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PUBLIC
PROSECUTOR'S
OFFICE

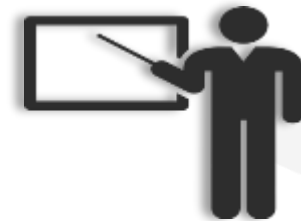
The new EU Anti-Fraud landscape and Interreg: ETC

**Detection of irregularities and fraud cases.
Reporting. Case study - workshop**

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Presentation content

- Legal framework on EU level: ETC and Anti-Fraud
- Definitions
- Competence of Administrative and Criminal Authorities on EU and National level
- Irregularity reporting and the Role of national controllers
- How to identify fraud – **red flags** and Case Study



EU Budget and Irregularities and Fraud

- For MFF 2021-2007:
 - **1.211 trillion** topped by EUR **806.9 billion** through NextGeneration EU
 - Irregularities and Fraud (PIF Report):
 - **2016:** 19080 fraudulent and non fraudulent – 2.97 bil
 - **2017:** 15213 fraudulent and non fraudulent, 2.58 bil
 - **2018:** 11 683 fraudulent and non fraudulent – 2.5 bil.
 - **2021:** 10,232 fraudulent and non fraudulent – 3.19 bil
- Funds for ETC: **nearly 10 billion**

Does the reporting to the Commission represent the real level of fraud?

Legal framework of the fight against Fraud

- **Art. 325 TFEU and Commission decision** establishing OLAF
- **Regulation 2988/95** on the protection of the EC financial interests
- **Regulation 2185/96** concerning on the spot checks and inspections
- **Regulation 883/2013** – OLAF concerning the investigations of OLAF, as amended by Regulation 2223/2020
- **PIF Convention and PIF Directive** - Directive 2017/1371
- **EPPO Regulation** - Regulation (EU) 2017/1939
- **Regulation 1303/2013**
- **Financial Regulation 2018/1046**
- **Regulation Regulation (EU) 2021/1059 and specific ETC Rules (Commission Impl Decisions 2022/74 and CD 2022/75 on the list of Interreg programs and areas, and support)**

How is each one of these legal acts related to ETC?



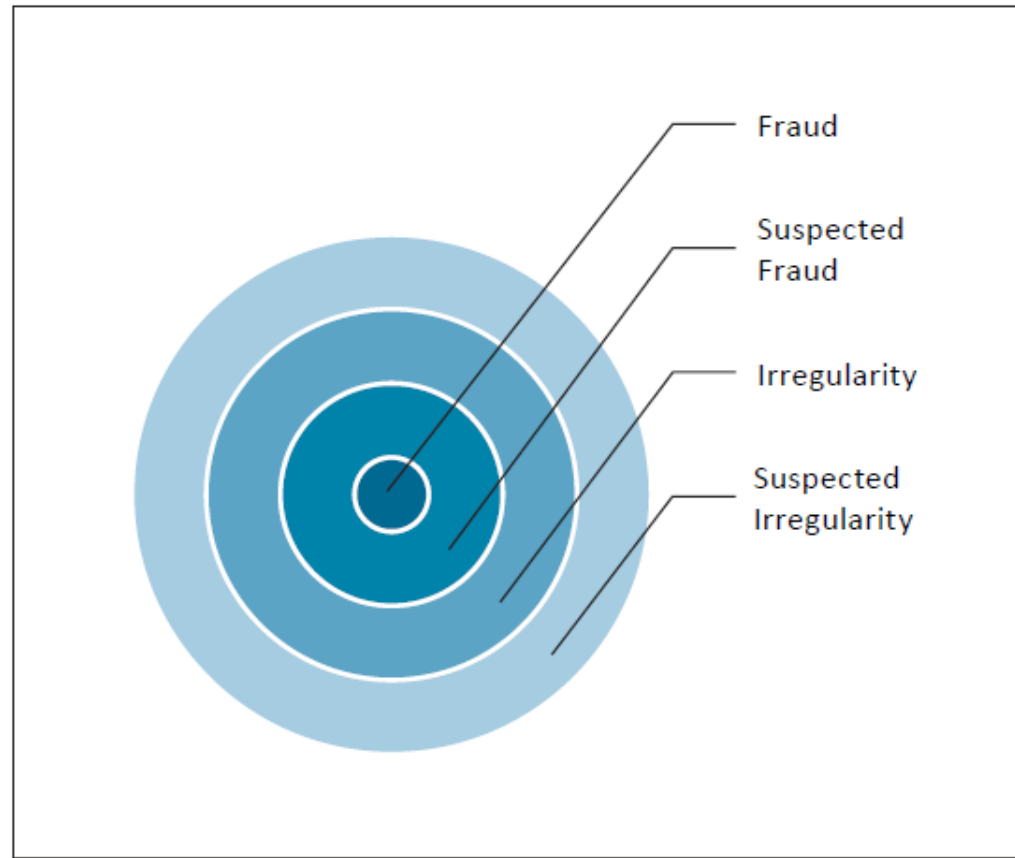
Definitions: Irregularity and Fraud. Suspensions.

Irregularity:

Regulation 2988/95,
CPR and Sectorial
Regulations

Suspected fraud: DR
for Reporting,
2015/1970-1973.

Fraud: PIF
Convention, PIF
Directive



Unintentional behavior

- **Suspicion of Irregularity** – any information, including from anonymous source, that an irregularity has been committed. This information must contain at least reference to concrete project, financing Programme, managing authority and description of the case. **Handbook of Irregularities: “any information received from any source about the existence of an irregularity before the assessment of this information”**
- **Irregularity** shall mean any **infringement** of a provision of Community law resulting from an **act or omission** by an **economic operator, which has, or would have**, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure. **(Regulation 2988/95 and 1303/2013)**

Possible Intentional behavior

- 'suspected fraud' – Regulation 2015/1970
- means an **irregularity that gives rise to the initiation of administrative or judicial proceedings** at national level in order to establish the presence of intentional behavior, in particular fraud, as referred to in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests;

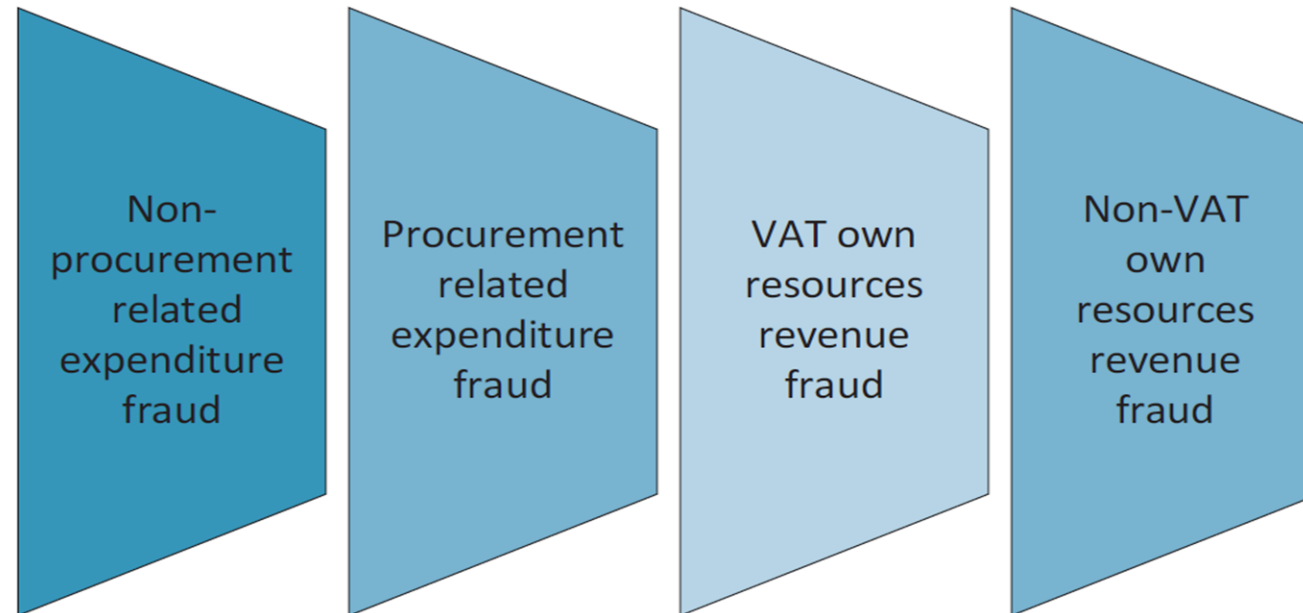
Intentional behavior

■ Fraud

Art. 3 DIRECTIVE (EU) 2017/1371

- For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests:
 - i) **the use or presentation of false, incorrect or incomplete statements or documents**, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) **non-disclosure of information** in violation of a specific obligation, with the same effect; or
 - (iii) **the misapplication of such funds** or assets for purposes other than those for which they were originally granted;

The 4 categories of fraud – PIF Directive



Now serving as the menu for the Material competence of the EPPO

The mandate of the EPPO

- The independent prosecution office of the EU.
- Responsible for investigating, prosecuting and bringing to judgment crimes affecting the EU's financial interests.
- Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office. OJ L 283, 31.10.2017



How does 1 year look like?

2022 in numbers

Some of the key figures featured in the Annual Report, valid on 31 December 2022:

- **3318 crime reports** were processed;
- **865 investigations** were opened;
- **1117 active investigations with estimated damages of €14.1 billion**;
- **16.5% of active investigations (185) were linked to VAT fraud, but account for 47% of the estimated damages (€6.7 billion)**;
- **€359.1 million in freezing orders** granted;
- **114 European Delegated Prosecutors** in active employment;
- **217 staff members** at the central office in Luxembourg.





Typologies identified in our cases in 2022

NUMBER OF ACTIVE EXPENDITURE FRAUD CASES

Agricultural and rural development programmes	231	Climate and environment programmes	7
Maritime and fisheries programmes	19	Recovery and resilience programmes	15
International cooperation programmes	9	Mobility and transport, energy and digitalisation programmes	15
Regional and urban development programmes	156	Asylum, migration and integration programmes	5
Education and culture-related programmes	18	Industry, entrepreneurship and SMEs programmes	13
Research and innovation programmes	27	Security and defence programmes	3
Employment, social cohesion, inclusion and values programmes	66	Other programmes/doubt cases	108

Judicial activity in criminal cases

JUDICIAL ACTIVITY IN CRIMINAL CASES

	Ongoing cases in the trial phase	73
	Number of first court decisions	15
	Number of appeals against first court decisions	2
	Number of ongoing cases in the appeal phase	2
	Number of final court decisions	20
	Number of extraordinary legal remedies against court decisions	0
	Convictions	20
	Acquittals	0

87



Indictments

19



Simplified prosecution procedures applied

59²



Dismissed cases

86³



Referrals to national authorities

106



Cases merged

The crimes investigated by EPPO

PIF directive

- > 6 July 2019, adopted into national legislations.
- Covers the fight against fraud to the EU's financial interests by means of criminal law.
- Harmonises definitions, sanctions and limitation periods of criminal offences.

Cross-border VAT fraud involving total damages above EUR 10 million.

Expenditure fraud, affecting financial interests of EU.




Customs fraud, affecting financial interests of EU.

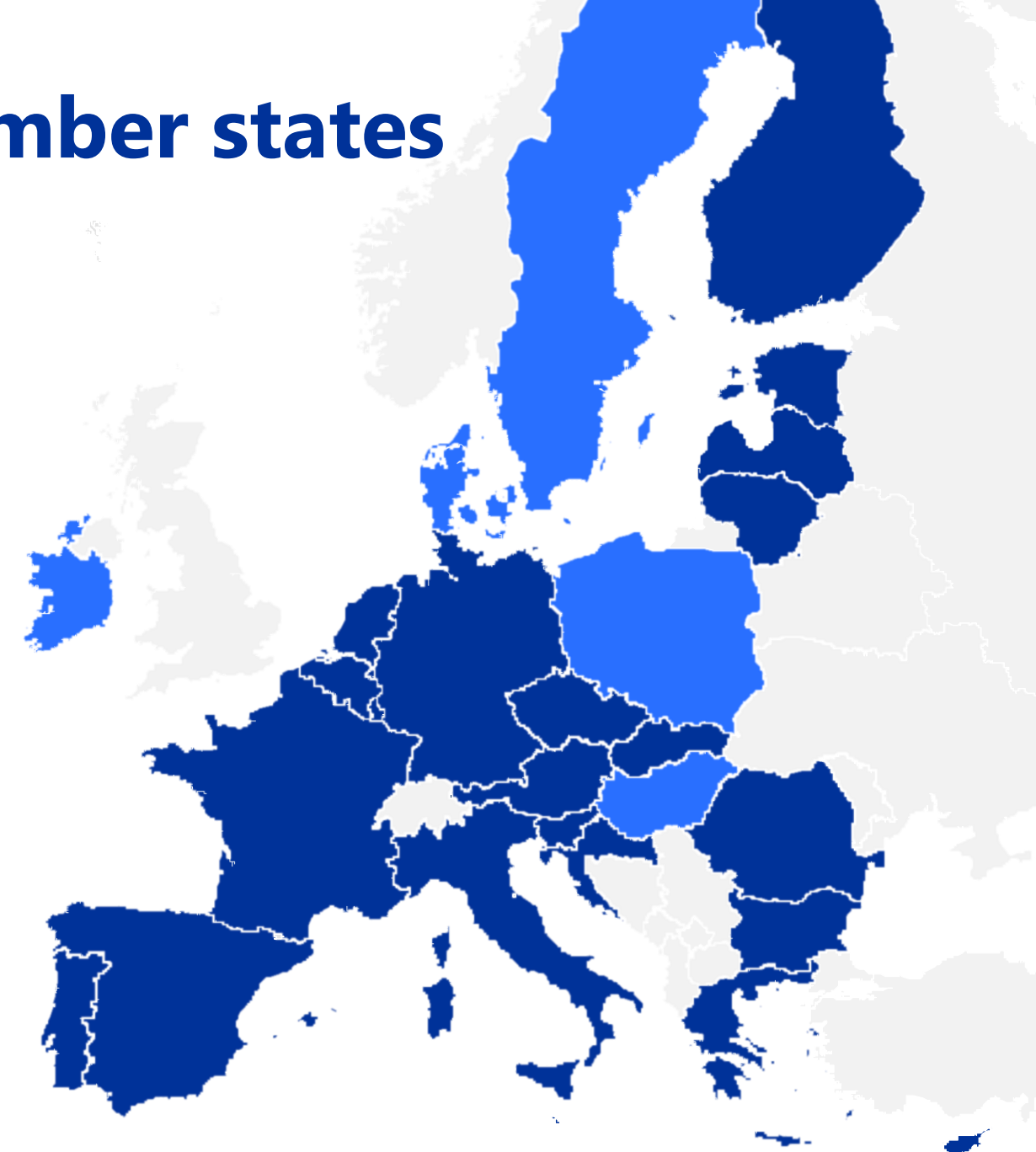
Corruption that (likely) damages financial interests of EU.

Misappropriation of EU funds or assets by a public official.

Money laundering & organised crime, and other offences inextricably linked.

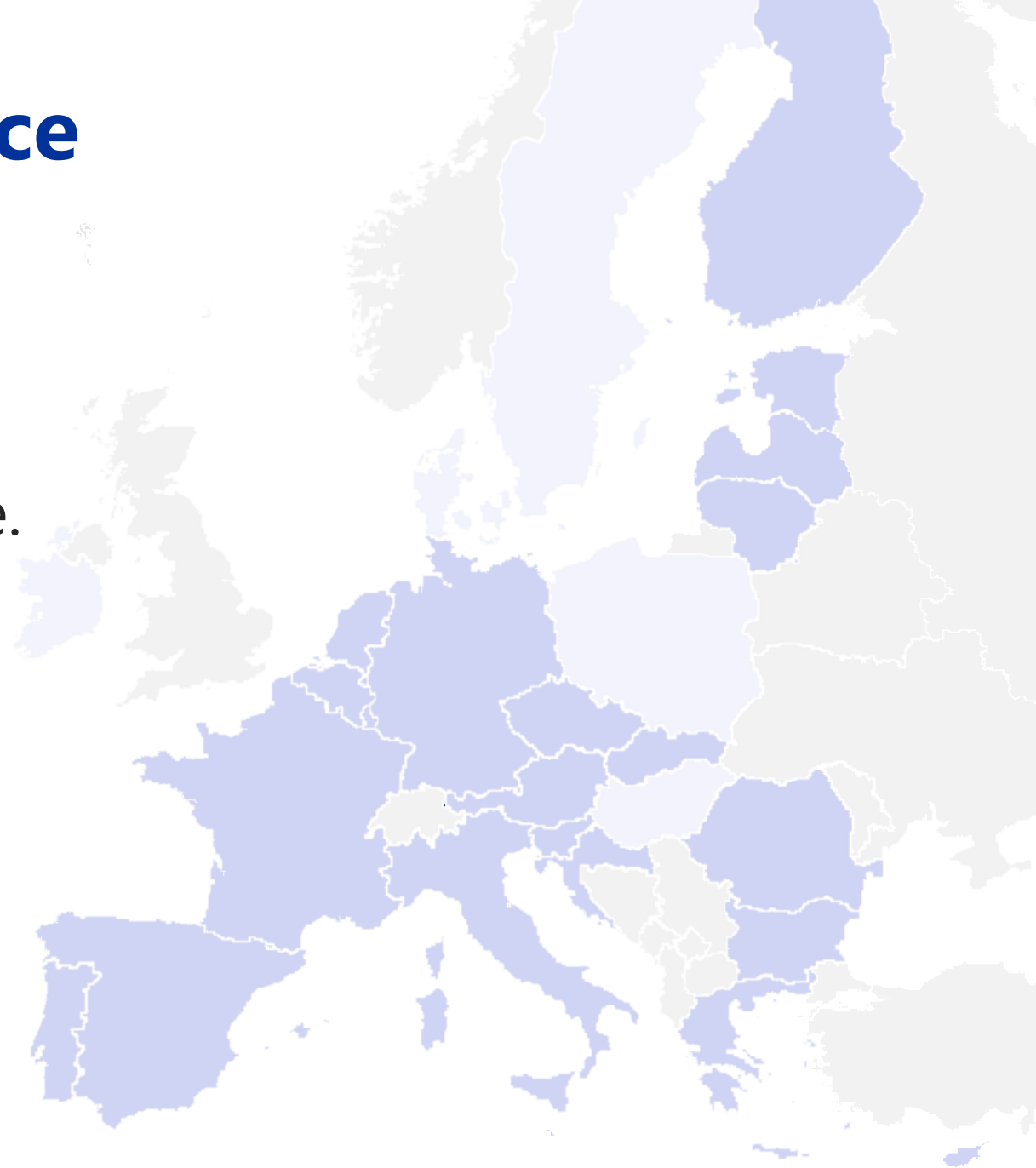
Participating EU member states

-  Participating EU member states
-  Non-participating EU member states
-  Non-EU



Territorial competence

- Offences committed, in whole or in part, in a participating Member State.
- Offences committed anywhere by a national of a participating Member State, or by an EU official.



Structure: the College

- Chaired by European Chief Prosecutor
- 1 European Prosecutor per participating EU member state
- Take decisions on strategic matters, including determining the priorities and the investigation and prosecution policy of the EPPO.



Structure: Decentralised level

- Up to 140 European Delegated Prosecutors (EDPs).
 - in charge of EPPO investigations
 - monitored by 15 Permanent Chambers in Luxembourg, composed of 3 European Prosecutors.

- Full independence from their national authorities. Cases are tried before national courts.



● = Active number of EDPs (April 2022)

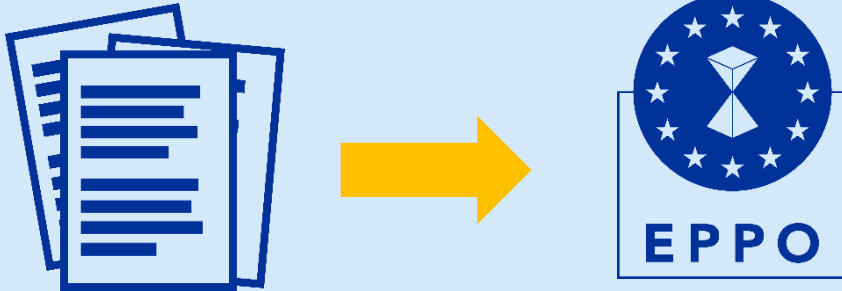
Permanent Chambers

- Novelty for a prosecution office
- Ensure independence
- Monitor and direct the investigations and prosecutions
- 15 Chambers: 3 European Prosecutors + legal support
- Cases are allocated randomly, automatic and alternating



Investigations: how it works

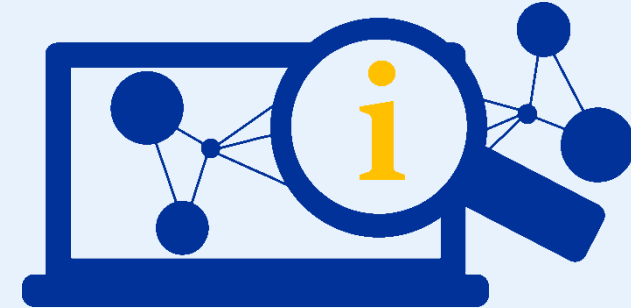
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Information comes to EPPO

- From private parties: **Report A Crime web form**
- From national authorities

2



Verification and registration in digital **Case Management System** and assigned to a European Delegated Prosecutor.

3



If opened, EDP investigates from start to finish

- Supported by EPPO financial investigators and case analysts
- Supported by national police, customs, tax services...
- Supervised by a Permanent Chamber in Luxembourg

4



Case is tried before the national courts

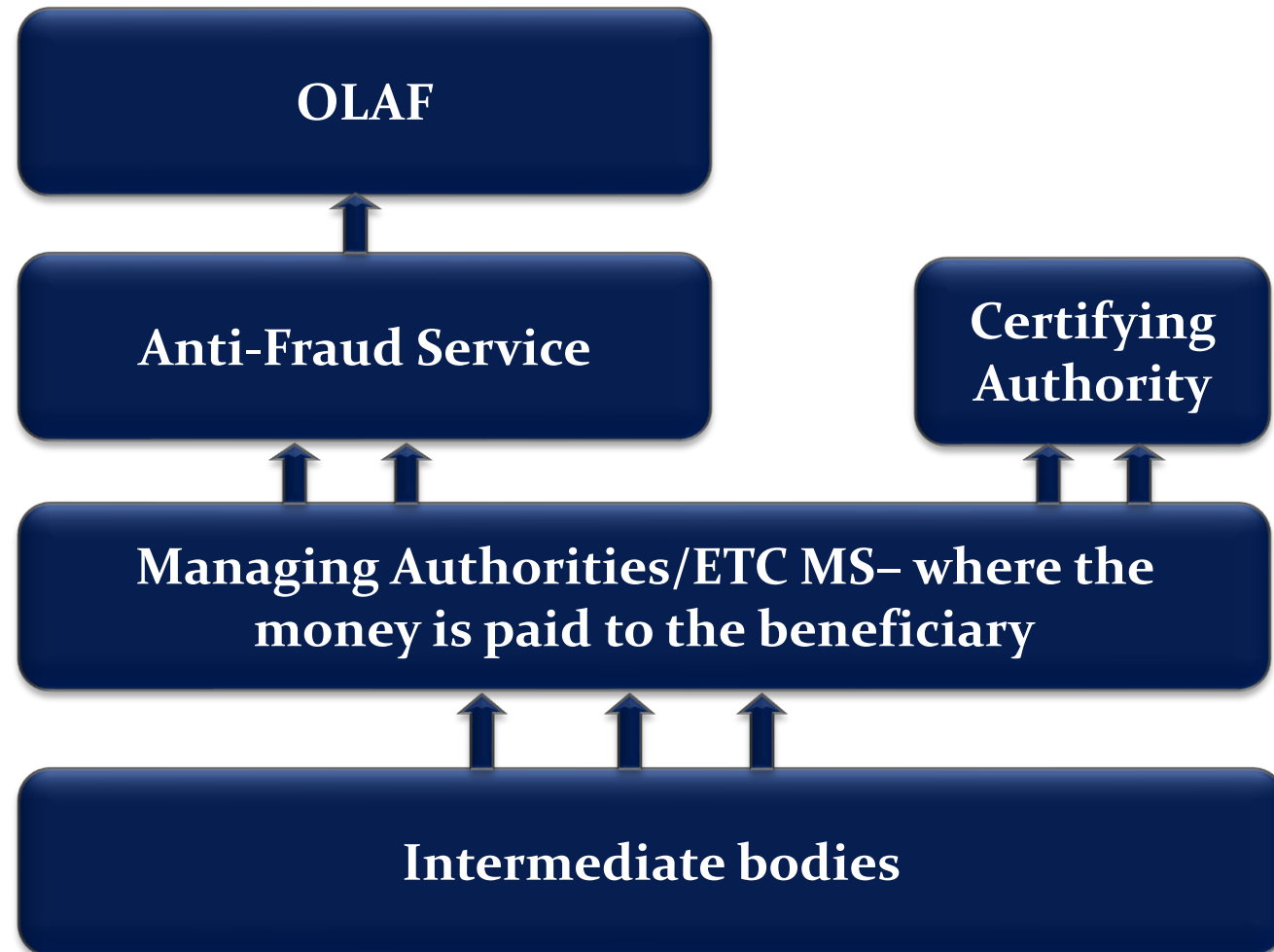
Competence in carrying-out investigations/checks

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

Reporting of Irregularities – Aim of Reporting

- Under EU law, Member States **must report** cases of irregularities in revenue and expenditure to the Commission, including suspected and established fraud, which have been subject to PACA.
- Reporting can vary significantly. Information includes the provision infringed, the amounts in question, the practices used to commit the irregularity, the parties involved, whether the detected irregularity constitutes 'fraud' etc.
- Functions: It is a **preventive measure** to support proactive risk analysis, and it also **allows administrative and judicial monitoring** of action taken by Member States.

Mechanism of Irregularity/Fraud Reporting



Reported Irregularities in ETC

Table CP14: Number of irregularities reported in relation to the programming period 2007-13 by objective - Cohesion and Fisheries Policies

Objective	REPORTING YEAR											TOTAL
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	
	N	N	N	N	N	N	N	N	N	N	N	N
Convergence	7	121	711	1498	2118	2669	2907	5221	4920	3413	881	24,466
Competitiveness and Employment	0	9	351	404	494	788	890	3156	1826	687	105	8,710
Territorial Cooperation	0	0	14	39	46	78	116	98	152	56	4	603
Multiobjective	0	30	152	225	495	763	708	1321	1314	706	99	5,813
Fisheries	0	0	6	30	75	144	81	180	261	192	29	998
null	0	0	0	3	0	2	15	106	42	15	3	186
TOTAL	7	160	1,234	2,199	3,228	4,444	4,717	10,082	8,515	5,069	1,121	40,776

Table CP16: Number of irregularities reported as fraudulent in relation to the programming period 2007-13 by objective - Cohesion and Fisheries Policies

Objective	REPORTING YEAR											TOTAL
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	
	N	N	N	N	N	N	N	N	N	N	N	N
Convergence	0	43	37	68	108	178	149	174	280	233	124	1,394
Competitiveness and Employment	0	4	1	10	9	28	35	119	8	29	3	246
Territorial Cooperation	0	0	3	13	2	4	3	3	5	5	3	41
Multiobjective	0	0	3	17	22	13	17	79	52	32	17	252
Fisheries	0	0	1	1	4	21	8	15	9	8	1	68
blank	0	0	0	0	0	0	1	7	0	0	1	9
TOTAL	0	47	45	109	145	244	213	397	354	307	149	2,010

CONFIDENTIALITY OF NATIONAL INVESTIGATIONS

- **Reporting obligation** imposed by EU legislation **may be limited!** Art. 3 of Delegated Regulations 2015/1970-73
- *'Where national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent tribunal, court or other body in accordance with national rules.'*
- This must remain an exception and safeguard the principle of uniform application (if other MS report these cases)

Reporting of Irregularities – classification

- **'Any breach of Union law or of national law relating to its application'** encompasses the whole normative framework in EU funding; including, on the one hand, provisions specific to EU funds, and on the other, provisions on the management of public funds in general at national or institutional level.

- **Irregularity**
- **Suspected Fraud**
- **Established Fraud**

- The fact generating the obligation to report – **PACA**
 - 1. *Member States shall report irregularities to the Commission which*
 - (a) *affect an amount that exceeds EUR 10 000 in contribution from the funds;*
 - (b) *have been the subject of a 'primary administrative or judicial finding'.*

PACA – Primary administrative or judicial finding

- **'primary administrative or judicial finding'** means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.
- **Requisites for PACA:**
- **a document in writing (written assessment):** a report, memorandum, resolution, recovery order, management verification report, check list any document with facts of irregularity
- **an assessment by a competent authority;**
- **a conclusion that an irregularity has been committed.**

Types of reporting

- In EU legislation the deadlines for meeting the reporting obligation vary, based on the type of the irregularity report (initial; follow-up or special report).
- **Initial** - Within two months following the end of each quarter (counting from the PACA).
- **Follow up** - *as soon as possible after obtaining the relevant information (In initiation, abonnement or conclusion of proceedings)*
- **Immediate** – if other MS is concerned
- **Limitation period** – no envisaged (programme). In suspicion of fraud – depends on National Legislation.

Exceptions to reporting obligations

Member States must report to the Commission only irregularities (including 'suspected fraud' and 'fraud') that affect an amount exceeding EUR 10 000 in contribution to the funds:

- The Member States shall not notify the Commission **of irregularities** in relation to the following:
 - (a) cases where the irregularity consists **solely of the failure to execute**, in whole or in part, an operation included in the co-financed operational programme **owing to the bankruptcy** of the beneficiary;
 - (b) cases **brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily** and before detection by either authority, whether before or after the payment of the public contribution;
 - (c) **cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned** in a statement of expenditure submitted to the Commission.

Closing and canceling the irregularity reporting

- **Canceling** – if the case did not constitute an irregularity
- **Closing**: when all proceedings and procedures are concluded on national level, including the reimbursement to the EU Budget.
- **Examples**:
 1. The beneficiary **recovers** the unduly paid **sums**
 2. the **financial correction procedure** is finalised;
 3. The procedures are concluded with final **administrative or judicial act**
 4. If the **court** says there was not an irregularity
 5. If the **beneficiary fulfills its obligation** that lead to the irregularity
 6. **Removal** from the **trade register** of the beneficiary
 7. the **MA discovers** the irregularity **before payment** and the funding agreement is cancelled or the beneficiary agrees to cover the financial consequences
 8. **New findings** opposite to the old ones

Role of national controllers

- The NC must be able to **detect potential red flags**
- The NC must try to **answer all sections of the NC checklist** as the guidelines provided by the JS of each program
- The NC must check and validate the partner's reports and all supporting documents with **"corresponding scepticism"**
- When the NC finds a suspicion of fraud, he **immediately notifies** the competent authority: MA/JS or law enforcement/Prosecutor's office, depending of rules

(BG Rules: In case the authority itself is involved – notify AFCOS).

Dealing with Fraud. Red flags

Red flags

- A red flag is an **indicator of possible fraud or corruption**. It is an element or a set of elements that are unusual in nature or vary from normal activity. It is a signal that something is out of the ordinary and may need to be investigated further.
- The presence of **red flags should make staff more vigilant** and should make them take the necessary measures to confirm or deny that there is a risk of fraud. Reactivity is of great importance.

How to detect fraud in your daily work?

Red flags in the **Format of Documents**

- ***Practical examples – Documents – the physical way to commit fraud***
- Documents which depart from standard and generally accepted layouts should be questioned.
- Invoices, letters with no logo of the company
- Invoices printed on paper other than prepared forms
- Visible differences in type, size, sharpness, colour, etc. of font in the document
- Erased or crossed-out figures, write-offs without signatures of authorised persons

Red flags in the **Format of Documents**

- Handwritten amounts without signatures of authorised persons or elements in a printed document where not a priori justified
- Lack of continuity in the text lines
- Abnormal sharp edges of official stamps or unusual colour indicating the use of a computer printer
- Fully identical signatures of persons (in format and size) on various documents suggesting the possibility of forgery in form of computer print
- Number of handwritten signatures made in a similar style or by identical pen on documents related to different time periods

Red flags in the Content of Documents

- Unusual dates, amounts, notes, phone numbers, and calculations
- Miscalculation in an invoice or in a payslip produced by a computer: e.g. total amounts not corresponding to the sum of the transactions
- Missing obligatory element in an invoice: date, Tax Identification Number, invoice's number, etc....
- Same mutual position of a stamp and a signature of person on a set of documents suggesting the use of an image (and not a genuine signature): it may be a computer-generated image used to falsify the documents

Red flags in the Content of Documents

- Lack of contact details of companies or persons, like phone number, emails etc
- Absence of serial numbers on invoices and delivery notes for goods, which are usually marked by serial numbers (electronics, production lines, etc.)
- Description of goods or services in a vague manner
- Discrepancies and deviation from standard concerning bank account numbers (e.g. fewer digits than there should be, number not corresponding to specific branch of a bank, other visible inconsistencies)

Red flags on Circumstances

- Contractor's address same as employee address
- Address of the supplier or beneficiary in a domiciling institution
- Unusual number of payments to one payee or address
- Invoices and bills issued by entities not registered in business activity register/trade register
- Unusual delays in providing information

Red flags on Circumstances

- The data contained in the document differ visually from a similar document issued by the same body
- Reference to a company not recorded in publicly available registers of companies or not traceable in public resources
- Invoices issued by a newly established company
- Beneficiary not being able to provide originals upon request
- **Beneficiary says “It was just a mistake”**

How is this mistake never in the favor of EU Funds?

Circumstances

Public Procurement – highest number of irregularities in EU

- Bid rigging, splitting of purchases, tailor-made specifications
- Staff costs wrongly calculated
- No proper procurement procedure followed
- Artificial splitting of contracts in order to benefit from the easier tendering procedure
- Complementary works related to already contracted services
- Specific Technical criteria/specifications set by beneficiary to limit the competition
- Publicity criteria not followed in the public procurement procedure
- No audit trail
- **The problem with Conflict of interest – who is responsible to detect and take measures?**

Cases study – practical workshop





THANK YOU

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