

The Commission's New Anti-Fraud Strategy – Enhanced Action to Protect the EU Budget



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ABSTRACT

This article introduces the EU Commission's Anti-Fraud Strategy (CAFS) adopted in April 2019 and explains its background, main features and objectives. The Commission introduced the new CAFS in order to meet the new challenges brought forward by a changing institutional and legislative anti-fraud environment and to adhere to relevant recommendations urging for a more robust anti-fraud system. The article discusses the CAFS's main challenges and concludes that the new Strategy is designed to pave the way for the creation of a more effective anti-fraud policy for the protection of the EU's financial interests. However, a strong commitment and continuous effort by the relevant stakeholders is necessary for an effective implementation.

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I. Introduction and Overview

The European Anti-Fraud Office (OLAF) is best known as an investigative body fighting fraud, corruption and other illegal activities detrimental to the EU's financial interests as well as serious misconduct within the European institutions.¹ The office has, nevertheless, a dual task. OLAF is not only mandated to carry out administrative investigations but also to act as the leading Commission Service² for developing effective EU anti-fraud policies including the European Commission's Anti-Fraud Strategy (CAFS).³ The new CAFS reads in this context:⁴

*"Fraud that affects the EU budget can cause EU funds to be siphoned off from their legitimate purposes and thereby compromise the effectiveness of EU measures. When fraudsters succeed, they call the integrity of EU action into question and undermine the public's trust in EU policies."*⁵

In fact, combating fraud starts with management placing a realistic assessment of and adequate response to the risks of fraud high in their planning agenda. On the part of the EU Commission, threats posed by fraudsters are being taken seriously. The Commission embarked on an ambitious project in April 2019 with the adoption of its brand new Anti-Fraud Strategy that pushes for more consistency and better coordination in the fight against fraud among the various Commission departments and paves the way for more data-driven anti-fraud measures in the coming years.⁶

An evolving fraud risk environment, along with a newly shaped legal and institutional anti-fraud landscape and the advent of the Multiannual Financial Framework (MFF) for 2021–2027, triggered the need for a new, more robust anti-fraud strategy for the EU Commission. The goal is to strive towards a strong improvement of detection, sanctioning and prevention of fraud for the protection of the EU's financial interests.

The vision behind the recently adopted Strategy is to strengthen the corporate oversight of the Commission regarding all issues related to fraud and to reinforce the anti-fraud system that is already in place through broadened and refined analysis of fraud-related data. The new Strategy's goal is challenging and ambitious but certainly corresponds to the indispensable need to increase citizens' trust in the EU institutions. The implementation of the Strategy's communication and accompanying Action Plan is a challenge welcomed by the Commission as a whole, with the European Anti-Fraud Office (OLAF) having been put in the driving seat to steer the implementation and collectively achieve this goal.

II. Background

1. Legal framework

Art. 325 of the TFEU requires the EU and its Member States to combat fraud and any other illegal activities that may affect the EU's financial interests. Under Art. 317 of the TFEU and Art. 36 of the new Financial Regulation,⁷ the EU Commission implements the EU budget, in compliance with sound financial management principles, applying effective and efficient internal control, which includes preventing, detecting, correcting and following up on fraud and irregularities. Accordingly, all Commission Services are obliged to prevent and detect fraud as part of their daily activities involving the use of resources. Therefore, a well-functioning strategic framework is imperative, to coordinate the Commission's anti-fraud measures and guarantee a high-calibre anti-fraud policy compliant to EU law provisions.

2. The call for a robust anti-fraud strategy

In order to prepare for the 2014–2020 Multiannual Financial Framework (MFF), the EU Commission had adopted a CAFS in 2011. The previous strategy had three priority actions:

- Introducing anti-fraud provisions in Commission proposals on spending programmes under the 2014–2020 MFF;
- Implementing anti-fraud strategies at department level;
- Revising the public procurement directives⁸, which have all been successfully implemented.

In the meantime, new developments emerged in EU law and policy that naturally contributed to the initiation of a new anti-fraud strategy. Developments included the adoption of the PIF Directive,⁹ the establishment of the European Public Prosecutor's Office,¹⁰ the Commission proposal for the amendment of Regulation (EU, Euratom) 883/2013¹¹ (the 'OLAF Regulation') and the preparation for a new MFF for 2021–2027. These new realities created an urgent need for new priorities and focus to be put in place for a modern and fit-for-purpose CAFS. Importantly and in addition to the evolving anti-fraud legal and policy landscape, the European Court of Auditors published a special report in January 2019 titled "Fighting fraud in EU spending: action needed",¹² which brought forward recommendations for the EU Commission referring to, among others, a renewed anti-fraud strategy based on enhanced risk analysis.

The first steps taken by the Commission Services towards a comprehensive revision of the CAFS, were to carry out an evaluation of the 2011 CAFS and a fraud risk assessment, involving also the executive agencies. The evaluation conducted in 2018 against the objectives of the 2011 CAFS concluded that although it was still relevant as a policy document for the Commission, a revision was essential, to meet the challenges of an evolving situation as concerns fighting fraud and other illegal activities affecting the EU budget. The fraud risk assessment identified two main vulnerabilities: (i) an underdeveloped central analytical capacity and (ii) certain gaps in the Commission's supervision of fraud risk management at department level. These findings paved the way towards the new Strategy's focus areas and priorities. This fraud risk assessment was published along with the new CAFS communication and Action Plan.¹³

III. The New Commission Anti-Fraud Strategy

1. Scope

The new CAFS was adopted on 29 April 2019. The CAFS is an internal policy document binding on the Commission Services and Executive Agencies in their fight against fraud and corruption affecting the EU's financial interests. Its scope focuses on protecting the EU's financial interests from fraud, corruption and other intentional irregularities and from the risk of serious misconduct inside the EU's institutions and bodies. These areas are also central to the legislator in the fight against fraud. As a result, the 2019 CAFS covers:¹⁴

- Fraud – including VAT fraud –, corruption and misappropriation affecting the EU's financial interests, as defined in Arts. 3 and 4 of the PIF Directive;
- Other criminal offences affecting the EU's financial interests, e.g., offences linked to an abuse of procurement procedures where they affect the EU budget;

- Irregularities as defined in Art. 1(2) of Regulation (EC, Euratom) No 2988/95¹⁵ (insofar as they are intentional but not already captured by the criminal offences referred to above); and
- Serious breaches of professional obligations by Members or staff of the EU's institutions and bodies, as referred to in Art. 1(4) of the OLAF Regulation and in the second subparagraph of Art. 2(1) of Commission Decision (EC, ECSC, Euratom) No 352/1999.

2. Priorities and implementation

The 2019 Strategy essentially rests upon two pillars: strengthening cooperation between the Commission Services and generating a robust analytical capability within the Commission, through innovative analytical tools, higher connectivity of databases and improved data quality. The EU Commission envisages that more in-depth analyses based on much broader, yet tailored data collection and intense cooperation with the relevant stakeholders will provide more purposeful and substantial information in relation to specific sectors and/or EU Member States.¹⁶

The CAFS's first objective is to improve further the understanding of fraud patterns, fraudsters' profiles and systemic vulnerabilities relating to fraud affecting the EU budget. The Commission will strive to achieve this goal through the reinforcement of new and existing databases and risk scoring tools. Reliable, complete and accurate data and their analysis are at the basis of well-functioning policy-making. The EU Commission, through OLAF's policy role, already collects and analyses data on fraudulent and non-fraudulent irregularities for the purposes of the annual Report on the Protection of the EU's Financial Interests (PIF report).¹⁷ According to the new CAFS, OLAF will work together with the Commission Services and with the Member States to identify and collect relevant fraud-related data. Based on this, it will examine Member States' anti-fraud systems and conduct analytical projects aimed at identifying, understanding and assessing further fraud risks affecting the EU budget. Subsequently, through a more efficient use of data, OLAF aims to become more effective as an investigative service and to evolve as a centre of expertise in fraud prevention and analysis. In addition, the new Strategy suggests that the increased availability of data and the continuous refinement of analysis techniques and IT tools might also lead to better-targeted investigations for the fight against fraud, corruption and any other illegal activities affecting the EU's financial interests.

The new Strategy's second objective concerns the optimisation of coordination, cooperation and workflows for the fight against fraud, in particular among the Commission Services and Executive Agencies. This objective is in line with the Commission's recent "Governance Package",¹⁸ which emphasises the need for adequate corporate oversight of policies and processes conducted by the Institution's Departments and Executive Agencies. The implementation of this objective is based upon the role of OLAF as an advisor and coordinator for steering the new CAFS implementation. At the strategic level, the Commission's Corporate Management Board (CMB) will be providing oversight and strategic orientations on the corporate aspects of the fight against fraud in the Commission Directorates-General and Services including on developments concerning the new CAFS.¹⁹ In cooperation with central services of the EU Commission in newly and thematically created working groups within the established Fraud Prevention and Detection Network, OLAF aspires to bring together ideas and join forces across the institution to optimise the fight against fraud. OLAF will share the overview of the Commission's anti-fraud activities with the CMB and propose guidance as deemed appropriate.

Further objectives of the CAFS were identified through the fraud risk assessment carried out by the Commission²⁰ or derived from the guiding principles of the Commission's fight against fraud, corruption and other illegal activities affecting the EU's budget.²¹ Those further objectives relate to the following areas:

- Integrity and compliance;

- Know-how and equipment;
- Transparency of EU funding;
- Legal framework; and
- Fighting revenue fraud.

These areas were integrated into the Action Plan,²² which is an accompanying document to the CAFS communication, designed to implement it.

Attention is given to the continuous principle of professional integrity and ethics among the Commission's staff. The Action Plan suggests, for instance, continuing training and internal communication in this respect, with special emphasis put on conflicts of interest, relations with lobbyists, duty of discretion and whistleblowing. Know-how and equipment relate to the maintenance and refinement of targeted anti-fraud training, awareness-raising and technical assistance. Moreover, on the notion of transparency, the CAFS Action Plan promotes effective information of the interested public on the use of EU funds, for example on public procurement through the Tenders Electronic Daily²³ (TED) database. Actions in connection with the legal framework refer to the continuous and effective fraud-proofing of legal instruments for the implementation of the budget, in view of the future MFF for 2021–2027. These include legislative proposals, delegated and implementing regulations as well as documents of systemic importance for a policy area, meaning, implementing decisions, model contracts and agreements, delegation agreements, guarantee agreements, calls for tenders/proposals/expressions of interest, and policy guidelines.

On fighting revenue fraud, the 2019 CAFS is now designed to strengthen the fight against customs and VAT fraud that harms the budget on the revenue side. As regards Traditional Own Resources (TOR), the new CAFS envisages to boost the Commission's and the Member States' analytical capacities in the customs area by sharing approaches and good practices and by increasing awareness and making best use of data sources. On Value Added Tax (VAT) fraud, the CAFS supports the adoption of a revamped VAT system through the effective implementation of related EU legislation combined with strengthened coordination and international cooperation.²⁴

IV. Conclusions

Yearly information on the implementation of the new Commission's Anti-Fraud Strategy will be included in the future EU Commission's "Annual Reports on the protection of the EU's financial interests," the mentioned PIF reports.²⁵

The fact that the European Commission's anti-fraud action is firmly integrated in its annual strategic planning and programming cycle already demonstrates the Institution's commitment towards an effective protection of the EU budget. Nevertheless, the Commission should bear in mind that the CAFS must remain at a central place in the Commission's agenda, in order for the Institution to demonstrate effectively its commitment and obligation to fight against fraud, corruption and other illegal activities affecting the EU budget. This is a key step into crafting a meaningful, structured and reinforced anti-fraud policy. The new CAFS implementation presents a challenge but also a great opportunity to construct a stronger anti-fraud system that will eventually have the broader impact of rebuilding citizens' trust in the EU institutions. In addition, with its reinforced role, OLAF can steer a course towards effective coordination and cooperation among the Commission Services to make the CAFS's implementation a collaborative process. The implementation of the CAFS is a shared responsibility; therefore, joint effort will lead towards best results.

Summing up, the new CAFS is an aspiring document with 63 action points in its Action Plan, which puts into place a more coherent and overall enhanced anti-fraud policy framework for the protection of the EU's financial interests. Its implementation has just begun and it is upon the Commission, benefiting from OLAF's guidance, to keep up the work towards achieving this goal.

1. See recital 6 of Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF) (SEC(1999) 802), 1999/352/EC, ECSC, Euratom, O.J. L 136, 31.5.1999, 20.↵
2. Commission Services refer to EU Commission Departments and Executive Agencies.↵
3. European Anti-Fraud Office's website available at: https://ec.europa.eu/anti-fraud/policy/preventing-fraud_en.↵
4. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the Court of Auditors "Commission Anti-Fraud Strategy: enhanced action to protect the EU budget," COM(2019) 196 final, 24 April 2019.↵
5. See COM(2019) 196 final, page 5.↵
6. European Commission press release "Strengthening the Commission's oversight in a modern and robust anti-fraud system" of 29 April 2019, available at: http://europa.eu/rapid/press-release_IP-19-2080_en.htm.↵
7. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, O.J. L 193, 30.7.2018, 1.↵
8. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, O.J. L 94, 28.3.2014, 65. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, O.J. L 94, 28.3.2014, 1. Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, O.J. L 94, 28.3.2014, 243.↵
9. Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, O.J. L 198, 28.7.2017, 29.↵
10. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), O.J. L 283, 31.10.2017, 1.↵
11. Commission Proposal of 23 May 2018 for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations, COM(2018) 338.↵
12. European Court of Auditors Special Report No 01/2019 'Fighting fraud in EU spending: action needed' available at: https://www.eca.europa.eu/Lists/ECADocuments/SR19_01/SR_FRAUD_RISKS_EN.pdf; see also T. Wahl, eucrim 1/2019, pp. 15-16.↵
13. Action Plan accompanying the document 'Commission Anti-Fraud Strategy: enhanced action to protect the EU budget' SWD(2019) 170 final.↵
14. See COM(2019) 196 final, op. cit. (n. 4), p. 8.↵
15. Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, O.J. L 312, 23.12.1995, 1.↵
16. See the European Court of Auditors Journal No 2/2019: Fraud and Corruption/Ethics and Integrity pp. 170-171.↵
17. European Commission, European Anti-Fraud Office, 'Annual Reports on the protection of the EU's financial interests ("PIF" Report)' available at: https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports_en.↵
18. Communication to the Commission "Governance in the European Commission" C(2018) 7703 final of 21 November 2018.↵
19. Communication to the Commission "Streamlining and strengthening corporate governance within the European Commission" C(2018)7704 final.↵
20. See "Fraud Risk Assessment", staff working document accompanying the communication "Commission Anti-Fraud Strategy: enhanced action to protect the EU budget", SWD(2019) 171 final.↵
21. See Section 4.1 of COM(2019) 196 final.↵
22. See SWD(2019) 170 final, op. cit. (n. 12).↵
23. The Tenders Electronic Daily database (TED) is a platform accessible to all potential bidders which serves as a source of data for improving the performance of national public procurement systems, available at: <https://ted.europa.eu/TED/main/HomePage.do>.↵
24. See SWD(2019) 170 final, op. cit. (n. 12).↵
25. 29th Annual Report from the Commission to the European Parliament and the Council, on the Protection of the European Union's financial interests – Fight against fraud – 2017, available at: https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports_en.↵

Authors statement

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