spain in collaboration with the European Anti-Fraud Office (OLAF), performing the functions of Anti-Fraud Coordination Service (AFCOS). Coordination and effective cooperation with regional and local authorities is especially relevant in the context of the decentralised system with Autonomous Communities (AC) having a wide range of competencies: e.g. in cases where the AC participate in the management of EU funds, their own internal control bodies carry out the audits and control procedures and share the findings. Besides, SNCA plays a relevant role in terms of prevention with the organisation of training events and conducts its own administrative investigations of suspected irregularities affecting EU fraud on top of assisting OLAF with its investigations in national territory.

The **Plan for the Control of European funds for the audit year 2020-2021** by the IGAE<sup>297</sup> sets out all audits to be carried out that year by IGAE and assigns them to the different internal units, as one consolidated planning instrument that allows for a coordinated execution.

Within the Ministry of Justice, the **Special Prosecution Office against Corruption and Organised Crime (ACPO)** investigates all major cases related to economic offences and offences related to corruption committed by public officials in the exercise of their official duties. It also carries out investigations of economic crimes committed by organized groups, unless when these fall under the specific competence of the Anti-Drug Prosecutor's Office or the National High Court's Office.<sup>298</sup> Besides prosecutorial investigations, ACPO intervenes directly in criminal proceedings in specific corruption crime cases, such as misappropriation of public funds and foreign bribery.<sup>299</sup>

As for the state security forces, both the **National Police Corps** through its **Central Unit for Economic and Fiscal Crime (UDEF) – General Police Station of the Judicial Police**, as well as the **Civil Guard** through its **Technical Unit of Judicial Police - Economic Crimes Group** play a relevant role in the investigation and prosecution of criminal activities in matters of economic and fiscal crime, also perpetrated by organised crime. The latter cooperates with OLAF specifically in matters of fraud in public finances and reports on ongoing investigations and with the SNCA in investigations related for example to irregularities committed in the context of the Common Agricultural Policy both on the revenue and on the expenditure side.

Finally, the **Intelligence Centre against Terrorism and Organized Crime (CITCO)** further plays a relevant role in the fight against organised crime, including the analysis of intelligence, the design of the relevant strategies and the coordination with international agencies.<sup>300</sup> Located under the Secretary of State for Security within the **Ministry of Home Affairs**, CITCO resulted from the 2014 merger of two domestic intelligence agencies, the National Anti-Terrorism

<sup>295</sup> <https://www.igae.pap.hacienda.gob.es/sitios/igae/es-ES/snca/Documents/lgs.pdf>

<sup>296</sup> In Spanish: *Intervención General de la Administración del Estado, IGAE, cuerpo dependiente del Servicio Nacional de Coordinación Antifraude, Ministerio de Hacienda.*

<sup>297</sup> <https://www.igae.pap.hacienda.gob.es/sitios/igae/es-ES/Control/Documents/Plan%20de%20%20control%20Fondos%20Europeos%202021.pdf>

<sup>298</sup> <https://www.fiscal.es/fiscal%C3%ADas-especiales>

<sup>299</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0308&from=EN>

<sup>300</sup> These include: the Centre for the Coordination of the Fight Against Drugs in the Mediterranean (CECLAD); the Maritime Operations Analysis Centre (MAOC-N); the Joint Interagency Task Force-South (JIAFT'S); or the Antenna of the Central Office for the Suppression of Illicit Traffic in Narcotic Drugs (OCTRIS) -Fort de France. The Secretary of State for Security is in charge of international police cooperation, especially with EUROPOL, INTERPOL and SIRENE.

Coordination Centre (CNCA) and the Intelligence Centre against Organized Crime (CICO) for the optimization of efforts and resources. It brings together personnel from the National Police Corps (CNP), Civil Guard, Customs Surveillance Service, Prison officers, Armed Forces and the National Intelligence Centre (CNI).<sup>301</sup>

**At EU level**, seven European Delegated Prosecutors in Spain were designated in April 2021. Contacts between them and Spanish institutions' representatives have been made in order to improve cooperation instruments and provide the EPPO with the current situation of the investigations carried out by the Spanish Administrations, agencies and bodies to protect EU's financial interests. The Spanish Law Enforcement Bodies (National Police and Civil Guard) are part of a working group in Europol, called OPERATION SENTINEL for fraud of funds from the aid and stimulus programs for the COVID-19 pandemic from the EU.

### Estimates of the loss to the EU budget

The financial impact of irregularities reported as fraudulent affecting EU's financial interest in Spanish territory in 2019 is estimated to amount to **over €4 million in total expenditure and to €2,5 million in revenue**.<sup>302</sup> **In terms of recovery rate, Spain is with 95% of the amount recovered**<sup>303</sup> among the most successful EU countries in fund recovery – these are provisional figures as recovery is ongoing and likely to continue to evolve in the future.

In broad terms, the cost of organised crime is described as having “a very high cost” directly impacting the Spanish economy.<sup>304</sup> According to the latest figures by the European Commission, **Spain lost €4,9 million to Value-Added Tax (VAT)** to fraud and evasion, tax avoidance, bankruptcies, financial insolvencies and miscalculations in 2018.<sup>305</sup> This figure has remained relatively stable in the last years at 6% of the VAT total tax liability (VTTL).

Interviewees confirmed there is no estimate or quantification of the impact of organised crime on the EU's Financial Interest at national level. They highlighted the challenges to conducting such estimation, among other factors due to the multidisciplinary and fast evolving nature of organised crime. In that regard, and as part of the technical assistance by the OECD for the development of the National Anti-Fraud Strategy, the Spanish AFCOS pointed at one of the planned trainings to focus on ways to estimate the impact of corruption and fraud in monetary terms and beyond.

<sup>301</sup> <http://www.interior.gob.es/en/el-ministerio/funciones-y-estructura/secretaria-de-estado-de-seguridad>

<sup>302</sup> [https://www.europarl.europa.eu/cmsdata/213102/COM\\_COM\(2020\)0363\(ANN\)\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

<sup>303</sup> [https://www.europarl.europa.eu/cmsdata/213109/COM\\_SWD\(2020\)0160\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/213109/COM_SWD(2020)0160_EN.pdf)

<sup>304</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2019-2442](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-2442)

<sup>305</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1579](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1579)

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## Sweden

### Scale of the problem and types of organised crime most common in Member State

According to the 2020 Rule of Law Report, Sweden is perceived as one of the less corrupt countries in Europe. Sweden criminalises most forms of public and private corruption. During the 2018 period a total of 15 reports were made to the Swedish Economic Crime Authority regarding suspected fraud involving EU funds, which is substantially fewer than during the preceding period, when 35 reports were received. Most of the reports concern structural fund and agricultural fund payments. Those reporting are managing, certifying, paying and auditing authorities, OLAF, and private citizens. The quality of the reports is usually high, and only exceptionally are reports dismissed before a preliminary investigation is begun. However, only a small number of the reports lead to a prosecution being brought. This is typically because a crime cannot be proven due to difficulties in proving what are known in Swedish law as the subjective requirements.

A common problem in the Economic Crime Authority's investigations is that it is difficult to prove that someone has intentionally provided incorrect information. This means that even if the objective requirements for proving a crime are fulfilled, it is usually not possible to fulfil the subjective requirements. The majority of all initiated preliminary investigations are therefore withdrawn with the justification that the crime cannot be proven. Regarding organised crime, another problem encountered is the difficulty in 'distinguishing between organized and network-related economic crime'<sup>306</sup> in the Swedish cases.

### Legal Frameworks to tackle organised crime, policies and strategies

#### Legislation

- Chapters 9 and 10 of the Swedish Penal Code deals in 15 sections with different types of fraudulent behaviour and action. Chapter 9 of the Penal Code deals with different types of fraudulent behaviour and action, including **abuse of EU subsidies**.
- The Money Laundering Act empowers the police authority to request information from banks bilaterally. the Financial Police and banks will now have the opportunity to collectively share information on methods, suspicious transaction patterns and new types of crime that have been jointly identified.<sup>307</sup>

#### Strategies/Policies

- A pilot project to evaluate and test new methods for sharing information under current legislation will run from June to November 2020 before the initiative will be officially implemented in 2021, with more banks expected to join the scheme.<sup>308</sup>

#### Institutions/Bodies

- **The Swedish Economic Crime Authority<sup>309</sup>**- The Swedish Economic Crime Authority (SECA) is a specialist authority within the Swedish judiciary, with mandate to investigate and prosecute financial crimes and with particular expertise in analysis and investigation. The agency's remit is to create security and justice by preventing and combating financial crime. The Economic Crime Authority principally focuses on serious financial crime, but also on less serious financial crime that is subject to milder sentences, but the prosecution of which has a preventive purpose. The Economic Crime Authority investigates cases such

<sup>306</sup> Berlusconi, G. (2016) Organised criminals and the legal economy

<sup>307</sup> <https://ctmfile.com/story/banks-and-police-team-up-to-fight-financial-crime-in-sweden>

<sup>308</sup> <https://ctmfile.com/story/banks-and-police-team-up-to-fight-financial-crime-in-sweden>

<sup>309</sup> [www.ekobrottsmyndigheten.se/](http://www.ekobrottsmyndigheten.se/)

as accounting fraud, tax offences, bankruptcy-related crimes, financial market crime and EU fraud. The Economic Crime Authority also takes crime prevention measures and undertakes intelligence activity. SECA is also tasked to monitor and analyse trends in economic crime, initiate joint action between authorities and put forth proposals for legislative changes designed to curb economic crime. SECA operates nationwide and consists of approximately 550 employees. Prosecutors and police officers of different specialties, analysts, forensic accountants and administrative staff work together in teams and are led by a Director-General.<sup>310</sup>

- **Financial Action Task Force-** The Financial Action Task Force (FATF) was formed in 1989 and is an intergovernmental body that prepares international standards for combating money laundering, terrorist financing and financing the proliferation of weapons of mass destruction. The FATF reaches more than 200 jurisdictions through its 39 members and 9 regional bodies. Sweden became a member of FATF in 1990 and undertook, through its membership, to implement the standards in the Swedish judicial system.

Through periodic evaluations, FATF and its regional bodies ensure that the members follow the international standards. FATF continually publishes opinions on countries with a high risk of money laundering and terrorist financing. FATF also produces guidance documents to support the introduction and application of the standards.<sup>311</sup>

- **The Financial Intelligence Unit of the Swedish Police-** The Swedish Financial Intelligence Unit is a section of the Swedish Police that registers, processes and analyses reports received from firms on suspected money laundering or terrorist financing. The Financial Intelligence Unit assess whether reported transactions can be linked to a particular crime or form part of criminal activity. If the efforts of the Financial Intelligence Unit result in a suspicion of underlying crime, the relevant police authority or other law enforcement agency is informed, such as the Swedish Economic Crime Authority.<sup>312</sup>
- **The Swedish Security Service-** The Security Service is commissioned with leading and conducting police activity to prevent and detect crimes against Swedish national security, such as terrorism or espionage.<sup>313</sup>
- **The Swedish Prosecution Authority-** The Swedish Prosecution Authority contributes to the reduction of crime and increasing public safety by ensuring that persons who commit crimes are subject to criminal investigation and prosecution. Prosecutors at the authority have a responsibility to lead preliminary investigations, take decisions on matters of prosecution and bring court proceedings in all cases that are referred to the agency<sup>314</sup>.
- **Egmont Group-** The Egmont Group is a global network for Financial Intelligence Units (FIUs). In Sweden, the Financial Intelligence Unit within the Swedish Police is the designated FIU. The Egmont Group was founded in 2000 to combat money laundering and terrorist financing between the FIUs of different countries. In 2013, 139 FIUs were members of the Egmont Group.<sup>315</sup>

<sup>310</sup> <https://www.europol.europa.eu/partners-agreements/member-states/sweden>

<sup>311</sup> [www.fatf-gafi.org](http://www.fatf-gafi.org)

<sup>312</sup> [The anti-money laundering work of the police \(In Swedish\)](#)

<sup>313</sup> [www.sakerhetspolisen.se/en/swedish-security-service.html](http://www.sakerhetspolisen.se/en/swedish-security-service.html)

<sup>314</sup> [www.aklagare.se/en](http://www.aklagare.se/en)

<sup>315</sup> [www.egmontgroup.org](http://www.egmontgroup.org)

### Institutional framework and role played by national authorities

In Sweden, the main authority in charge of combatting organised crime, especially in relation to EU finances, is the **Swedish Council for the Protection of the European Union's Financial Interests (SEFI Council)**. The SEFI Council is responsible for coordinating initiatives in Sweden against fraud and other abuse of EU-related funds. The SEFI-council which mainly works with crime prevention via authorities administering EU-funds. Generally, there are several long-lasting collaborative efforts and coordinated collaboration between the judiciary and authorities like the taxation Authority. Recently since 2017 there is an increased cooperation between authorities and the judiciary regarding welfare crime. The Swedish Economic Crime Authority is responsible for the Council's offices.

The main objectives of the SEFI Council are:

- Make it easier for involved agencies to collaborate. This makes the efforts more effective in terms of preventing, discovering, investigating and taking measures when there is a suspicion of EU-related funds being misused.
- Monitor developments within its responsibility area and suggest or start initiatives to maintain a good level of protection for the EU's financial interests.
- Provide a forum where the participants can share information and experiences.
- Analyse and evaluate the work done within this area.

In addition, every three years, the SEFI Council submits a report describing the protection of the EU's financial interests in Sweden '**Report on the EU's Financial Interests in Sweden**', The report show what the Council has done to promote EU-related funds being handled both effectively and correctly, the work of the SEFI Council regarding the coordination of the agencies involved, as well as the progress of SEFI Council's work over the years and the next plans and objectives over the next three years. According to the interviewees, based on the SEFI-Council's report and studies, it can be concluded that there are reasons to believe that the competent authorities failed to report the majority of identified corrections as possible crimes to law enforcement agencies.

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### Estimates of the loss to the EU budget

No information has been found regarding the estimate loss to the EU budget derived from activities of organised crime organisations in Sweden. The stakeholders contacted declared that there are no estimates of the loss to the EU budget.

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<sup>316</sup> [https://www.ekobrottsmyndigheten.se/Documents/Rapporter/EU\\_rapporter/SEFI-report%202010-2012\\_ENG.pdf](https://www.ekobrottsmyndigheten.se/Documents/Rapporter/EU_rapporter/SEFI-report%202010-2012_ENG.pdf)



