

CONTROL OF THE USE OF COMMUNITY FUNDS

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Abstract. *The purpose of the work is to present the control activity carried out by the competent bodies regarding funds of community origin, regardless of the priority axis and the main objectives pursued within it. On the other hand, emphasis is placed on the fight against irregularities and fraud that may occur in the practical use of these categories of funds. In the framework of the research carried out, it was aimed both to highlight the basic objectives of the control activity in the mentioned direction, but also the correlation that is established between these objectives and the effective achievement of the priority objectives established as a result of obtaining financing and co-financing from community funds.*

Key words: *community funds; OLAF, intra-community fraud, member state.*

JEL Classification Codes: *G32, H26, P45.*

1. INTRODUCTION OF "EUROPEAN FUNDS" – WHAT THEY ARE, WHY AND FOR WHAT

The concept of "European funds" refers to the non-reimbursable financing instruments allocated to the Member States of the European Union (EU), in order to reduce the economic and social development gaps. The funds are managed jointly by the European Commission and by each Member State. (<https://mfe.gov.ro/1-ce-sunt-fondurile-europene-si-de-cate-tipuri-sunt-acestea/>)

For Romania, the European Structural and Investment Funds (ESIF) are the main source of funding for the Operational Programmes and have as their main objective the implementation of the Economic and Social Cohesion Policy at national level.

The ESIFs comprise:

- European Regional Development Fund (ERDF)
- European Social Fund (ESF)
- Cohesion Fund (CF)

• **The European Regional Development Fund (ERDF)** aims to strengthen economic, social and territorial cohesion in the European Union by correcting imbalances between its regions. In 2021-2027, the fund will enable investments to make Europe and its regions:

- More competitive and smarter, through innovation and support to small and medium-sized businesses;
- Greener, low-carbon and resilient;
- More connected by enhancing mobility;
- More social, supporting effective and inclusive employment, education, skills, social inclusion and equal access to healthcare, as well as enhancing the role of culture and sustainable tourism;
- Closer to citizens, supporting locally-led development and sustainable urban development across the EU.



In addition, Interreg projects will cover several areas (https://ec.europa.eu/info/funding-tenders/funding-opportunities/funding-programmes/overview-funding-programmes/european-structural-and-investment-funds_ro):

- Interreg NEXT - Eastern and Southern Neighbourhood partner countries;
- Interreg Outermost Regions - the EU's remote regions and their neighbourhoods;
- Interreg IPA - cooperation of Member States with Western Balkan countries and Turkey and helps acceding countries to alleviate border obstacles and manage programmes in the same way as Member States are doing.

ERDF action is designed to reduce economic, environmental and social problems in urban areas, with a special focus on sustainable urban development (at least 8 % of the ERDF resources are set aside for this field through territorial or local development strategies, i.e. Integrated Territorial Investment (ITI), Community-led Local Development (CLLD)).

- **European Social Fund (ESF)** - social innovation aims to advance European life through improving working conditions, education, community development or health, or through tackling critical problems such as poverty or discrimination. All the examples gathered in the Social Innovation Match have a wide coverage: they can be funded from public or private sources and can be local, regional, national or European.

The SIM includes:

- Social innovation initiatives from across Europe have the possibility to filter initiatives by country, type of initiative, theme of organisation, level of action, status and source of funding
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- **Cohesion Fund (CF)** - The Cohesion Fund supports investments in the field of environment and trans-European networks in the area of transport infrastructure (TEN-T).

For the 2021-2027 period, the Cohesion Fund concerns Bulgaria, Czechia, Estonia, Greece, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovakia and Slovenia. 37% of the overall financial allocation of the Cohesion Fund are expected to contribute to climate objectives.

- **The European Agricultural Fund for Rural Development (EAFRD)** - deals with solving specific problems in the EU's rural areas.

Rural development is the second pillar of the common agricultural policy (CAP). It supports the first pillar (income support and market measures) by strengthening the social, economic and environmental sustainability of rural areas. The CAP contributes to the development of rural areas by pursuing three long-term objectives:

- competitiveness in agriculture and forestry;
- sustainable management of natural resources and climate;
- balanced development of rural economies and communities, including the creation and maintenance of jobs.

The EAFRD budget for 2021-2027 amounts to EUR 95.5 billion. of this amount, EUR 8.1 billion comes from the NextGeneration EU recovery instrument and is intended to mitigate the effects of the COVID-19 pandemic on the sector.

EU countries implement EAFRD funding through rural development programmes (RDPs). RDPs are co-financed by national budgets and can be drawn up either at national or regional level. The European Commission approves and monitors rural development programmes, and decisions on the selection of projects and the award of payments are taken by national and regional authorities.

EAFRD priorities are also broken down into 18 areas of interest. Countries set objectives related to the priorities and areas of intervention chosen, as well as a strategy for achieving those

objectives. Progress towards achieving the objectives is monitored through the Common Monitoring and Evaluation Framework (CMEF).

In addition, agricultural development is also financed through direct payments from the European Agricultural Guarantee Fund (EAGF).

Aid for disadvantaged groups is provided by the European Fund for Aid to the Most Deprived (FEAD).

• **European Maritime and Fisheries Fund (EMFF)** - The fund:

- helps fishers adapt to sustainable fishing
- supports coastal communities in diversifying their economies
- finances projects that create new jobs and improve quality of life along European coasts
- supports sustainable aquaculture developments
- makes it easier for applicants to access financing
- supports the implementation of the maritime policy.

Each country is allocated a share of the total fund budget, based on the size of its fishing industry and prepares an operational programme, setting out how the funds will be used during the current funding period 2014-20. Once the Commission approves this programme, it is up to the national authorities to decide which projects will be funded.

The European Commission has delegated to the Executive Agency for Small and Medium-sized Enterprises (EASME) the implementation of part of the European Maritime and Fisheries Fund (EMFF).

2. CONTROL OF THE USE OF EUROPEAN FUNDS: INSTITUTIONS AND LEGISLATION

The institutions within whose competence the control of European Funds falls and which are also supported by specific legislation refer to **OLAF (The European Anti-Fraud Office)** and **DLAF (Anti-Fraud Department)** respectively.

OLAF investigates cases of fraud of the EU budget, corruption and serious professional misconduct at the level of the European institutions and develops anti-fraud policy on behalf of the European Commission (https://anti-fraud.ec.europa.eu/index_ro).

The European Union budget helps to finance several programmes and projects that improve the lives of citizens in the EU and beyond. The use for entirely different purposes of funds from the EU budget, the non-payment of taxes, duties and other amounts due to the EU budget directly affects the beneficiaries (the population) and damages the entire European project.

Olaf's task is to eliminate such practices, which is why it is taking a number of actions in this direction (https://anti-fraud.ec.europa.eu/about-us/what-we-do_ro):

- carries out investigations into the acts and acts of fraud, corruption involving EU funds, in order for all EU taxpayers' money to reach its intended destination, to carry out those projects that lead to the creation of new jobs and growth;
- helps to strengthen citizens' trust in the EU institutions (cases of serious professional misconduct by staff and members of the EU institutions are taken very seriously);
- develop a strong EU anti-fraud policy.

Investigations may include interviews and inspections at premises and may fall into one of the following three categories:

- internal investigations: administrative investigations within the EU institutions and bodies for the purpose of detecting fraud, corruption and any other illegal activities;
- external investigations: administrative investigations outside the EU institutions and bodies for the purpose of detecting fraud or other misconduct by natural or legal persons;

- Coordination cases: OLAF contributes to investigations by national authorities or other EU bodies by facilitating the collection and exchange of information and the establishment of contacts.

Once the investigation is concluded, OLAF recommends that action be taken by the EU institutions and national authorities concerned and monitors how they are subsequently implemented (criminal investigations, financial recoveries or other disciplinary and administrative measures).

The Anti-Fraud Department (DLAF) is a structure with legal personality within the Government's working apparatus, coordinated by the Prime Minister, which acts on the basis of functional and decision-making autonomy, independently of other public institutions, according to the obligations assumed by Romania (<https://mfinante.gov.ro/domenii/informatii-contribuabili/institutii-publice/ucaapi/strategia-cfpi>).

DLAF is the contact institution with the European Anti-Fraud Office and ensures, supports and coordinates the fulfillment of Romania's obligations regarding the protection of the EU's financial interests in accordance with the provisions of the Treaty on the Functioning of the EU. DLAF's operating expenses are financed from the state budget, through the budget of the General Secretariat of the Government. DLAF performs the following functions:

- a) the function of coordinating the fight against fraud, in order to ensure an effective and equivalent protection of the EU's financial interests in Romania;
- b) the control function, in order to identify irregularities, frauds and other illicit activities affecting the EU's financial interests in Romania;
- c) the regulatory function, which ensures the elaboration of the normative and institutional framework necessary to ensure the protection of the EU's financial interests in Romania;
- d) the representation function, which ensures Romania's participation in the advisory committees, working groups and communication or information exchange networks, in the field of the protection of the EU's financial interests.

DLAF has the capacity of finding body regarding the criminal aspects affecting the EU's financial interests in Romania: in case of identification of irregularities, it transmits the act of control to the competent authorities in the management of the funds, in case of finding elements of a criminal nature, DLAF notifies the Prosecutor's Office competent to carry out the criminal investigation and transmits the act of control in order to recover the damage and to hold the criminal liability of guilty persons.

In support of these two institutions that are the basis of the system we find (http://publications.europa.eu/resource/cellar/ff022363-f608-4a91-b2aa-ee5eee6fff73.0021.02/DOC_3):

- the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF);
- Working groups coordinated by COCOLAF:
 - *Fraud Prevention Group*: boosts cooperation between the relevant national authorities of EU countries and the Commission through the exchange of experience and practices in the field of fraud prevention;
 - *Group for reporting and analysis of fraudulent and other irregularities*: focuses on introducing and discussing statistical analysis of reported cases;
 - *AFCOS (Anti-Fraud Coordination Service)*: exchanges experience and best practices in the field of investigative cooperation between OLAF and national authorities;
 - *OLAF Anti-Fraud Communicators Network (OAFCN)*: brings together spokespersons and public relations officers from the relevant national authorities and from OLAF to share media strategies and promote communication on fraud prevention and deterrence.

Regarding the legislative aspects, we can make the following synthesis:

1988 – The Anti-Fraud Coordination Unit (UCLAF) is created

1999 – Regulation (EC) No 1999 appears. Regulation (EC) No 1073/1999 containing general rules for OLAF's investigations

2004 – The European Community establishes the HERCULE programme

2013 - Regulation No. Regulation (EC) No 883/2013 on OLAF investigations

2017 - E adopted Regulation (EU) 2017/1939 establishing the European Public Prosecutor's Office (EPPO) and the Directive on the fight against fraud to the Union's financial interests by means of criminal law

2020 - adopted the revised Regulation 883/2013 (OLAF Regulation)

THE EU Convention of 26 July 1995 and the three protocols thereto (the 'PIF Convention and its protocols'):

- 1) First protocol
- 2) The second protocol and the explanatory note
- 3) Protocol on the powers of the Court of Justice

EU Convention of 26 May 1997

Strictly on the fund component we find (https://anti-fraud.ec.europa.eu/about-us/legal-background_ro):

- Commission Delegated Regulation (EU) 2015/1971
- Commission Implementing Regulation (EU) 2015/1975
- Article 69 and Annex XII of Regulation (EU) 2021/1060 of the European Parliament and of the Council
- Article 13.7 of Regulation (EU) 2021/1529 of the European Parliament and of the Council
- Commission Decision establishing a model framework financial partnership agreement between the Commission and the government of an IPA III beneficiary
- Article 23 of Regulation (EU) 2021/691 of the European Parliament and of the Council

Note: in addition to the above-mentioned legislative component comes the case law of the CJEU (Court of Justice of the European Union) with relevance to the work of OLAF.

3. INVESTIGATIONS AND EFFECTS

The monitoring and evaluation system is necessary to assess to programs achieve their desired objectives, and to provide insight into what can be improved in the future. Monitoring is defined as “a continuing function that uses systematic collection of data on specified indicators to provide management and the main stakeholders of an ongoing intervention with indications of the extent of progress and achievement of objectives and progress in the use of allocated funds.” Evaluation is defined as “the systematic and objective assessment of an ongoing or completed project, programme, or policy, its design, implementation and results.” (**OECD Glossary of Key Terms in Evaluation and Results Based Management, 2010**)

In 2022, OLAF identified fraud patterns as collusion, manipulation of procurement procedures, conflicts of interest, inflated invoices, evasion of customs duties, smuggling and counterfeiting. During the COVID-19 pandemic people carried out many aspects of their lives digitally, so too did fraudsters. Under COVID restrictions, OLAF tracked down key pieces of data and working across boundaries to reconstruct a bigger picture of the fraudulent activity.

In 2022 OLAF concluded 256 investigations, issuing 275 recommendations to the relevant national and EU authorities, opened 192 new investigations, following 1,017 preliminary analyses carried out by OLAF experts, recommended the recovery of €426.8 million to the EU budget and prevented the loss of €197.9 million from the EU budget.

The investigative body opened an investigation together with the European Investment Bank (EIB) into a €100 million alleged fraud linked to irregularities during the tender phase of

the construction of a highway in Bosnia and Herzegovina. The investigation focussed on possible corrupt practices involving a publicly owned economic operator, relating to the process of awarding a tender (fully funded by a loan from the EIB) to manage, construct and maintain the highway. The tender process was a part of a larger construction project with a total value of over €200 million.

OLAF and EIB investigators cooperated closely during investigation which proved that members of the management of the economic operator exerted undue influence on the members of the tender evaluation committee to exclude one bidder from the process and select a preferred bidder. It also proved that both the rules set out in the Finance Contract between the EIB and the candidate country and the EIB Guidelines on procurement procedures were breached. Thanks to the investigation, which was completed in less than one year, the practices were spotted and stopped before they really got going, thereby preventing €97.8 million from being unduly spent.

OLAF investigated allegations of nepotism and misappropriation of EU funds during the implementation of a Horizon 2020 project. It also established that the project coordinator did not have adequate premises and infrastructure to carry out scientific activities and there was no competitive and merit-based selection of the researchers. Moreover, the investigation uncovered instances of conflict of interests on the part of the director of the research institute when selecting applicants. OLAF concluded the investigation and recommended to the European Research Executive Agency (REA) to recover over €700 000 paid to the beneficiary. The OLAF intervention prevented €400.000 from being unduly spent.

Preventing fraud from happening – rather than addressing it later – is a crucial element towards ensuring that EU money reaches its intended beneficiaries. Together with other Commission departments, OLAF has developed the Commission’s anti-fraud strategy (CAFS) of April 2019 and coordinates its implementation.

The anti-fraud strategy seeks to further improve the prevention, detection and sanctioning of fraud, and frames the Commission’s ongoing efforts to reduce the level of fraud against the EU budget. It is accompanied by an Action Plan with 63 actions addressed to the Commission.

In 2022, OLAF advised Commission services on their anti-fraud strategies and continued cooperation with them in the framework of the Early Detection and Exclusion System (EDES – database containing a list of persons or entities excluded from contracts financed by the EU budget, among others, on the grounds of significant deficiencies in complying with their main contractual obligations, fraud, corruption, or other misconducts.). (https://ec.europa.eu/olaf-report/2022/anti-fraud/anti-fraud_en.html)

The economic operators listed below have been excluded from participation in EU procurement procedures, grant award procedures, prizes procedures, financial instruments and procedures for selection of experts or any other form of contribution from the EU budget for the periods mentioned and/or have been imposed a financial penalty. Therefore, they cannot be awarded any contract financed by the EU budget.

Other cases of exclusions and financial penalty are listed in the Commission's database (EDES-DB) which is only accessible to authorised users involved in the implementation of the EU budget. (https://commission.europa.eu/strategy-and-policy/eu-budget/how-it-works/annual-lifecycle/implementation/anti-fraud-measures/edes/edes-database_en)

The publication of the administrative sanctions is subject to a decision of the authorising officer responsible and concerns the exclusion situations listed, which are: **(Article 106(1) and 106(2) of Regulation 966/2012, Art. 136(1) of Regulation 2018/1046)**

- grave professional misconduct;
- fraud, corruption, participation in a criminal organisation, money laundering or terrorist financing, terrorist-related offences or offences linked to terrorist activities;

- significant deficiencies in complying with main obligations in the performance of a contract financed by the budget;
- irregularity;
- creation of an entity circumventing fiscal, social obligations;
- circumvention of fiscal, social obligations by an entity.

Table 1: Administrative sanctions as subject to a decision of the authorising officer

| Name/Address | Country | Sanctions | Period | Grounds |
|---|---------|-------------------------|------------|--|
| PROZONE DOO ZA RAZVOJ I IMPLEMENTACIJU INFORMACIONIH TEHNOLOGIJA*PROZONE LLC FOR DEVELOPMENT AND IMPLEMENTATION OF INFORMATION TECHNOLOGY PUSKINOVA 26 21000 NOVI SAD | RS | EXCLUSION | 25/12/2025 | Exclusion Art. 136(1)(c) FR - grave professional misconduct |
| ALEMANY SALUDES ASOCIADOS SL*ASA AV ALFONSO EL SABIO 9 5 D 03002 ALICANTE | ES | FINANCIAL EUR 37,730.00 | | Exclusion Art. 106(1)(e) FR - serious breach of contract |
| LA INTERNATIONAL COOPERATION S.R.L. (PREVIOUS NAME - LATTANZIO ADVISORY S.P.A.) VIA CIMAROSA 4 20144 MILANO | IT | EXCLUSION | 26/04/2024 | Exclusion Art. 136(1)(c) FR - grave professional misconduct Exclusion Art. 136(1)(d) FR - fraud and criminal activities |
| H W COMMUNICATIONS LIMITED* GREAVES ROAD PARKFIELD LA1 4TZ LANCASTER | GB | EXCLUSION | 30/11/2023 | Exclusion Art. 136(1)(e) FR - serious breach of contract |
| HEALTH INFORMATION MANAGEMENT SA*HIMSA BOULEVARD LAMBERMONT 84 B 1030 BRUXELLES | BE | EXCLUSION | 02/09/2024 | Exclusion Art. 136(1)(c) FR - grave professional misconduct Exclusion Art. 136(1)(e) FR - serious breach of contract |

Source: https://commission.europa.eu/strategy-and-policy/eu-budget/how-it-works/annual-lifecycle/implementation/anti-fraud-measures/edes/edes-database_en

OLAF's recommendations aim to serve several purposes: (https://ec.europa.eu/olaf-report/2022/impact-of-investigations/impact-of-investigations_en.html)

- Financial recommendations invite competent EU or national authorities to recover amounts that were unduly spent from – or, in customs matters, not duly collected for – the EU budget as a result of fraud or other irregularities.
- Judicial recommendations invite a Member State's judicial authorities to start criminal prosecution. The creation of the European Public Prosecutor's Office (EPPO), operational since June 2021, is changing the way fraud is detected, investigated and prosecuted in the EU.
- Disciplinary recommendations aim to sanction wrongdoing by EU staff or Members of EU bodies. The recommendations are made to the authority that has disciplinary powers within the institution or body concerned.

- Administrative recommendations aim at administrative measures different than, or going beyond, financial recovery or disciplinary action

Administrative recommendations are varied in nature. They can be classified into specific/case-related recommendations and generic recommendations:

- specific recommendations (137 between 2018 and 2022) call for measures closely related to the case under investigation, such as administrative sanctions or activation of early risk detection concerning individual entities or additional fact-finding, e.g. additional audits and administrative verifications focused on specific beneficiaries or spending transactions

- generic recommendations (73 between 2018 and 2022) go beyond a single investigation in their scope, addressing systemic weaknesses identified in the regulatory framework and/or management and control systems.

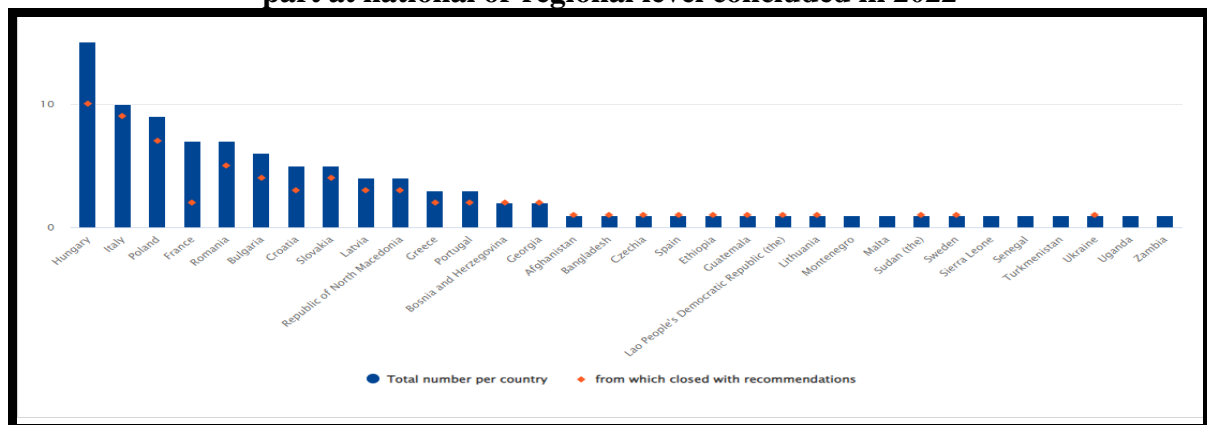
2022 marked the year when hundreds of billions from the Recovery and Resilience Facility funding were disbursed to help Member States recover from the pandemic. OLAF provided continuous support and advice to national authorities putting the a special accent on the early detection of irregularities due to the new ways in which the money was distributed and accounted for, as well as the large amounts on offer. As the billions started to flow, OLAF started to investigate first cases into expenditure fraud related to RRF funds.

The year also witnessed the illegal and brutal invasion of Ukraine by Russia. OLAF has had a long-standing cooperation with the Ukrainian authorities both on the expenditure side of the EU budget (protection of EU funds) and on the revenue side (customs cooperation). Since the beginning of the war OLAF has supported Ukraine’s anti-fraud authorities, to help strengthen and improve the country’s structures to deal with fraud and corruption and to protect current and future EU funding. This partnership continues in 2023. OLAF has also played a leading role in preventing evasion of EU sanctions against Russia and Belarus following the invasion.

The sum recommended by OLAF for recovery each year depends on the scope and scale of the investigations concluded in that particular year. The amounts recommended for recovery are therefore not an indication of the overall level of fraud in Europe; rather, they relate to the specific investigations finalised by OLAF in that year.

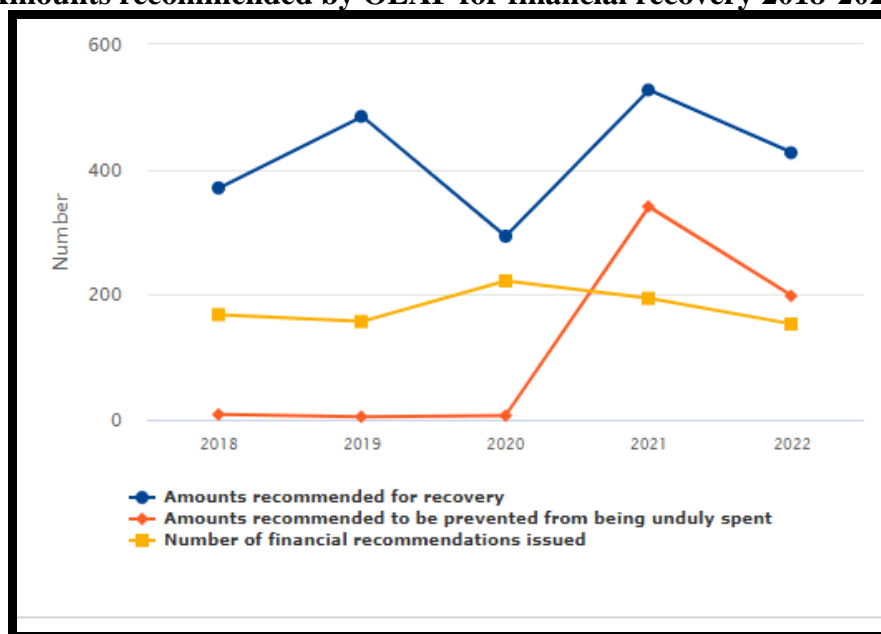
The analysis shows how these figures fluctuate year on year. One or two high-value cases in any particular year can lead to a significant increase in the amount recommended for recovery. In contrast, years where there were a large number of recommendations do not necessarily have the highest amounts recommended for recovery. In 2022, OLAF issued 153 financial recommendations for €426.8 million to be recovered and €197.9 million to be prevented from being unduly spent.

Figure 1: Investigations into the use of EU funds managed or spent in whole or in part at national or regional level concluded in 2022



Source: https://ec.europa.eu/olaf-report/2022/statistical-annexes/statistical-investigative-performance_en.html

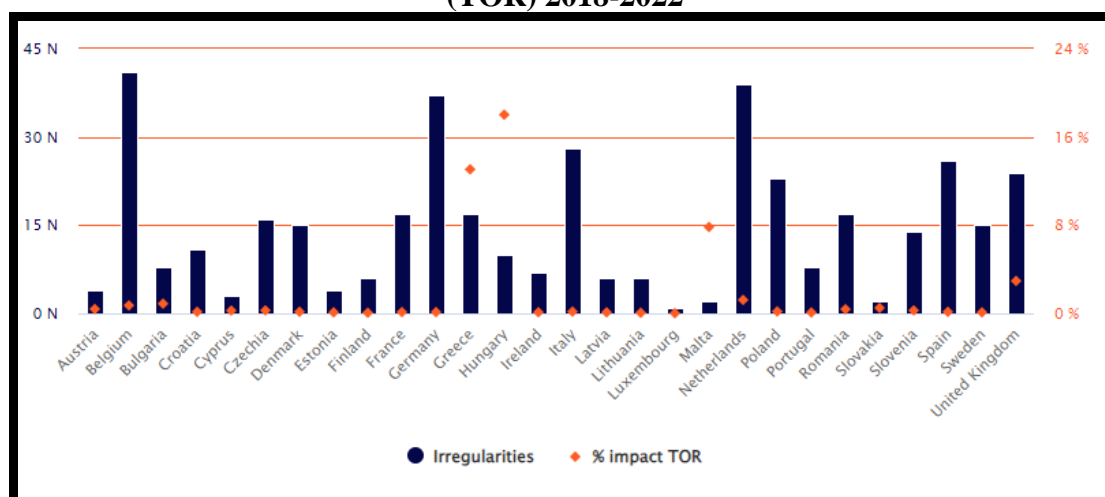
Figure 2: Amounts recommended by OLAF for financial recovery 2018-2022 (€ million)



Source: https://ec.europa.eu/olaf-report/2022/statistical-annexes/statistical-investigative-performance_en.html

The figure below shows the number of irregularities / fraud cases detected in the area of traditional own resources (TOR) between 2018 and 2022 and their financial impact as a percentage of the gross TOR collected by Member States and made available to the EU budget.

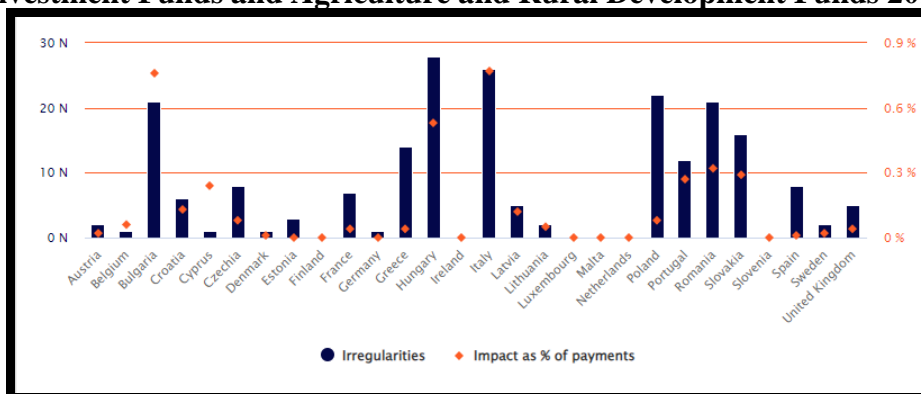
Figure 3: Irregularities / fraud cases detected in the area of traditional own resources (TOR) 2018-2022



Source: https://ec.europa.eu/olaf-report/2022/statistical-annexes/statistical-investigative-performance_en.html

The last figure shows the number of fraudulent and non-fraudulent irregularities detected in the two main areas of shared management (European Structural and Investment Funds and Agriculture and Rural Development Funds) between 2018 and 2022 and their financial impact expressed as a percentage of total payments, by Member State.

Figure 4: fraudulent and non-fraudulent irregularities detected in European Structural and Investment Funds and Agriculture and Rural Development Funds 2018-2022



Source: https://ec.europa.eu/olaf-report/2022/statistical-annexes/statistical-investigative-performance_en.html

4. CONCLUSIONS

This study is intended to be an analysis of the phenomenon of fraud regarding community funds. The European Anti-Fraud Office (OLAF) is a modern investigative body protecting the integrity of the EU market and the financial interests.

OLAF's primary mission is protecting EU's financial interests, not criminal prosecution. When an OLAF investigation finds sufficient grounds for suspecting a criminal offence, issues a judicial recommendation for the competent Member State authority to start criminal prosecution. It invites these authorities to take action to redress fraud, corruption or other illegal activities uncovered by the investigation. These recommendations are intended to protect the EU budget and to uphold the rule of law.

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