

Special report

## Conflict of interest in EU cohesion and agricultural spending

Framework in place but gaps in transparency and detection measures



EUROPEAN  
COURT  
OF AUDITORS

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## **Abbreviations**

## **Glossary**

## **Commission's replies**

## **Timeline**

## **Audit team**

## Executive summary

**I** A conflict of interest is an irregularity affecting the EU budget that may be linked to fraudulent activities. It is defined in the EU Financial Regulation and in the EU Directives on public procurement.

**II** In 2018, a revision of Article 61 of the Financial Regulation explicitly extended obligations to avoid conflicts of interest to people involved in managing EU funds in the Member States in the area of shared management. A conflict of interest exists where the impartial and objective exercise of the functions of those involved in EU budget implementation is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

**III** The purpose of the audit was to verify, in the light of the revised legislation, recent cases and the interests of core stakeholders and the public, whether the Commission and Member States adequately addressed conflicts of interest in the common agricultural policy and cohesion policy. The audit was intended to highlight possible shortcomings in the management of conflicts of interest at Commission and Member State level and recommend improvements.

**IV** We assessed the framework and the procedures in place to prevent conflicts of interest, as well as measures to detect, resolve and report on such cases.

**V** We found that both the Commission and the Member States had made efforts to address conflicts of interest, but that gaps remained, particularly in terms of promoting transparency, and, in Member States, detecting situations at risk, as well as comprehensive reporting of conflict-of-interest cases so that the Commission and Member States authorities have a clear overview.

**VI** We recommend measures to help the Commission improve its capacity to prevent and detect conflicts of interest and promote transparency.

# Introduction

## Conflicts of interest and the EU budget

**01** A conflict of interest is an irregularity affecting the EU budget that may be linked to fraudulent activities. The European Court of Justice has ruled that “conflict of interest constitutes, objectively and in itself, a serious irregularity without there being any need to qualify it by having regard to the intentions of the parties concerned and whether they were acting in good or bad faith”<sup>1</sup>. Conflict of interest is defined in the EU Financial Regulation<sup>2</sup> and in the EU Directives on public procurement<sup>3</sup>.

**02** A revision of Article 61 of the Financial Regulation in 2018 explicitly extends obligations to avoid conflicts of interest to people involved in managing EU funds in the Member States. The article also applies to persons involved in making decisions on preparatory acts for EU spending programmes, such as members of government. Under Article 61(3), a conflict of interest exists where the impartial and objective exercise of the functions of a person involved in EU budget implementation is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

**03** When a perceived or actual conflict of interest is identified, the relevant authority must ensure that the person in question ceases all activity in the matter. Article 36(3) of the Financial Regulation requires effective internal control in the implementation of the EU budget, based on best international practices and including the avoidance of conflicts of interest.

**04** For the purpose of this report, we define an “interest” as a commitment, obligation, duty or goal associated with a particular social and economic role or practice. Such an interest can be intended to either favour or disadvantage certain individuals or groups. An interest may be categorised as direct or indirect, and financial or non-financial (see [Figure 1](#)).

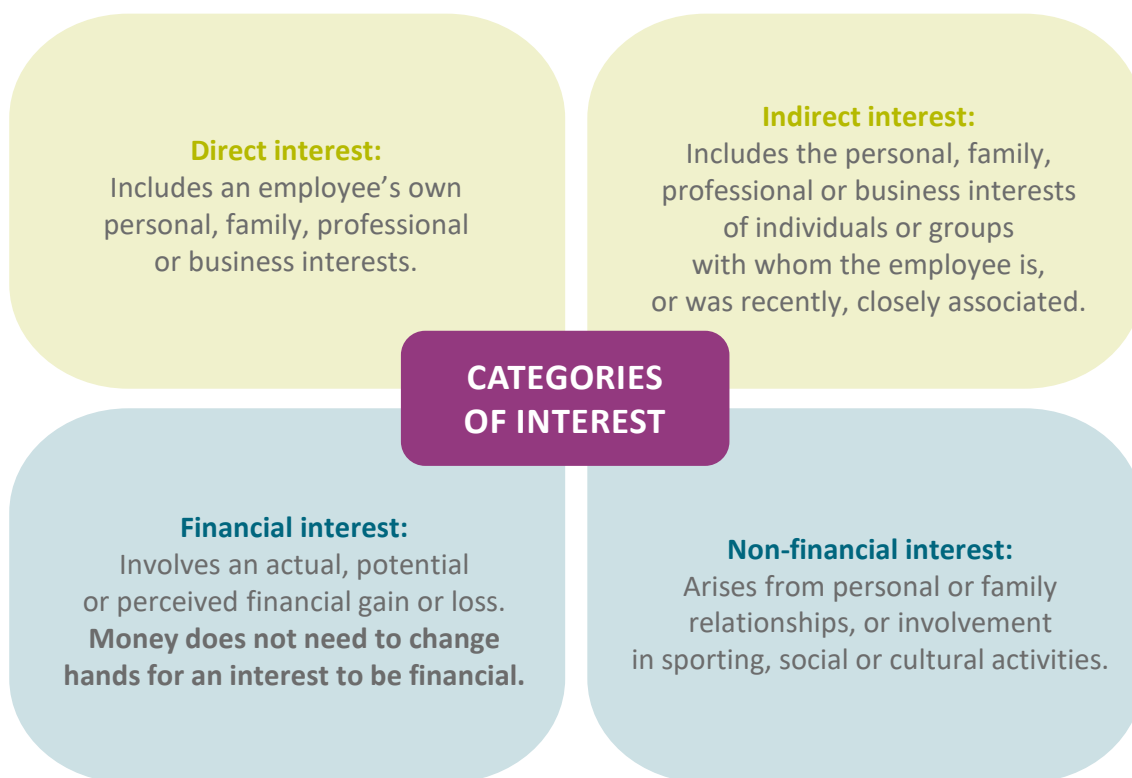
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<sup>1</sup> [Ismeri Europa Srl v Court of Auditors of the European Communities](#).

<sup>2</sup> [EU Financial Regulation, Article 61](#).

<sup>3</sup> Article 35 of [Directive 2014/23/EU](#), Article 24 of [Directive 2014/24/EU](#) and Article 42 of [Directive 2014/25/EU](#).

**Figure 1 – Categories of interest**

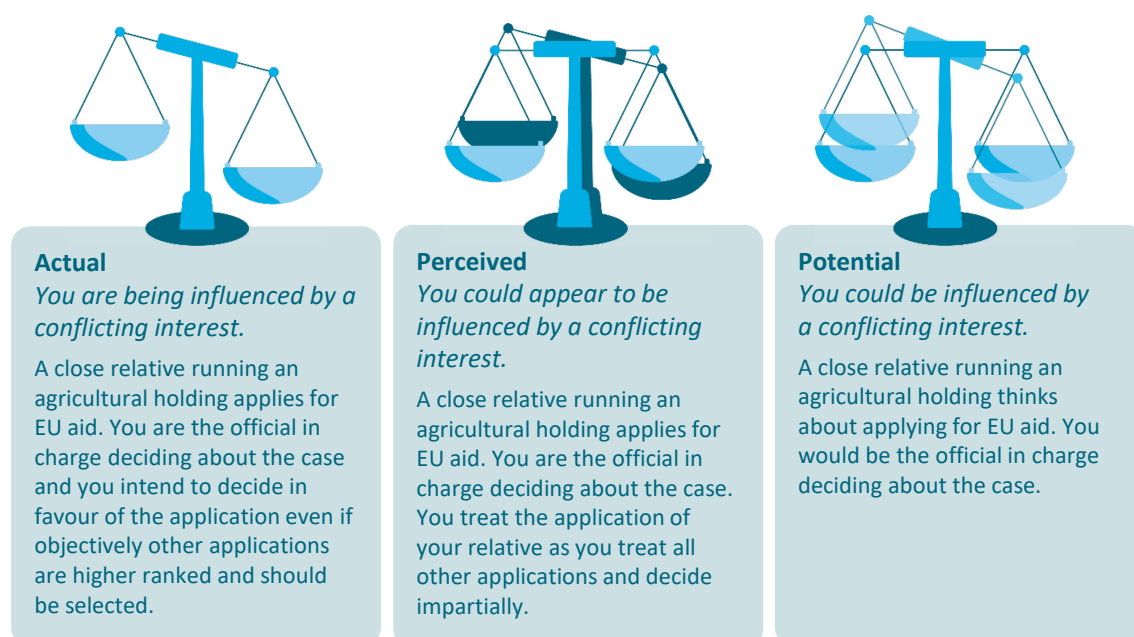


Source: Victorian Public Sector Commission, 2016.

**05** The OECD<sup>4</sup> distinguishes different types of conflict of interest: actual, potential and perceived. The difference between them, which is not defined in EU law, is presented in [Figure 2](#) below as applied to the context of EU funding:

<sup>4</sup> OECD, Managing conflict of interest in the public sector, 2005.

**Figure 2 – Examples of an actual, perceived and potential conflict of interest**



Source: ECA.

**06** In addition, national rules may also address conflicts of interest concerning private beneficiaries of EU-funded projects (for instance between beneficiaries and their suppliers), which is not covered by the Financial Regulation. These rules are usually aimed at avoiding the inflation of prices, the provision of false evidence to justify expenses, or the circumvention of eligibility rules<sup>5</sup>. The European Anti-Fraud Office (OLAF) has identified such cases in recent years<sup>6</sup>.

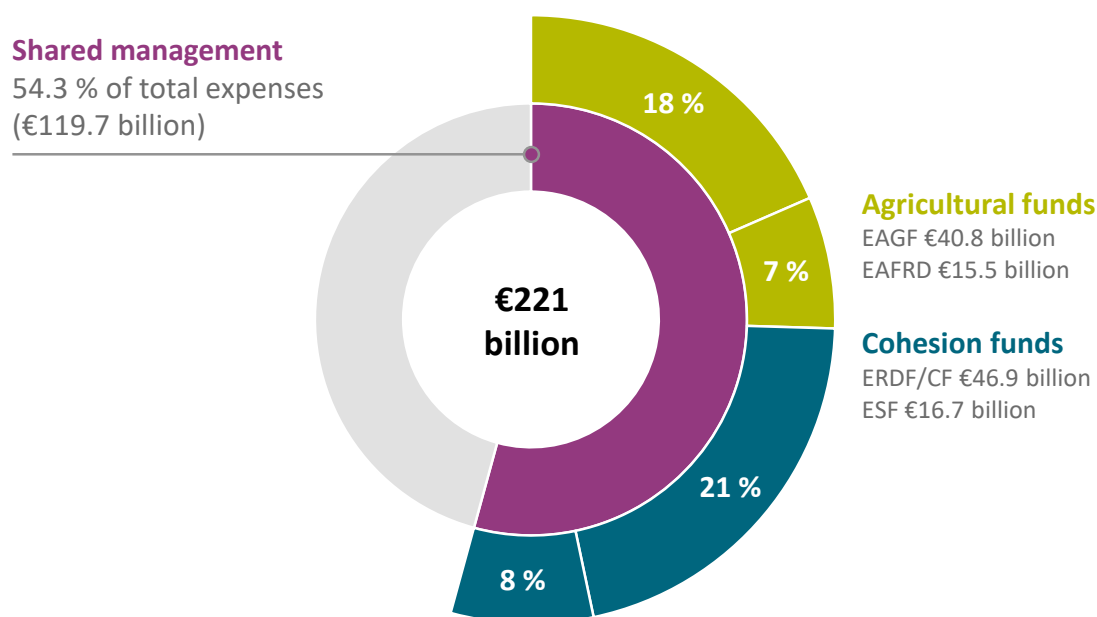
## Conflicts of interest and shared management

**07** Around half of EU spending is under shared management by the Commission and the Member States (see [Figure 3](#)). This includes the two agricultural funds – the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) – and the three main cohesion funds: the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF).

<sup>5</sup> See e.g. OECD, *Collusion and Corruption in Public Procurement*, 2010.

<sup>6</sup> See *OLAF report 2021*, p. 18 or *OLAF report 2020*, pp. 14-15.

**Figure 3 – EU spending under shared management in 2021**



Source: ECA based on European Commission, Annual Accounts of the European Union 2021.

**08** Under shared management, the Commission retains overall responsibility for the implementation of the budget. The **Commission** draws assurance from the internal control and reporting systems in place, provides guidance and support to implementing and auditing bodies in the Member States, carries out audits and may apply financial corrections if Member States fail to protect the EU budget. **Member States** must take effective and proportionate measures to prevent, detect and correct irregularities (such as conflicts of interest) in shared management, including those due to fraud, and to recover amounts unduly paid.

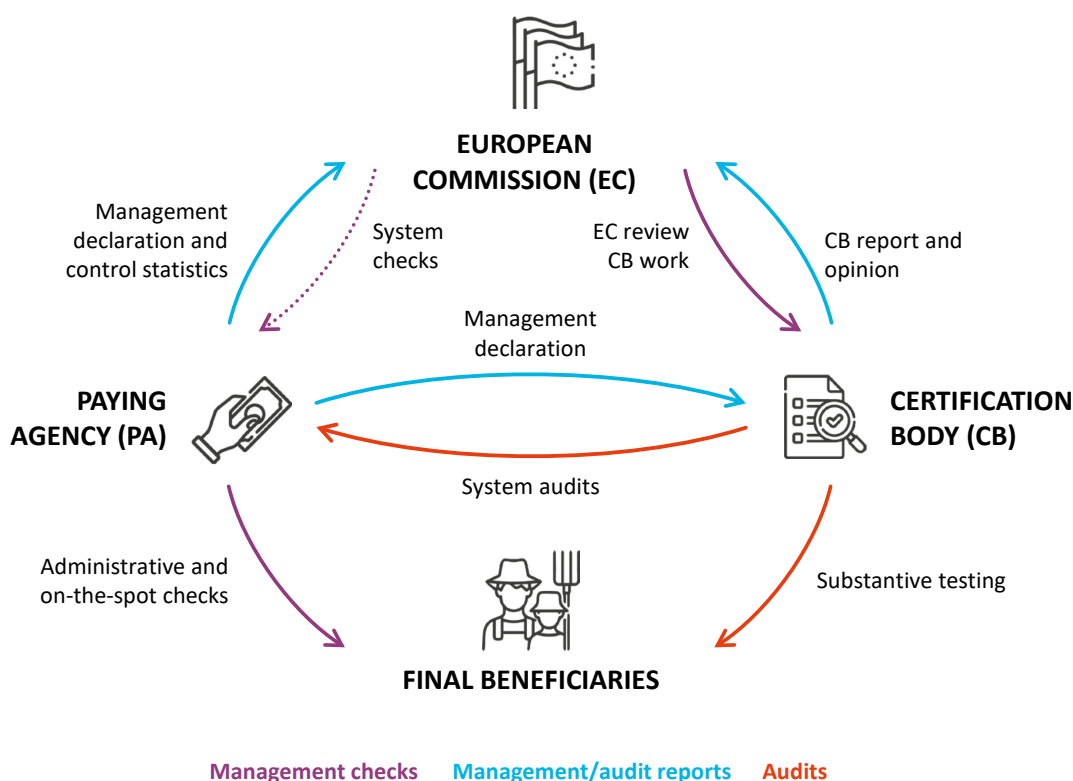
**09** In **cohesion**, managing authorities are responsible for appraising grant applications, selecting projects for funding, carrying out administrative and on-the-spot verifications, authorising payments, collecting data on each operation, and establishing anti-fraud measures. Managing authorities may entrust some of their functions to intermediate or delegated bodies, which can be ministries or other public or private bodies. Independent audit authorities check the effective functioning of the management systems and internal controls of an operational programme.

**10** In **agriculture** (see **Figure 4**), managing authorities manage rural development programmes funded through the EAFRD. Paying agencies are responsible for the management and control of expenditure from the EAGF and EAFRD. They may delegate functions such as the management of aid applications or on-the-spot checks



on final recipients to other public or private authorities. Certification bodies provide an opinion on the completeness, accuracy and veracity of the paying agency's annual accounts, on the proper functioning of its internal control system and on the legality and regularity of the expenditure for which reimbursement has been requested from the Commission.

**Figure 4 – Shared management in the CAP**



Source: ECA.

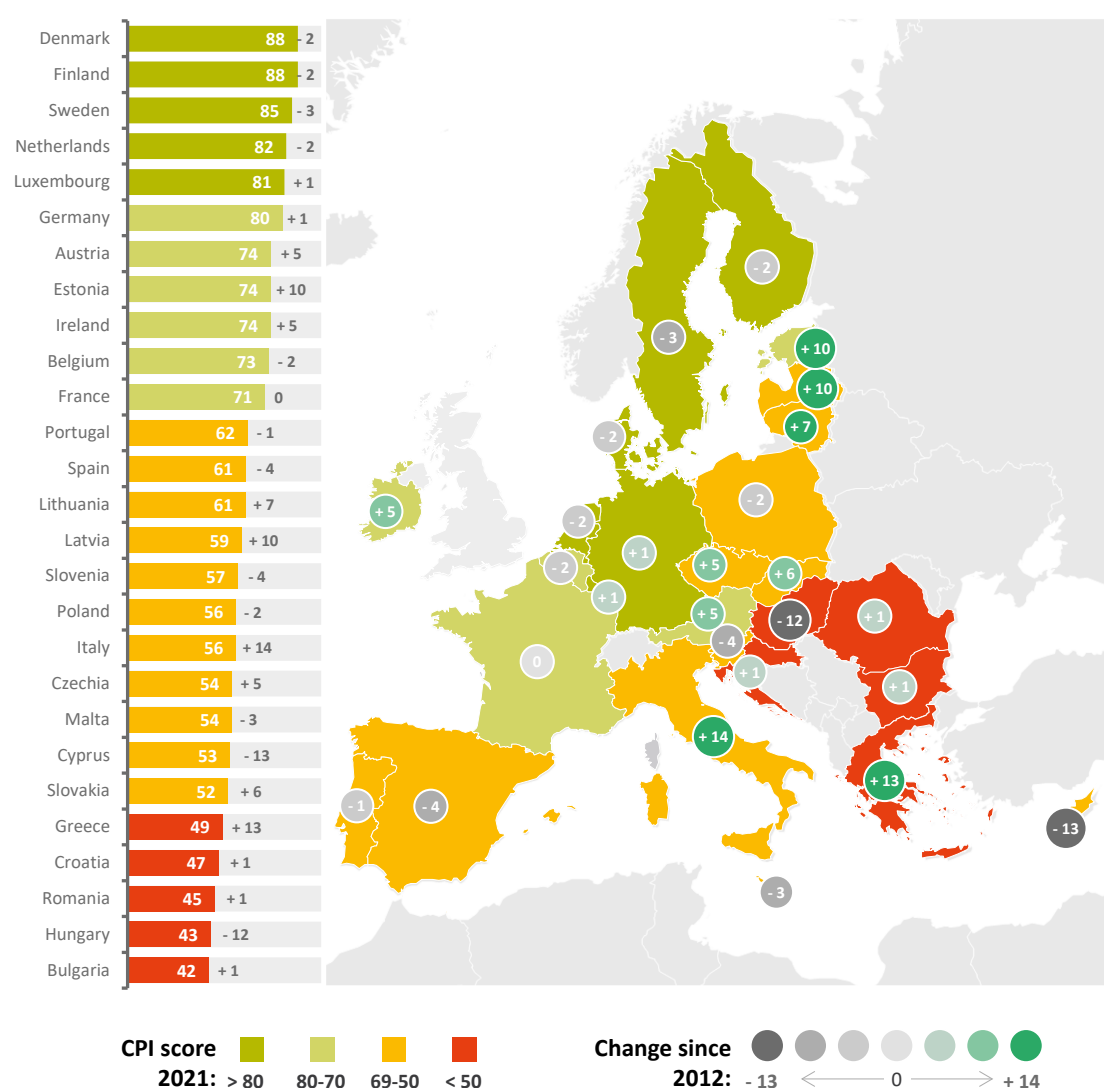
## Risks of conflict of interest and the protection of the rule of law

**11** A report from the Organisation for Economic Co-operation and Development (OECD)<sup>7</sup> shows how conflicts of interest in shared management can pose a significant risk throughout the project management cycle. During the application and project selection stage, collusion between public officials, applicants and third parties can result in projects being awarded unfairly. Perpetrators may bribe public officials and falsify documentation. During the project closing and evaluation stage, conflicts of interest may jeopardise the objectivity of evaluation reports.

<sup>7</sup> OECD, *Fraud and Corruption in European Structural and Investment Funds*, 2019.

**12** In January 2022, Transparency International issued the latest version of its Corruption Perception Index (CPI). This index covers bribery, but also other forms of diversion of public funds. It assesses preventive mechanisms such as the government's ability to enforce integrity mechanisms or the existence of adequate laws on financial disclosure, prevention of conflicts of interest and access to information. Overall, the EU is, on average, perceived as less corrupt than other regions. Denmark, Sweden and Finland are among the best performers. Romania, Hungary and Bulgaria are the lowest-ranked EU countries (see [Figure 5](#)).

**Figure 5 – Corruption Perception Index 2021 – European Union**



Source: ECA based on Transparency International, Corruption Perception Index 2021, 2022.

**13** In December 2020, the European Parliament and the Council adopted [Regulation 2020/2092 establishing a general regime of conditionality for the protection of the Union budget](#). The Regulation identifies a number of situations that

may indicate a breach of the rule of law principles. According to Article 3 of the Regulation, “failing to ensure the absence of conflicts of interests” is one such situation. Where such breaches have a sufficiently direct impact on the sound financial management of the EU budget, or there is a serious risk of them doing so, the Commission must propose appropriate measures. [Commission guidelines](#) on how to apply the provisions were published in March 2022<sup>8</sup>. On 27 April 2022, the Commission sent a notification letter to Hungary, formally launching the procedure provided for under the Regulation 2092/2020 to protect the EU budget. On 18 September 2022, the Commission proposed measures to the Council to protect the EU budget and the financial interests of the EU against breaches of the principles of the rule of law in Hungary<sup>9</sup>.

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<sup>8</sup> [Guidelines on the application of the Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget](#), C(2022) 1382 final, 2.3.2022, Brussels.

<sup>9</sup> Proposal for a [Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary](#), COM/2022/485 final.

## Audit scope and approach

**14** Our aim was to verify whether conflicts of interest are adequately addressed in the common agricultural policy and cohesion policy, in the light of the revised legislation, recent cases and the interests of core stakeholders such as the European parliament and the public. In order to do so we assessed whether the Commission and the Member States had:

- o set up a comprehensive legal framework, developed adequate procedures and taken awareness-raising actions to prevent conflict-of-interest situations; and
- o taken measures to detect, resolve and report on conflicts of interest.

**15** We focused on conflicts of interest in shared management as defined in the Financial Regulation and the Public Procurement Directive, but also covered conflicts of interest involving private beneficiaries of EU spending. We covered measures financed by the ERDF and CF, the ESF and the EAGF and EAFRD, which represent almost 95 % of all spending under shared management.

**16** We collected audit evidence through:

- o a desk review of strategic, legislative, policy and guidance documents on conflicts of interest;
- o interviews with representatives of five Commission directorates-general (DGs)<sup>10</sup> and OLAF, EPPO<sup>11</sup>, the EU Ombudsman, the OECD, GRECO<sup>12</sup>, the UN ethics office, scientific experts and academics, think tanks and other relevant stakeholders;
- o interviews with representatives from over 50 national and regional authorities in four Member States (Germany<sup>13</sup>, Hungary, Malta and Romania), managing

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<sup>10</sup> Commission's Directorates-General for Agriculture and Rural Development (DG AGRI), Directorate-General for Budget (DG BUDG), Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL), Directorate-General for Human Resources and Security (DG HR) and Directorate-General for Regional and Urban Policy (DG REGIO).

<sup>11</sup> The European Public Prosecutor's Office is an independent public prosecution office of the European Union.

<sup>12</sup> The Group of States against Corruption (GRECO) is the Council of Europe anti-corruption body.

<sup>13</sup> Focusing primarily on the regions Bavaria and Saarland.

cohesion funds and agricultural funds, and non-governmental organisations. We selected these four Member States according to criteria such as size, national and regional structure, geographic coverage, materiality of EU aid for cohesion and agriculture, ranking in different corruption indices and Member States' reporting of conflicts of interest to the Commission (OLAF). In addition, we contacted two other Member States (Italy and Luxembourg) about individual conflict-of-interest cases identified by the media and included relevant examples from Czechia stemming from work on our statement of assurance;

- o a survey of all EU Member States to collect information and opinions to complement our audit work in our sample of Member States. We addressed the survey to the core bodies in shared management, notably managing authorities, paying agencies, audit authorities, certification bodies and the certifying authorities. We achieved a response rate of over 90 %.

**17** In December 2021, we held a panel discussion on conflicts of interest in shared management with scientific, policy and administrative experts. The panel helped us verify and develop our audit findings.

# Observations

## Measures to improve transparency and protect whistleblowers are not yet in place

**18** Member State authorities in shared management should have a sound policy on preventing conflicts of interest, based on a clear and comprehensive legal framework, strategies, procedures and recurrent awareness-raising activities. Transparent access to information on the beneficiaries of EU funds and the protection of whistleblowers also help to prevent conflicts of interest.

**19** In order to prevent conflicts of interest internally, the Commission should identify related risks, raise awareness of the issue and provide relevant staff training. As it is ultimately responsible for the EU budget, the Commission should check that control systems in Member States addressing the risk of conflict of interest are operating effectively and provide guidance to the relevant authorities.

## The Commission offers comprehensive training and requires compulsory declarations, but there are weaknesses in its procedures on revolving doors

**20** For internal purposes, the Commission addresses conflicts of interest as part of its ethics and integrity framework, covered primarily by the EU Staff Regulations<sup>14</sup>, their implementing provisions<sup>15</sup> and ethics codes and guides. The Commission's rules require staff to submit ad-hoc declarations of conflicts of interest which could impair their impartiality. The rules govern the acceptance of gifts, hospitality and favours, the declaration of professional activities carried out by spouses or partners of staff, and the requirement to seek prior authorisation for any external activities and to declare activities after employment. Implementing procedures vary from DG to DG.

**21** Commission staff must make declarations on possible conflicts of interest at various moments of their professional life: upon entry into service, if they are involved in a public procurement procedure, as well as when leaving their institution and when returning from leave on personal grounds. In the DGs for Regional and Urban Policy

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<sup>14</sup> [EU Staff Regulation](#).

<sup>15</sup> [Commission Decision of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service, C\(2018\) 4048 final, 29.6.2018, Brussels](#).

(DG REGIO) and Employment, Social Affairs and Inclusion (DG EMPL), auditors submit declarations before every audit assignment, while auditors in the DG for Agriculture and Rural Development (DG AGRI) have to report situations in which they might find themselves in a situation of conflict of interest.

**22** The Commission has issued internal guidance<sup>16</sup>, and has a comprehensive training policy on ethics, and a dedicated page on its intranet. Staff members who believe that they may find themselves in a conflict-of-interest situation should immediately inform the organisational entity responsible for their appointment (“appointing authority”) and are advised to also inform their line manager. The appointing authority is responsible for preventing any potential conflicts of interest. Staff declarations of interest are stored in the Commission’s human resources application. The Commission’s guidance on managing sensitive functions focuses on managing internal control risks more effectively and proactively. This includes re-designing processes, introducing enhanced internal controls, awareness-raising measures or a combination of the above. The guidance advises compulsory rotation of staff in sensitive functions as a last resort.

**23** The European Ombudsman, an independent and impartial body that investigates complaints about maladministration by EU institutions and bodies, has dealt with around 70 cases concerning conflicts of interest in the EU institutions since 2013. The majority of these (44 cases) concerned conflicts of interest in the Commission, including the issue of “revolving doors”, in which a person moves between a role as a public official and a related private-sector role. In 2019, the Ombudsman concluded that while the Commission’s practices complied with the rules, more could be done to make those rules more effective and more meaningful. The Ombudsman recommended that the Commission take a more robust approach when dealing with cases involving senior officials<sup>17</sup>.

**24** More recently, the Ombudsman examined 100 Commission decisions taken between 2019 and 2021 regarding “revolving door” moves by its staff members<sup>18</sup>. She found improvements since her last enquiry but also made several suggestions. One of these was that the Commission temporarily forbid former officials from taking up jobs

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<sup>16</sup> [Guidance on the avoidance and management of conflicts of interest under the Financial Regulation](#), (2021/C 121/01).

<sup>17</sup> [Ombudsman decision on how the European Commission manages revolving doors](#).

<sup>18</sup> [Ombudsman decision: revolving doors situations](#).

if they posed a risk that could not be mitigated through properly monitored and enforced restrictions<sup>19</sup>.

## **The Commission finds weaknesses in Member States' prevention procedures and provides useful guidance**

**25** The Commission addresses the risk of conflict of interest in shared management in Member States mainly through system audits of the Member States' management and control systems, and by providing guidance. System audits are intended to obtain assurance that Member States' management and control systems are effective in preventing, detecting and correcting errors and irregularities, including those related to conflicts of interest. Additionally, in the area of cohesion, starting from the end of 2021, the Commission carried out several thematic audits of measures taken under specific programmes or in specific Member States to avoid conflicts of interest.

**26** We reviewed a sample of Commission system audit files, ten in the area of cohesion and ten in the area of agriculture. The ten cohesion audits assessed the management and control systems for public procurement, and included specific findings on the lack of evidence of checks on conflicts of interest (see [Box 1](#)).

### **Box 1**

#### **Weaknesses in public procurement procedures in Hungary**

In 2019, the Commission identified serious deficiencies in the functioning of the management and control system in Hungary in relation to controls over public procurement procedures. The Commission applied a 10 % flat-rate correction to all affected contracts.

Source: Commission.

**27** Of the ten agricultural audit files that we reviewed, four concerned the accreditation of the paying agencies, while six concerned rural development investments by public beneficiaries. The findings mainly related to shortcomings in public procurement procedures, such as missing or undated declarations of conflicts of interest, or paying agencies' checklists not sufficiently detailed. We found that, apart from system checks on paying agencies' accreditation criteria, DG AGRI audits did not

<sup>19</sup> [European Ombudsman press release](#) No 3/2022: EU administration at critical point in treatment of "revolving doors", 18 May 2022.



specifically cover measures to prevent conflicts of interest in the area of direct payments until 2021, even though conflicts of interest can occur in the management of direct payments (see examples in [Box 2](#) below).

## Box 2

### Conflicts of interest in direct payments

In Luxembourg, a Ministry of Agriculture employee with access to confidential data on agricultural parcels for which nobody had claimed support shared this information with his wife, a farmer. His wife then claimed support for this land. The employee, who did not disclose this conflict of interest to his line manager, was sentenced to two years in prison, with 18 months' probation.

In Romania, an official in the paying agency responsible for direct payments approved aid applications for a company in which he was a shareholder. The Romanian National Agency for Integrity confirmed that this represented a conflict of interest and asked the paying agency to take appropriate measures. Following disciplinary proceedings, the official was sanctioned in the form of a three-month salary reduction.

Source: ECA.

**28** In April 2021, the Commission published [new guidance on conflicts of interest](#) covering all management modes. The previous guidelines specifically covering conflicts of interest, prepared in consultation with Member State experts, date from 2015 in [agriculture](#), and from 2013 in [cohesion](#)<sup>20</sup>. The Commission's [Anti-Fraud Knowledge Centre](#) has published guidance on identifying, managing and monitoring conflicts of interest under the ERDF and ESF. Their website includes a [library of case studies](#), with anonymised cases of fraud detection and lessons learned. In 2011, OLAF also published a one-off [compendium](#) of anonymised cases of fraud detection and lessons learned, which includes a chapter on conflict-of-interest cases.

### Member States have a framework to prevent conflicts of interest, but it has not changed since the new EU definition was adopted

**29** Article 61 of the Financial Regulation, on conflicts of interest, is directly applicable in all Member States. In addition, all Member States and regions in our sample have national or regional definitions and descriptions of conflicts of interest and rules for public officials and members of government. In the Member States we examined, we

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<sup>20</sup> [European Commission Anti-fraud portal](#).

found these national or regional rules to be spread across numerous administrative and criminal laws, resulting in a highly fragmented legal framework that is usually less detailed in scope than Article 61 of the Financial Regulation.

**30** For example, in Germany, the rules do not explicitly include situations of conflict of interest arising from “political affinity” or “emotional life”. In all four Member States in our sample, rules on conflicts of interest form part of the overall ethics, integrity and anti-fraud framework applicable to civil servants. We found there had been no major changes in the sampled Member States’ rules and procedures governing EU funds since shared management was introduced into the Financial Regulation in 2018.

### **Member States have procedures to manage conflicts of interest, but certain weaknesses remain**

**31** In the agricultural area, the accreditation criteria require paying agencies to take appropriate measures to avoid situations of conflict of interest. The certification bodies from our sample of Member States and regions did not report any systemic weaknesses concerning such measures in the 2014-2020 programming period.

**32** In cohesion, before the 2014-2020 programmes started, managing authorities had to carry out risk assessments on the impact and likelihood of fraud in relation to key programme management processes, and to put in place adequate measures to mitigate those risks. The setting-up of anti-fraud measures had to be verified by an independent audit body as part of the designation process for managing authorities. The implementation of those anti-fraud measures was subject to a number of subsequent audits by the Commission, as well as by the Member States.

**33** The most common preventive measure used by the Member States authorities we examined is self-declarations of interest. These are usually completed upon recruitment and before important steps in the management of EU funds (granting subsidies, public procurement, checks and audits), but not by ministers or state secretaries, who prepare and make decisions on EU programmes. Romania is the only Member State in our sample that collects and publishes annual declarations of wealth and interests from all civil servants. However, the agency does not analyse or verify the content of these declarations unless an investigation is opened.

**34** In Malta, Hungary and Romania, government ministers have to provide regular declarations of income and assets. This is not the case in Germany, either at federal or regional level. Ministers only need to submit declarations if they are also members of

parliament, and these include fewer elements than in the other Member States in our sample.

**35** Under Article 61(2) of the Financial Regulation, public officials in the Member States must declare situations posing a risk of conflicts of interest to their line manager, and if the conflict of interest is confirmed, cease all activity in the matter. We learned from the authorities we interviewed that such declarations are collected on paper, stored by the human resources department and can be used in case allegations about conflicts of interest arise later. However, national or regional authorities usually do not record these declarations in a central database, except for Romania and the paying agency for agricultural funds in Hungary.

**36** The Member State authorities in our sample regarded training and information measures on avoiding conflicts of interest as important. Overall, we found that they provided relevant training on ethics and the fight against corruption and fraud. Conflicts of interest are generally covered as part of training on fraud, though often as a marginal component.

**37** Member State authorities also run awareness actions among staff involved in managing EU funds. We found examples of good practice in awareness-raising activities (see example in [Box 3](#)).

### Box 3

#### Activities to internally raise awareness of the risk of conflict of interest in public entities

In Romania, through the [LINC](#) project, the National Agency for Integrity, together with Transparency International, organised information sessions in ministries, managing authorities and intermediate bodies on combatting fraud and corruption. The agency has developed [guides](#) on how to declare interests and assets, as well as a compendium of conflict-of-interest cases. The managing authorities and agencies in Romania provide annual training sessions on how to complete these declarations.

In Germany, two regional managing authorities organised joint anti-corruption training sessions with the aim of sharing their experience with one another. Another region offers all public staff regular courses on preventing corruption and conflicts of interest through an online learning platform.

Source: ECA.

**38** The German authorities issue publicly available [annual corruption and integrity reports](#) indicating the overall level of corruption in the public sector at federal level. The reports include statistics on related criminal offences and anonymised examples of corruption cases, including conflicts of interest. This report does not give any information on corruption in the management of EU funds, and comparable reports are not available at regional level, where most EU cohesion and agriculture programmes are managed.

**39** In Romania, the National Agency for Integrity publishes [annual and quarterly activity reports on its website](#), presenting information such as the number of conflict-of-interest cases confirmed by the courts, the number of civil servants sanctioned, their position and the institution for which they work, and the types of sanction imposed. These reports, though very detailed, present only the cases investigated by the agency's inspectors.

**40** Member State authorities also apply other preventive measures:

- functional division of tasks (segregation of duties);
- application of the “four-eyes” principle;
- checks during both the application and implementation phases of a project;
- checks, including by internal auditors or, in the case of subordinate/local authorities, by the higher authority;
- audits by the certification body/audit authority, the national or regional audit institutions, the Commission and the ECA;
- staff rotation where possible, or changing responsibilities.

**41** Staff rotation is an important tool to avoid conflicts of interest. However, the shared-management authorities in the sampled Member States did not apply staff rotation regularly and consistently. In Germany, there was greater emphasis on segregation of duties and the four-eye principle. In Malta, not enough experienced and trained staff were available for rotation to be effective. In Romania, the civil servants working for unit selecting and evaluating projects for cohesion funding were not subject to rotation due to the need to preserve the knowledge and skills required for this work.

**42** Policies on “revolving doors” (see paragraph [23](#)) may also help to prevent conflicts of interest. Legal provisions intended to limit this risk exist in three of the four Member States we examined, Hungary being the exception. However, in Romania and Germany, the bodies involved in managing EU funds do not check whether staff leaving their organisation follow post-employment rules. In Malta, people holding positions that involve regulatory or inspectorate functions are subject to the directive on the revolving door policy for public employees. However, the annex to the directive does not list the employees of the authorities we audited as people performing such functions, meaning they are not subject to the directive. An internal audit in 2021 by the Romanian managing authorities for the structural funds also found weaknesses in measures to prevent conflicts of interest and revolving doors.

### **Efforts to increase transparency on EU funding beneficiaries are ongoing**

**43** Open, comparable and transparent information on the ultimate beneficiaries of EU funding facilitates public scrutiny and investigation in the event of suspected conflicts of interest. It increases the probability of detecting a conflict of interest and may therefore have a preventive and deterrent effect.

**44** The websites of the shared-management Commission DGs include links to national and regional websites listing beneficiaries of EU agriculture and cohesion funding<sup>21</sup>. In addition, the Commission makes the online platform, Kohesio, publicly available, with information on cohesion-funded projects in all Member States. However, the data published for transparency purposes is limited, partly in order to avoid infringing EU and national data-protection regulations. For instance, the identity of CAP beneficiaries receiving up to €1 250 is not disclosed<sup>22</sup>. The websites contain no information on final recipients that are legal persons, which was not required by the 2014-2020 legislation.

**45** A recent study commissioned by the European Parliament reported that public bodies, limited liability companies and other legal persons accounted for about one tenth of CAP beneficiaries yet received more than one third of EU funds<sup>23</sup>. In cohesion,

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<sup>21</sup> For cohesion see Commission Webpage “[Beneficiaries of European Union Cohesion Policy](#)” and for agriculture see Commission Webpage “[Beneficiaries of CAP funds](#)”.

<sup>22</sup> In accordance with Article 112 of [Regulation \(EU\) No 1306/2013](#).

<sup>23</sup> Study for the European Parliament, CONT Committee: [The largest 50 beneficiaries in each EU Member State of CAP and Cohesion Funds](#), 2021.

identification of the ultimate beneficial owners of companies receiving EU funding is compulsory in the programming period after 2014-2020<sup>24</sup>. The legal framework for agriculture for 2023-2027 requires beneficiaries to provide information on groups of undertakings in which they participate<sup>25</sup>, where applicable. However, it does not require identification of ultimate beneficial owners.

**46** The [Anti-Money-Laundering Directive](#) introduced registers of beneficial owners in 2017. [Transparency International](#) has highlighted that the registers in Hungary and Romania are not public, while those in Germany and Malta require payment of a fee to access. Shared-management authorities in our sample of Member States do not have their own databases interlinked with these registers, which increases the risk of conflicts of interest going undetected. Such an increase in transparency needs, however, to respect the ruling of the European Court of Justice of November 2022 on access to beneficial ownership data.

### **Delays in the transposition of the directive on protecting whistleblowers**

**47** Whistleblowing is where a person discloses information obtained in the context of his/her work for or with an organisation about corruption or other wrongdoing committed in or by that organisation. A person only qualifies as whistleblower if he/she is part of that organisation and may therefore suffer retaliation— unlike, for example, clients or other people who do not work for or with the organisation. Measures to protect whistleblowers can contribute to the prevention and detection of corruption and fraud. Member States had until December 2021 to transpose the provisions of the [EU Whistleblower Directive](#) concerning the protection of people who report breaches of EU law, including conflicts of interest affecting the protection of the EU's financial interests.

**48** In early 2022, the Commission sent letters of formal notice to 24 Member States that had not notified measures to ensure the complete transposition of the Directive by the deadline of 17 December 2021. As of May 2022, only eight Member States had incorporated the directive into their national legislation<sup>26</sup>. The Commission is following up the remaining cases. From the Member States we reviewed, Malta alone has

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<sup>24</sup> Article 69(2) of [Regulation \(EU\) 2021/1060](#).

<sup>25</sup> Article 59(4) of [Regulation \(EU\) 2021/2116](#).

<sup>26</sup> Cyprus, Denmark, France, Latvia, Lithuania, Malta, Portugal and Sweden.

transposed the Directive, but the Parliamentary Assembly of the Council of Europe has noted serious flaws in Malta's Whistleblower Protection Act<sup>27</sup>.

## Gaps in measures to detect, resolve and report on conflicts of interest

**49** The Commission and Member State authorities should have procedures in place to detect conflict-of-interest situations involving their staff members. Under shared management, national authorities are primarily responsible for identifying and addressing conflicts of interest at beneficiary level. The Commission may also detect conflicts of interest in Member States when checking the operation of national control systems. Data mining, by comparing information from different sources, has the potential to help detect possible conflicts of interest.

**50** Once irregularities involving conflicts of interest are detected, they should be appropriately dealt with and resolved. To better monitor the associated risks, it is key to collect reliable information on detected conflicts of interest.

### The Commission focuses on reported suspected cases

**51** The Investigation and Disciplinary Office of the Commission (IDOC) conducts administrative inquiries and disciplinary proceedings concerning Commission staff. IDOC carries out an inquiry based on the mandate received from the appointing authority when it receives allegations from a whistleblower or other source. The accuracy, reliability and completeness of the information provided to the appointing authority remains the individual responsibility of each staff member.

**52** The DGs in our sample that are responsible for policy areas under shared management also do not verify the information given in staff self-declarations (see paragraph 22) unless there is reason to believe an investigation might be warranted. In 2020, according to IDOC's activity report<sup>28</sup>, three out of 83 newly registered cases concerned conflicts of interest within the Commission.

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<sup>27</sup> Agence Europe: "[Parliamentary Assembly of Council of Europe considers that Malta's Whistleblower Protection Act does not meet its objective](#)", 20 December 2021.

<sup>28</sup> Activity Report of the Investigation and Disciplinary Office of the Commission (IDOC), 2020.

**53** OLAF may also investigate possible serious offences by EU staff linked to their professional activities and make disciplinary recommendations. In its 2020 annual report<sup>29</sup>, OLAF published a snapshot of disciplinary recommendations made between 2016 and 2020. In 21 cases these concerned potential conflict-of-interest situations.

**54** The Commission occasionally identifies conflicts of interest during its general system audits in the Member States. The sample of 20 Commission system audits we reviewed (see paragraphs **26** and **27**) included one instance where DG AGRI had found a conflict of interest on the part of staff of a delegated body in Spain and applied a financial correction.

**55** DGs responsible for specific policy areas (such as DG REGIO and DG AGRI) also follow up allegations from whistleblowers or the media, as in the case of the former Prime Minister of Czechia, see **Box 4**.

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<sup>29</sup> OLAF Annual Report, 2020.



## Box 4

### Alleged conflicts of interest in Czechia

NGOs and media made allegations against the then Prime Minister of Czechia because of a conflict of interest concerning companies under his control and their status as beneficiaries of EU agriculture and cohesion aid. The Commission (DGs AGRI, EMPL and REGIO) carried out a coordinated audit at the beginning of 2019. DG EMPL and DG REGIO issued their final audit report in December 2019. Throughout 2020 and 2021, DG EMPL and DG REGIO monitored the implementation of their audit conclusions and recommendations by the Czech authorities. Considering the public interest and the request from the European Parliament, the final audit report was made publicly available on 24 April 2021. DG REGIO informed the public in its 2021 annual activity report that progress had been made on most recommendations but three were still being implemented, including the recommendation concerning the alleged conflict of interest. In July 2022 DG EMPL and DG REGIO closed the follow up of this audit following implementation of all outstanding recommendations.

DG AGRI audited the EAFRD investment measures concerned. It made a reservation for the Czech paying agency in relation to its rural development programme, as outlined in its 2021 annual activity report. The reservation resulted in an action plan asking the Czech authorities to take remedial action, which is currently ongoing. The audit led to the [decision](#) to impose financial corrections on Czechia.

Source: European Commission.

**56** Additionally, OLAF has the power to investigate potential cases of fraud, corruption and any other illegal activities affecting the financial interests of the EU, including conflicts of interest, if there are sufficient grounds for suspicion. OLAF investigations may conclude with recommendations to the DGs to recover irregularly spent amounts, and it may forward cases to national prosecuting bodies or to the [European Public Prosecutor's Office](#) (EPPO).

**57** OLAF has closed 10 cases from the last three programming periods involving CAP projects with a conflict-of-interest component (five involving pre-accession funding, one from 2000-2006, three from 2007-2013 and one from 2014-2020). OLAF recommended that DG AGRI recover a total of €20 347 891 from the Member States concerned.

**58** In cohesion, between 2000 and 2021, OLAF closed 18 conflict-of-interest cases concerning the ERDF and CF. Sixteen of these cases included financial recommendations to DG REGIO totalling €162 970 401. OLAF has not opened any conflict-of-interest investigations concerning the ESF over the 2000-2022 period.

### **Member States place great emphasis on detecting conflict of interest in procurement but pay insufficient attention to some red flags**

**59** Article 61(3) of the Financial Regulation requires individuals implementing EU funds, and those preparing the corresponding legal framework, to not be “compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest”. A number of authorities we interviewed told us that information on such individuals’ emotional lives, political affinities and personal interests was difficult to obtain and in many cases covered by data protection rules. Therefore, not all reasons behind conflicts of interest can be detected through cross-checks against registers and databases.

**60** Member State authorities place greater emphasis on detecting conflicts of interest in procurement procedures than in other areas of activity. The [Commission’s guidelines on financial corrections for non-compliance with public-procurement rules](#), issued in 2019, recommend a 100 % correction “whenever an undisclosed or inadequately mitigated conflict of interest has been identified with impact on the outcome of the procurement procedure”.

**61** Our statement-of-assurance audits have in recent years identified irregularities not previously prevented or corrected by national authorities, involving potential conflicts of interest where applicants were linked to other stakeholders involved in EU-funded projects (see examples in [Box 5](#)).

## Box 5

### Examples of conflicts of interest in procurement involving private beneficiaries

In Czechia, under a project to purchase new compressed natural gas buses to replace old ones, we found that the beneficiary and the winning bidder were both owned and controlled by the same group. The beneficiary did not require potential bidders to have any experience, which was very unusual given the references usually required for similar projects. The beneficiary did not sufficiently demonstrate that it had taken appropriate measures to prevent, identify and remedy conflicts of interest arising from ownership and personal ties with the winning bidder and tenderer. This point was not covered in the audit authority's checklist.

In Romania, a company received EU support for the restructuring and conversion of vineyards over a 15-hectare area leased free of charge from a physical person for a period of 15 years, after which the vineyard would be returned to that person. Romanian law requires beneficiaries to take all the necessary measures to avoid situations giving rise to conflicts of interest, in particular where connections exist between beneficiaries and their suppliers. The beneficiary signed a contract with another company for mechanical and manual weeding of the plantation and the installation of a support system. We found that the owner of the land was the sole shareholder and administrator of this supplier. We sent this case to OLAF for further investigation.

*Source: ECA.*

**62** We observed a wide variety of procurement-related checks and procedures in the Member States. Such checks generally focus on conflict-of-interest declarations and sometimes involve verifying the names of decision-makers in population databases or against publicly available web-based tools such as trade registries. Other examples of situations which might indicate a conflict of interest, commonly known as “red flags”, are shown in [Box 6](#).

## Box 6

### Examples of red flags for conflicts of interest in public procurement

The ERDF managing authorities for Saarland and Bavaria, in their regular checks on public-procurement procedures, have identified a number of red flags indicating potential conflicts of interest. These include:

- the same contractor always winning procedures organised by a particular contracting authority;
- deviations from standard tendering procedures for no good reason, e.g. choosing a negotiated procedure when an open procedure could have been used;
- tenderers' bids always differing by the same percentage, e.g. one always being 10 % lower than another.

Source: ECA based on information gathered during the audit.

**63** Other red flags for potential conflicts of interest in public procurement include a high percentage of procedures with only one bidder (“single-bid” procedures) or an unusual number of direct orders (i.e. procurement without any competitive tendering). In its [public procurement country report](#), Hungary informed the Commission that, between 2015 and 2017, the proportion of single-bid procedures used by the country's various contracting authorities ranged between 10 % and 28 %. Overall, such procedures had been used for nearly 17 % of the approximately 8 800 contracts awarded in Hungary. Malta also reported a similar percentage (18.9 %) of single-bid procedures, while Romania reported 50 %<sup>30</sup>. The most recent [country reports covering 2018-2020](#) no longer contain such quantitative information.

**64** The Commission's [Single Market Scoreboard](#) shows a rather high proportion of procedures with only a single bidder in 2020, ranging from 9 % in Lithuania and Sweden to 51 % in Poland. For the Member States in our sample, it reports a 41 % rate in Romania, 39 % in Hungary, 19 % in Germany and 16 % in Malta. In this context, Malta's national audit institution has expressed concerns about public procurement, such as direct orders being used without the necessary approvals and not being published in the country's dedicated procurement journal<sup>31</sup>. Indicator 2 of the Single Market Scoreboard is about procurement procedures involving negotiation with a

<sup>30</sup> See 2018 [public procurement country reports](#) (Country reports and information on EU countries), submitted by EU and EEA countries to the European Commission.

<sup>31</sup> [Auditor General Report, 2019, Malta National Audit Office.](#)

company without any call for tenders, which are more prone to conflicts of interest than open procedures. The figures for this indicator are rather low for our sample of Member States. However, this type of procedure was used in Romania in 22 % of cases.

### **Audit bodies in Member States found weaknesses in the management of conflicts of interest**

**65** In agriculture, certification bodies deliver an annual opinion on the proper functioning of the paying agencies' internal control systems and on the legality and regularity of expenditure for which reimbursement has been requested from the Commission. According to the relevant Commission guidelines<sup>32</sup>, this work should cover irregularities such as conflicts of interest. In the sampled Member States, certification bodies did not report systemic weaknesses in the paying agencies' management of conflicts of interest. In Hungary and Germany (Bavaria) they have detected fewer than 10 (mostly formal) errors relating to conflicts of interest in recent years when assessing the regularity of transactions.

**66** In cohesion, national or regional audit authorities performed audits in the 2014-2020 period to assess management and control systems in the Member States, including the management of conflicts of interest. The national or regional audit authorities did not report any weakness in our sample in Germany and Hungary. Malta's audit authority concluded that the management and control systems in the country worked but needed some improvements. Romania's audit authority mentioned some weaknesses in the use of [Arachne](#) (the risk-scoring tool provided by the Commission, as explained in paragraphs [67](#) to [69](#)) in the management of the ERDF and the CF.

### **Data mining is not used sufficiently to detect conflicts of interest**

**67** The Commission recommends that Member States use the Arachne data-mining application provided by the Commission free of charge to help prevent and detect fraud. Arachne is a risk-scoring tool that combines several data sources and flags potentially risky projects and beneficiaries.

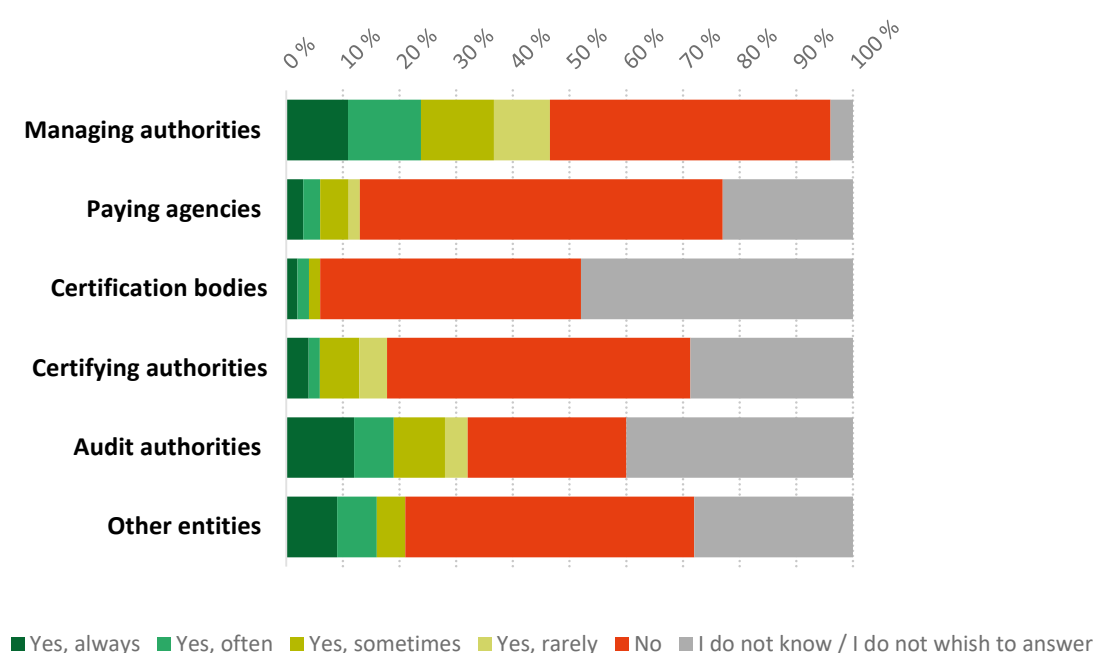
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<sup>32</sup> European Commission (DG AGRI), Guideline No 1 – Guidelines for the certification audit of the EAGF/EAFRD accounts – Guideline for accreditation, FY 2021.

**68** The Commission offers a module in Arachne which allows managing authorities and paying agencies to assess the risk of fraud and conflicts of interest during the project selection phase. The tool in itself cannot show actual conflicts of interest, but it can help managing authorities and paying agencies to identify red flags warranting further investigation. Arachne can prove useful in indicating conflicts of interest in public procurement procedures at beneficiary/contractor/sub-contractor level. However, its datasets did not include information on public officials who approve project applications under shared management and are responsible for controls in the Member States in our sample.

**69** The use of Arachne in shared management at Member State level is more common in cohesion than in agriculture. Around a quarter of the bodies involved in the management and control of EU funds that replied to our survey used Arachne to check for and detect conflicts of interest (26 %). Almost half of the respondents did not use Arachne (49 %) and a quarter either did not know or did not wish to say (25 %). Managing authorities use Arachne the most (47 %) and paying agencies and certification bodies the least (12 % and 6 %, respectively). Out of 130 authorities using Arachne, over half (54 %) do so “always” or “often”, whereas the rest do so only “sometimes” or “rarely” (see [Figure 6](#) below):

**Figure 6 – Use of Arachne to check for conflicts of interest in projects\***



\* 160 respondents of the survey in all Member States (mainly managing authorities and often acting as coordinators) provided replies for 501 institutions overall.

Source: ECA, based on a survey conducted in all Member States.

**70** In 2016, the Commission set up an Early Detection and Exclusion System (EDES)<sup>33</sup> for funds spent under direct and indirect management. The system ensures that applicants posing a risk to the EU’s financial interests are detected early and excluded from award procedures or selection to implement EU funds. In particular, exclusion is applicable to those suspected of or found guilty of fraud, corruption, grave professional misconduct (including attempts to unduly influence an award procedure) or other illegal activities. Information on such applicants would also be relevant for shared management. As we reported in special report 11/2022 “[Protecting the EU budget: Better use of blacklisting needed](#)”, there is currently no EU-level mechanism for excluding counterparties under shared management, and Arachne is not interconnected with EDES. Given that both applications are developed by the Commission, lack of integration between them means missed opportunities to prevent conflict-of-interest situations.

**71** The Member State authorities in our sample explained that they preferred to use national databases, such as national trade registries and population databases. In their view, such databases are more up-to-date and include more complete information than Arachne. In addition, in their efforts to ensure fair procurement procedures and avoid conflicts of interest, a number of authorities in Hungary, Malta and Romania use national data-mining tools (see example in [Box 7](#)). The German authorities do not use Arachne or any national data-mining tools due to concerns about data protection and the accuracy and reliability of Arachne data.

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<sup>33</sup> Early Detection and Exclusion System.

## Box 7

### PREVENT system in Romania

Romania's National Agency for Integrity has set up PREVENT, an information system for preventing conflicts of interest in public procurement. The system is based on "integrity forms", which are generated by the IT system used for all public procurement procedures run through the country's electronic tenders system. On these integrity forms, contracting authorities must enter the names of all relevant decision-makers from their own organisation and from the bidding organisations. PREVENT then checks this information automatically against data in the population registry and business registry. It returns a score of 0 or 1, with 1 denoting a potential conflict-of-interest situation. In this case, an integrity inspector will analyse the case in order to rule out a false positive and, if a conflict of interest is confirmed, issue an integrity warning to the contracting authority.

Source: ECA, based on information gathered during the audit.

**72** The PREVENT system in Romania is an example of how technology can be used to scrutinise thousands of public procurement procedures. However, there are also shortcomings with such a system. For example, it can only be used for tenders published in the electronic tenders system (16 % of tenders between 2018 and 2020 were not), there are no sanctions for contracting authorities failing to complete integrity forms, and potential conflicts of interest can go undetected as only cases with a score of 1 are actually investigated. In 2020, 19 506 public procurement procedures were analysed through PREVENT, and integrity inspectors issued 10 integrity warnings, including four concerning EU funds. Furthermore, the effectiveness of such a tool depends heavily on the quality of its algorithm and of the data from the integrity forms.

**73** The increasing availability of "big data" on public procurement, coupled with developments in the capacity of digital tools to analyse such data, make it possible to analyse patterns in the award of public contracts<sup>34</sup> that might indicate red flags for further investigation. The same applies to the award of public grants. Overall, the use of data-mining tools to detect conflicts of interest is still underdeveloped.

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<sup>34</sup> See e.g. Elizabeth Dávid-Barrett and Mihály Fazekas, *Grand corruption and government change: an analysis of partisan favoritism in public procurement*, *European Journal on Criminal Policy and Research* 26, 411-430 (2020).



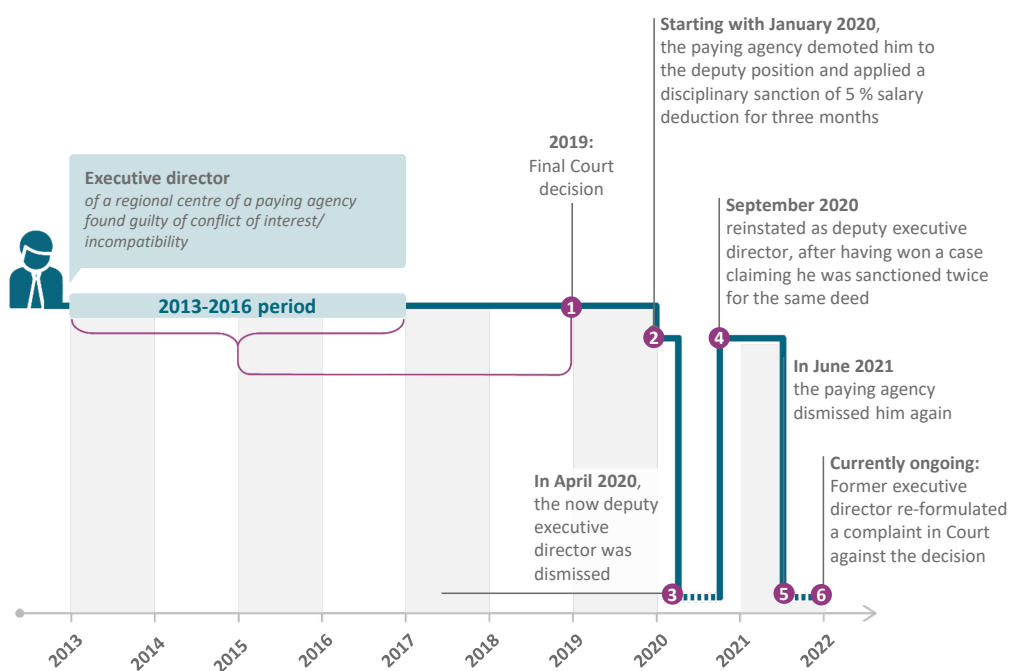
## Resolution mechanisms are in place, but the procedures may take time

**74** Conflicts of interest may be linked to other irregular or fraudulent behaviours. This is reflected in the range of options available to address such cases once they are detected, such as:

- sanctions or disciplinary procedures against EU or national officials found to be in breach of rules or professional obligations;
- procedures aimed at protecting the EU budget, such as recovery of irregularly disbursed funds from the beneficiary or application of financial corrections by the Commission;
- criminal proceedings in national courts.

**75** The Member State authorities in our sample indicated that, when sanctioning conflicts of interest, they generally make no distinction between EU and national funds. The Romanian authorities informed us of three cases in 2014-2020 where they had sanctioned staff members due to conflicts of interest (see [Figure 7](#)).

**Figure 7 – Addressing conflicts of interest takes time**



Source: ECA, based on information gathered during the audit.

**76** When the facts qualify as a criminal offence, prosecutors may take the cases to court (see [Box 8](#)).

## Box 8

### Conflicts of interest may be linked to a variety of criminal offences still under investigation

In Italy, delegates from a paying agency who had access to the agency's agricultural parcel registration system have been accused of having provided information to third parties about parcels not yet claimed by any farmer. These third parties are charged with having then claimed these parcels, without a valid legal title to the land and without performing any agricultural activity on it. These alleged offences form part of a major suspected fraud case concerning claims dating back to 2010, for which criminal proceedings began in 2021 and are still ongoing.

Source: ECA based on information acquired during the audit.

**77** When a conflict of interest results in the irregular disbursement of EU funds, the amounts concerned must be recovered from the beneficiary<sup>35</sup>. If a Member State does not take adequate recovery action, the Commission may decide to apply financial corrections against its national budget. The Commission may also apply financial corrections when it identifies weaknesses in the control systems of national bodies involved in the management and control of EU funds, such as in the case described in [Box 1](#) above.

### Reporting on conflicts of interest is incomplete

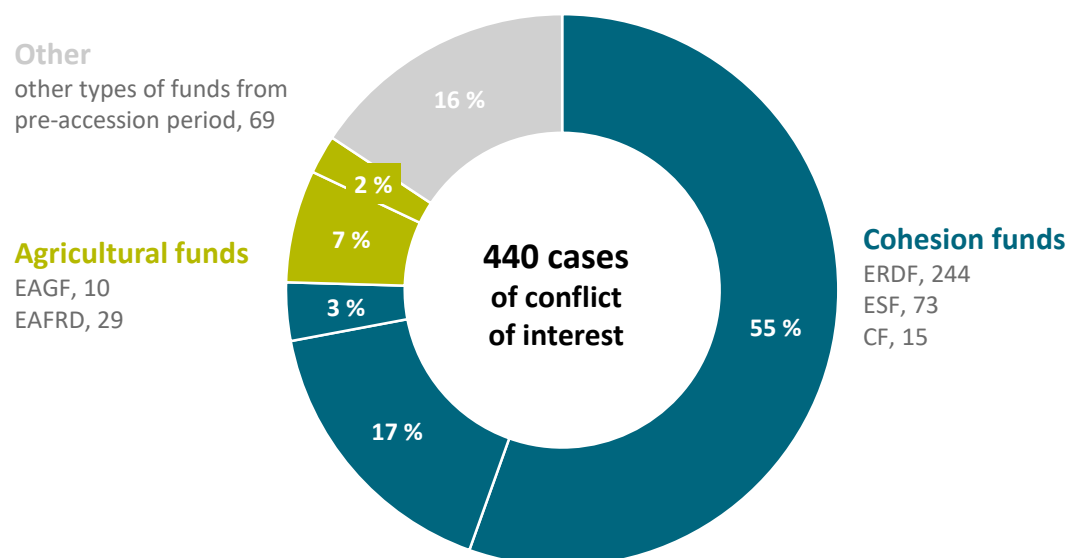
**78** The Commission and the Member States in our sample do not publish information about the scale of conflicts of interest in shared management. No comprehensive quantitative information on conflict-of-interest cases or findings can be found in the [DGs' annual activity reports](#), [OLAF annual reports](#) or the [annual reports on the protection of the EU's financial interests](#), and there is no corresponding indicator measuring the frequency and magnitude of conflict-of-interest irregularities in shared management.

**79** Member States report irregularities and fraud to OLAF via the [Irregularities Management System \(IMS\)](#). Since 2000, member states have reported 440 conflict-of-interest cases in cohesion and agriculture in IMS. More than half of those cases (55.4 %) have been reported for the ERDF, 19 % for pre-accession funds, 17 % for the

<sup>35</sup> Article 54 of [Regulation 1306/2013](#) and Article 122 of [Regulation 1303/2013](#).

ESF and the lowest number for the EAGF and the CF (2 % and 3.4 % respectively), (see [Figure 8](#) below). The conflict of interest cases recorded in IMS represent 0.4 % of the total number of irregularities reported (data as of March 2022).

**Figure 8 – Conflict-of-interest cases in IMS by fund**



Source: ECA, based on data from IMS.

**80** Due to legal derogations<sup>36</sup>, however, not all irregularities are entered in IMS. According to the [EU's handbook on reporting irregularities](#), there is no obligation to report irregularities to OLAF if they are detected and corrected by Member States before they submit expenditure to the Commission for reimbursement, or the amount involved is below €10 000. As we have found in previous audits<sup>37</sup>, the quantity and quality of data and information recorded in IMS varies between Member States. Nor are all cases investigated by OLAF recorded in IMS. For example, only six of the 18 cases opened by OLAF with a conflict-of-interest component in cohesion were recorded in IMS by the Member States concerned. Member States may also consider a conflict of interest to be a minor component in a wider fraud case (e.g. falsified documents or declarations, corruption or bribery) and not report such cases as relating to conflicts of interest.

**81** In addition to IMS data, DG REGIO and DG EMPL receive information about conflict-of-interest cases and related recoveries in public procurement from the Member States in the ESF, CF and ERDF via [SFC, the EU's fund management system](#).

<sup>36</sup> Article 122(2) of [Regulation 1303/2013](#); Article 50(1) of [Regulation 1306/2013](#).

<sup>37</sup> Special reports 01/2019 "[Fighting fraud in EU spending](#)", paragraphs 23-28, and 06/2019 "[Tackling fraud in EU cohesion spending](#)", paragraphs 47-57.

In 2014-2020, Member States communicated 31 conflict-of-interest irregularities, totalling €3.4 million, that had affected the outcome of procurement procedures (four under the CF, 24 under the ERDF and three under the ESF). Those 31 cases relate to 16 programmes in 11 Member States.

**82** DG AGRI does not receive such information about similar cases under the EAFRD via SFC, as Member States only send summary tables, which do not show the type of irregularity in each case.

## Conclusions and recommendations

**83** Our overall conclusion is that both the Commission and the Member States have made efforts to address conflicts of interest, but that gaps remain, in particular when it comes to promoting transparency, and detecting situations at risk.

**84** The Commission's framework for preventing conflicts of interest internally is based on the EU Staff Regulations, their implementing provisions and ethics codes and guides, and includes comprehensive training on ethics (paragraphs [20](#) to [22](#)). In addition, the European Ombudsman analysed the Commission's practices regarding revolving doors and recommended that it temporarily forbid former officials from taking up jobs if they posed a risk that could not be mitigated through properly monitored and enforced restrictions (see paragraph [24](#)).

**85** The Commission's audits in the area of cohesion and agriculture cover conflicts of interest where relevant, including for direct payments to farmers from 2021. Commission audits help to identify shortcomings in the prevention of conflicts of interest, often concerning procedural issues but also more general weaknesses in the management of public procurement (paragraphs [25](#) to [28](#)).

**86** The Member States we examined have rules and procedures in place to prevent and manage conflicts of interest, but these have not undergone any major changes since the 2018 update of the Financial Regulation. Self-declarations are the most widely used method, along with training and awareness-raising activities in the area of ethics and integrity, while staff rotation is less favoured. Members of government involved in decision-making and allocating funding for EU programmes did not have to provide any kind of declaration (paragraphs [29](#) to [42](#)).

**87** Having open, comparable and transparent information on final recipients of EU funds also allows for better public scrutiny. On its website, the Commission publishes links to national and regional websites listing beneficiaries of EU agriculture and cohesion funding. In addition, the Commission makes the online platform, Kohesio, publicly available, with information on cohesion-funded projects in all Member States. Those websites currently contain no information on ultimate beneficiaries that are legal persons, which limits transparency. Identification of the ultimate beneficial owners of companies benefiting from EU funding will be compulsory in the Member States' management and control systems in the new programming period in cohesion. Beneficiaries of agriculture funding will have to provide information on groups of undertakings in which they participate as from 2023 (paragraphs [43](#) to [46](#)).

**88** From our exchanges with the Member States’ authorities, we concluded that information concerning emotional life, political affinity and personal interest is difficult to obtain and is in many cases covered by data protection rules. In procurement, we observed a variety of verification procedures in the Member States, generally focusing on conflict-of-interest declarations and sometimes including checks on decision-makers’ names against population databases and publicly available web-based tools such as trade registries (paragraphs 59 to 62).

**89** Shared-management authorities also check procurement situations which might indicate a conflict of interest, commonly known as “red flags”. However, we found that certain red flags were given insufficient attention, such as a high proportion of procedures in which there is only one bidder or where contracts are negotiated with suppliers without competitive tendering (paragraphs 63 and 64).

**90** The use of Arachne is voluntary. The tool also does not contain information on public officials involved in the management and control of EU funds. This limits the type of conflict-of-interest situations it can help to detect (paragraphs 67 to 69). Like any data-mining tool, its usefulness largely depends on the quantity and quality of underlying data available.

**91** Member States collect data on conflicts of interest as part of their obligation to record irregularities and report them to the Commission. Due to weaknesses in reporting, neither the Commission nor the Member States have a complete overview of the amounts affected by conflicts of interest in shared management and there is no corresponding indicator (paragraphs 78 to 82).

## **Recommendation 1 – Improve the capacity to prevent, detect and report conflicts of interest**

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The Commission should:

- (a) Facilitate and promote sharing of best practice with and among Member State authorities on how to identify the various conflict-of-interest situations described in Article 61(3) of the Financial Regulation: family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest;
- (b) Promote the exchange of best practice on the use of big data and data-mining tools in the Member States to detect conflicts of interest and invite the Member

States to make these tools available to all their authorities and to use them systematically;

- (c) Establish clear guidance for Member States on when and how to report fraud and irregularities involving conflicts of interest in a complete and uniform manner to the Commission via IMS.

**Target implementation date: 2024**

## **Recommendation 2 – Promote transparency**

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The Commission should:

- (a) Identify and disseminate best practice including procedures which have been applied to prevent conflicts of interest when designing and adopting programmes and measures;
- (b) Facilitate the exchange of best practice among Member States on requiring declarations about the income and assets of national or regional public-sector staff working in decision-making positions in shared management, in order to increase transparency and accountability and minimise the risk of undisclosed conflicts of interest.

**Target implementation date: 2024**

This Report was adopted by Chamber I, headed by Ms Joëlle Elvinger, Member of the Court of Auditors, in Luxembourg at its meeting of 25 January 2023.

*For the Court of Auditors*

Tony Murphy  
*President*

# Abbreviations

**CAP:** Common agricultural policy

**CF:** Cohesion Fund

**DG AGRI:** Directorate-General for Agriculture and Rural Development

**DG BUDG:** Directorate-General for Budget

**DG EMPL:** Directorate-General for Employment, Social Affairs and Inclusion

**DG HR:** Directorate-General for Human Resources and Security

**DG REGIO:** Directorate-General for Regional and Urban Policy

**EAGF:** European Agricultural Guarantee Fund

**EAFRD:** European Agricultural Fund for Rural Development

**ERDF:** European Regional Development Fund

**ESF:** European Social Fund

**EDES:** Early Detection and Exclusion System

**EPPO:** European Public Prosecutor's Office

**GRECO:** The Group of States against Corruption

**IDOC:** Investigation and Disciplinary Office of the Commission

**IMS:** Irregularity management system

**OECD:** Organisation for Economic Co-operation and Development

**OLAF:** European Anti-fraud Office

**SFC:** System for Fund Management in the European Union



# Glossary

**Action plan:** Document establishing the steps to take to achieve a particular goal.

**Arachne:** Data-mining and risk-scoring tool developed by the Commission to support managing authorities and paying agencies in the management and control of the ESI and CAP funds.

**Beneficiary:** Natural or legal person receiving a grant or loan from the EU budget.

**Big data:** Large amounts of unstructured data from diverse sources, and its processing, collection, storage and analysis to reveal meaningful patterns, trends and associations.

**Certification body:** For agricultural spending, a public or private entity designated by a Member State to accredit paying agencies and certify annually the reliability of their accounts and the legality and regularity of the underlying transactions.

**Corruption:** Abuse of public, corporate or personal power for illicit gain.

**Direct payments:** Support payments, mostly area-related aid, made directly to farmers under the European Agricultural Guarantee Fund.

**Error:** The result of an incorrect calculation or an irregularity arising from noncompliance with legal and contractual requirements.

**Fraud:** Intentional and unlawful use of deception to gain material advantage by depriving another party of property or money.

**Irregularity management system:** Application that Member States use to report irregularities, including suspected fraud, to OLAF.

**Irregularity:** An infringement of EU (or relevant national) rules or contractual obligations.

**Managing authority:** The national, regional or local authority (public or private) designated by a Member State to manage an EU-funded programme.

**Operational programme:** Framework for implementing EU-funded cohesion projects in a set period, reflecting the priorities and objectives laid down in partnership agreements between the Commission and individual Member States.

**Paying agency:** Body appointed by a Member State to administer EU agricultural spending.

**Red flag:** Indication that a transaction or other activity could be fraudulent.

**Revolving doors:** Situation in which someone leaves a legislative or regulatory role to take up a related position in the private sector, or vice versa.

**Rural development programme:** Set of national or regional multiannual objectives and actions, approved by the Commission, for the implementation of EU rural development policy.

**Shared management:** Method of spending the EU budget in which, in contrast to direct management, the Commission delegates to the Member State while retaining ultimate responsibility.

**Statement of assurance:** Statement published in the ECA's annual report, setting out its audit opinion on the reliability of the EU accounts and the regularity of the transactions which underlie them.

**Suspected fraud:** An irregularity that gives rise to administrative or judicial proceedings to establish whether it was fraudulent.

**Ultimate beneficial owner:** Person who ultimately benefits from or has an interest in a business or organisation.

**Whistleblower:** Person, often an employee, who reveals information about wrongdoing within a business or organisation.

## Commission's replies

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=63584>

## Timeline

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=63584>

## Audit team

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber I – Sustainable use of natural resources, headed by ECA Member Joëlle Elvinger. The audit was led by ECA Member Pietro Russo, supported by Chiara Cipriani, Head of Private Office, and Benjamin Jakob, Private Office Attaché; Richard Hardy, Principal Manager; Jan Huth, Head of Task; Anca Florinela Cristescu, deputy Head of Task, and Servane de Becdelièvre, Maciej Szymura, Mihaela Vacarasu, Lutz Venske, Auditors. Marika Meisenzahl provided graphical support. Michael Pyper provided linguistic support.



*From left to right: Pietro Russo, Benjamin Jakob, Anca Florinela Cristescu, Richard Hardy, Servane de Becdelièvre, Jan Huth*

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Conflicts of interest are irregularities affecting the EU budget, which occur when the impartial and objective exercise of the functions of a person involved in EU budget management is compromised by reasons involving family, emotional life, political or national affinity, economic interest or any other personal interest.

We examined whether conflicts of interest are adequately addressed in agricultural and cohesion policy. We conclude that the Commission and Member States have a framework in place to prevent and manage conflicts of interest but that gaps remain in promoting transparency and detecting situations at risk.

We recommend that the Commission takes actions to improve the capacity to prevent, detect and report conflicts of interest, and to promote transparency.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.



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Publications Office  
of the European Union

EUROPEAN COURT OF AUDITORS  
12, rue Alcide De Gasperi  
1615 Luxembourg  
LUXEMBOURG

Tel. +352 4398-1

Enquiries: [eca.europa.eu/en/Pages/ContactForm.aspx](https://eca.europa.eu/en/Pages/ContactForm.aspx)  
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