



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

## **DG AGRI ANTI-FRAUD STRATEGY**

**Version 4.0**

For agreement:

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## 1 BACKGROUND

In June 2011, the Commission adopted a new Anti-Fraud Strategy<sup>1</sup> (“2011 CAFS”) and an Internal Action Plan for its implementation<sup>2</sup>. At the same time, the Internal Audit Service had performed an audit on Fraud Prevention and Detection in DG AGRI, which resulted in recommendations on how to improve DG AGRI’s activities in this field<sup>3</sup>.

Based on the 2011 CAFS and the IAS audit, on 12 September 2012 DG AGRI adopted a specific Anti-Fraud Strategy (“AGRI AFS”) to address fraud prevention, detection and correction in the implementation of the Common Agricultural Policy (“CAP”).

Since 2011, DG AGRI has updated the AGRI CAFS on three occasions. Whilst the general dispositions of the AGRI AFS remained the same,

- new CAP regulations were integrated and the action plan needed update (AGRI AFS V 2.0 dated 13 May 2014),
- the delegation to the REA of the management of direct expenditure under Horizon 2020 was incorporated and references to the new Commission Delegated Regulation (EU) No 907/2014 and Commission Implementing Regulation (EU) No 908/2014 were introduced (AGRI AFS V 2.1 dated 18 November 2014),
- the fraud risk assessment specifically for the CAP, finalised in November 2015, was incorporated as were some marginal changes (AGRI AFS V 3.0 dated 18 January 2016).

Further updates of the AGRI AFS have been delayed until the adoption of the revision of the 2011 CAFS.

The Commission has adopted the revised CAFS on 29 April 2019<sup>4</sup> (“CAFS 2019”). The present version of the AGRI AFS is the alignment to the CAFS2019, which it complements for the specificities of the CAP. It continues outlining the anti-fraud strategy for shared, decentralised and direct management of the CAP budget under the responsibility of DG AGRI.

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Commission Anti-fraud Strategy COM(2011)376

<sup>2</sup> Communication to the Commission, Commission Internal Action Plan for the Implementation of the Commission Anti-Fraud Strategy SEC(2011)787/2

<sup>3</sup> IAS Audit Report IAS.B.3-2011-AGRI-001, see Ares(2015)2827890 - 06/07/2015

<sup>4</sup> COM(2019) 196 final

## **2 GUIDING PRINCIPLES OF THE AGRI AFS**

In implementing the CAP, DG AGRI pursues a policy of zero tolerance of fraudulent irregularities and expects the same from the relevant bodies in the Member States (paying agencies, managing authorities and competent authorities) under shared management when implementing the CAP and making payments to its beneficiaries. The same goal is pursued in the implementation of the IPARD programmes by the Candidate Countries.

Fraudulent irregularities cause financial loss and reputational damage in public perception. All actors involved in the implementation of the CAP must act rigorously to prevent, detect and correct fraudulent irregularities and must be seen to do so.

## **3 IMPLEMENTATION OF THE AGRI AFS TO DATE**

The following anti-fraud actions have proven successful and shall be continued in the future:

### **3.1 Anti-fraud seminars<sup>5</sup>**

As the Member State authorities tasked with the implementation of the CAP stand in the first line when it comes to preventing, detecting and correcting fraudulent irregularities, DG AGRI has offered to the competent authorities and paying agencies holding targeted anti-fraud seminars for their staff. The offer was later extended to the IPARD paying agencies in Candidate Countries and potential Candidate Countries.

The seminars explained the anti-fraud legal framework and what Member States should do in order to adopt effective and proportionate anti-fraud measures. They presented the typology of fraudulent irregularities, gave examples of indicators for fraudulent irregularities (“red flags”) and how to integrate them into management and control work.

Between March 2013 and November 2018, over 60 such seminars have been delivered in all Member States, Candidate Countries and potential Candidate Countries, reaching out to more than 5.000 participants. After the end of 2018, no further seminars have been requested and DG AGRI had no reason to deliver more seminars at its own initiative. Further seminars shall however be delivered in the future upon request or at DG AGRI’s own initiative if the need arises (e.g. should new fraud patterns arise that need to be brought to the attention of Member States).

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<sup>5</sup> AGRI AFS V.3.0, Action point 5.

### **3.2 Fraud-risk assessment<sup>6</sup>**

In early 2016, DG AGRI published an “Assessment of the risk of fraud and other serious irregularities to the detriment of the CAP budget”<sup>7</sup>. The assessment was made available to Member States in 25 different languages and was designed to assist Member States in better designing their individual anti-fraud policies and to provide intelligence to administrative and control staff in the competent authorities and paying agencies.

The fraud-risk assessment is an on-going exercise and it complements the risk management in DG AGRI and the preparation of the annual risk register. All appropriate information relating to fraud to the detriment of the CAP budget (OLAF reports, DG AGRI’s own audit work, ECA reports, etc.) is evaluated to identify if new fraud patterns emerge or identified fraud patterns change, and if therefore the fraud-risk assessment needs modifications. So far, this has not yet proven necessary<sup>8</sup>.

### **3.3 Other guidance<sup>9</sup>**

In 2013, DG AGRI drafted guidance notes on fraud detection in areas at specific risk. The subjects covered were manipulated offers in EAFRD investment projects, on the artificial creation of funding conditions and on the fulfilment of the anti-fraud parameters of the accreditation criteria for paying agencies. Additional guidance has been provided by the COCOLAF Fraud Prevention Group and has been made available to the Member States through the SFC.

### **3.4 Arachne**

As of 2019, DG AGRI works with Member States to promote the use of the risk scoring tool Arachne in particular for non-IACS, i.e. project-based measures under rural development (investment, diversification, modernisation, village renewal, etc.). This corresponds to Action Point 4 of the CAFS 2019 Action Plan<sup>10</sup>, which reads: “*Review and improve the ARACHNE risk scoring tool. Continue to promote its use among Member State authorities, supported by an external legal opinion as necessary.*”

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<sup>6</sup> AGRI AFS V.3.0, Action points 2 and 7.

<sup>7</sup> Ares(2016)158697 - 12/01/2016

<sup>8</sup> At this point, it is too early to determine if any Covid-19 measures and restrictions at EU or Member State level have provoked or will provoke new specific fraud risks.

<sup>9</sup> AGRI AFS V.3.0, Action points 2 and 7.

<sup>10</sup> SWD(2019) 171 final.

## **4 IRREGULARITIES AND FRAUD AND THE LEGAL FRAMEWORK FOR THE PROTECTION OF FINANCIAL INTERESTS OF THE EU**

### **4.1 Definition of irregularity**

Article 1(2) of Regulation (EC, Euratom) No 2988/1995<sup>11</sup> defines an irregularity as *"any infringement of a provision of Union 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 Union or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Union, or by an unjustified item of expenditure"*.

### **4.2 Definition of fraud**

The Convention drawn up based on Article K.3 of the Treaty on the European Union on the protection of the European Communities' financial interests<sup>12</sup> defined fraud, in respect of expenditure, as

*"any intentional act or omission relating to*

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

More recently, Article 3 of 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<sup>13</sup> defines fraud as follows:

*1. Member States shall take the necessary measures to ensure that fraud affecting the Union's financial interests constitutes a criminal offence when committed intentionally.*

*2. For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests:*

*(a) in respect of non-procurement-related expenditure, any act or omission relating to:*

*(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;*

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<sup>11</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, (OJ L 312, 23.12.1995, p. 1–4)

<sup>12</sup> OJ C 316, 27.11.1995, p. 49. The Convention remains applicable to the Netherlands only.

<sup>13</sup> OJ L189, 28.7.2017, p. 29.

*(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;*

*(b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to:*

*(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, which damages the Union's financial interests; ...*

It is therefore the intentionality of the misrepresentation, which distinguishes fraud from an irregularity<sup>14</sup>.

Since 2006, when they notify irregularity cases to the Commission (OLAF) through the Irregularities Management System ("IMS"), Member States have been required to identify whether these cases involved "suspected fraud"<sup>15, 16</sup>.

### **4.3 Damage to the EU's reputation**

Additionally, other misbehaviours without direct impact on the EU's financial interests, but which are nevertheless detrimental to the reputation of the EU and/or the organisation, shall also be covered by the scope of this strategy. These misbehaviours shall include, but not be limited to, cases of document forgery, concealment or destruction of material facts, breaches of IT systems, conflicts of interests that intentionally have not been declared, so called "land grabbing", favouritism and collusion.

### **4.4 Other instances of infringements**

Albeit without direct impact on the EU financial interests, other instances of infringements are, for instance, the unlawful use of logos, not only, but also pertaining to the "Euro-leaf" EU organic logo, the "protected designation of origin" (PDO), the "protected geographical indication" (PGI) and the "traditional speciality guaranteed" (TSG), and any related use of false certificates in the areas

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<sup>14</sup> In order to be categorised as fraud, a suspected case of fraud must be determined as "fraud" by a Court decision (Res Judicata).

<sup>15</sup> Regulation (EC) No 1848/2006 defines "suspected fraud" as an irregularity which has been subject of a primary administrative or judicial finding giving rise to the initiation of proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud...". This definition is reproduced in Article 27 c) of Commission Regulation (EC) No 1828/2006.

<sup>16</sup> See also Action Points 2 and 3 of the CAFS 2019 Action Plan (SWD(2019) 171 final).



mentioned. This applies also to the use of specific slogans like ‘*Enjoy, it’s from Europe*’. In order to protect the confidence of consumers into such logos/certificates/slogans and to safeguard the reputation of the EU in this area, the present Anti-Fraud Strategy shall cover, mutatis mutandis, this area as well.

#### **4.5 Legal framework for the protection of financial interests of the EU**

Under Article 317 of the Treaty on the Functioning of the European Union (TFEU) and Article 36 of the Financial Regulation<sup>17</sup>, the Commission implements the EU budget in compliance with the principles of sound financial management. The Commission also must apply effective and efficient internal control, which includes preventing, detecting and correcting fraud and other irregularities. The Member States – collecting and spending some 80% of the EU budget - shall cooperate with the Commission.

Therefore, Article 325 (1) of the TFEU requires both the EU and Member States to counter fraud and any other illegal activities affecting the financial interests of the EU. The same applies to candidate countries in relation to the management of pre-accession funds (e.g. IPARD).

More recent anti-fraud legislation in the EU are the PIF-Directive<sup>18</sup>, which sets stricter common standards for the criminal legislation in Member States to protect the EU’s financial interests, and the Regulation establishing the European Public Prosecutor’s Office (EPPO)<sup>19</sup>.

CAP-specific provisions for the programming period 2014-2020 complement the provisions on sound financial management and the fight against fraud in the TFEU. In general terms it must be understood that Regulation (EU) No 1306/2013 on the financing, management and monitoring of the CAP ensures the legality and regularity of expenditure by Member States under the CAP through adequate management and control systems. By definition, systems ensuring the legality and regularity of expenditure offer as an automatic consequence a high degree of protection against fraud and other irregularities.

More specifically, Article 58 (1) of Regulation (EU) No 1306/2013 obliges Member States to ensure effective prevention against fraud, especially in areas with a higher level of risk. They shall prevent, detect and correct irregularities and fraud, impose penalties and recover undue payments.

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<sup>17</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and the of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, repealing Regulation (EU, Euratom) No 966/2012

<sup>18</sup> 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 (OJ L 198, 28.07.2017, p. 29)

<sup>19</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (“the EPPO”), OJ L 283, 31.10.2017, p. 1

Annex I of Commission Delegated Regulation (EU) No 907/2014 foresees that before authorizing a payment claim, the Paying Agency must have inter alia fraud checks pursuant to Article 58 (1) of Regulation (EU) No 1306/2013 in place. Internal control activities shall also cover monitoring procedures to prevent and detect fraud, and training must be delivered to staff to raise fraud awareness.

Commission Implementing Regulation (EU) No 908/2014 requires the pre-accreditation reviews to verify if risk-based anti-fraud measures are put in place in the management and control procedures and systems (Article 1 (3)(c)). Annex 1 of the same Implementing Regulation requires the director of the Paying Agency to confirm in the annual management declaration “that effective and proportionate anti-fraud measures under Article 58 of Regulation (EU) No 1306/2013 are in place and take account of the risks identified”.

The Commission’s Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013<sup>20</sup> for the CAP post 2020 contains anti-fraud provisions comparable to the provisions described above. Article 57 (1) of the proposal obliges Member States to ensure an effective prevention of fraud, to detect and correct irregularities and fraud and to impose effective, dissuasive and proportionate penalties. In addition, the legislative proposals for the CAP post 2020 clarify certain legal concepts in order to avoid misinterpretations and irregularities in their practical application. This should also reduce opportunities for applicants and beneficiaries to commit fraud.

## **5 THE CAP BUDGET AND THE IMPACT OF POSSIBLY FRAUDULENT AND OTHER IRREGULARITIES**

### **5.1 Budget and Beneficiaries**

With around 36% of the total EU budget, the budget of the CAP remains the largest single policy in budgetary terms.

In 2019, the CAP budget was of € 57,7 billion with € 40,6 billion for farmers’ income support (70%), € 14,7 billion for rural development (25,5%) and € 2.5 billion for market measures.

These funds are disbursed to almost seven million beneficiaries (6,4 million for income support, 3,3 million beneficiaries for rural development and 120.000 beneficiaries for market measures)<sup>21</sup>.

Under the Multiannual Financial Framework 2021-2027 the future CAP will continue to be an important policy also in financial terms.

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<sup>20</sup> COM(2018)393 final

<sup>21</sup> As a majority of beneficiaries of payments under rural development measures are also beneficiaries of direct payments (but are only counted once when considering total beneficiary numbers), the total number of beneficiaries, up to 6.9 million for both Agricultural Funds, is lower than the sum of the individual figures.

## 5.2 Financial impact of possibly fraudulent and other irregularities

In spite of the large budget of the CAP and the large number of its beneficiaries, the financial impact of possibly<sup>22</sup> fraudulent and other irregularities is low. This is clearly due to the effective management and control systems in place for the CAP, which also result in a high level of assurance for the CAP.

In 2017, the 276 possibly fraudulent irregularities reported by Member States through the Irregularities Management System (IMS) had a potential financial impact of € 59,9 million<sup>23</sup>. This corresponds to around 0,1 % of the expenditure in 2017. Over the period from 2013 to 2017, the image is similar: 0,13 % financial impact of all possibly fraudulent irregularities with 0,03 % for the 1<sup>st</sup> Pillar (direct payments and market measures) and 0,25 % for the 2<sup>nd</sup> Pillar<sup>24</sup> (rural development).

Also in 2017, Member States reported 3.054 cases of non-fraudulent irregularities with a potential impact of € 210,5 million, corresponding to a financial impact of around 0,37 % of the expenditure in 2017.

For 2018, Member States reported 249 instances of possibly fraudulent irregularities (less than in 2017) with a financial impact of € 63,3 million (slightly higher than in 2017).

Also in 2018, Member States reported 2.832 cases of non-fraudulent irregularities with a potential impact of close to € 164 million, corresponding to a financial impact of around 0,28 % of the expenditure in 2018.

In 2019, Member States reported 235 instances of possibly fraudulent irregularities (-3% compared to 2018) with a financial impact of € 24,6 million (-62% compared to 2018), which corresponds to a financial impact of 0,04% of CAP expenditure in 2019.

Also in 2019, Member States reported 2.798 cases of non-fraudulent irregularities with a potential impact of some € 206,1 million, corresponding to a financial impact of around 0,35 % of the expenditure in 2019, representing a slight increase from 0,28% in the previous year.

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<sup>22</sup> Most of the cases reported by Member States are suspected to be fraudulent, but will in actual fact never be established as accomplished fraud by a court of justice.

<sup>23</sup> Source : 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; COM(2018)553. Caveat: The reliability of IMS reporting by the Member States is not unlimited, as it cannot be excluded that not all relevant cases are reliably reported by Member States.

<sup>24</sup> Source : Commission Staff Working Document – Fraud Risk Assessment, p. 10; SWD(2019)171.

### **5.3 OLAF investigations**

The limited impact of possibly fraudulent irregularities is also reflected in the number of OLAF investigations concerning CAP beneficiaries.

As at the 31<sup>st</sup> of December of each year, OLAF conducted 41 investigations in 2015, 32 in 2016, 28 in 2017, 32 in 2018 and 35 in 2019<sup>25</sup>. Around 80% of all investigations concerned non-IACS, project-based measures under rural development.

## **6 FRAUD RISK ASSESSMENT**

### **6.1 1<sup>st</sup> Pillar (direct payments and market measures)**

#### **Direct payments**

Structured and repetitive fraud/irregularities in direct payments to agricultural holdings and in most market measures are seldom. Where fraud/irregularities happen, they are of an anecdotic nature, i.e. generally non-repetitive and therefore unforeseeable.

The reason for the low fraud likelihood in direct payments is the highly mature and reliable administrative and control environment in which they are managed in all Member States. The Integrated Administrative and Control System (IACS) including the Land Parcel Identification System (LPIS), which Member States are obliged to set up and operate according to Articles 67-78 of Regulation (EU) 1306/2013, make it almost impossible to fraudulently overstate the surface they are cultivating. Hence the extremely low fraud impact rate of around 0,03 % in direct payments under the EAGF.

This most likely explains the recent appearance of allegations of “land grabbing” in a few Member States: As the illicit claim of direct payments (double claims or claims for non-agricultural land) are practically impossible, wrongdoers recur to an illicit appropriation of agricultural land for which they then claim direct payments in a legal manner. Such occurrences cannot as such be resolved by CAP legislation. They are a matter of rule of law in the Member States concerned, which is also reflected in the Commission proposal on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018)324).

#### **Market Measures**

Most market measures show no significant exposure to fraudulent irregularities. Promotion actions however, by their structure, show an increased risk of fraudulent manipulations. Several OLAF cases have identified fraudulent schemes

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<sup>25</sup> It merits mention that the majority of OLAF investigations is closed with financial recommendations or – more seldom – with administrative recommendations. E.g., of the 16 investigations closed in 2019, 11 cases (70%) made recommendations for recoveries from final beneficiaries. The ratio is similar for previous years.

in which the beneficiaries (associations of producers of specific agricultural products) cooperated with the implementing bodies (commercial companies implementing the promotion campaigns) in overstating the costs of campaign activities or in invoicing costs for activities that in fact had never taken place.

In addition, in 2019 some Member States have reported in the IMS an increase of possibly fraudulent irregularities in relation to support to producer organisations.

## **6.2 2<sup>nd</sup> Pillar (rural development)**

The exposure to fraudulent irregularities of the funds allocated to the EAFRD is divided. All surface related payments (e.g. agri-environmental and climate measures or compensation for areas with natural constraints) are managed through the IACS with the LPIS (see 6.1 above) and are therefore little concerned by fraudulent irregularities. The same is true for animal related measures.

The situation is however different for investment measures under rural development. Measures to modernise agricultural holdings and diversification measures (i.e. subsidies paid towards the creation of non-agricultural businesses like micro-enterprises of rural tourism) are more complex in nature and therefore threatened by fraudulent manipulations. It is difficult to assess if applications for such subsidies are honest and if the costs set out in the application are reasonable. Where the reasonableness of costs is ensured through private procurement (the so-called three-offer-rule), falsifications of offers are difficult to detect. The employment of alternative methods may considerably reduce the risk of fraudulent manipulations (reference databases for prices, simplified cost options, flat-rate contributions, etc.), but cannot completely exclude it.

In numerous cases of diversification projects it has been observed ex post that a micro-enterprise was not created for the sake of starting a business for itself, but rather as an artificial, pro-forma creation to help an already existing beneficiary to circumvent funding limitations that prevented it to apply for subsidies under the EAFRD more than once in a given period. Such artificially created funding conditions are often visible only ex post, i.e. after the artificially created business has been established and is up and running and it has proven difficult for Member States to gather enough evidence to establish both objective and subjective artificial creation.

## **6.3 Conflicts of interests**

Article 61 of the Financial Regulation obliges national authorities to prevent conflict of interests. In accordance with Articles 63(2) and 36(3) of the Financial Regulation, Member States managing EU funds in shared management must prevent, detect and correct irregularities and fraud with respect to the Union budget and set-up internal control systems capable of avoiding conflict of interests. Where such a conflict exists (including situations that may objectively be perceived as conflict of interests), they shall ensure that the person in question ceases all activities in the matter and should take any further appropriate action in accordance with the applicable law. A conflict of interests prejudicing the Union budget and not handled in line with the above obligations constitutes an irregularity. The Commission services are preparing *Guidelines on avoidance of*

*conflicts of interest under the Financial Regulation* addressed to the Members States authorities.

Article 61 applies to all types of support under shared management, including the two CAP funds (EAGF and EAFRD). The risk of conflict of interests is higher for project-based support, where they may take the very different forms: individuals with political mandates benefiting directly or indirectly from CAP payments when they have the (theoretical) possibility to influence administrative decisions to grant such payments; the owner/manager of a company benefiting from an investment measure under rural development is also the owner/manager of the company that supplies the investment goods. Many variations are imaginable here. In some cases, such situations may lead to fraud (e.g. through overpricing of investment goods with the aim to reduce the beneficiary's own contribution to the investment).

On the other hand, for EAGF Direct Payments there is very limited discretion at national level concerning decisions on the disbursement of these funds. The eligibility conditions for DP are set out in EU law, there is no selection procedure or award decision (like for investment projects), and the allocation of payments to beneficiaries is directly linked to the area farmed.

According to the accreditation criteria in Annex I of Regulation (EU) No 907/2014, the Paying Agencies shall ensure that appropriate measures are taken to avoid conflict of interests. The Certification Bodies assess on an annual basis the compliance of the Paying Agencies with the accreditation criteria, including the measures in place to avoid conflict of interests.

DG AGRI monitors the PAs' compliance with the accreditation criteria by assessing the annual certification reports prepared by the Certification Bodies and the Management Declarations made by the heads of the Paying Agencies. In case there are findings related to the compliance with the accreditation criteria, DG AGRI opens conformity enquiries to protect the EU budget.

It is difficult to cover all possible figures of conflicts of interest by EU legislation. However, in many cases the use of the IT-tool Arachne<sup>26</sup> can help competent authorities and paying agencies to identify projects, beneficiaries and contractors in a situation of conflict of interests.

#### **6.4 Fraud risks in the context of the COVID-19 pandemic**

The lockdown in almost all Member States of the EU may have affected the efficiency of both management and control of legal and regular spending of CAP funds, in particular in relation to non-IACS measures under rural development. The financial difficulties which also the farming sector and rural communities are enduring may – after the lockup - lead to an increased pressure on Member States

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<sup>26</sup> See section 3.4 above

to pay subsidies quickly to the detriment of quality, value for money and control<sup>27</sup>.

Fraudsters may try to take advantage of this situation, e.g. by submitting falsified offers for investment goods, by creating artificial funding conditions, etc<sup>28</sup>. To which extent this risk may materialise, cannot be assessed at this point. Member States are required to be particularly diligent in this situation in order to minimise this risk.

## **7 ROLES AND RESPONSIBILITIES IN THE PREVENTION, DETECTION, CORRECTION AND INVESTIGATION OF FRAUD AGAINST CAP FUNDS**

### **7.1 Member States**

Under shared management, Member States are the most important players when it comes to preventing, detecting and correcting fraud against the CAP funds. Their bodies entrusted with the implementation of the CAP are in the front line. Fraudulent manipulations are set up to deceive them and their staff. The Member States therefore become the victims of fraud in the first place.

According to Article 63 of the Financial Regulation<sup>29</sup> and the sectorial legislation in force<sup>30</sup>, under shared management the Commission has delegated implementation tasks to the Member States, which are thereafter responsible, in the first instance, for preventing, detecting and correcting fraud and irregularities.

In order to ensure that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the legislative, regulatory, administrative or other measures necessary for protecting the EU financial interests and in particular to prevent, detect and correct irregularities and fraud. In addition, according to Annex I to the Delegated Regulation (EU) No 907/2014<sup>31</sup>, paying agencies must take measures to prevent and detect fraud and irregularity in the context of their activities.

Member States are obliged to report fraudulent and non-fraudulent irregularities potentially exceeding a financial impact of EUR 10 000 to the Commission via the Irregularities System (IMS)<sup>32</sup>. This reporting is an important tool to detect

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<sup>27</sup> See ECA Opinion 4/2020, [https://www.eca.europa.eu/lists/ecadocuments/op20\\_04/op20\\_04\\_en.pdf](https://www.eca.europa.eu/lists/ecadocuments/op20_04/op20_04_en.pdf)

<sup>28</sup> See section 6.2 above

<sup>29</sup> See fn. 16

<sup>30</sup> Articles 4, 5, 58 of Regulation (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy

<sup>31</sup> Commission Delegated Regulation (EU) No 907/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro

<sup>32</sup> Commission Delegated Regulation (EU) 2015/1971 and Commission Implementing Regulation (EU) 2015/1975

trends in beneficiaries' wrongdoing and is a building block for the Commission's yearly report on the protection of the EU's financial interests.

Member States have a strong incentive to recover undue payments from the beneficiaries as soon as possible because of the automatic clearance mechanism ("50/50" rule) introduced through Article 33 of Regulation (EC) No 1290/2005 and maintained by Article 54 (2) of Regulation (EU) No 1306/2013. This mechanism provides that if a Member State fails to recover an unduly paid amount from a beneficiary within four years of the primary administrative or judicial finding (MFF 2007-2013) or the reception of a control report by the paying agency stating that a fraudulent or non-fraudulent irregularity has been committed (MFF 2013-2020), 50% of the non-recovered amount is charged to the budget of the Member State concerned. In case of proceedings before national courts, the recovery period is eight years.

In recent years, cases of possibly irregular or criminal acquisition of agricultural surfaces in some Member States have shown that the fraudulent declaration of surfaces to obtain direct aid are not attractive to fraudsters. They therefore recur to other forms of obtaining surfaces in an allegedly illegal way for which they then claim direct aid in a regular and legal way under CAP regulations. Remedies against such actions is however a question of rule of law in the Member States concerned, which is also reflected in the Commission proposal on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018)324).

## **7.2 Candidate Countries and potential Candidate Countries**

Candidate Countries and potential Candidate Countries have the same responsibilities in preventing, detecting and correcting fraudulent irregularities against the IPARD funds assigned to them as Member States in relation to their CAP funds.

The Commission has conferred the management of IPARD funds to specific agencies to be established and accredited by each applicant country. They are responsible to put an effective management and control system in place, covering also the fight against fraudulent irregularities.

The Candidate Countries are strongly encouraged to recover undue payments from beneficiaries. Claims against beneficiaries must be registered in a debtors' ledger as at the date of the first judicial or administrative findings. Where recovery has not taken place within 2 years counting from the date of the registration of the amount receivable in the debtors' ledger, the full amount receivable shall be reimbursed to the EU budget.

## **7.3 DG AGRI**

Although Member States, Candidate and potential Candidate Countries play the most exposed part in preventing, detecting and correcting fraudulent irregularities,



DG AGRI remains in a key role in the protection of the financial interests of the European Union. The Financial Regulation<sup>33</sup>, the sectoral legislation<sup>34</sup> and the internal control principles for effective management<sup>35</sup> require implementation of the EU budget in accordance with the principles of **sound financial management** and with an **effective and efficient internal control**, providing reasonable assurance of achieving prevention and detection of fraud and irregularities. In particular, principle n° 8 of the Commission Internal Control Framework states *'The Commission considers the potential for fraud in assessing risks to the achievement of objectives'*.

As for funds implemented under **shared management**, DG AGRI shall ensure that the Member States have set up and effectively run management and control systems making sure funds are efficiently and correctly used to guarantee the legality and regularity of expenditure.

As regards funds managed through **direct management**, which represents less than 0.5% of total EU expenditure under the DG responsibility<sup>36</sup>, DG AGRI implements the specific rules, tools and recommendations in relation to fraud prevention, detection and investigation developed by the Commission's Horizontal Services (SG, BUDG, OLAF, LS, IAS). This includes the use of the Early-detection and Exclusion System (EDES) in appropriate cases<sup>37</sup>. DG AGRI has put in place financial circuits with, for example, a second ex-ante control implemented by an independent unit as well as an internal control system in view of addressing fraud related issues. Finally, direct management is also included, although to a lesser extent, in the annual audit plan, which provides for the possibility of including ex-post controls based on a risk analysis.

### 7.3.1 Policy development

DG AGRI is responsible for ensuring that the design and detailed rules of the various CAP support schemes duly take into account the inherent risk of fraud and the necessity to reduce it as much as possible.

For the CAP in the currently applicable Article 58 (1) of Regulation (EU) No 1306/2013 contains specific provisions to prevent, detect and correct fraud. Art. 57 (1) of the proposed Regulation for the CAP post 2020 contains the same provisions.

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<sup>33</sup> Regulation 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

<sup>34</sup> Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy, Article 58 (MFF 2013-2020).

<sup>35</sup> Communication to the Commission from Commissioner Öttinger, Revision of the Internal Control Framework (C(2017) 2373 of 19.4.2017).

<sup>36</sup> This includes expenditure under H2020.

<sup>37</sup> Art. 135 and 136 of the Financial Regulation ((EU) 2018/1046).

### **7.3.2 Policy implementation**

DG AGRI carries out accreditation and conformity audits in the Member States to verify the effective functioning of national internal control systems and the specific management and control systems in place for the various aid measures. The conformity clearance system is designed to exclude expenditure from EU financing which has not been executed in compliance with EU rules, thus protecting the EU budget from expenditure which should not be charged to it. However, it is not a mechanism by which individual cases are followed-up and irregular payments to beneficiaries recovered, which according to the principle of shared management is the responsibility of the Member States.

DG AGRI's Assurance and Audit Directorate conducts an annual Central Risk Analysis as a common and unique approach for planning conformity audits. One of the seven risk factors used in this analysis is the "OLAF risk". For each Member State/audit field pairing, the fraud risk is assessed by the audit teams considering any denunciations and communications of irregularities under Regulation (EU) No 1306/2013<sup>38</sup>.

These actions contribute to fraud prevention through promoting well-functioning internal control systems in the Commission and in the Member States, which can prevent, detect and correct irregularities.

NB! The CAFS 2019 Action Points 1, 2 and 3 explicitly reinforce the use of the Irregularities Management System (IMS) for strategic and operational analysis.

### **7.3.3 Responsibilities in DG AGRI**

Whereas the Anti-Fraud Strategy is a responsibility shared by all services within the DG<sup>39</sup>, in order to ensure overall coordination, an Anti-Fraud Correspondent (AFC) in DG AGRI will ensure the implementation and follow-up of the actions identified in annex to this strategy. Moreover, the AFC shall receive and evaluate all incoming information potentially relating to external and internal fraud, and coordinate external and internal cases with OLAF and the competent units within DG AGRI.

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<sup>38</sup> See also Commission Delegated Regulation (EU) 1971/2015 with specific provisions on the reporting of irregularities and Commission Implementing Regulation (EU) 1975/2015 setting out the frequency and format of the reporting.

<sup>39</sup> With direct responsibility for the Director-General (as Authorising Officer by Delegation), the Resources Director, the Deputy Director-General for Risk Management and Internal Control (RMIC), all Authorising Officers by Sub-delegation + units AGRI.R.2 – Direct Financial Management and Accounting, AGRI.R.5 – Document Management, Security and HR Business Correspondent, AGRI.I.2 – Strategic programming, , Internal Control Inter-institutional relations, AGRI.H.1 – Competency Centre for Assurance and Audit, AGRI.H.5 – Assurance and financial Audit.

For each Directorate, the Director will be the contact point for the AFC. These contact points will ensure that the necessary information is provided to the AFC and that the follow-up required in order to implement the actions foreseen in this strategy is carried out at the level of their Directorate.

The AFC will contribute to Management and Strategic Plans of DG AGRI, its Annual Activity Report, its Internal Control annual Assessment and the DG's management reports to the Commissioner. In addition, the AFC will communicate once a year to Directorate H relevant information for the Central Risk Assessment. Finally, the AFC will – up until the end of each month of March – draft an annual activity report summarising the state of implementation of the AGRI AFS.

Detailed "Internal rules for the handling of allegations of external fraud and other irregularities, and of OLAF cases" have been adopted by the Director-General of DG AGRI and been published in the AGRI intranet.

#### **7.4 OLAF and the EPPO**

Art. 325 (2) TFEU lays down that the Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

On the basis of Regulation (EU, EURATOM) No 883/2013, the main task of OLAF is to carry out administrative investigations on allegations of fraud and other serious irregularities to the detriment of the EU budget. In addition, according to Article 1(2) of the same Regulation, OLAF shall contribute to the design and development of methods to prevent and fight fraud.

Against this background, the CAFS 2019<sup>40</sup> foresees a proactive and reinforced role for OLAF as far as fraud prevention and detection are concerned and, more importantly, it provides that OLAF will cooperate with the DGs in the development of sector-specific anti-fraud strategies.

OLAF also assists Member States in this area, e.g. through regular meetings of the COCOLAF, ad hoc trainings, etc.

The EPPO<sup>41</sup> will exercise a central role in conducting and coordinating criminal investigations in the Member States that have adhered to the EPPO<sup>42</sup>. If and how a

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<sup>40</sup> 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).

<sup>41</sup> Established by Regulation (EU) 2017/1939

<sup>42</sup> See CAFS 2019 Action Point 53 on cooperation with the EPPO.

Commission service like DG AGRI will cooperate with the EPPO is not yet determined. Once there is more clarity in this regard, DG AGRI will adapt accordingly.

In order to ensure that the present AGRI Anti-Fraud Strategy and the CAFS 2019 are aligned both in relation to their objectives and the relevant action points of the CAFS 2019, the AGRI Anti-Fraud Strategy provides for additional activities to complement OLAF's activities in the framework of its fraud prevention work with the Member States (e.g. action points 4 and 5 in the DG AGRI internal action plan).

### **7.5 Research Executive Agency (REA)**

DG AGRI is in charge of Societal Challenge 2 "*Food security, sustainable agriculture and forestry, marine and maritime and inland water research and the bioeconomy*" within the research and innovation programme Horizon 2020. However, its operational, administrative and financial implementation has been delegated to the REA.

Within the remit of its duties concerning the administrative and financial implementation of the actions under Societal Challenge 2, the REA will apply its Anti-Fraud Approach in its version of September 2019<sup>43</sup>.

The REA will include possible cases of suspected fraud and other serious irregularities in its dedicated quarterly report on such matters, which it will also circulate to DG AGRI.

### **7.6 Consumers, Health, Agriculture and Food Executive Agency (CHAFEA)**

Furthermore, some tasks and activities related to promotion of agricultural products are entrusted to the CHAFEA. However, as of 2021, these promotion activities will be entrusted to the REA.

## **8 STRATEGIC OBJECTIVES**

In order to ensure an optimal alignment between the CAFS 2019 and DG AGRI's Anti-fraud Strategy, the strategic objectives of DG AGRI's Anti-fraud Strategy are as follows and will be implemented through five main action areas:

- (1) Continuous **fraud risk assessment**
- (2) **Guidance and support for Member States and Candidate Countries** to increase their fraud awareness and their capabilities for fraud prevention and detection
- (3) **Cooperation with OLAF**

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<sup>43</sup> Ares(2019)6519167 – 22/10/2019.

- (4) Maintaining **fraud awareness in DG AGRI**
- (5) **Monitor the implementation of the recommendations of OLAF**  
following investigations

The actions to achieve these objectives are set out below.

## **ACTIONS TO IMPLEMENT THE CAFS 2019 AND THE AGRI AFS**

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This section sets out the actions planned to implement the AFS. It provides an overview of these actions, indicating the lead service(s) in the DG, the expected outputs and the target deadlines.

### **ACTION 1: CONTINUOUS FRAUD RISK ASSESSMENT AND UPDATE OF THE ANTI-FRAUD STRATEGY<sup>44</sup>**

DG AGRI has carried out an assessment of the risk of (external and internal) fraud against the CAP budget<sup>45</sup>. The assessment has taken into account the relevant OLAF guidance and the implementation guide on risk management in the Commission by DG BUDG.

Its updating is an on-going process based on OLAF Final Reports, DG AGRI's own audits, audits by the European Court of Auditors, and other information from Member State authorities. Since its first draft, no new fraud patterns<sup>46</sup> have emerged.

Output/Deliverable	Chef de File	Baseline	Indicator	Timing
Update of the existing fraud risk assessment as required by emerging new fraud patterns	AFC	Fraud risk assessment Ares(2015)5175278 – 18/11/2015	Updated version of fraud risk assessment	Continuous. Information on on-going fraud risk assessment in AAR of the AFC
Update of the AGRI AFS	AFC	AGRI AFS Version 4.0	Updated version of the AGRI AFS	31/12/2021
Contribution to DG AGRI Risk Management exercise on fraud related risks relevant at DG level	AFC	Directors contribution to the Risk management exercise 2020	AFC contribution to Director R	Continuous

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<sup>44</sup> CAFS 2019 Action Point 11 « Further improve service-level anti-fraud strategies and their implementation»

<sup>45</sup> Ares(2015)5175278 – 18/11/2015

<sup>46</sup> The phenomenon of 'land-grabbing' is not fraud against the CAP as such.

## **ACTION 2: GUIDANCE AND SUPPORT FOR MEMBER STATES<sup>47</sup>**

Article 58 (1) of Regulation (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy stipulates inter alia that Member States shall

- ensure effective prevention against fraud, especially in areas with a higher level of risk, and which will act as a deterrent, having regard to the costs and benefits as well as the proportionality of the measures;
- prevent, detect and correct irregularities and fraud.

To this end, Annex I to the Delegated Regulation (EU) No 907/2014<sup>48</sup> foresees – as accreditation criteria - the following in the operations of paying agencies:

1. Before authorising a claim for payment, the paying agency shall inter alia carry out checks as required by Article 58 of Regulation (EU) No 1306/2013 to prevent and detect fraud and irregularity with particular regard to the risks incurred (Section 2 (A) (iii) of Annex I).
2. The paying agencies internal control activities shall cover inter alia monitoring procedures to prevent and detect fraud and irregularity with particular regard to those areas of CAP expenditure under its competence which are exposed to a significant risk of fraud or other serious irregularities (Section 4 (A) (iv) of Annex I).
3. Finally, the paying agency shall ensure that staff training is appropriate at all operational levels, including fraud awareness (Section 1 (B) (iv) of Annex I).

In addition, according to Art. 1 (3)(c) of Commission Implementing Regulation (EU) No 908/2014 the audit body appointed by the competent authority in the sense of Art. 1 (1) of the same Implementing Regulation shall examine in the context of its pre-accreditation review the extent to which the procedures and systems put in place by the Paying Agency are apt to safeguard the Union budget including risk-based anti-fraud measures<sup>49</sup>.

Last, the management declaration of the directors of Paying Agencies shall also give the assurance that effective and proportionate anti-fraud measures are in place and take account of the risks identified<sup>50</sup>.

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<sup>47</sup> CAFS 2019 **Action Point 37** “Encourage Member States to put in place national anti-fraud strategies, and provide advice and support in this respect”; **Action Point 38** “Where appropriate and possible, reinforce Member States’ obligations for the post-2020 MFF throughout the anti-fraud cycle”; **Action Point 39** “Explore the possibility of applying the underlying rationale of Action Point 36 to financial instruments under shared management” [Action Point 36 “Obtain assurance about internal control of entrusted entities, financial (sub-) intermediaries, fund managers, etc.]

<sup>48</sup> Commission Delegated Regulation (EU) No 907/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro

<sup>49</sup> Commission Implementing Regulation (EU) No 908/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency

<sup>50</sup> Annex I to Commission Implementing Regulation (EU) No 908/2014

Compliance with the accreditation criteria is reviewed on an annual basis by the Certification Bodies, their reports are reviewed by DG AGRI and audit missions are carried out on a risk basis by DG AGRI.

DG AGRI has drafted guidelines on the three points aforementioned that complement the accreditation criteria. They have been made available to Member States in February 2014.

DG AGRI has provided all paying agencies with dedicated anti-fraud seminars. The seminars addressed the anti-fraud obligations of Member States, gave an overview of the typology of fraud in the areas at risk and provided detailed information of fraud indicators ('red flags'). Member States have also been provided with DG AGRI's fraud risk assessment in their respective national language.

Such initiatives shall be continued as appropriate.

Output/Deliverable	Chef de File	Baseline	Indicator	Timing
Sharing of updates of the existing fraud risk assessment as required by emerging new fraud patterns	AFC	Fraud risk assessment Ares(2015)5175278 – 18/11/2015	Updated version of fraud risk assessment	Within 3 months of updated version of the fraud risk assessment
Anti-fraud training to staff of paying agencies in the Member States	AFC in cooperation with OLAF as appropriate	Anti-fraud seminars delivered to Member States until 2018	Requests for training or newly identified need for training	Continuous
Sharing of specific fraud issues with paying agencies on an ad-hoc basis where training for staff would not be appropriate	AFC/Dir. H	Information delivered in training seminars until the end of 2018	Information delivered through CIRCA-BC/conferences of directors of paying agencies, etc.	Continuous
Use of Arachne by Member States	Dir. H	Number of Member States using Arachne at the end of 2019	Increase of number of Member States using Arachne	Continuous



### **ACTION 3: COOPERATION WITH OLAF<sup>51</sup>**

DG AGRI has established internal rules on how to deal with and follow-up on denunciations and OLAF operational cases<sup>52</sup>.

As far as financial follow-up is concerned, the Communication to the Commission of 27.11.2007 establishes the provisions applicable to all OLAF operational activities<sup>53</sup>. DG AGRI has implemented this communication through Note D(2009)287904 of 30.09.2009 on Financial Follow-up of irregularity cases by Directorate H.

The cooperation between DG AGRI and OLAF will also be extended to the publication of a case-compendium on CAP-related OLAF investigations.

Output/Deliverable	Chef de File	Baseline	Indicator	Timing
Transmission of allegations of fraud and other serious irregularities received by DG AGRI to OLAF	AFC	Allegations received by DG AGRI	100% of allegations received by DG AGRI transmitted to OLAF	Continuous
Operational meetings with OLAF investigation units before closure of investigations	AFC/Dir. H/other DG AGRI units concerned	Requests by OLAF	100% of requests honoured (ratio of requests received and requests honoured)	Continuous
Participation in networking and training events by OLAF (FDPNet and sub-group on shared management, COCOLAF, etc.)	AFC	Invitations by OLAF	Participation in meetings	Continuous

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<sup>51</sup> CAFS 2019 Action Point 56 on the optimisation of the cooperation between services/other EU bodies and OLAF.

<sup>52</sup> "Internal rules for the handling of allegations of external fraud and other irregularities, and of external OLAF cases", adopted by the Director-General on 4 February 2014

<sup>53</sup> Division of responsibilities between OLAF and the AODs in the Commission concerning the financial follow-up of irregularities in the domain of Community expenditure under shared management in the agricultural and structural actions area.

#### **ACTION 4: MAINTAINING FRAUD AWARENESS IN DG AGRI<sup>54</sup>**

Fraud prevention is a responsibility for all the services within the DG. Systematic awareness raising actions for all staff and for selected target groups would ensure continuous information and increased consciousness on prevention and reporting of fraud. Such actions will be closely linked with other training actions on ethics and whistleblowing.

Output/Deliverable	Chef de File	Baseline	Indicator	Timing
EUlearn training events for all staff on fraud detection, prevention and correction	AFC	Training delivered until the end of 2019	Creation of training event	1 event before end of each calendar year

#### **ACTION 5: MONITORING THE IMPLEMENTATION OF RECOMMENDATIONS FOLLOWING OLAF INVESTIGATIONS<sup>55</sup>**

Under shared management with the Member States, DG AGRI does not follow up the correction of individual irregularities in detail. However, as concerns OLAF investigations and their recommendations, DG AGRI – since the 2<sup>nd</sup> semester of 2018 – gives OLAF cases a specific follow-up and requires Member States to report in detail on the state of play of implementing OLAF recommendations.

Output/Deliverable	Chef de File	Baseline	Indicator	Timing
Transmission of OLAF Final Reports to the Member State concerned under cover of a note signed by the Director-General of DG AGRI	AFC	Reception of OLAF Final Reports and Recommendations	Transmission to Member State	Continuous

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<sup>54</sup> CAFS 2019 Action Point 20 « Analyse fraud patterns and fraud risks using case compendiums of OLAF investigations according to needs identified.»

<sup>55</sup> CAFS 2019 Action Point 60 "Closely monitor Member States' follow-up of OLAF's financial recommendations"