



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

Protecting EU
taxpayers' money
from criminals

Irregularities, Fraud and Conflict of interests

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Tackling expenditure fraud in ETC programmes:

1. Reporting of irregularities and reporting of fraud – the two different processes
2. A comparison between authorities within the Anti-Fraud Cycle
3. Irregularity and Fraud – definitions
4. What's at stake and what will change for the future?
5. Irregularity reporting
6. Modus operandi and red flags
7. Conflict of interests





1

Reporting of irregularities and reporting of fraud

Reporting of Irregularities and Reporting of Fraud

- **Purpose of** the two processes
- **Legal basis** of the two processes Regulation 1303/2013, art. 122 and art. 69 (2), 12, and Annex XII of CPR 2021/1060; Delegated Regulations 2015/1970-1975 + others and **art. 24 of the EPPO regulation**
- **Where and when to report fraud?**
 - 1. The institutions, bodies, offices and agencies of the Union and **the authorities of the Member States** competent under applicable national law **shall without undue delay report to the EPPO** any criminal conduct in respect of which it could exercise its competence in accordance with Article 22, Article 25(2) and (3).
 - 2. When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence for which the EPPO could exercise its competence in accordance with Article 22, Article 25(2) and (3), or where, at any time after the initiation of an investigation, it appears to the competent judicial or law enforcement authority of a Member State that an investigation concerns such an offence, **that authority shall without undue delay inform the EPPO** so that the latter can decide whether to exercise its right of evocation in accordance with Article 27.

United front - The Anti-Fraud cycle

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



2

Definitions of Irregularity and Fraud

Legal framework of the fight against Fraud

- **Art. 325 TFEU and Commission decision** establishing OLAF
- **Regulation 2988/95** on the protection of the EC financial interests
- **Regulation 2185/96** concerning on the spot checks and inspections
- **Regulation 883/2013 – OLAF** concerning the investigations of OLAF, as amended by Regulation 2223/2020
- **PIF Convention and PIF Directive - Directive 2017/1371**
- **EPPO Regulation - Regulation (EU) 2017/1939**
- **CPR Regulation 2021/1060 and Sector Regulations**
- **Financial Regulation 2024/2059**
- **Regulation (EU) 2021/1059 and specific ETC Rules (Commission Impl Decisions 2022/74 and CD 2022/75 on the list of Interreg programs and areas, and support)**

*Due to the specificities of each Fund, specific rules applicable to each Fund **and to the European territorial cooperation goal (Interreg)** under the ERDF should be laid down in separate Regulations ('Fund-specific Regulations') to complement this Regulation.*

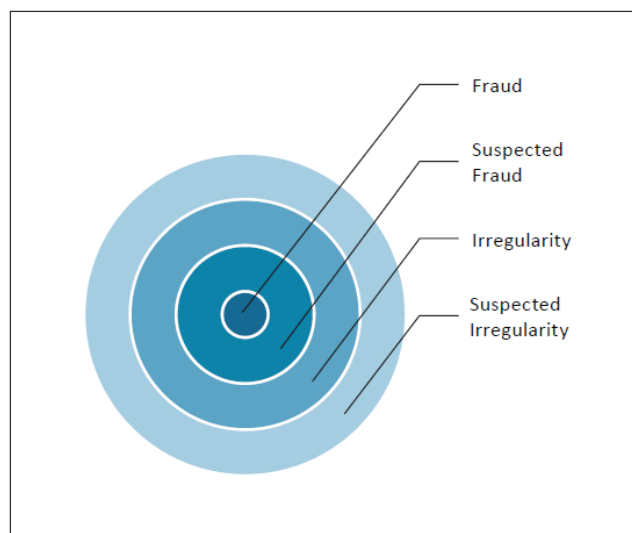


Definitions: Irregularity and Fraud. Suspicions.

Irregularity: Regulation 2988/95, CPR 2021/1060 and Sectoral Regulations

Suspected fraud: DR for Reporting, 2015/1970-1973 for previous period; Annex 12, art. 69 of Regulation 2021/1060

Fraud: PIF Convention, PIF Directive



Unintentional behavior

- **Suspicion of Irregularity** – any information, including from anonymous source, that an irregularity has been committed. This information must contain at least reference to concrete project, financing Programme, managing authority and description of the case. **Handbook of Irregularities: "any information received from any source about the existence of an irregularity before the assessment of this information"**
- **Irregularity** shall mean any **infringement** of a provision of Community law resulting from an **act or omission** by an **economic operator, which has, or would have**, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure. **(Regulation 2988/95, 1303/2013, 2021/1060)**

Possible Intentional behavior

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

Intentional behavior

- **Fraud in public procurement**

Art. 3 DIRECTIVE (EU) 2017/1371

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

Intentional behavior

■ Non-public procurement fraud

Art. 3 DIRECTIVE (EU) 2017/1371

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

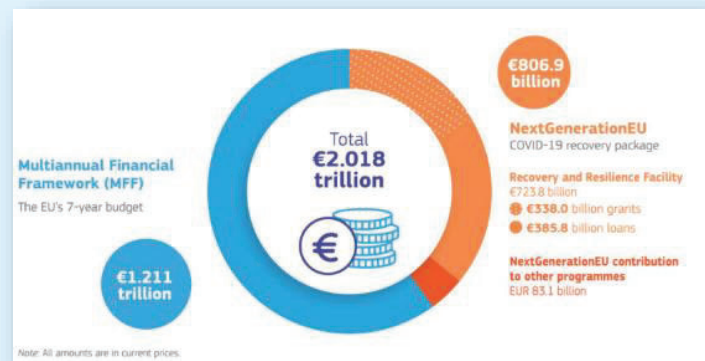


3

What's at stake when we speak of irregularities, suspected fraud and fraud?

THE EU'S 2021-2027 LONG-TERM BUDGET

- The EU sets the limits of its spending in the multiannual financial framework, the EU's long-term budget for the next 7 years. MFF (2021-2027)
- This MFF's budget consists of **EUR 1.211 trillion** (EUR 1.074 trillion in 2018 prices), topped up by EUR **806.9 billion** (EUR 750 billion in 2018 prices) through NextGenerationEU, a temporary instrument to power the recovery.



- *What does this mean?* In the 1980s, the bulk of the EU budget went to agriculture and, as of the 1990s, to cohesion. While their shares have gradually declined over time, for a long time these areas still received over 70 % of the total budget.
- Now: new criteria; new goals, new added value – research, trans-EU networks, external action.

THE EU'S 2021-2027 LONG-TERM BUDGET



Source: [L_202400765EN.000101.fmx.xml](#)



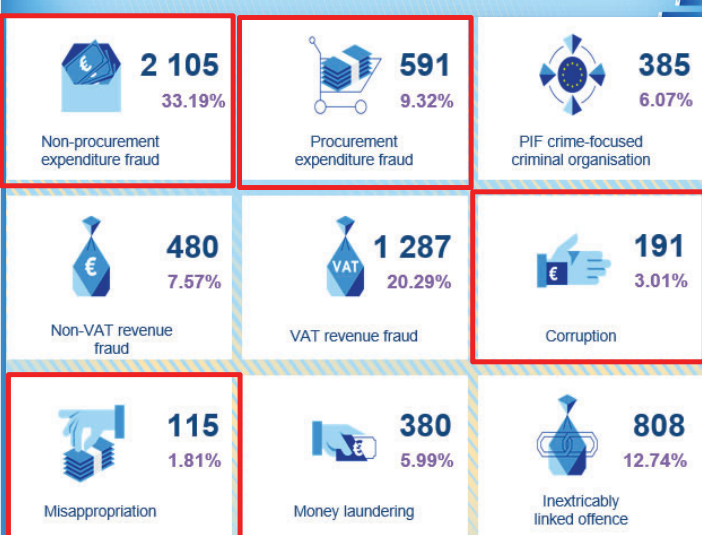
Territorial competence of the EPPO

- ▶ Offences committed in whole or in part **within the territory** of the 24 participating Member States
An offence is considered as having been committed on the territory of BE/LU (where the EU institutions are located) if any constituent element of the offence has taken place on their territory, *for example*:
 - ▶ **Damage** takes place in BE/LU (expenditure fraud) (EU funds disbursed from BE/LU)
 - ▶ **False documents** received in BE/LU by an EU body
- ▶ Offences committed **anywhere** outside the combined territories of the participating Member States:
 - ▶ by a national of a participating Member State
 - ▶ by an EU official



CENTRAL OFFICE - OPERATIONAL ACTIVITY

DATA VALID ON 31 DECEMBER 2024



Covering the three management types

- **Direct management:** EU funding is managed directly by the European Commission (20% for 2021-2027) – Commission, EU delegations or Agencies (no third parties). NextGen-> RRF, COSME
- **Shared management:** the European Commission and national authorities jointly manage the funding (70% for 2021-2027)
- **Indirect management:** funding is managed by partner organizations or other authorities inside or outside the EU (10% for 2021-2027), such as Erasmus+, MS development agencies, National promotional banks, EIB and EIF, humanitarian and international development.

CENTRAL OFFICE - OPERATIONAL ACTIVITY

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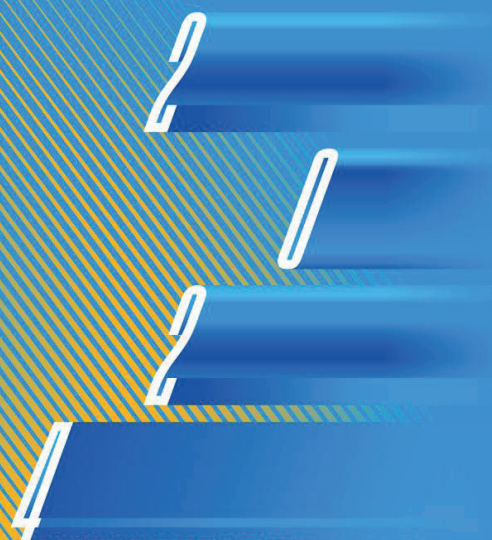


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CENTRAL OFFICE





THE EPPO:

- ▶ investigates,
- ▶ prosecutes, and
- ▶ brings to judgment the perpetrators of or accomplices to crimes affecting the financial interests of the EU.



CRIMES INVESTIGATED BY THE EPPO*



Expenditure and customs fraud.



VAT fraud involving two or more Member States and total damages of at least €10 million.



Corruption that damages the financial interests of the EU.



Misappropriation of EU funds or assets by a public official.



Money laundering involving property derived from these crimes.



Participation in a criminal organisation with focus on PIF offences.



Any other '**inextricably linked**' offences.

*As provided for in the PIF directive on the fight against fraud to the EU's financial interests by means of criminal law and implemented by national legislations. The directive harmonises definitions, sanctions and limitation periods of criminal offences.

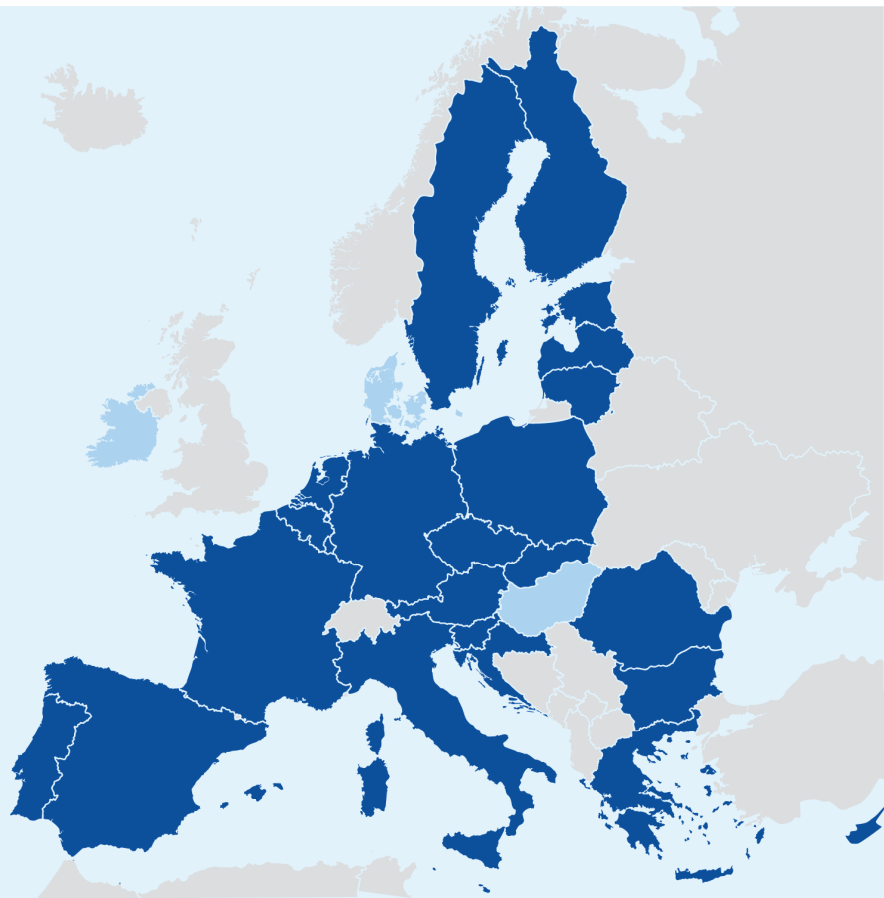


WHICH MEMBER STATES PARTICIPATE IN THE EPPO?

To date, **twenty-four** EU Member States participate in the enhanced cooperation

Three EU Member States do not participate:

- **Denmark** does not take part in the AFSJ (Protocol no. 22 to TFEU): it cannot take part in any EU Regulations, unless the Denmark Constitution and the Protocol are amended;
- **Ireland** has an opt in/out to the AFSJ (Protocol no. 21 to TFEU): it may decide to opt-in and join the EPPO
- **Hungary**: sovereign decision not to join yet; may join the EPPO later.



THE EPPO IS COMPOSED OF TWO LEVELS:

- ▶ The central level:
 - ▶ the European Chief Prosecutor,
 - ▶ 24 European Prosecutors, two of whom are appointed by the College as Deputies for the European Chief Prosecutor,
 - ▶ the Administrative Director, and dedicated technical and investigative staff.
- The decentralised level:
 - European Delegated Prosecutors located in the participating Member States.

The **central level** supervises the investigations and prosecutions carried out at the **national level**.



European Delegated Prosecutors

Active number of
European Delegated
Prosecutors:
168

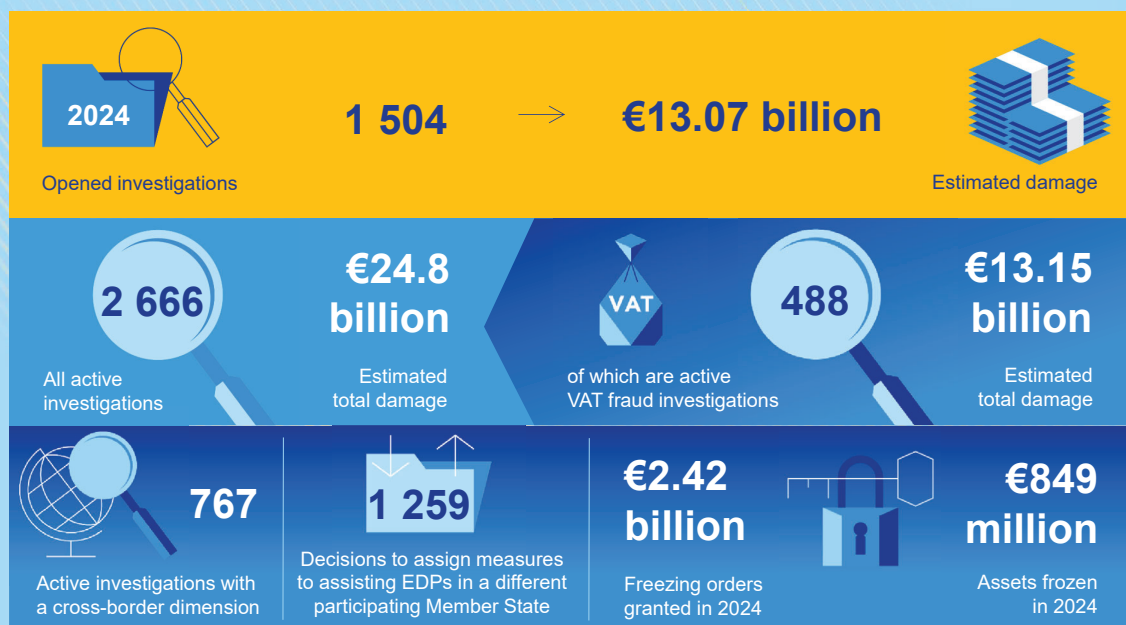


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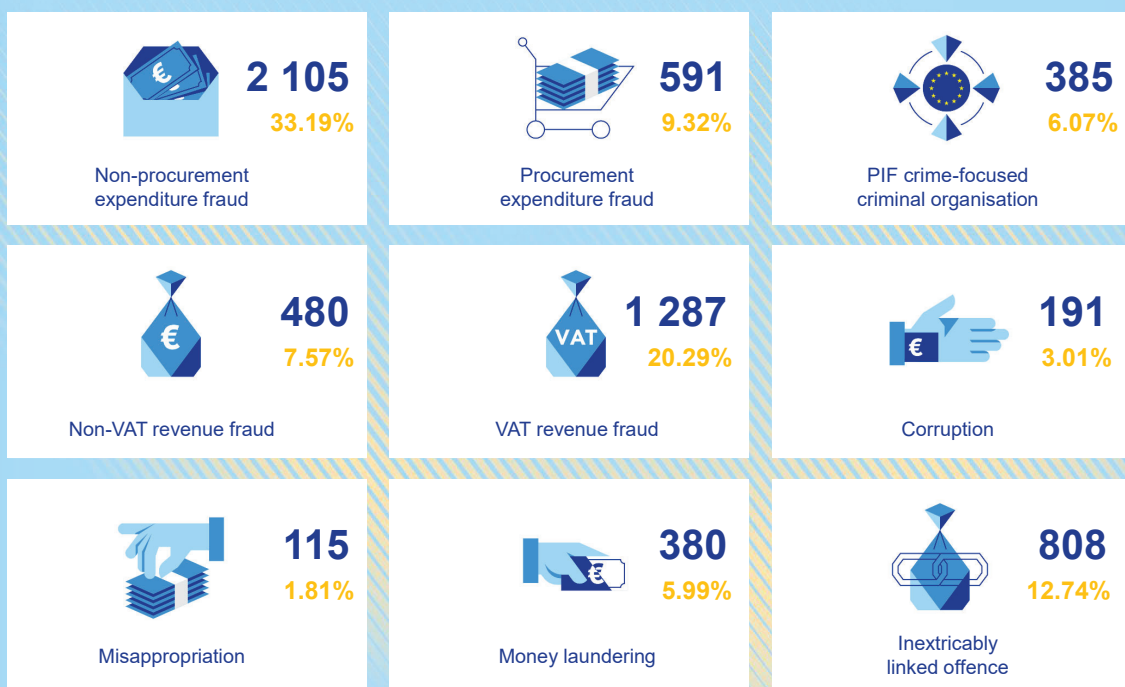
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CENTRAL OFFICE - TYPOLOGIES IDENTIFIED IN ACTIVE EPPO CASES

NUMBER OF INVESTIGATED OFFENCES BROKEN DOWN BY TYPE



Relevant dossiers in the fight against PIF related fraud

- **Environmental Crime Directive** (Dec 2023)
- **Sanctions Violation Directive (2024) – Harmonization of criminal offences for sanctions violation**
- **Proposal Anti-Corruption Directive** (May 2023)
- **AMLA**
- **Whistleblowers' directive Directive (EU) 2019/1937**
- The AC proposal provides for additional 'corruption' offences than what is currently provided for in the PIF Directive. The additional offences that do not apply to the PIF Directive, are:
 - Bribery in the private sector (Article 8),
 - Misappropriation in the private sector (Article 9 - the PIF Directive applies only to the public sector)
 - Trading in influence (Article 10)
 - Abuse of functions (Article 11)
 - Obstruction of justice (Article 12)
 - Enrichment from corruption offences (Article 13).
- **The Anti-Money Laundering Directives Directive (EU) 2018/843**
- **Whistle-blower's directive 2019/1937**
- Material scope, *inter alia*: (b) breaches affecting the financial interests of the Union as referred to in Article 325 TFEU and as further specified in relevant Union measures;



4

Irregularity reporting

When to report irregularities?

- Regulation 1303/2013, art. 122
 - Art. 122, par. 2 - MS shall notify the Commission of irregularities that exceed EUR 10 000 in contribution from the Funds and shall keep it informed of significant progress in related administrative and legal proceedings.
 - Art. 122, par. 2 - In particular cases preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.
 - The Additional criteria: In the Delegated Regulations (2015/1970 and the following)
- Regulation 2021/1060, art. 69 (2) and (12) + Annex 12
 - (a) irregularities that have been the subject of PACA
 - (b) irregularities that give rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of fraud or other criminal offences, as referred to in the PIF Directive and PIF Convention
 - (c) irregularities preceding a bankruptcy;
 - (d) specific irregularity or group of irregularities for which the Commission submits a written request for information to the Member State following the initial reporting from a Member State.

When not to report irregularities?

- Regulation 1303/2013, art. 122, par. 2. MS Shall not notify the Commission of:
 - (a) cases where the irregularity consists solely of **the failure to execute**, in whole or in part, an operation included in the co-financed operational programme **owing to the bankruptcy** of the beneficiary;
 - (b) **cases brought to the attention of the managing authority or certifying authority** by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;
 - (c) **cases which are detected and corrected by the managing authority or certifying authority** before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.
- Regulation 1060, art. 69 (2) and (12) + Annex 12 Irregularities exempted from reporting. The following irregularities shall not be reported:
 - (a) **irregularities for an amount lower than EUR 10 000 in contribution from the Funds; this does not apply in the case of irregularities which are interlinked and the total amount of which exceeds EUR 10 000 in contribution from the Funds, even when none of them exceeds that ceiling on its own;**
 - (b) cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed programme owing to the **non-fraudulent bankruptcy** of the beneficiary;
 - (c) **cases brought to the attention of the managing authority or the authority in charge of the accounting function** by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution; **(if sus->report)**
 - (d) **cases which are detected and corrected by the managing authority before inclusion** in a payment application submitted to the Commission. **(if sus->report)**
 - **The exemptions in points (c) and (d) of the first subparagraph of this point shall not apply to irregularities referred to under point 1.1(b)**

Limitation of reporting. Thresholds

- **Reporting obligation via IMS** imposed by EU legislation **may be limited!** Art. 3 of Delegated Regulations 2015/1970-73 and art 1.5. of Annex XII of CPR 2021/1060.
- *'Where national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent tribunal, court or other body in accordance with national rules.'*
- This must remain an exception and safeguard the principle of uniform application (if other MS report these cases)

Amount Irregularity	Reporting Obligation to Commission	Timing
€0/250 - €10,000	Not reported to Commission	Still irregularity – not reportable Included in internal system or annual summaries (EUR 250 – in 1303/2013, not in 2021/1060) Must be corrected/documented
More than €10,000	Must be reported via IMS	Within 2 months of detection <u>Or Immediately</u> if other MS is concerned or repercussions outside MS territory (Annex XII, p. 1.2 of CPR 2021/1060)
Suspected Fraud/Fraud (any amount)	Must be reported via IMS (+EPPO)	Within 2 months of detection <u>Or Immediately</u> if other MS is concerned or repercussions outside MS territory (Annex XII, p. 1.2 of CPR 2021/1060) EPPO – immediately (art 24 Regulation)

A nighttime photograph of a city street with cars and illuminated buildings, partially obscured by a blue and green gradient overlay.

6

Best practices to manage Conflict of Interests

Articles concerned



Legislative act – EU Level	Articles
Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast)	Art 61 , as well as art. 69, art 72, art. 138, art 145, art 157 (indirect management), art. 208, art 212, art. 219, art. 229 (award procedure), art 240, art 242,
Regulation (EU, Euratom) No 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 and repealing Regulation (EU, Euratom) No 966/2012 ⁽¹⁾ Financial Regulation (hereinafter 'FR 2018')	Articles 2, 26, 33, 36, Art 61 , 62, 63, 69, 70, 71, 73, 76, 77, 78, 89, 136, 137, 141, 150, 154, 155, 167, 205, 209, 216, 225, 237 and Annex I points 20.6, 28.2 and 29.1
Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ⁽²⁾ Financial Regulation (hereinafter 'FR 2012') (Not directly applicable to shared management)	Articles 32, 57 and art. 59
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	Articles 2, 24, 41, 57, 58 and 83



Articles concerned



Article 61

Conflict of interests

1. Financial actors within the meaning of Chapter 4 of this Title **and other persons, including national authorities at any level**, involved in budget implementation **under direct, indirect and shared management**, including acts preparatory thereto, audit or control, **shall not take any action which may bring their own interests into conflict with those of the Union**. They shall also **take appropriate measures to prevent a conflict of interests from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interests**.
2. Where there is a risk of a conflict of interests involving a member of staff of a national authority, the person in question shall refer the matter to his or her hierarchical superior. Where such a risk exists for staff covered by the Staff Regulations, the person in question shall refer the matter to the relevant authorising officer by delegation. The relevant hierarchical superior or the authorising officer by delegation shall confirm in writing whether a conflict of interests is found to exist. **Where a conflict of interests is found to exist, the appointing authority or the relevant national authority shall ensure that the person in question ceases all activity in the matter**. The relevant authorising officer by delegation or the relevant national authority shall ensure that any further appropriate action is taken in accordance with the applicable law, including, in the cases involving a member of staff of a national authority, with the national law relating to conflict of interests.
3. **For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.**



Conflict of interests – best practices



- Conflict of interest can arise even if the person does not actually benefit from the situation, as it is sufficient that the circumstances compromise the exercise of their functions in an objective and impartial manner (p. 7)
- Mere link with beliefs, views, opinions or preferences does not usually or automatically constitute a personal interest
- BUT persons involved in budget implementation should consider the risks that may arise for their impartiality and the image and reputation of institutions

Example of personal interest:

A head of a managing authority/paying agency:

- (1) ***might have a direct personal (family) interest in allocating EU funds to a project of the company of their spouse/partner*** (and therefore would need to declare a conflict of interest and abstain from being involved in decision-making related to that project, so that the situation can be managed);
- (2) ***might have an indirect personal (family) interest, in allocating EU Funds to a company that promised to create a new factory for which the company of the spouse/partner will most likely be the most significant sub-contractor*** (and therefore would require them to abstain from decisions related to the award procedure) or owns the land that the company will have to buy to build the factory.



Conflict of interests – best practices



- **Covers direct and indirect management + explicitly shared management** (since 2018)
- Either prevent or manage them appropriately
- Having in place detailed policies and rules to avoid and manage – for everybody
- Scope of conflict of interests covers now all management modes + all actors + national authorities at all levels involved in EU Budget implementation, including carrying out preparatory acts and audits, incl. exercising control!
- As of 2018 more situations are covered: not only managing of COI, but also situations which “may objectively be perceived ”as COI (preventive function).
- The obligation to prevent COI does not depend on national implementing measures being adopted.
- However, national authorities are competent for adopting supplementary and even more detailed/stricter measures.
- Newest definition, Financial Regulation 2024/2509 (Recast), art. 61



Conflict of interests – best practices



- The relationships regarding family membership may vary between countries and need to be analysed within legal and cultural context (**for example degree of kinship**)
- **Family and Emotional Life are two different categories** (for example emotional bond is not required between family members for a person's impartiality to be compromised)
- **Secondly, COI is not an automatic consequence of a family relationship** (as well as the concerned persons impartiality needs to be compromised)
- **Art. 61 covers at least immediately family** (spouse, partner, children, parents, great-grandparents, great grandchildren, half brothers and sisters, uncles and aunts, nieces and nephews, first degree cousins, parents in law, children in law, siblings in law, stepparents and stepchildren – those should be perceived at least as “situation objectively perceived as Conflict of interests”)



Who is concerned?



- Financial actors as well as other persons (examples: authorising officers, accounting officers, staff;
- **Shared management**: national authorities, incl any actor involved or assisting the preparation of the process of **planning, deciding on, managing, auditing and controlling the use of EU funds.**
- **Applies to any actor and any step, where someone is responsible for or/who has the ability to steer/or influence the decision making process linked to the implementation of the EU Budget.** Their involvement has to be significant (degree of discretion, for example to give instructions or advisory function or take a decision etc)
- **Example**: person working for the managing authority, but not involved in implementation of the EU budget, fall outside the scope.



Obligations in case of conflict of interests



- Rules to be implemented in a comprehensive and preventive manner
- Situations have to be examined and resolved in such a way that they are no longer perceived as such
- **Suggested steps:**
- Person must report to hierarchical superior
- Relevant superior must confirm in writing whatever a COI exists. The hierarchical superior must exercise judgement and carefully consider the situation. He should consider replacing the person.
- When COI is established, the relevant authority must ensure that the staff member ceased all relevant activities
- National authority should ensure any further appropriate action in accordance with applicable law



Red flags

- **absence of a declaration of conflict of interest**, where mandatory or requested;
- **staff member of the contracting authority**, just before joining it, **worked for a firm that may bid in a tender to be prepared by the staff member**;
- **staff member of the contracting authority has immediate family working for a firm that may bid in a tender**
- amendment to the terms and conditions of the contract signed between the beneficiary and the contractor,
- relationships/acquaintance **between the beneficiary and staff of the authority involved in budget implementation** or between the final beneficiary and contractors
- **beneficiary and procured subcontractor share office space/premises/address, or similarity in company names indicates economic interdependence**,
- **evaluation committee members do not have the necessary technical expertise to evaluate the submitted bids and are steered by one individual**,
- **subjective elements are overrepresented in the criteria system or in the evaluation of a tender**, — specifications are very similar to the winning bidder's product or services, especially if the specifications include a set of very specific requirements that very few bidders could meet, — estimated/maximum amount of the contract is not disclosed in the publicly available procurement documents (only registered internally), but the bid is very close to that internally established amount (for example, 1-2 % difference); — beneficiary created immediately prior to the application for the grant;
- **few applicants or fewer applicants than expected for a call for proposals/tenders**;
- **the same enterprise repeatedly wins successive contracts**;
- poor execution of contract does not result in application of penalties or in the exclusion of the contractor/service provider from being awarded further contracts.

Conflict of interests – best practices



Examples of rules on ethics and conflicts of interest at Member State level:

- (1) In one **Member State** it is prohibited for persons occupying managerial positions in government administration (e.g. minister, secretary of state, head of central office) to hold more than 10 % of shares in private companies.
- (2) In a **second Member State**, the Head of State, ministers and members of Parliament may not accept gifts, hold shares in private or public companies or hold government contracts.
- (3) In a **third Member State**, anyone holding a public sector position must not carry out any trading activities if they own over 10 % of a company's shares.
- (4) In a **fourth Member State**, ministers and members of Parliament must not be part of supervisory or managerial bodies of private companies and if they own shares in a private company of 0,5 % or more, they must transfer their consequential management rights to another person for the duration of their mandate.
- (5) In a **fifth Member State**, officials who have financial responsibilities and whose hierarchical level or the nature of their duties so warrants must, within two months of their appointment, take all steps to ensure that their financial assets are managed, during the duration of their duties, under conditions which exclude any right of scrutiny on their part.



Conflict of interests – best practices



9.4.2021

EN

Official Journal of the European Union

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II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COMMISSION

COMMISSION NOTICE

Guidance on the avoidance and management of conflicts of interest under the Financial Regulation

(2021/C 121/01)

DISCLAIMER: 'On the basis of applicable EU law, this document provides technical guidance for staff and bodies involved in implementing, monitoring and controlling the EU Budget on how to interpret and apply the EU rules in order to facilitate implementation and to encourage good practice(s). The examples provided in the document merely aim at illustrating the specific concepts presented in each chapter. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.'

EUROPEAN COMMISSION

Best Practices to Prevent and Manage
Conflicts of Interests

Commission working document

18 December 2024

Ref: [EWC\(2024\)05668/19 02/09/2025](#)

DISCLAIMER:

The present document aims to provide guidance to Member States where needed and/or disseminate best practices in the relevant for a with Member States authorities. In any case, it should not be read as giving any endorsement or providing binding rules.

1



Situations - examples



Weak control environment on CoI in a certain Member State.

- Investment on the control environment of CoI mainly through (i) strengthening the verifications and (ii) conducting training sessions on CoI to actors involved in the implementation of Union funds;
- Establish a systematic Risk Analysis process at the level of the managing authority and focus on the areas with the highest likelihood of occurrence and severity (high risk areas);
- Consider CoI as a holistic process, affecting all aspects of the processing of EU funds (and not only on the public procurement process);
- Enrich CoI prevention and detection mechanisms;
- Assign responsibility for carrying out controls to designated project managers or controllers on a sample basis;
- Streamline the procedures on reporting CoI;
- Ameliorate the process on whistle-blowers in order to properly protect the anonymity of persons.



Situations - examples



In a Member State, **declarations of impartiality** are not signed by all people involved in the implementation of the EU funds, and **checks of declarations** of impartiality against other sources of information are not performed in the context of public procurement procedures.

- Increase the transparency in selection procedures, for instance, (i) by having the members of evaluation committees provide declarations of impartiality against the tenderers and as regards potential conflicting interests preventing the person from acting impartially (e.g. if a person is associated with a tenderer is then removed from the evaluation panel), (ii) by cross-checks carried out by other entities based on hard evidence (e.g. articles of association of tendering firms, shareholding etc), (iii) by keeping the composition of evaluation committees wide and open to persons outside the close circle of affiliated/connected firms (e.g. university panels should be constituted not only by national/local professors);
- Ensure declarations are signed at all levels, including new employees;
- Test the impartiality declarations against risk scoring & data mining tools (e.g. ARACHNE);
- Raise the awareness of CoI (e.g. recurrent trainings, quizzes and tests, educational material and awareness campaigns, quarterly or annual reports, e.g. on external contacts with lobbyists etc.);
- Ensure potentially conflicting interests, including e.g. family ties, are properly checked;



Situations - examples



In a Member State, the verification of potential conflict of interests and checks on veracity of declarations in public procurement **vary significantly** among different authorities.

- Ensure homogeneity on the verification of CoI by focusing on key riskiest areas, reflecting prior risk assessment to be validated and shared among managing authorities;
- Introduce obligatory annual targeted training sessions for all managing authority staff;
- Share findings, main issues and best practices among managing authorities within the Member State;
- Introduce horizontal procedures on the uniformity of the checks ensuring the veracity of declarations, e.g., by establishing a checklist for those who need to carry out the checks;
- Set out the chain of command/responsibility for verifying and take action against conflict of interests, for instance (i) by introducing a designated officer or committee with the mandate to verify employee's declarations on conflict of interest or (ii) by establishing a two-step verification process to oversee employees found to be in a conflict of interest situation (e.g. the designated supervisor first makes a general check of all the employees, to see if they have submitted a CoI declaration, and second, more in-depth and personal checks of individual employees, especially where inconsistencies or potential issues are detected in their declarations).



Situations - examples



Lack of procedures for establishing a CoI, and proportional consequences for non-compliance with CoI rules, including e.g. **disciplinary sanctions**.

- *Personal consequences.* Non-compliance with the organisation's CoI policy should generally be regarded as, at minimum, a disciplinary matter, while more serious breaches involving an actual conflict could result in sanctions for abuse of office, or prosecution for e.g., a corruption offence, in accordance with applicable national law. Other sanctions may apply to the public official depending on the seriousness of the breach – for example, a simple failure to register a relevant interest as required, compared with a more serious refusal to resolve an actual conflict of interest of which the public official is aware. Sanctions should be proportionate and enforceable, including, e.g., a potential impact on the appointment or career of the public official involved, change of duties, position or location.



Situations - examples



Absence of **alert** mechanisms to **prevent** the risk of CoI.

- Establishing specific risk indicators that may help alert to the risk of CoI, including the following risk indicators:
 - absence of a declaration of CoI, where mandatory or requested;
 - staff member of the contracting authority, just before joining it, worked for a firm that may bid in a tender to be prepared by the staff member;
 - staff member of the contracting authority has immediate family working for a firm that may bid in a tender;
 - amendment to the terms and conditions of the contract signed between the beneficiary and the contractor;
 - relationships/acquaintance between the beneficiary and staff of the authority involved in budget implementation or between the final beneficiary and contractors;
 - beneficiary and procured subcontractor share office space/premises/address, or similarity in company names indicates economic interdependence;
 - evaluation committee members do not have the necessary technical expertise to evaluate the submitted bids and are steered by one individual;
 - subjective elements are overrepresented in the criteria system or in the evaluation of a tender,



Situations - examples



A civil servant who has recently left the service would enter into **new employment or private business relations** in a field linked to their previous functions or, conversely, that a person with a **recent business background** in a certain field would be recruited to a related public function (for example, a civil servant, shortly after positively evaluating the request for a financing, quits the public service and joins the entity which received the financing).

[An example of this would be a situation when a civil servant, in short period after positively evaluating the request for co-financing, quits the service and starts working for that specific company. According to OLAF, irregularities like this were reported in IMS.]

- Appropriate provisions to deal with conflicting interests related to new professional activities after leaving the civil service (e.g. restrictions to work on certain files for a limited period of time);
- Restrictions, for a limited period of time, from professional contacts with former colleagues or from representing opposing parties after leaving the service;
- Quarantine periods, where a public official must refrain from accepting job offers or carrying out activities or consultancy services related to the responsibilities exercised in the public office previously held, for a set period of time (usually between 1 and 2 years). The quarantine rules may also apply to commercial transactions and share purchases. Compliance of these rules could be ensured for instance by reports submitted by said officials to a supervisory body on the activities pursued after termination, and/or subsequent verifications and checks in national registries.



Situations - examples



E. Interests linked with emotional life

Persons involved in budget implementation are affected by an **emotional life** factor that could compromise their impartiality and objectivity. This could in particular result from friendships or enmities, family relationships, party affiliations, associations or religious beliefs.

- Reduction of personal (one-on-one) contacts between employees and beneficiaries, for instance through the development of better monitoring systems, and by developing routines for in-person meetings.



Situation which may be perceived as COI



- (1) The person (or their partner) simultaneously carries out consultancy work, for either a consultancy or a third party providing services to the consultancy, on submitting applications for EU funding.
- (2) The person (or an immediate family member of the person) **directly or indirectly owns a company applying for EU funding.**
- (3) The person has a **personal friendship with the managers/owners of a company applying for EU funding.**
- (4) The person is a candidate (as a member of a political party) **for public office and their political party has a business relationship vis-à-vis a specific applicant for EU funding.**
- (5) **Prior to leaving their position in the public service, a person negotiates their future employment in a company applying for EU funding**(or affiliated or partner company, or another company with overlapping ownership compared to the one applying for EU Funding).
- (6) **The person recently worked in a management position in a company applying for EU funding, and was in charge of the particular sector of the company that is now requesting the funding.**
- (7) **If the person lives in a municipality that is applying for infrastructure funding, this should not necessarily and objectively be perceived as giving rise to a conflict of interest.** The larger the group to which the person belongs that would benefit from a measure – in this case, **the people of the municipality concerned – the more diluted the risk of conflict of interest generally becomes.** However, a case-by-case assessment remains necessary if, for example, the person were to benefit from the funding measure in a particular way, e.g. from public infrastructure increasing the real estate value of their neighbourhood, the perception of a conflict of interest could exist/arise.

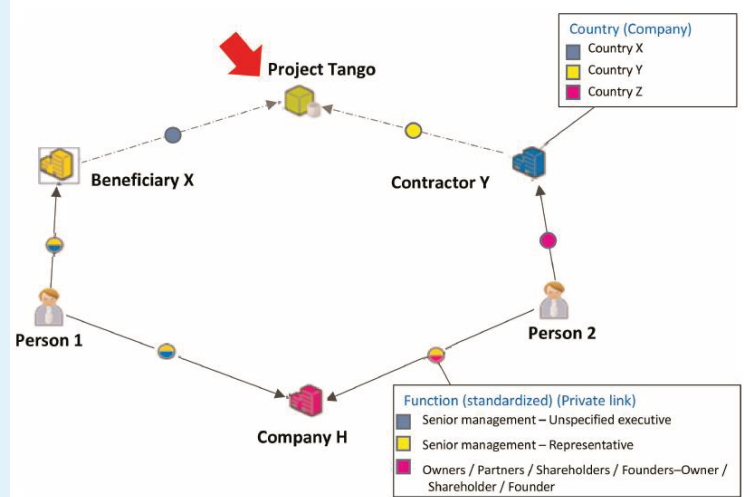


Arachne in practice



In the project Tango example, a **direct legal link** between **person 1** (project **beneficiary** located in country Y) and **person 2** (project **contractor** located in country X) **is found through company H**, which is located in a country different from that of the beneficiary and contractor. **The existence of a conflict of interest in this example is worth verifying.** This information can be used to more effectively and efficiently target verifications, controls and audits. It should be noted that, even if the example above refers to a procurement case, ARACHNE is also an effective tool to determine the existence of perceived conflicts of interest among staff working for an EU institution or a national authority who are responsible for selecting and appraising applications for grants and other forms of public financial support.

Example of ARACHNE in practice:



Live presentation – Declaration of COI and Best Practices



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(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COMMISSION

COMMISSION NOTICE

Guidance on the avoidance and management of conflicts of interest under the Financial Regulation

(2021/C 121/01)

DISCLAIMER: 'On the basis of applicable EU law, this document provides technical guidance for staff and bodies involved in implementing, monitoring and controlling the EU Budget on how to interpret and apply the EU rules in order to facilitate implementation and to encourage good practice(s). The examples provided in the document merely aim at illustrating the specific concepts presented in each chapter. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.'



EUROPEAN COMMISSION

Best Practices to Prevent and Manage Conflicts of Interests

Commission working document
18 December 2024

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DISCLAIMER:
The present document aims to provide guidance to Member States where needed and/or disseminate best practices in the relevant for a with Member States authorities. In any case, it should not be read as giving any endorsement or providing binding rules.



Questions and answers





THANK YOU

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