

Identifying Patterns of Fraud with EU Funds under Shared Management - Similarities and Differences between Member States

Country Factsheets



This document was requested by the European Parliament's Committee on Budgetary Control.

AUTHORS

Jack MALAN
Ivan BOSCH CHEN
Clara BURILLO
Emilio CEGLIA
Marta DIMAURO
Marta GUASP TESCHENDORFF
Wiktór MAGDZIARZ, and
Elias NACER
Centre for Strategy & Evaluation Services (CSES)

ADMINISTRATOR RESPONSIBLE

Rita CALATOZZOLO

EDITORIAL ASSISTANT

Mirari URIARTE

LINGUISTIC VERSIONS

Original: EN

ABOUT THE EDITOR

Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe for updates, please write to:

Policy Department for Budgetary Affairs
European Parliament
B-1047 Brussels
Email: Poldep-Budg@ep.europa.eu

Manuscript completed in January 2022

© European Union, 2022

This document is available on the internet at:

<http://www.europarl.europa.eu/supporting-analyses>

DISCLAIMER AND COPYRIGHT

The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© Cover image used under licence from Adobe Stock.com

LIST OF ABBREVIATIONS

ACP	Certifying and Paying Authority
ADC	Autoridade da Concorrência (“Competition Authority”)
AFCOS	Anti-Fraud Coordination Service
ANAC	National Anti-Corruption Authority
ARACHNE	ARACHNE (database of EU-funded projects)
BMEL	Bundesministeriums für Ernährung und Landwirtschaft (“German Federal Ministry of Food and Agriculture”)
BMWi	Bundesministeriums für Wirtschaft und Klimaschutz (“German Federal Ministry for Economic Affairs and Environmental protection”)
CA	Certifying Authority
CAP	Common Agricultural Policy
CATONE	Cooperation Agreements and Training on Objectives and New Experiences
CBA	Central Anti-Corruption Bureau
CF	Cohesion Fund
CFCA	Central Finance and Contracting Agency
CNDCEC	National Council of Chartered Accountants and of Accounting Experts
CNRs	Common National Rules
COLAF	Comitato per la lotta contro le frodi nei confronti dell'Unione Europea (“Anti-Fraud Committee in charge of the fight against irregularities/fraud in the EU budget”)
COP	Competitiveness Operational Programme
DCIAP	Department of Criminal Investigation of the Prosecutor General's Office
DELNA	Transparency International Latvia
DG REGIO	Directorate-General for Regional and Urban Policy

DLAF	Departamentul pentru lupta antifraud (“Anti-Fraud Department”)
DNA	National Anti-Corruption Directorate
EAFRD	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EC	European Commission
EDES	Early Detection and Exclusion System
EFTA	European Free Trade Agreement
EGESIF	Expert group on European Structural and Investment Funds
ELY Centres	The Centres for Economic Development, Transport and the Environment
EMFF	European Maritime and Fisheries Fund
EP	European Parliament
EPPO	European Public Prosecutor’s Office
ERDF	European Regional Development Fund
ESF	European Social Fund
ESI	European Structural Investment
ESIF	European Structural and Investment Funds
EU	European Union
EUROPOL	European Union Agency for Law Enforcement Cooperation
GDPR	General Data Protection Regulation
GRECO	The Group of States against Corruption
IBs	Intermediate bodies
IFAP	Instituto de Financiamento da Agricultura e Pescas (“Financing Institute for Agriculture and Fisheries”)
IFG	Informationsfreiheitsgesetz (“Freedom of Information Act”)
IGRUE	Inspectorate General for Financial Relations with the European Union

IMS	Irregularity Management System
INTERREG	Cross-Border, Interregional, Transnational Cooperation Programmes
KNAB	Latvia Corruption Prevention and Combating Bureau
MAs	Managing Authorities
MEF	Ministero dell'Economia e delle Finanze ("Ministry of Economy and Finance of Italy")
RGS	Ragioneria Generale dello Stato ("State Accounting Department of the Ministry of Economy and Finance")
IGRUE	Ispettorato Generale per i Rapporti finanziari con l'Unione Europea ("Inspectorate-General for the financial relationships with the European Union")
MoF	Ministry of Finance
MoP	Manuals of Procedure
NAD	National Anticorruption Directorate
NAFS	National Anti-Fraud Strategy
NBR	National Bank of Romania
NGO	Non-Governmental Organisation
NMS	National Monitoring System
NOP	National Operational Programme
NOP NaM	National Operational Programme "Networks and Mobility"
NOP IaN	National Operational Programme "Infrastructures and Networks"
NRDP	National Rural Development Program
OECD	Organisation for Economic Co-operation and Development
OLAF	European Commission's Anti-Fraud Office
OP	Operational Programmes
OPAC	Operational Programme Administrative Capacity

OPFMA	Operational Programme for Fisheries and Maritime Affairs
OPHC	Operational Programme Human Capital
OPLI	Operational Programme Large Infrastructure
OPTA	Operational Programme on Technical Assistance
OWiG	Ordnungswidrigkeitengesetz (“Administrative Offences Act”)
PIAF-IT	Integrated National Anti-Fraud Platform
PIF	Protection of the Financial Interests of the Union (Report)
R&D	Research & Development
RECORD	Reducing Corruption Risks and Data
ROP	Regional Operational Programme
RRF	Recovery and Resilience Facility
SCIF	Service for Combating Irregularities and Fraud
SIAN	National Agricultural Information System
SIDIF-CONOSCO	Community irregularities and fraud information system (Italy)
SI.GE.CO.	Sistema Gestione e Controllo (“Management and Control System”)
SMEs	Small and mid-size enterprises
StGB	Strafgesetzbuch (“German Criminal Code”)
SNCA	Servicio Nacional de Coordinación Antifraude (“National Anti-Fraud Coordination Service)
UNCAC	UN Convention against Corruption
VAT	Value Added Tax
ZGS	Zwischengeschaltete Stellen (“Intermediate bodies”)

CONTENTS

LIST OF ABBREVIATIONS

CROATIA	1
DENMARK	5
FINLAND	8
ITALY	11
GERMANY	20
LATVIA	24
POLAND	28
PORTUGAL	33
ROMANIA	37
SPAIN	45

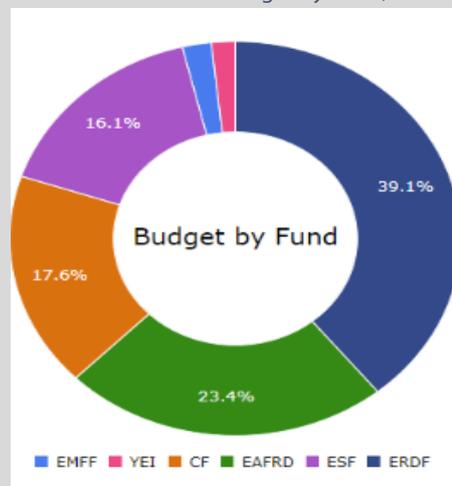
Croatia

Context

For the 2014-2020 period, Croatia received **EUR 12.09** billion in funding as part of the European Structural and Investment funds which was distributed through 4 national operational programmes. EUR 8.397 billion was destined to cohesion policy, EUR 2.026 billion as part of the European Agricultural Fund for Rural Development (EAFRD) and EUR 253 million as part of the European Maritime and Fisheries Fund. Within cohesion policy, the corresponding allocation is EUR 4.321 billion for the European Regional Development Fund, EUR 2.559 billion for the Cohesion Fund, and EUR 1.516 for the European Social Fund.¹

- EUR 2.1 billion through the Cohesion Funds (CF)
- EUR 2.8 billion through the European Agricultural Fund for Rural Development (EAFRD)
- EUR 252 million through the European Maritime and Fisheries Fund (EMFF)
- EUR 206 million through the Youth Employment Initiative (YEI)
- EUR 1.9 billion through the European Social Fund (ESF)
- EUR 4.7 billion through the European Regional Development Fund (ERDF)
- EUR 2.8 billion through the European Agricultural Fund for Rural Development (EAFRD)

Figure 1: ESIF 2014-2020: Croatia Budget by Fund, EUR



The four operational programmes were:

- Operational Programme Efficient Human Resources (EUR 1.85 billion, 1.58 billion from ESF)
- Operational Programme for Maritime Affairs and Fisheries 2014-2020 (EUR 252,643,138 from EMFF)
- Operational Programme Competitiveness and Cohesion (EUR 6.863 billion, EUR 4.700 billion from ERDF, EUR 2.131 billion from Cohesion Fund and EUR 31.499 million from ERDF's REACT-EU initiative)
- Rural development programme 2014-2020 (EUR 2.383 billion, EUR 2.026 from EAFRD and the rest from co-financing from the Republic of Croatia)

Scale of the problem and types of fraud most common in Member State

According to the 2020 PIF Report, Croatia reported 0 cases in Agricultural funds, and 3 cases in Cohesion policy and Fisheries amounting to EUR 517,730 in total. This compares to the non-fraudulent irregularities in which 10 cases amounting to EUR 292,227 were found in Agriculture, and 21 cases amounting to EUR 2,075,541 in Cohesion policy and Fisheries.

Interviewees indicate that a major source of irregularities in EU funds is in subcontracting but not as many of these irregularities have been declared as fraud. Often there is a lack of understanding or inexperience with the procedures involved. As is the case in other countries, these interviewees indicated that establishing cases of fraud can be difficult as these need to be determined in court. MAs

¹ <https://strukturnifondovi.hr/en/>

interviewed also noted that there has been an increasing amount of cases involving conflicts of interests. Similarly, such cases can be hard to prove.

When it comes to ESF, managing authorities interviewed indicated that since the funding tend to be relatively small due to the relatively small size of the projects (e.g. in comparison to infrastructure projects in Cohesion Fund) they are not as attractive to fraudsters and therefore do not have many cases.

For agricultural funds, interviewees noted that cases of fraud often involve the attempt to manipulate conditions to meet eligibility criteria, often through the submission of falsified documentation.

News coverage of the issue of fraud has recently focused on the case of a former Croatian government minister (in office between 2016 and 2019) accused of defrauding EU funds. Investigations performed by EPPO pointed towards three additional other suspects involved in the case. The fraud of EU funds involved irregularities in the public procurement procedures used to purchase IT systems.² News coverage on this topic has also highlighted that irregularities in EU funds in Croatia frequently involve the manipulation of eligibility criteria for funds, and collusion between managing authorities and applicants.³

Measures to tackle fraud in shared management, policies and strategies

Croatia established its national AFCOS – the Service for Combating Irregularities and Fraud (SCIF) within the Ministry of Finance – in 2008 (pre-accession in 2013) by Decision 92/2008. The SCIF plays a coordination role within the system of managing authorities and other government bodies in charge of distributing EU funds, reporting in IMS, and combating irregularities, fraud, corruption and other illegal activities. The SCIF was in charge of drafting Croatia's National Anti-Fraud Strategy.⁴

The AFCOS network is composed of representatives from:

- The Ministry of Justice
- The Ministry of the Interior
- The Ministry of Economy, Labour and Entrepreneurship (the Public Procurement System Department)
- The Ministry of Finance: (Tax Department, Customs Administration, Financial Police, Sector for Budgetary Supervision, Ministry of Administration, State Audit Office, State Attorney's Office of the Republic of Croatia.)

The SCIF plays a coordination role and is not engaged in investigations, inspections or supervision. As part of this role, OLAF notifies SCIF when an investigation has been opened for a case in Croatia and SCIF notifies national authorities (such as the Ministry of Interior, Tax administration etc.) The AFCOS also notifies authorities if support for such investigations is required.⁵

The SCIF is set up around three organizational units:

- A department in charge of data collection and analysis, and irregularities reporting to the IMS database
- A department for monitoring notified irregularities procedures and co-ordination with competent bodies

² "Former Croatian development minister arrested on suspicion of EU fraud". *EURONEWS*. Online: <https://www.euronews.com/2021/11/10/former-croatian-development-minister-arrested-on-suspicion-of-eu-fraud>

³ Gaura Hodak, Orhidea. (2020). Ministar Marić nije uspostavio kontrolu trošenja EU novca. *Nacional*. Online: <https://www.nacional.hr/ministar-maric-nije-uspostavio-kontrolu-trosenja-eu-novca/?fbclid=IwAR0yonjqagrIsqe3MEBHLIM1ahKMJu1eWnlzRRGVLfzex79dRfGpzAL8is>

⁴ https://ec.europa.eu/anti-fraud/sites/default/files/883_conference_juric_en.pdf

⁵ https://ec.europa.eu/anti-fraud/sites/default/files/883_conference_juric_en.pdf

- A department responsible for training and risk management⁶

In addition to these measures, anti-fraud practices in Croatia include whistleblowing emails which allow for beneficiaries and other authorities to report irregularities and company/tax registers to prevent previous fraudsters and other risk profiles to apply for funds.

Payment agencies are also involved in reporting irregularities via the IMS though they are unable to declare whether irregularities are fraudulent. The payment agencies for EU funds submit cases to public attorneys who then make a decision on whether to take a case to court for it to be established as fraud. As stipulated in their internal regulations, payment agencies meet on a quarterly basis with prosecutors to follow up on cases opened and update the IMS system.

For the European Agricultural Fund, paying agencies have a central public procurement system for private beneficiaries such as farmers and entrepreneurs, which registers details of the potential beneficiaries. These details are also inputted into their own red-flags risk analysis tool to prevent fraud.

Croatia's AFCOS system has elements of good practice (as described below) but some journalists have pointed out flaws which hamper the fight against fraud. One article published in the magazine 'Nacional' argues that there are few institutions with the authority to investigate and control the spending of EU funds and that the system to do so is not sufficiently robust. The article notes that when possible fraudulent irregularities are detected, these cases are submitted to the State Attorney's Office or the Ministry of the Interior to investigate but these two offices are overstretched in resources to properly assess cases and do not have expertise in EU funds. The SCIF acting as AFCOS, on the other hand, does have this expertise, but does not have investigative powers (an issue highlighted in our research for other Member States). It is stressed that there is a need for an independent institution involved in analysing public procurement procedures involved in EU funds.

Additionally, the article argues that there is a lack of oversight over the State Attorney's Office and the Ministry of the Interior, and that this allows for the possibility of corruption in the control over EU funds.⁷

Possible good practices

Good practices can be seen in the setup of the SCIF. As noted above, the SCIF includes a unit involved in developing vocational training programmes for officials in the AFCOS system. These annual training programmes are implemented in cooperation with OLAF. Additionally, the unit monitors performance, engages in risk analysis and examines knowledge gained in the irregularities and anti-fraud management to inform such training programmes. Also identified as good practice is the regular evaluation of activities which allows authorities to analyse risks in the AFCOS system as well as propose measures to remedy such risks.⁸

Both the training programmes and the regular evaluation of anti-fraud measures have previously been highlighted as good practices that should be adopted by Member States. In the case of the former, they allow authorities to be aware of the most effective measures and tools available, ensuring a high level of anti-fraud standards. Similarly, regular evaluation achieves this by consistently identifying weaknesses and improving practices. Interviewees from the paying agencies have added that they are piloting Arachne for identifying conflicts of interest and that when they are familiar with the tool, they intend to produce guidance and training programmes for Managing Authorities on its use.

Furthermore, the EU's anti-fraud knowledge centre highlighted Croatia's practice of having integrated EC-recommended red flag indicators into their management verifications for the OP Competitiveness

⁶ <https://mfin.gov.hr/highlights-2848/protection-eu-financial-interest/scif/2911>

⁷ Gaura Hodak, Orhidea. (2020). Ministar Marić nije uspostavio kontrolu trošenja EU novca. Nacional. Online:

<https://www.nacional.hr/ministar-maric-nije-uspostavio-kontrolu-trosenja-eu-novca/?fbclid=IwAR0yonjqqrIsqe3MEBHLIM1ahKMJu1eWnlzRRGVLfzex79dRflGpzAL8is>

⁸ <https://mfin.gov.hr/highlights-2848/protection-eu-financial-interest/scif/2911>

and Cohesion, and OP Efficient Human Resources. These Operational Programmes are managed by the Croatian Ministry of Regional Development and EU Funds and the Ministry of Labour and Pension System respectively. The manuals of procedure (MoP) and the rule book for MAs and IBs – the Common National Rules (CNRs) – governing these OPs indicate red flags that such authorities need to keep into account. Additionally, Croatia uses the Arachne IT tool for the identification of red flags which is frequently highlighted as good practice by the EU. The CNRs outline the anti-fraud and anti-corruption measures that MAs and IBs must take operating in programme implementation.

The list of red flags outlined by Croatian authorities is transposed from the EC's guidelines on fraud risk assessment (the Information Note of Fraud Indicators for ERDF, ESF, and CF 'COCOF 09/0003/00-EN'), therefore mirroring the EC's template for guidelines. In addition to the guidelines, MAs in Croatia have identified additional fraud risk indicators based on an assessment of their systems that are used to implement EU-funded programmes in Croatia. Therefore, MAs have developed additional red flags specific to the context in which they operate.

The fraud risks are categorized under three areas of fraud: public procurement, forgery of documents, and labour costs and consulting services. The categories of risks have specific indicators and demonstrative examples to help MAs identify risks. Such practices appear to be useful in the identification of patterns of fraud allowing for prevention. Specific projects at higher risk are subject to more extensive verification measures such as on-the-spot checks. Moreover, intermediate bodies and MAs meet on a regular basis to raise awareness of emerging fraud risks, and risk coordinators are assigned for the follow up on the implementation of anti-fraud measures and monitoring of fraud risks. These coordinators also meet regularly (at least twice a year) to share knowledge and good practices.

The Commission notes that the practice adopted by Croatia aids in the countering of fraud risks such as conflicts of interest, avoidance or manipulation of public procurement procedures, double funding, collusion and manipulation of project costs (false invoicing). It further adds that statistics indicate such practices have led to better response to risks and greater awareness as well as capacity to detect risks. The anti-fraud knowledge centre notes in terms of the transferability that these practices would easily be replicated in other Member States.⁹

Another measure that can be identified as good practice involves the paying agencies' practice of validating data reported through IMS with prosecution officials. Meetings on a quarterly basis with prosecutors allows them to follow up on cases opened. This is good practice as it allows for more accurate data to be reported to OLAF (which is often lacking across the EU).

⁹ https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/ec-recommended-red-flags-integrated_en

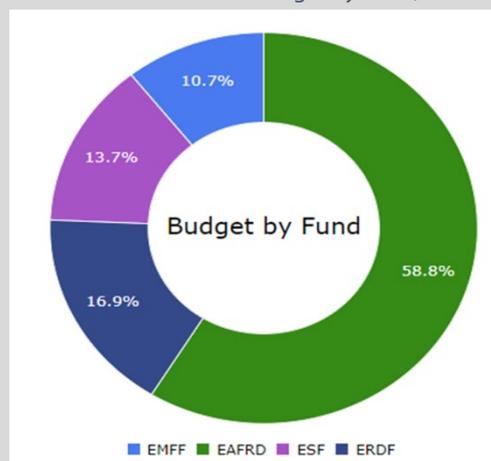
Denmark

Context

In the 2014-2020 period, Denmark received EUR 1.9 billion through the European Structural and Investment Funds (ESI Funds)¹⁰ divided as follows:

- EUR 1.1 billion through the EAFRD
- EUR 329 million through the ERDF
- EUR 267 million through the ESF
- EUR 208 million through the EMFF

Figure 1 ESIF 2014-2020: Denmark Budget by Fund, EUR



These resources were allocated to operational programmes which aimed to support growth and employment across Denmark by promoting innovation and investments, green growth initiatives, entrepreneurship, education, and job creation. In total, there were four operational programmes at national level which pursued different strategic objectives.

For instance, the ERDF programme “Innovative and Sustainable Growth in business” aimed to increase the number of innovative SMEs, enable them to exploit their growth potential and enhance their sustainable energy consumption. Approximately 5% of the total ERDF resources were allocated to interventions supporting the sustainable urban development of cities with a population of more than 30,000 inhabitants. The ESF programme “Educational and Entrepreneurial Growth” instead supported entrepreneurship, job creation and inclusion through education and employment. The EMFF programme “Maritime and Fisheries” aimed *inter alia* to increase aquaculture production and organic production to at least 10% of the total production.

Finally, the National Rural Development Programme financed through the EARDF focused 69% of its resources on encouraging climate friendly farming practices including organic farming and a better management of natural resources. Approximately 2,400 EARDF projects aimed to improve the environmental performance of farms while also supporting job creation and inclusion.

Scale of the problem and types of fraud most common in Member State

The national authorities consulted during this study confirmed that fraud in EU structural funds is not a serious problem in Denmark. A very limited number of suspected cases of fraud were reported by the managing authorities during the 2014-2020 period. Most of these cases were subsequently classified as irregularities after investigation. According to the interviewees, one possible factor increasing the risk of irregularities by beneficiaries is the complexity of the application and project reporting processes under the ESI funds. On the other hand, the MAs use external auditors to conduct audits on projects and reported expenses which – in their view- strengthens the reliability of the national assurance model and reduces the risk of errors.

¹⁰ This figure only considers the EU resources planned for the country. In addition to the EU contributions, Denmark contributed with national resources (EUR 826 million) achieving a total budget of EUR2.7 billion for the 2014-2020 programming period (current prices).

Measures to tackle fraud in shared management, policies and strategies

As highlighted in the 2020 PIF Report, Denmark does not have a national anti-fraud strategy in place. However, the Danish managing authorities (MA) consulted through the interview programme confirmed that the existing national systems for monitoring, detecting and reporting irregularities and cases of fraud in structural funds are effective and compliant with current EU rules and requirements. Therefore, no fundamental change is needed.

Feedback from our research also suggests that the Danish MAs have adopted specific organisational and operational measures to enhance their fraud prevention action and fraud risk assessment capacity. One example is the **Danish AFCOS network set up to fight fraud more effectively** and help MAs improve their fraud risk assessment practices. The network formalized existing informal cooperation and communication mechanisms between the Danish MAs and other national institutions such as the Danish State Prosecutor for Serious Economic and International Crime.

The Ministry of Finance - the AFCOS - acts as coordinator of this network and provides a single point of entry for information exchanges from and to OLAF. In particular, the Ministry of Finance disseminates requests from OLAF to the network, promotes the exchange of information between the MAs and shares information with OLAF. MAs and other bodies, e.g. the Danish State Prosecutor for Serious Economic and International Crime, may still interact directly with OLAF with regard to specific cases or On-the-Spot Checks. **Key to the success of the AFCOS network is also the use of a handbook** which details the regulatory framework of the AFCOS, describes the roles and responsibilities of the network participants as well as the collaborative arrangements between MAs and with OLAF and defines the members' individual anti-fraud action plans. These include for instance the Action plan on the common agricultural policy (CAP) and the Anti-fraud strategy of the Danish Fisheries Agency (see below). As in most Member States the AFCOS network is led by the Ministry of Finance and consists of the various government departments and agencies involved in managing EU funds and combating fraud.

Despite the establishment of the AFCOS network, the level of coordination and exchange of information between the Danish MAs is not considered sufficient by some authorities interviewed. In particular, the Danish MAs only meet three times per year for network meetings. There is no formal mechanism in place to share information on a regular basis nor an integrated database to monitor irregularities or cases of fraud at central level. MAs staff members have discretion over the frequency and type of collaboration with other authorities. Thus, the MAs collaboration could be further improved.

The Danish MAs also use **national IT tools to fight fraud** against the EU's financial interests. The national authorities frequently merge data and conduct cross checks between projects to detect any misreporting across funds. These tools are regularly assessed to verify if they are fit for the purpose. There is scope for improvement in the use of EU tools. At present, ARACHNE is not extensively used by the Danish MAs given that this tool is not considered sufficiently developed to support their anti-fraud action. However, the Danish MAs contributing to this study emphasised that there are currently discussing with the Commission about possible ways to improve the use of this tool.

Possible good practices

1. The Danish Business Authority is the MA responsible for managing the ERDF and the ESF OPs during the 2014-2020 programming period. The Authority integrated **a system of red flags into the programmes' management verification checklists and developed a Project Reporting Tool (PRV) for beneficiaries**. The PRV tool is used by beneficiaries to report on the progress of the project and submit expense claims, timesheets and deliverables to the Authority. The red flag system is set up to verify the invoice claims and expenditures that the beneficiaries submit to the PRV. From the PRV, the Danish Business Authority can extract, process and categorise all data into an excel database. The indicators for red flags identify risky areas (e.g. company relationships between beneficiaries, number of beneficiaries and share of wages in the total invoices) and are the result of the experience of the Authority in detecting irregularities and fraudulent activities as well as of the knowledge shared

through the AFCOS network. When red flags are raised, the Authority staff inspects the case and requires the beneficiary to provide further information regarding the flagged expense claim. In case the error is confirmed, the Authority refuses the payment and transfers the file for internal investigation. This system allows the authority to have a comprehensive overview of the projects implementation, beneficiaries (including VAT number) and to promptly detect irregularities or fraudulent activities before the payments are processed.

2. Another good practice is the **Anti-fraud strategy developed by the Danish Fisheries Agency**. This strategy adopts a risk-based approach and it is structured around three pillars: a holistic method to combat fraud including experience and knowledge sharing; aiming towards a risk-based control, adopting innovative approaches to report fraud. The Danish Fisheries Agency conducts controls with a risk based approach. This means that there is a higher rate of control of investment projects, as fraud is more likely to occur on this type of projects. A key element of the strategy is to ensure that the Danish Fisheries Agency has relevant expertise (legal and technical) to detect and combat fraud.

3. Denmark passed its **new Whistleblower Protection Act** ("Lov om beskyttelse af whistleblowere") in June 2021 to fully transpose the Whistleblower Protection Directive. The scope of the Act is broad as it covers reports relating to suspected cases of fraud, embezzlement, bribery etc. This Act obliges all private and public employers – with more than 50 employees - to establish a whistleblowing channel or hotline and provides considerable protections for whistleblowers. Being the first EU MS to fully implement the EU Whistleblower Protection Directive into national legislation, Denmark is committed to exploit the full potential of whistleblowing systems to fight criminal conducts. As regards the structural funds, several MAs offer citizens the possibility to report suspected fraudulent activities using whistleblowing mechanisms. In most cases, these mechanisms are established in the form of email addresses published on the official website of the MA. However, interviewees have confirmed that so far these channels have not been used to a great extent.

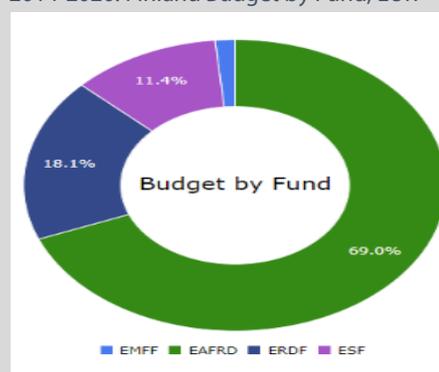
Finland

Context

During the 2014-2020 period, the Finnish Operational Programme, “Sustainable growth and jobs 2014-2020 — Finland’s structural funds programme” was comprised of ERDF and ESF funding, with a combined total of EUR 4.8 billion.¹¹ This reflects the programme’s priorities, which were mainly to promote research and innovation, improve SME competitiveness, increase the number of jobs, and bolster education to ensure a future skilled workforce. The ESF contributed to fighting social exclusion, promoting well-being, health, and reducing poverty. Two other operational programmes took place:

- EUR 3.3 billion through EAFRD
- EUR 885 million through ERDF
- EUR 558 million through ESF
- EUR 74 million through EMFF

Figure 1: ESIF 2014-2020: Finland Budget by Fund, EUR



The SME Initiative was an ERDF-funded programme (€20,000,000 ERDF) that “provided guarantees to financial intermediaries that give loans to SMEs.” Furthermore, “the guarantees are expected to unlock over €360 million of fresh loan funding for Finnish SMEs, vital for creating new jobs and boosting growth.”¹²

The Entrepreneurship and Skills programme was specifically for the Åland autonomous region, with €3,065,144 ESF funding and €2,685,719 ERDF funding. ESF goals included boosting education, supporting young people’s skill development, reducing unemployment, and promoting social inclusion. ERDF goals were primarily to improve the cooperation between research institutions and SMEs, diversifying business structures and the economic structure of Åland itself.¹³

The Managing Authority is the Ministry of Employment and the Economy, however there are provincial associations that serve as authorities in the provinces. A series of ELY centres perform implementation and development tasks of the state administration therein.¹⁴ For the Åland, programme, the Department of Trade and Industry, Åland Government was the Managing Authority.

Scale of the problem and types of fraud most common in Member State

According to the 2020 PIF report, in Finland, there were no irregularities reported as fraudulent that year.¹⁵ This could be because the irregularities were not significant in cost, or because of other confounding factors. Nine irregularities in Agriculture and 160 in Cohesion Policy & Fisheries funds were not reported as fraudulent. The total expenditure was €136,055.

¹¹ https://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/finland/2014fi16m2op001

¹² https://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/finland/2016fi16rfsm001

¹³ https://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/finland/2014fi05m2op001

¹⁴ <https://tem.fi/aluekehittamisen-tavoitteet-ja-suunnittelu>

¹⁵ European Commission. (2020). *Report from the Commission to the European Parliament and the Council 31st Annual Report on the Protection of the European Union’s financial interests—Fight against fraud- 2019*. Brussels. Available at: https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_en.pdf

Measures to tackle fraud in shared management, policies and strategies

One of the most important ways to catch crime is through reporting, either by victims or by relevant authorities. To address gaps in the whistleblower protection legislation, such as the absence of a guarantee of identity protection when reporting fraud, the Managing Authority of Finland's ESIF implemented a reporting channel specific to fraud in ESI Funds in 2019. This tool guarantees anonymity, and thereby seeks to encourage the public and other authorities to speak up.¹⁶ The channel can also be used by anyone to learn about fraudulent actions that can occur in ESIF-funded projects. It is available in both Finnish and Swedish, however the channel is not accessible via the English version of the Managing Authority's website.

All parameters of information a user could provide are listed in the form's prompt, as well as explicit statements that the reports will be anonymous. At the MA, dedicated employees review the report to ensure it was not made in bad faith and determine whether an investigation is warranted. Since May 2019, four reports have been submitted via the channel, pertaining to labour costs and conflicts of interest. Although this is a low number, this channel did allow the MA to "investigate cases of fraud that might have gone undetected otherwise."¹⁷ Since the MA does not publish reports about the number of allegations received or investigation outcomes, there may be more reports that are not publicly available. It is also important to note that creating and maintaining the channel did not incur any additional costs to the MA and was included in the website design budget.

Another tool is the EURA 2014, managed by the Ministry of Economic Affairs and Employment.¹⁸ It is an electronic database containing all documents relating to EU-funded projects, and aims to shift storage of such information away from paper. All contracting procedures are completed electronically, from submitting applications and signing documents to making payments. If an intermediate body (IB) makes an on-site verification visit, they use the information on EURA 2014 to prepare. The information relevant to the audit are stored on the system as well. Each authority (Managing, Intermediate, Contracting and Audit) have different access to the system, based on their type of use and can only manage information within their area of control.¹⁹

In terms of efficacy, EURA 2014 plays a key role in fraud prevention and detection, as it provides a single source for all relevant information on a project and its activities. It is especially helpful in detecting double funding, excessive/fraudulent labour costs and procurements that exceed the national or EU threshold. It also helps reduce the administrative burden faced by Managing Authorities and standardises the assessment procedure through a set of checklists.²⁰

Possible good practices

For the ESIF whistleblower reporting channel, the important success factors noted were the guaranteed anonymity of the reporter, making the portal directly accessible on the Finnish ESIF

¹⁶ https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/reporting-channel-structural-funds_en

¹⁷ https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/reporting-channel-structural-funds_en

¹⁸ <https://tem.fi/en/frontpage>

¹⁹ https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/aura-2014_en

²⁰ https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/aura-2014_en

website and easy use (a simple text box).²¹ In addition, Finland has been working to transpose the fifth anti-money laundering directive (EU Directive 2015/849).²²

²¹ https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/reporting-channel-structural-funds_en

²² European Commission. (2020). *Report from the Commission to the European Parliament and the Council 31st Annual Report on the Protection of the European Union's financial interests—Fight against fraud- 2019*. Brussels. Available at: https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_en.pdf

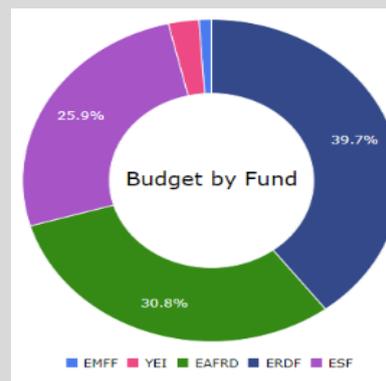
Italy

Context

During the 2014-2020 programming period, **EUR 57.9 billion**²³ were allocated to Italy through European Structural and Investment Funds (ESI Funds)²⁴ as follows:

- EUR 26.2 billion via the ERDF
- EUR 16.6 billion via the ESF
- EUR 12.6 billion via the EAFRD
- EUR 537.2 million via the EMFF.²⁵

Figure 2 ESIF 2014-2020: Italy Budget by Fund, EUR



The 2014 Partnership Agreement for Italy outlined the national development strategy and the distribution of EU resources and national co-financing throughout the territory for the 2014-2020 cycle.²⁶ In line with the national development strategy, the Italian Managing Authorities set out their strategic objectives and interventions in multi-year programming documents.

A total of **83 Operational Programmes (OPs)** were co-financed in Italy through the ESI Funds and national resources. These included: 15 OPs managed by central administrations (12 National OPs “PON”, two National Rural Development Programs “PSRN”; one National OP EMFF); 68 OPs managed on a decentralised basis by regional administrations/ autonomous provinces²⁷ (39 Regional OPs “POR”; eight OPs for territorial cooperation “PO CTE”; 21 Rural Development Programmes “PSR”). These programmes were supported through a single or a combination of EU funds. In addition, Italy financed other interventions through national resources from the Rotation Fund²⁸ with a view to contributing to the achievement of the objectives of the OPs.

Looking at the thematic areas, Italy financed projects contributing to all 11 thematic objectives of the EU structural funds for 2014-2020. Most of the **ERDF and ESF resources** were allocated to co-finance OPs pursuing the objectives of the cohesion policy in Italy.²⁹ This includes: developing an innovation-friendly business environment; putting in place high-performance infrastructures and efficient management of natural resources; increasing labour market participation whilst promoting social inclusion; supporting the quality, effectiveness and efficiency of the public administration. The **rural development funding** through the EAFRD (together with national contributions) co-financed 23 RDPs with the aim to increase the competitiveness of the agricultural and agri-industry sector, especially in less developed areas. Finally, the **EMFF funding** supported an OP which focused inter alia on boosting the competitiveness of Italian fisheries and aquaculture sector and preserving the

²³ This figure takes into account Regulation (EU) 2017/2305.

²⁴ Italy contributed with national resources (EUR 29.9 billion) achieving a total budget of EUR87.9 billion for the 2014-2020 programming period (current prices).

²⁵ Italy also received EUR 1.8 million through the Youth Employment Initiative (YEI). Data presented here have been extracted from the ESIF Open Data platform, also available at: <https://cohesiondata.ec.europa.eu/countries/IT> (data accessed on 22/11/2021).

²⁶ Partnership Agreement for Italy was initially approved by the European Commission on 29 October 2014. It was amended on 8 February 2018 following the adjustment “technical” of the Multiannual Financial Framework 2014-2020, carried out in accordance with Article 92(3) of Regulation (EU) No 1303/2013.

²⁷ A comprehensive description of the 83 Operational programmes is available at: <https://www.agenziacoazione.gov.it/lacoazione/le-politiche-di-coazione-in-italia-2014-2020/le-risorse-e-i-fondi/programmi-operativi-regionali-nazionali-2014-2020/?lang=en>

²⁸ As foreseen in Law no. 183/1987 on the co-financing of interventions and coordination of policies.

²⁹ A list of National and Regional OPs is available on the “OpenCoesione” website.

marine environment.³⁰ Most of the ESI funding was allocated to OPs supporting the development of the Italian southern regions.³¹

Despite the significant budgetary allocations, Italy frequently faces challenges in achieving the spending targets for ESI funds compared to other EU MS.³² The highly decentralised system for the implementation of OPs involving central and regional administrations as well as intermediary bodies (e.g. municipalities and provinces) could be a potential factor explaining the challenges the administrations face in implementing the EU budget.

Scale of the problem and types of fraud most common in Member State

According to the latest PIF report, a total of 26 irregularities (worth EUR 22.3 million) were reported as fraudulent in 2020 by the Italian authorities.³³ In the same year, the total number of irregularities reported as non-fraudulent amounted to 452 (EUR 57 million).³⁴ However, as emphasised by the Commission, the number of irregularities reported as fraudulent reflects the results of Member States' work to fight fraud and other illegal activities affecting the EU's financial interests and cannot be considered as a measure of the level of fraud in the country.³⁵ This aspect should be considered when assessing the scale of the problem across the EU.

With regard to the trends - as reported by the COLAF annual report to the Italian Parliament - over the past few years Italy has experienced a **steady decline in the number of detected and reported irregularities and cases of fraud**.³⁶ In 2019, the total number of reported irregularities and cases of fraud amounted to 595. This figure represents a -27.62% decrease compared to the number of cases in 2018 (822: a reduction of 227 cases) and a -49.1% decrease compared to the figure in 2017 (1,169: a reduction of 574 cases). One factor potentially explaining these downward trends is the adoption of effective anti-fraud prevention and management measures by the Italian authorities and the development of specific systems and tools to detect fraud (see section below).

Below we provide data on judgments relating to fraud cases and their financial value (Table 1) as well as the value of fraud reports by the Guardia di Finanza and Carabinieri in the years 2018-20

Table 1 Total number and value of first-instance judgements relating to fraud

Year	Number of first-instance judgements	Value (EUR)
2018	94	63.576.988,75
2019	82	56.131.798,11
2020	66	27.500.796,67

Table 2 Value of cases of fraud reported by the Guardia di Finanza and Carabinieri per fund and year

Fund Year	ERDF (EUR)	Agricultural funds (EUR)	ESF (EUR)	EMFF (EUR)
2018	9.090.743,89	14.059.929,38	6.618.151,82	3.084.383,21
2019	8.225.253,30	20.185.243,23	190.490,00	2.338.096,52
2020	11.916.518,75	230.290.641,81	712.750,00	112.000,00

³⁰ Further information is available on Italy's "EMFF OP factsheet", page 2.

³¹ This refers to the Italian southern regions i.e. Basilicata, Calabria, Campania, Puglia and Sicily. The ESI funds also prioritise the transition regions i.e. Abruzzo, Molise and Sardinia.

³² As of 30 June 2021, 77.73% of EU and national resources were committed and the progress on payments accounted for 55.98% of the total resources programmed under of the ESI Funds (including the YEI share).

³³ European Commission (2021), "32nd Annual Report on the protection of the European Union's financial interests", Annex I and II, pages 2-3.

³⁴ *Ibid.*

³⁵ European Commission (2021), "32nd Annual Report on the protection of the European Union's financial interests", Annex I and II, pages 2-3.

³⁶ COLAF Report 2019, pages 49 - 52.

Source: Data provided by the Italian Court of Auditor

Types of fraud

The Italian Guardia di Finanza has identified some recurrent fraudulent schemes aimed at circumventing the public procurement rules and procedures. For instance, this includes:³⁷

- False self-certifications on the progress of works;
- False statements of expenditure produced to the Public Administration or granting banks, also by claiming the reimbursement of non-existent underlying transactions;
- Use of false documents (usually bank cheques), which the beneficiary then shows to the granting bank 'as a guarantee for the investment';
- Use of (fictitious) suppliers based abroad to make the risk assessment more difficult. These companies are often owned, also through nominees, by the same person as the beneficiary of the grant;
- Use of false bank statements/references which are submitted by the subsidised party to the granting bank, 'certifying' the possession of financial and property assets to obtain financing.

Subjects involved in fraud

The analysis of the complaints received by the Italian Court of Auditor and subsequent judgments showed that the fraud in EU expenditure is mainly perpetrated by:

- Individual entrepreneurs (especially in cases of contributions to small-sized activities, for instance in the agricultural sector or incentives for entrepreneurship, including for young people or women);
- Companies and other collective enterprises (for example cooperatives, especially in the agricultural sector), with the participation and collaboration of the administrators of the collective body. In these cases, the action of the Court is directed both against the company and the individuals who operate on behalf and in the interest of the company.

In some cases, fraud is committed with the collaboration of public officials who direct the disbursement procedures or who should carry out the controls. In these cases, the Court also acts against the officials.³⁸

Irregularities and fraud in the agricultural sector

In 2019, a total of 30 irregularities (worth EUR 2.6 million) were reported as fraudulent by the Italian authorities in the agricultural sector.³⁹ These cases referred to both direct payments under the European agricultural guarantee fund (EAGF) as well as contributions via European agricultural fund for rural development (EAFRD).

As regards the trends in the EAFRD, there has been a progressive increase in the number of irregularities reported between 2010 and 2019 with a peak in 2016.⁴⁰ However, only 9% of these irregularities have been reported as fraudulent.

The most frequently detected **types of fraud** in EU funds supporting the agricultural sector are⁴¹:

- False declarations and legal documents to obtain property rights in agricultural areas, also by means of undue access to the National Agricultural Information System (SIAN);
- Certification of activities and operations relating to construction works or investments that have not taken place and/or are not compliant with national legislation;

³⁷ Contribution from the Italian Guardia di Finanza.

³⁸ Contribution from the Italian Court of Auditor.

³⁹ European Commission (2019), PIF Report, Annex 1, page 2.

⁴⁰ 2019 COLAF REPORT, page 80.

⁴¹ Contribution from the Carabinieri Department for the Protection of Agri-foodstuffs.

- Unlawful management of land for civic use whilst receiving EU and national contributions;
- Undue receipt of contributions for the application of specific production methods (e.g. organic farming) which turn out to be non-compliant and false following checks.

The Tables below provide data on the investigations carried out by the Carabinieri Command for the Protection of Agri-foodstuffs in the three-year period 2018-2020.

Table 3 Overview of the investigations carried out by the Carabinieri Command

Year	2018	2019	2020
Controlled agricultural enterprises	277	278	275
Companies proposed for suspension of EU aid	4	4	46
Unduly received contributions in €	€ 2.135m	€ 21.445m	€ 5.922m
Criminal violations	53	160	192
Administrative Violations	3	22	18

Source: Contribution from the Carabinieri Command for the Protection of Agri-foodstuffs

Irregularities and fraud in the infrastructure sector

With regard to the National Operational Programme "Infrastructures and Networks" 2014- 2020 (hereafter NOP IaN 14-20), there are no identified cases of fraud or other criminal activities against EU funds. However, in the National Operational Programme "Networks and Mobility" 2007-2013 (hereafter NOP NaM 07-13) one case of fraud has been identified. This concerned illegal activities and corruption in the acquisition of a tender related to a road modernization project perpetrated by an individual. Therefore, it is not possible to identify an obvious trend as there is only one case of fraud detected.

In relation to the NOP IaN 14-20, some irregularities were reported. These were mainly caused by the incorrect application of the EU legislation and the failure to comply with the Public Procurement Code (e.g. use of the negotiated procedure without prior publication of a tender) by the Beneficiaries of the Programme. This aspect highlights, on one hand, the complexity of the EU financial regulations and, on the other, the information gap on the side of the beneficiaries for the correct implementation of the funds granted. In order to overcome these issues, it would be desirable to simplify the EU financial regulations as well as to disseminate information material and organize training webinars to support the beneficiaries in the correct implementation of projects.⁴²

Regional disparities

Reporting from news articles has placed emphasis on the regional dimension on the problem. When it comes to agriculture and fisheries, ECA highlighted that EUR 356 million was defrauded in 2015 in Italy, EUR 175 million of which occurred for funding destined to southern regions. Sicily represented EUR 167.8 million of this fraud. Central regions in comparison defrauded EUR 162 million and northern regions around EUR 14.2 million.⁴³ On the other hand, for the period of 2014-2020, 46% of fraud cases in CAP and fisheries policies were reported in central regions compared to 33% in the south and 21% in the North.

When it came to the structural funds in this period, 85% of irregularities and fraud were reported in southern regions compared to 12% in central regions and 3.5% in the north. It has been noted that (as in other Member States) the large amount of funds provided through cohesion policy attract organised crime groups.⁴⁴ A recent case demonstrates the involvement of organised crime can have

⁴² Contribution from the Italian Ministry of Infrastructure and Transport.

⁴³ Turno, Roberto. (2017). Fondi europei, dall'Italia frode per 356 milioni di euro. Ilsole24ore. Online: <https://www.ilsole24ore.com/art/fondi-europei-dall-italia-frodi-356-milioni-euro-ADoF7CUC>

⁴⁴ Mobili, Marco. & Rogari, Marco. (2018). Frode sui finanziamenti Ue in sei casi su 10 (boom al sud). Ilsole24ore. Online: <https://www.ilsole24ore.com/art/frode--finanziamenti-ue-sei-casi-10-boom-sud-AEz7WnoE>

in agricultural funding. In this case reported by Politico, 94 individuals with possible links to mafia organisations were arrested for fraud. Applications for subsidies included fake names, applications on the part of deceased farmers, false lease contracts and declarations for land that was not eligible for agricultural subsidies.⁴⁵ Nevertheless, it has been stressed that prevention mechanisms and efforts to recover funds have been strengthened over the years.⁴⁶

Despite cases of fraud and organised crime involvement, it has also been stressed by some journalists that a high number of irregularities in Italy are due to the complexity of rules governing EU funding, particularly for procurement processes. In agricultural policy, between 2006 and 2018, out of the 5,620 suspected cases reported by Italy to the EU Commission, 21 cases of fraud were found. In the ERDF and ESF, a high number of irregularities (close to 90% in 2018) were found to be a result of overly complex procurement laws.⁴⁷

Measures to tackle fraud in shared management, policies and strategies

Institutional Framework

In Italy, different central and regional administrations as well as agencies and bodies are involved in various capacities in combating fraud in shared management funds. Below we provide an overview of the main institutions and bodies contributing to the prevention and fight against fraud:

- The **“Anti-Fraud Committee in charge of the fight against irregularities/fraud in the EU budget”** (COLAF) is responsible for providing strategic direction and coordinating all national anti-fraud activities and initiatives. Established in 1992, the COLAF acts as the Anti-Fraud Coordination Service (AFCOS).⁴⁸ Based in the Presidency of the Council of Ministers (Department for European Policies), the Committee is chaired by the Minister for European Affairs and consists of: representatives of the Department for European Policies; the Commander of the body the Guardia di Finanza responsible for combating fraud; representatives of administrations appointed by the Minister for European Affairs; members designated by the Unified Conference.
- The **Italian Financial Police “Guardia di Finanza”** is responsible for the prevention and investigation of all forms of economic-financial crime affecting public resources. The Guardia di Finanza participates in the works of the four-year policy cycle on threats to the security of the European Union (so-called Policy Cycle), through membership of the “European Multidisciplinary Platform against Criminal Threats” (EMPACT), founded in 2010. In 2012, the Guardia di Finanza signed an operational agreement with OLAF to enhance the practical cooperation in the fight against fraud in EU funds.
- A special unit of the Guardia di Finanza (**“Nucleo della Guardia di Finanza per la repressione delle frodi nei confronti dell'UE”**) serves as a technical secretariat to the COLAF. The Unit supports the coordination of anti-fraud activities relating to structural funds and contributes to the exchange of information about specific national anti-fraud actions and measures at the national and EU levels. This unit fulfils an advisory role for the coordination of anti-fraud activities relating to tax, CAP and structural funds.
- The **Inspectorate General for the financial relations with the European Union - General Accounting Office of the Ministry of the Economy and Finance (MEF - RGS - IGRUE)** manages the National Monitoring System (NMS) and monitors the exchange of data on irregularities and cases of misappropriation of EU funds with the Commission.
- The **Italian Court of Auditors (“Corte dei Conti”)** carries out control activities on the management of EU funds and helps detect fraudulent practices. In particular, the Court analyses

⁴⁵ Bayer, Lili. (2020). 94 arrested in Italy over EU agriculture funding fraud. Politico. Online: <https://www.politico.eu/article/94-arrested-in-italy-over-eu-agriculture-funding-fraud/>

⁴⁶ Mobili, Marco. & Rogari, Marco. (2018). Frode sui finanziamenti Ue in sei casi su 10 (boom al sud). Ilsole24ore. Online: <https://www.ilsole24ore.com/art/frode--finanziamenti-ue-sei-casi-10-boom-sud-AEz7WnoE>

⁴⁷ Chiellino, Giuseppe. (2020). Fondi europei e truffe: in 13 anni 5.620 casi sospetti ma solo 21 frodi. Ilsole24ore. Online: <https://www.ilsole24ore.com/art/in-13-anni-5620-casi-sospetti-ma-solo-21-frodi-ACHhVBCB>

⁴⁸ The mandate and composition of the Committee was amended with Presidential decree (D.P.R.) n. 91 of 14 May 2007.

and verifies data on the use of EU funds, as well as on irregularities and fraud, both at the level of the individual body/administration and at aggregated level (Report to Parliament). It also monitors cases of irregularities/fraud reported by national administrations through the IMS (accessing the system as “observer”). The Court is also competent on claims for the compensation of damages against national or EU finances. The Prosecutor's Office of the Court of Auditors can act only if it receives a specific and concrete report on the damage (Art. 51 Italian Code of Accounting Justice). This report can be submitted by the MA, the Guardia di Finanza or other police force.

- The **Carabinieri Command for the Protection of Agri-foodstuffs** carries out extraordinary controls on the disbursement and perception of public funds in the agri-food, fishing and aquaculture sectors.⁴⁹
- The **Italian National Anti-Corruption Authority (ANAC)** is an independent body established to fight against corruption in public contracts and help national administrations ensure legality, competition and correctness in public procurement procedures. The ANAC fulfils some regulatory functions (e.g. issuing guidelines) as well as supervisory functions over public procurement, transparency and civil servants' integrity. It also exerts sanctioning functions over public administrations which fail to comply with anti-corruption obligations. The ANAC reports to the Italian Court of Auditors potential cases of corruption in the public procurement system and collaborates with the Court for the definition of corruption indicators. It also reports to the Italian Court of Auditors any cases of corruption of fraud against public finances. In 2016, ANAC concluded an administrative cooperation arrangement with OLAF to step up its engagement in protecting the EU financial interests.

Regulation (EU) no. 1303/2013 establishes that the national authorities must ensure "adequate effective and proportionate anti-fraud measures in relation to the risks identified", following the indications provided by the Services of the European Commission in the EGESIF guidance note of 16/06/2014.⁵⁰ Therefore, national managing authorities (and intermediary bodies), certifying authorities and audit authorities are key actors in ensuring that anti-fraud approaches and measures are effective and tailored to the specific needs of different operational programmes and projects.

Strategies and measures to tackle fraud in shared management

The COLAF develops **National Anti-fraud Strategies (NAFS)** to effectively prevent and pursue cases of fraud in relation to EU funds. Developing a national anti-fraud strategy is considered a “national legislative obligation” in Italy.⁵¹ Since 2013, the results of the NAFS are presented in the Annual Report submitted by the COLAF to the national Parliament, pursuant to paragraph 1 - Article 54 of Law 234/2012. This Report provides an overview of the situation in Italy, the strategic priorities of the anti-fraud action and the specific measures adopted by the Italian Authorities as well as the results achieved during the reporting year and possible future developments.⁵² In the 2019 Report, the COLAF reported **several anti-fraud initiatives** including:

- PIAF-IT project (described in the ‘good practices’ section).
- C.A.T.O.N.E. project (“Cooperation Agreements and Training on Objectives and New Experiences”) in partnership with the Italian Court of Auditors. This project aimed at supporting the collaboration and exchange of good practices on the recovery of EU funds (unduly paid sums) between the Court of Auditors and accounting and criminal prosecution offices of Portugal, Spain, France and Greece as well as EU stakeholders (OLAF, EPPO, EU Court of Justice, EU Court of Auditors, AFCOS). The project led to the realization of an international conference, held in Rome on 25 - 28 May 2021 and to the publication of the proceedings.
- Collaboration project with the National Council of Chartered Accountants and of Accounting Experts (CNDCEC) involving accountants with specific skills in first level controls to enhance the

⁴⁹ As foreseen in par.1, art.6 of the Decree of the President of the Council of Ministers n.179, of 5/12/2019.

⁵⁰ Article 125, paragraph 4, letter c. of Regulation (EU) no. 1303/2013.

⁵¹ 2019 COLAF Annual Report, page 12.

⁵² The 2019 Annual Report was presented on 18 November 2020.

administrative capacity of MAs in the management and control of interventions co-financed with ESI fund.

- FRED (“Fraud Repression through EDucation”) project. An international initiative aiming to facilitate the collaboration and exchange of information between different national and European universities and the anti-fraud services on innovative mechanisms for preventing and combating fraud and improve the procedures of disbursement of the EU funds.

In line with the principles set out in Regulation (EU) No 1303/2013 and the financial Regulation (EU, Euratom) No 966/2012, Italy establishes **management and control systems (SI.GE.CO)** in order to ensure the effective implementation and sound financial management of the OPs and interventions co-financed through the structural funds. A SI.GE.CO consists of the set of tools and procedures defined by the national authorities taking into account the specificities of each operational programme. The SI.GE.CO defines the role and functions of the Italian Managing Authorities (MAs) and the Certifying Authorities (CAs), the procedures to exchange data on the expenditure as well as specific provisions on the audit of the functioning of the system itself.

An innovative aspect of the 2014-2020 management and control systems compared to the past, is the **introduction of anti-fraud measures and procedures established by the MAs to assess the risk of fraud and prevent, identify and correct any cases of fraud**. In particular, the Italian MAs have defined structures, procedures and tools for the evaluation of fraud risks taking into account the specificities of the operational programmes they are managing. This includes the use of anti-fraud self-assessment checklists (see good practices), tools and the establishment of specific structures.

Furthermore, in order to improve their anti-fraud action, several **MAs have set up specific fraud-risk evaluation groups to assess the risk of fraud within their operational programmes**. For instance:

- The Italian Ministry of Labour and social policies set up an anti-fraud group to conduct self-assessments of the risks of fraud within the National Operational Programme “Social Inclusion” (co-financed by the ESF) in the 2014-2020 period.⁵³ This group consisted of the MA, representatives of operational units working on the programme, intermediary bodies (IB) and the Certifying Authority (CA). The Ministry also defined specific fraud risk self-assessment procedures and a tool to improve the management and control of the programme. This tool was based on model proposed by the EGESIF guidance note, then adapted and integrated to reflect the specificities of the programme on social inclusion.
- The Italian Agency for Territorial Cohesion set up Fraud Risk Assessment Teams (“Gruppi di Valutazione del Rischio Frode”, GVRF groups) to reduce the risk of fraud, monitor emerging risks and adopt corrective actions for the two programmes within its remit (PON Città Metropolitane 2014/2020 and PON Governance e Capacità Istituzionale 2014/2020). Each Team is composed of representatives of the Agency, intermediary bodies as well as the CA. Building on the experience of the EC self-assessment tool (EGESIF), these Teams contributed to the adoption of risk assessment tools – which reflected the specificities of the OPs and addressed the needs of the authorities involved.

During the 2014-2020 programming period, **the Italian MAs have also launched “Piani di rafforzamento amministrativo – PRA”**. These are biannual plans aiming to enhance the administrative capacity and efficiency of the MAs involved in the management of operational programmes. Therefore, specific interventions and systemic actions have been carried out in some OPs (e.g. PON Governance and Capacità Istituzionale) to enhance the capacity of the MAs.

⁵³ [All.30 - Procedura autovalutazione rischio frode PON Inclusion 14.11.2017.pdf \(lavoro.gov.it\)](#).

Possible good practices

Italy has been a pioneer in the use of innovative IT tools and databases for better prevention, detection, reporting and sanctioning of irregularities and cases of fraud. Below we provide a few examples:

- **Integrated Anti-Fraud Platform (PIAF-IT) project** - Launched in 2019 by MEF and the COLAF, the PIAF-IT project aims to build an innovative business intelligence platform to prevent and detect fraud to EU budget. The project is co-funded by the EC/OLAF under the Hercule III programme, but the platform will be maintained operational through the Italian budget. The PIAF-IT builds on the experience and lessons learnt from the SIAF⁵⁴ and is complementary to ARACHNE. It builds on information and data from different archives and certified national authorities including the MEF, Ministry of Justice, Court of Auditors, Business Register of Infocamere as well as the IMS managed by the EC and it will be supported by the Guardia di Finanza. Once finalised, this innovative platform will allow "cross-referencing" of data/information for the purpose of assessing the risks of potential irregularities and any anomalies associated with potential beneficiaries of EU funds. The ultimate goal is to centralise all information relating to beneficiaries of EU funding and provide operational and technical support to the Italian MAs/Audit and financial Authorities competent on EU funds. It will also facilitate interinstitutional and transnational cooperation. The same tool could be replicated in other MS.⁵⁵
- **SIDIF - ConosCO** ("Community irregularities and fraud information system") - created in 2010 by the Italian Court of Auditors uses data on irregularities and errors provided in the IMS-OLAF system and by the national MAs. Through the Sidif-ConosCO database, the Court processes and classifies known data and carries out specific analysis in order to fulfil its audit and jurisdictional functions. This database is also used by the Court to perform analysis on the recovery procedures initiated by national or regional MAs in relation to the agricultural aid and FESR in order to investigate key issues.

In addition to the national IT tools and systems, the Italian national and regional MAs in charge of the ESI funds often use the IMS and ARACHNE as supporting tools to enhance their control capacity and improve compliance with anti-fraud legislation.

Italy has also developed national guidelines on the use of ARACHNE. In 2018, the MEF set up a working group consisting of representatives of the national Cohesion Agency, MAs and audit authorities of specific operational programmes financed through the ERDF and ESF 2014-2020, with the aim to provide common guidance on the use of ARACHNE. The Italian "Guidelines for the use of the Community anti-fraud system ARACHNE"⁵⁶ were published in 2019. The guidelines provided the national Authorities with an overview of the ARACHNE system, its features and potential applications. This document also explained the procedures and measures to conduct audit, risk monitoring and score analysis using ARACHNE and outlined the responsibilities of each category of Authority (Managing MA, Certifying CA, Audit AA). For instance, national MAs could use ARACHNE during projects selection and verification or to sample riskier operations to conduct checks.

Following the publication of the national guidelines, **a number of national authorities issued their own guidelines** on how to perform controls on national/regional operational programmes, also using the available IT tools. For instance, the Italian Agency for Territorial Cohesion published the "Guidelines for the effective performance of first level checks of the ESI Funds for the Programming

⁵⁴ SIAF IT tool (The Anti-Fraud Information System) was set up in 2010 within the National Operational Programme "Governance and Technical Assistance 2007-2013". This system was managed by the Italian Financial Police (Guardia di Finanza) and covered four southern regions (Puglia, Campania, Calabria and Sicilia). The system allowed to process and analyse data from different national sources in order to improve the MA reporting on fraud against the EU financial instruments. Some parts of the SIAF co-funded by EC/OLAF under the Hercule III programme.

⁵⁵ [PIAF \(Integrated Anti-Fraud Platform\) \(europa.eu\)](https://europa.eu).

⁵⁶ [Ragioneria Generale dello Stato - Ministero dell'Economia e delle Finanze \(mef.gov.it\)](https://mef.gov.it).

2014-2020". The objective of this document is to provide support and guidance to all the authorities and entities involved in the implementation, management and control of the ESI Funds during the programming period 2014-2020. To this end, the document provides an overview of the EU and national legislative framework, the requirements and provisions applying to the ESI funds and provides methodological and operational advice on how to conduct the assessment of eligible expenditures and controls in specific areas (e.g. public procurement, state aids etc.).

Another good practice is **the use of anti-fraud checklists and indicators to assess and measure fraud risks within complex operational programmes**. Feedback from the interviews suggests that the Commission's EGESIF note provided guidance on the anti-fraud cycle (prevention, detection, correction and prosecution) and minimum requirements for effective anti-fraud measures. This also included guidance on the main types of fraud and a specific anti-fraud self-assessment tool which was adopted and applied by some Italian MAs. The Region of Sicily – the MA of the ERDF Operational Program Sicily 2014-2020 (total allocation of EUR4,200 million from EU and national resources) – is one of such MAs that have applied the tool. Sicily developed a set of checklists to support the risk monitoring and control units performing first-level checks on expenditure.⁵⁷ These checklists contain questions on specific aspects to consider in the selection of beneficiaries (e.g. conflicts of interest, beneficiaries' declarations), issues relating to bidding process (e.g. bid rigging, connection between bidders) and payment claims (e.g. ghost services, inflated/incorrect invoices, payments to offshore companies).⁵⁸

Finally, there are several **whistleblowing mechanisms** in place in Italy through which public officials and citizens can report cases of suspected fraud or irregularities affecting the public finances. In particular, Article 54 bis of Legislative Decree 165/2001 and Article 7 of Legislative Decree 14/2017 relating to the "Code of Conduct and Protection of Dignity and Ethics" foresee that the public official reports offenses of which they have become aware in the context of his employment relationship to the person responsible for the prevention of corruption and transparency within the administration, the ANAC or the competent judicial or accounting authority. The whistleblower is subject to protection as regards his identity and any sanctioning measures are banned. In addition, the Italian authorities have developed mechanisms which are open to third parties. Some examples are reported below:

- The **ANAC** provides public officials and citizens the possibility to report on suspected cases of corruption or any other transparency issue in public procurement procedures.⁵⁹ The authority also conducts investigative activity to assess the reliability of the reports.
- The **Agency for territorial cohesion** provides in its website a form for reporting illegal conduct that should be sent to a dedicated email address.⁶⁰
- The **Puglia Region** developed a whistleblowing tool that allows any citizen to report suspicious fraud cases relating to the programme POR Puglia FESR FSE 2014-2020.⁶¹

Since 2016, the ANAC monitors the application of the provisions on the whistleblowing in Italy and publishes an annual report to assess the effectiveness of this tool for the prevention of corruption. Data include cases reported by public officials, employees of supplier companies in public contracts and public administrations. The fourth report on the whistleblowing activity was published in 2019.

⁵⁷ [OP anti-fraud measures - EuroInfoSicily \(euroinfosicilia.it\)](https://europa.eu/euroinfo/sicily/).

⁵⁸ Further details are available at: https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/fraud-risk-checklists-sicily_en/

⁵⁹ ANAC whistleblowing webpage: <https://www.anticorruzione.it/-/segnalazioni-in-materia-di-anticorruzione-trasparenza-e-imparzialita>

⁶⁰ The form is available at: <https://www.agenziacoazione.gov.it/amministrazione-trasparente/altri-contenuti/segnalazione-di-illecito-whistleblowing/>

⁶¹ Citizens should complete a form and send it to a dedicated email address. The form is available at <https://www.regione.puglia.it/fondi-uo-segnalazione-whistleblowing>

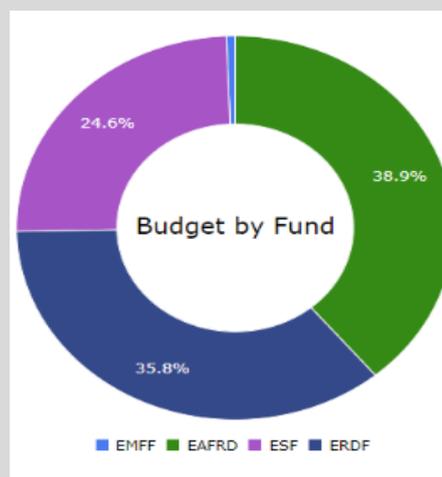
Germany

Context

In the funding period 2014-2020, the ESI Funds comprised a budget of about 454 billion Euro, out of which Germany received around **EUR 36.2 billion** divided as follows⁶²:

- around EUR 11.9 billion from the European Regional Development Fund (ERDF);
- around EUR 11.2 billion from the European Social Fund (ESF);
- around EUR 12.9 billion from the European Agricultural Fund for Rural Development (EAFRD);
- around EUR 219 million from the European Maritime and Fisheries Fund (EMFF);
- no funding from the Cohesion Fund (CF) due to Germany's strong economic development and performance capacity.

Figure 3 ESIF 2014-2020: Germany Budget by Fund, EUR



ESI Funds are implemented on the basis of co-financing. In Germany, this predominantly comes from the individual *Land* which co-finances the project co-funded by an ESI fund but also from the federal level. For the latter, the contribution depends on the relevant region's economic development and ranges from 15 per cent in less-developed regions to 50 per cent in more strongly-developed regions.⁶³

In general terms, it is the individual federal states (*Länder*) that decide who benefits from the funds, as they determine the guidelines for financial assistance and set up the funding programmes. The purpose of this approach is to back regional policy with funding, as this is considered the most effective approach to targeting actual needs best. There is one exception to this, which affects ESF as there is a federal funding programme developed jointly by the Federal Ministry of Labour and Social Affairs, with the Federal Ministries of Economic Affairs, Education, the Environment, and Family Affairs respectively running in parallel. This nation-wide programme receives 2.7 billion Euro of the total funds provided to Germany under the ESF. To avoid duplication of funding, individual federal states coordinate on programme content with the ESF federal programme when setting up their own programmes.⁶⁴

⁶² Federal Ministry of Economic Affairs and Energy (2017). The European Structural and Investment Funds in Germany

⁶³ *Ibid.*

⁶⁴ *Ibid.*

Scale of the problem and types of fraud most common in Member State

In the funding period 2014-2020, cases of fraud and suspected fraud have so far only occurred to a very limited extent. According to OLAF's 2020 report on the "Protection of the EU's financial interests against fraud and corruption" (the so-called "PIF report")⁶⁵, irregularities reported as fraudulent affecting the EU's financial interest in Germany are estimated, on the expenditure side, to have taken place in the context of the Common Agriculture Policy (12 cases) and the Cohesion Policy and Fisheries (10 cases), amounting to a total of almost €1.5 million. As for the revenue side, 87 cases of irregularities reported as fraudulent were registered by OLAF, estimated at €7.7 million.

The low number of cases of fraud and suspected fraud in the EU funding programmes under shared management makes it not possible to draw conclusions in terms of trends and patterns of typical types of fraud. No information is available on which specific project or financing types are particularly affected by fraud, nor on the actors committing such crimes. Individual administrative authorities of the funding programs at federal and state level pointed out that ultimately it is always individuals who are behind companies and organized crime.

Stakeholders do not consider it possible to assess the extent of unreported fraud affecting funds under shared management. The multi-stage control system consisting of ex-ante and ex-post checks make it unlikely for cases of fraud to go undetected. Besides, the comprehensive legal requirements for all agencies involved (managing authorities, paying agencies, certifying and audit authorities and intermediary bodies) as well as the existing security measures in place (see next section) further hinder detected cases of fraud to go unreported. Although irregularities are reported regularly, these rarely lead to legal proceedings.

Measures to tackle fraud in shared management, policies and strategies

Most of the EU funding is **administered and controlled by the federal states ('Länder')** which are responsible for setting up, implementing and monitoring the administrative and control systems. This includes anti-fraud measures (covering the four stages of the anti-fraud cycle - prevention, detection, control, recovery). The federal states work closely with the Federal Ministry of Finance which is the entity with overall responsibility in Germany for the protection of the financial interests of the European Union.

Within Germany's Federal Government, decision-making authority for the ERDF is with the Federal Ministry for Economic Affairs and Energy (BMWi), whereas the decision-making authority for the EAFRD and the EMFF is the Federal Ministry of Food and Agriculture (BMEL).⁶⁶ Implementation of repressive anti-corruption policies and prosecution of criminal cases lies with the federal states. At that level, the organisational structure on corruption offences varies: some federal states have specialised prosecution offices, whereas others have specific corruption-related expertise distributed across all prosecution offices.⁶⁷

Managing Authorities, intermediate bodies and paying agencies / certifying authorities asked to **consider the existing anti-fraud approaches to be appropriate and sufficient** based on the argument of the low number of cases of fraud in relation to the total number of projects funded. The combination of different measures appears to be particularly effective. This includes instruments for assessing fraud risks (including the European Commission's self-assessment tool), taking into account the principle of the separation of tasks and functions within the administration, anonymous whistleblower systems, direct contact with funding recipients, a large number of administrative and on-site inspections and the comprehensive sensitization of all actors involved. These measures apply

⁶⁵ European Commission (2021). Annex to the 32nd Annual Report on the protection of the European Union's financial interests – 2020, available on https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports_en

⁶⁶ https://www.bmwi.de/Redaktion/EN/Publikationen/european-structural-and-investment-funds-in-germany.pdf?__blob=publicationFile&v=4

⁶⁷ *Ibid.*

not only to the managing authorities, intermediate bodies and paying agencies / certifying authorities but also to the administrative and certification authorities as well as to the handling of the individual projects by intermediate bodies (ZGS).

For **prevention** purposes, the **separation of functions exists in all areas of the administration and control systems**, e.g. between the managing and certifying authorities as well as the audit authorities. The approval and processing of the projects and the payment of the grant are carried out by the ZGS. Within the ZGS there is a separation of functions between the approval / funds call check and payment of the grant. Indeed, the ZGS request extensive documents from the applicants as part of the application process in order to determine project-related funding risks.

As for the **fight** against fraud and corruption, checklists are used, among other things, to check personnel costs, the correct calculation of overhead expenses or the assertion of cost reimbursements for services provided outside the implementation period. All funding approvals and their payment are subject to a four-eye or six-eye principle. With regard to the **financial management and control** of the operational program, administrative and on-site inspections are a key tool for detecting, but also for preventing fraud. The self-assessment tools provided by the European Commission are used on a regular basis.

Other preventive measures include awareness raising efforts towards recipients, for example by informing them of the facts relevant to the subsidy before approval and the criminal liability under the criminal code (StGB); the acknowledgment is confirmed with a signature. Trainings to all actors involved in the administrative and control systems are carried out so that they can for example recognize the warning signs of suspected fraud. The tool Arachne is not used in Germany mainly due to privacy concerns. Other tools developed at EU level (e.g. guides, including the Commission's *Guide to Assessing the Risk of Fraud and Effective and Appropriate Anti-Fraud Measures*, *OLAF Compendium of Anonymous Cases - Structural Policy Measures*, *OLAF Practical Guide to Detecting Conflicts of Interest* and *OLAF Practical Guide to Detecting Falsified Documents*) are considered relevant guidance when defining measures in the management and control systems.

In Germany, as well as in eight other Member States⁶⁸, more than 50% of all estimated and established amounts in fraudulent cases were detected by anti-fraud services.⁶⁹ As for non-fraudulent cases, voluntary admission was the main means of detection.⁷⁰

Germany's legal framework to prevent and tackle fraud is in line with EU and international standards. **Germany has successfully transposed European legal instruments into national law**, including the Protocol of 27 September 1996 to the Convention on the Protection of the European Communities' Financial Interests and the Convention of 26 May 1997 on the Fight against Corruption Involving Officials of the European Communities or officials of Member States of the European Union⁷¹. Furthermore, Germany has transposed the **EU Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive)** into national law (June 2019)⁷², so as to strengthen "the protection of the financial interests of the EU" (*EU-Finanzschutzstärkungsgesetz – EUFinSchStG*)⁷³. This recent law regulates offences relating, for example, to misapplication of funds or assets from the Union budget or budgets managed by the European Union.

The key legislative provisions concerning fraud in Germany are contained, on the one hand, in the **Criminal Code (StGB) (Fraud - sections 263 to 265e)**⁷⁴ which applies to individuals, and, on the other hand, in the **Administrative Offences Act (OWiG)**, which holds companies civilly liable for corruption offenses committed by their representatives. The Criminal Code Section 264 on subsidy fraud

⁶⁸ Ireland, Spain, France, Italy, Lithuania, Austria, Romania and Slovenia.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ <https://www.mondaq.com/germany/criminal-law/861122/anti-corruption-bribery-comparative-guide>

⁷² <https://www.buzer.de/gesetz/13459/index.htm>

⁷³ <https://eucrim.eu/news/germany-legislative-draft-implementation-pif-directive-tabled/>

⁷⁴ https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html

particularly penalises different types of cases, with e.g. serious cases being considered those in which offenders “acquire, out of gross self-interest or by using forged or falsified documentation, an unjustified, large subsidy for themselves or another” or “abuse their powers or position as a public official or European official”. “Subsidy” in this context is defined as “benefit from public funds under federal or Länder law” as well as “benefit from public funds under the law of the European Union”; the law applies *i.a.* to offenders acting as German public officials or EU officials.⁷⁵

Public officials are obliged to report reasonable suspicion of corruption to the highest service authority or law enforcement agency under the Act on Federal Civil Servants (*Bundesbeamten-gesetz*, BBG). In addition, other pieces of legislation contributing to the prevention of corruption and fraud are: the German Constitution, also known as the Basic Law of Germany (GG), the Federal Budget Code (*Bundeshaushaltsordnung*, BHO), the Federal Civil Servant Status Act (*BeamStG*), the Act against Restraints of Competition (GWB), the Freedom of Information Act (IFG), and the Act on International Legal Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*, IRG).^{76,77}

More broadly, and as part of its efforts to fight cross-border corruption, Germany is part of the **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**, the **UN Convention against Corruption (UNCAC)**, the **UN Convention Against Transnational Organised Crime (UNTOC)** as well as the **Criminal Law Convention on Corruption of the Council of Europe** and a supplementary protocol.

Possible good practices

No specific national anti-fraud strategy exists in Germany⁷⁸. In the context of **EU funding under shared management** specifically, however, several measures and best practices aim to minimise the risk of fraud. Germany reported adopting operational anti-fraud measures in the form of self-assessment of the fraud risk in relation to the European Social Fund (ESF) in 2019, as well as an administrative measure which addresses agriculture and fisheries and aims to raise awareness on conflicts of interest among competent authorities.⁷⁹ In terms of best practice, the new Competition Register for Public Procurement brings together information on whether a company must or can be excluded from an award procedure due to having committed relevant offences, accessible in a national database for public contracting authorities, sector contracting entities and concession grantors with information to assess.⁸⁰

⁷⁵ https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html

⁷⁶ <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/17-18December2019/V1911805e.pdf>

⁷⁷ <https://www.ganintegrity.com/portal/country-profiles/germany/>

⁷⁸ https://www.eca.europa.eu/Lists/ECADocuments/SR19_06/SR_FRAUD_COHESION_EN.pdf

⁷⁹ European Commission (2020). Annex to the 31st Annual Report on the protection of the European Union's financial interests - Fight against fraud – 2019

⁸⁰ https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/competition-register_en

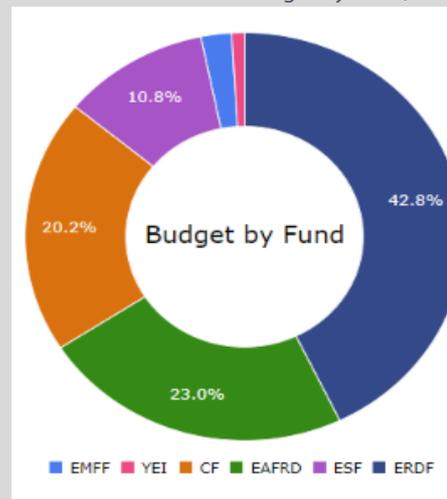
Latvia

Context

In the funding period 2014-2020, the ESI Funds was made up of a budget of about €454bn, of which Latvia received around **€6.1bn** divided as follows⁸¹:

- EUR 2.6 billion (42.8% of total ESI) via the European Regional Development Fund (ERDF)
- EUR 668 million (10.8%) via the European Social Fund (ESF)
- EUR 1.4 billion (23%) via the European Agricultural Fund for Rural Development (EAFRD)
- EUR 139 million (2.3%) via the European Maritime and Fisheries Fund (EMFF)
- EUR 1.2 billion (20.2%) via the Cohesion Fund (CF)
- EUR 58 million via the Youth Employment Initiative (YEI)

Figure 4 ESIF 2014-2020: Latvia Budget by Fund, EUR



For the 2014-2020 planning period, Latvia had one overarching programme, through which it channelled its ERDF, ESF and CF funds, known as the “Growth and Employment” programme. The Growth and Employment programme had nine interrelated and integrated investment priorities, which covered a wide range of policy areas including R&D, infrastructure, the labour market, sustainability and SME competitiveness among others⁸².

The management arrangements of the shared management funds were reorganised during the 2014-2020 planning period. In contrast to the 2007-2013 planning period, where six different agencies attached to line ministries were in charge of the management of the funds, the beginning of the previous programming period was marked by the creation of a new agency, the Central Finance and Contracting Agency (CFCA), in charge of the management of all ESI funds. CFCA was set up to provide direct services to applicants and beneficiaries, to perform project selection, to ensure adequate implementation, and to advise on payments and other fund-management issues.

In addition, the Ministry of Finance performs the function of Managing Authority. It is tasked with the management and implementation of EU funds. The Managing Authority, in cooperation with the responsible authorities and in consultation with social, non-governmental and regional partners, develops the planning documentation, thus ensuring compliance with the partnership principle in the preparation of planning documents as well as ensuring cross-sectoral coordination of EU funds. The Ministry of Finance is also responsible for the establishment and maintenance of the EU funds management information system, which provides the basis for the evaluation and monitoring of the funds⁸³.

⁸¹ <https://cohesiondata.ec.europa.eu/countries/LV>

⁸² https://ec.europa.eu/regional_policy/en/katlas/programmes/2014-2020/latvia/2014lv16maop001

⁸³ <https://www.esfondi.lv/2014-2020>

Scale of the problem and types of fraud most common in Member State

Given the large size of the ESI Funds disbursed to Latvia, fraud and misuse of funds remain an important concern. In addition, given Latvia's strategic geographical location, at the crossroad between Asia and Europe, this Member State is susceptible to organised crime group activities which can affect EU funds. According to the Europe Anti-Fraud Office (OLAF), **36 fraudulent and 96 non-fraudulent irregularities were reported between 2015 and 2019**⁸⁴. According to the Latvian AFCOS, **in 2020, several fraudulent irregularities were reported amounting to a sum of €5,543,226**, of which the following breakdown was provided (in decreasing order)⁸⁵:

- €3,468,980 affecting the ERDF
- €1,259,702 affecting the EAFRD
- €596,163 affecting the EMFF
- €218,381 affecting the ESF

In 2019, there was one irregularity reported as fraudulent regarding agricultural policy amounting to a potential loss of €19,302. 10 further irregularities were also reported as fraudulent in funds dedicated to cohesion policy and fisheries, representing €9,475,407⁸⁶. It should be noted that these figures are likely to be undercounts as several stakeholders have raised doubts on the accuracy of the above-mentioned figures.

According to the AFCOS, the main type of fraud is procurement fraud, which involves the forging of documents and the misappropriation of financial resources. The most common type of forgery includes the falsification of documents during tendering procedures, with for example, tax declarations being submitted for entities that do not exist.

Procurement fraud can occur both when procuring from the EU, but also when subcontracting to local entities. The AFCOS noted that it is difficult to clearly determine whether the procurement irregularities they identify are indeed fraudulent. In addition, it is difficult for the AFCOS to identify the frauds as they are being perpetrated and, in most cases, fraudulent cases are only discovered after the procurement process has taken place.

One type of fraud that was highlighted by stakeholders consulted takes place in the EAFRD fund, where machinery fraud is a pattern of fraud identified by the AFCOS. This entails the purchasing of machinery and equipment in other Member States and third countries (e.g. Belarus) to hike prices. Another issue reported regarding this type of fraud lies in the purchasing of second-hand machinery when only innovative machinery is eligible under the EAFRD.

NGOs in Latvia interviewed for this study have indicated that they do not have other figures besides those reported through IMS. Nonetheless, they have pointed out that the Corruption Prevention and Combating Bureau's (KNAB) new strategy has stressed the need to tackle fraud of EU funds and characterized the issue as serious.

While there is a lack of information regarding patterns of fraud affecting EU funds reported by civil society organisations and the media, two high-profile investigations were identified from the desk research. In 2019, the Latvian State Police arrested five individuals suspected to have defrauded over € 4m from EU Regional Development Funds and from funds of the Latvian Investment and Development Agency⁸⁷.

⁸⁴ [https://www.europarl.europa.eu/cmsdata/213102/COM_COM\(2020\)0363\(ANN\)_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

⁸⁵ Data provided by the Latvian AFCOS, part of the Ministry of Finance.

⁸⁶ [https://www.europarl.europa.eu/cmsdata/213102/COM_COM\(2020\)0363\(ANN\)_EN.pdf](https://www.europarl.europa.eu/cmsdata/213102/COM_COM(2020)0363(ANN)_EN.pdf)

⁸⁷ <https://eng.lsm.lv/article/society/crime/group-under-arrest-over-suspected-4m-eu-funds-fraud.a313227/>

Another high-profile case is the so-called ‘builders’ cartel case’. The Central Finance and Contracts Agency (CFCA)⁸⁸ – the Latvian Managing Authority for EU funds – was in September 2021 contemplating the suspension of the disbursement of EU funds to 12 projects still under construction. It was estimated by CFCA that the cartel could have made projects co-financed by EU funds at least €18m more expensive⁸⁹. In addition, 13 projects were already completed for which fraudulent activity was also suspected. At the time of writing, the investigation regarding this case was still ongoing.

Measures to tackle fraud in shared management, policies and strategies

The Ministry of Finance is responsible for the detection and prevention of fraud to the shared managed funds. To this end, it has set up an EU Funds Audit Department with the goal to detect fraud. This department also acts as Latvia’s AFCOS. The AFCOS monitors and quantifies all irregularities that are identified. In its monitoring, the AFCOS does not separate fraud and irregularities. The AFCOS reports directly to the Cabinet of Ministers.

There are a couple of elements worth noting regarding overarching measures taken in Latvia to combat fraud to the funds under shared management but also to other EU and national funds. First, the PIF directive has been transposed into Latvian criminal law⁹⁰. Second, a new national antifraud strategy has been approved by the Latvian government for the period 2020-2022 that includes new provisions for the cooperation between the AFCOS and OLAF, additional resources for the implementation of the law known as “On Support to the European Anti-Fraud Office” as well as capacity building efforts.

Regarding EU tools, Latvian stakeholders praised Arachne’s effective risk scoring tool in determining the fraud risk profile of final beneficiaries. However, stakeholders also noted that Arachne does not allow for the detection of fraud and noted that this EU tool is not used in the management of the EAFRD.

Regarding EDES, the AFCOS noted that the Managing Authorities had started using this tool, however, its uptake being quite recent and sparse limits the ability of EDES to be fully effective.

Possible good practices

A good practice from the Latvia case lies in the emphasis on prevention and early detection rather than intervention or mitigation. Due to the protracted time to settle cases in the courts, Latvian stakeholders stressed the need to direct more of their efforts towards early detection of irregularities. To this end, the guidance developed and published by OLAF, which offers fraud indicators (also referred to as “red flags”) have been integrated into the fraud detection strategy and have been disseminated across key stakeholders (i.e. audit authorities, police and prosecution authorities) by adapting and updating the red flags according to their national and local context. However, the Latvian stakeholders stressed the need for new a guidance with revised fraud indicators to be issued by OLAF given that the last publication is now 10 years old.

Last, another potential good practice emerging in Latvia lies in their prospective use of additional databases, such as ORBIS, to monitor the financial activities of companies and thus better detect fraud. Indeed, databases such as Arachne only provide data for the EU-27, which does not allow local authorities the possibility to detect fraud in relation to third countries, including China.

Latvia is unique due to the extent of cooperation it has with NGOs and the general public. This can be considered good practice as it involves other institutions in the fight against fraud with different expertise and experience. This is particularly the case with Transparency International Latvia (DELNA)

⁸⁸ The CFCA is a branch of Latvia’s Ministry of Finance.

⁸⁹ <https://bnn-news.com/central-financing-and-contracting-agency-may-cut-eu-financing-to-12-projects-involved-in-construction-cartel-activities-227915>

⁹⁰ <https://likumi.lv/ta/en/en/id/88966-criminal-law>

which cooperates with the Latvian AFCOS and the European Commission for the implementation of integrity pacts (as discussed in 3.5.2 of the main report).

Another area of cooperation is seen in the use of data tools. DELNA has created several data tools for combating both fraud and corruption. In the area of fraud in shared management, DELNA, alongside Transparency International Estonia has created the Opener tool. This tool makes data on beneficiaries of procurement (including for EU funds) publicly available and allows users to identify conflicts of interest, particularly related to membership to political parties.⁹¹ Additionally, in cooperation with DELNA and the national corruption bureau, Latvian authorities have hosted “hackathons”, inviting the general public to manipulate and analyse data on fraud in an attempt to find new ways to detect red flags and find solutions. Those who participated were reportedly very satisfied with the results of such events.⁹²

⁹¹ <https://opener.ee/>

⁹² <https://delna.lv/lv/2021/11/15/sekmigi-nosledzies-pretkorupcijas-datu-hakaton/>

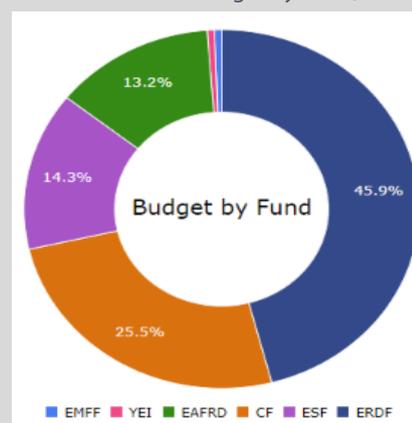
Poland

Context

In Poland, there were a number of operational programmes during the 2014-2020 period: five national, and 16 regional. For the national programmes, the Managing Authority is the Ministry of Investment and Economic Development, however each programme has a sub-department in charge of its activity. During the 2014-2020 programming period, **EUR 90.7 bn** was allocated to Poland. The breakdown of this figure is specified below:

- EUR 41.6 billion through ERDF
- EUR 23.1 billion through CF
- EUR 12.9 billion through ESF
- EUR 11.9 billion through EAFRD
- EUR 539 million through YEI
- EUR 531 million through EMFF

Figure 5 ESIF 2014-2020: Poland Budget by Fund, EUR



- The Development of Eastern Poland was an **ERDF** programme (€2,000,000,000) focusing on infrastructure and increasing innovation through supporting young entrepreneurship and SMEs growth.⁹³ (MA: Department of Supra-Regional Programmes)
- Digital Poland was an **ERDF** programme (€2,392,249,047) that aligned with the EU's Digital Agenda for Europe. It focused on the deployment of fast broadband and development of e-services for public administration, as well as improving digital literacy among the public. (MA: Department of Digital Development).⁹⁴
- The Infrastructure and Environment Programme was an **ERDF** (€4,973,939,282) and Cohesion Fund (€22,436,807,603) programme supporting Poland's shift to a low-carbon economy. This involved reforming transport infrastructure, increasing environmental protection, adapting to climate change conditions, reducing greenhouse gas emissions, and ultimately improving the living conditions of Poland's citizens. (MA: Department of Infrastructural Programmes).⁹⁵
- Smart Growth was an **ERDF** programme (€8,924,473,014) concerned with strengthening research activities and the connections between public research, businesses and the needs of economy in 16 Polish regions. It also involved improving institutional conditions for R&D activities and supporting enterprise innovation. (MA: Department of Innovation and Development Support Programmes).⁹⁶
- Technical Assistance programme was a **Cohesion Fund** programme (€703,123,363) aimed at strengthening Poland's administrative capacity to implement its **ESIF** programmes. (MA: Department of Aid Programmes).⁹⁷

For the regional programmes, each one was managed by the regional authority. A summary of which shared management funds, and funding amounts, are listed below:

- ROP 1: ERDF (€1,618,916,106); ESF (€633,630,483)
- ROP 2: ERDF (€1,368,083,592); ESF (€535,456,695)

⁹³ https://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/poland/2014pl16rfop003

⁹⁴ https://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/poland/2014pl16rfop002

⁹⁵ https://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/poland/2014pl16m1op001

⁹⁶ https://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/poland/2014pl16rfop001

⁹⁷ https://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/poland/2014pl16cfta001

- ROP 3: ERDF (€1,603,400,406); ESF: (€627,557,768)
- ROP 4: ERDF (€657,463,449); ESF (€249,466,244)
- ROP 5: ERDF (€1,621,433,387); ESF (€634,615,728)
- ROP 6: ERDF (€2,071,528,510); ESF (€806,633,462)
- ROP 7: ERDF (€1,569,733,875); ESF (€545,153,821)
- ROP 8: ERDF (€679,152,913); ESF (€265,814,879)
- ROP 9: ERDF (€1,519,517,194); ESF (€594,726,566)
- ROP 10: ERDF (€877,582,526); ESF (€336,013,351)
- ROP 11: ERDF (€1,340,249,168); ESF (€524,562,530)
- ROP 12: ERDF (€2,498,891,499); ESF (€978,045,635)
- ROP 13: ERDF (€987,745,674); ESF (€376,797,919)
- ROP 14: ERDF (€1,242,117,496); ESF (€486,154,599)
- ROP 15: ERDF (€1,760,975,177); ESF (€698,231,240)
- ROP 16: ERDF (€1,178,818,353); ESF (€422,420,863)

Scale of the problem and types of fraud most common in Member State

In the 2020 PIF report, five irregularities were reported as fraudulent in Cohesion Policy and Fisheries, with a total cost of €8,291,118.⁹⁸ In Agriculture, six irregularities were reported as fraudulent, with €363,041 total cost.

Interviewees mentioned that the types of fraud detected by the Ministry of Finance include false declaration of taxpayer status, purchasing services at much higher prices than they are on the market, bid rigging, false declarations and documents for co-financing, and other forms of procurement fraud. Procurement fraud is the most common type in Poland, but often cases do not come to the attention of the national prosecutors' offices. Unfortunately, data on the prevalence or frequency of these types of fraud is not available, either because the amounts concerned do not meet the IMS threshold of €10,000, or because there is only limited access to the national prosecutor's data. According to interviewees, the groups who can access the data are international organisations (need to apply directly to the NP), the Ministry of Finance, and the managing authorities.

Interviewees indicated the average number of pending prosecutions each year is approximately 200-300, however the number has shown to be much greater between 2017 and 2020. Another individual interviewed mentioned that, in 2020, there were 493 proceedings involving EU funds. The majority of these proceedings concerned obtaining undue subsidies for agricultural land. There were also a significant number of proceedings concerning regional Operational Programmes. In terms of National Operational Programmes, the largest number of proceedings concerned the Knowledge Education Development and the Innovative Economy OPs. In addition, in 138 of those 493 proceedings, a bill of indictment or a petition for conviction was submitted to the Court. Convictions are reported to the *Register of Entities Excluded from the Possibility of Receiving Funds Allocated for the Implementation of Programs Financed with the Participation of European Funds*.

Authorities in Poland have indicated that those most likely to perpetuate fraud against EU funds are initially individuals, but who later on attempt to expand their businesses by involving other actors, or less conscious people. They are "both natural persons and organised criminal groups."

Measures to tackle fraud in shared management, policies and strategies

Within the **Ministry of Finance**, there are a few departments responsible for tackling fraud specifically in shared management in Poland:

⁹⁸ European Commission. (2020). *Report from the Commission to the European Parliament and the Council 29th Annual Report on the Protection of the European Union's financial interests—Fight against fraud- 2020*. Brussels.

- **The Department for Audit of Public Funds:** Tasked with audit and AFCOS tasks for funds originating from the EU and non-refundable funds from foreign sources, this department also plays a key role alongside the Interministerial Anti-Fraud Unit and the Government Commissioner for Combating Fraud against Poland or the European Union.⁹⁹
- **The Department for Protection of EU Financial Interests:** This department primarily implements the General Inspector of Treasury Control's tasks, such as quality control in transferring Poland's own funds to the EU budget. Its scope encapsulates funds deriving from the EU budget and non-returnable funds from assistance granted by member states of the EFTA (European Free Trade Agreement).¹⁰⁰
- **The President of the Public Procurement Office** performs official ex-ante control of public procurement of significant value.

In 2009, Poland's **Ministry of Development Funds and Regional Policy**¹⁰¹ created a **Cross-Check IT Mechanism**, which helps the beneficiaries responsible for implementing operational programmes to check for irregularities in the funding of their expenditures.¹⁰² The Mechanism allows users to check for double financing of expenditure. Using a tool called OBIEE, Ministry employees can generate reports that can determine whether the double financing was done intentionally, in which case the situation is investigated and reported to OLAF.¹⁰³ This has been cited as good practice in the EU. The tool conducts three types of cross checks: program, horizontal, and inter-periodic. Each one is performed based on the type of potential irregularity and the concerned beneficiary's activity.

Since its creation, the Mechanism has helped improve the overall quality of data and prevents double payments based on incorrect information going through. This can reduce the time and resources spent sorting through, analysing and investigating potential irregularities, and provides an educational opportunity for beneficiaries, as they can better infer patterns or themes in the data and understand any predictors of a fraud case. Irregularities of all sizes are detected, preventing fraud, particularly via double funding.¹⁰⁴ A few challenges have been encountered in the development of this Mechanism, mainly that the introduction of preventative cross-checking proved to be ineffective. In response to this, the Commission indicated to the authorities the requirements needed to "avoiding double financing on the level of projects' expenditure. Cross check mechanisms follow these requirements."¹⁰⁵

The Polish NGO, ePaństwo Foundation, is part of the **RECORD (Reducing Corruption Risks and Data)** project, created in conjunction with Hungary, Romania, and Spain. This cross-border tool aims to analyse the public procurement data in different Member States, accounting for the different formats, regulations, gaps in datasets, and fraud environments.¹⁰⁶ Also part of this toolkit are training materials for stakeholders on how to use open-source data to identify such risks and engage in advocacy against such issues, and a series of micro-learning materials.

⁹⁹ Ministry of Finance. (n.d.). *Department for Audit of Public Funds*. Gov.pl. [online] Available at: <https://www.gov.pl/web/finance/department-for-audit-of-public-funds>

¹⁰⁰ Ministry of Finance (2016). *Department for Protection of EU Financial Interests*. Ministry of Finance. [online] Available at: http://mf-arch.mf.gov.pl/en/ministry-of-finance/ministry/departments/-/asset_publisher/6ZjG/content/department-for-protection-of-eu-financial-interests?redirect=http%3A%2F%2Fmf-arch.mf.gov.pl%2Fen%2Fministry-of-finance%2Fministry%2Fdepartments%3Fp_p_id%3D101_INSTANCE_6ZjG%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1

¹⁰¹ Ministry of Development Funds and Regional Policy. (n.d.). *What We Do*. Gov.pl. [online] Available at: <https://www.gov.pl/web/funds-regional-policy/what-we-do1>

¹⁰² gov.pl. (n.d.). Ministry of Funds and Regional Policy. <https://www.gov.pl/web/fundusze-regiony>

¹⁰³ Anti-Fraud Knowledge Centre. (n.d.). Cross-Check IT Mechanism. European Commission. [online] Available at: https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/cross-check-it-mechanism_en

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Anti-Fraud Knowledge Centre. (n.d.). Tenders GURU. European Commission. [online] Available at: https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/tenders-guru_en

As part of RECORD, the Tenders GURU data analytics tool “allows the users to investigate additional layers of information,” as well as “investigate procurement cases and compare them between countries.”¹⁰⁷ ePaństwo Foundation listed the following benefits of the Tenders GURU tool: clean data (is machine-readable, allows for trustworthy filters and analysis, as well as profound complexity), number of filters (allows for granularity and more specificity), and open-source code (for widespread usage).

Because the tool was only recently launched in 2021, and because Tenders GURU does not collect data on who uses the portal or how the data helped detect fraud cases, it is difficult to apprehend a full picture of its impacts and efficacy thus far. Presently, “the project team observed low interest of public administration in using the tool. Moreover, there is a certain level of reluctance from the public administrations in some countries to use the tool and release more information on public procurement.”¹⁰⁸ Given this is a participatory project, it can only succeed if all Member States cooperate and demonstrate the value in a unified approach to identifying fraud in procurement data.

A further challenge is that the data itself is “not sufficient for efficient anti-fraud activities. It should be combined with effective capacity building.”¹⁰⁹

In terms of cross-border activity, Poland has strengthened its risk analysis abilities to detect fraud and irregularities through the use of IT tools like ARACHNE.¹¹⁰ However, interviewees stated that Poland does not use ARACHNE specifically, as the department responsible for helping programmes and departments manage shared management programmes is concerned about ARACHNE’s irregularity monitoring tools. Hence, Poland developed the Cross-Check IT Management System.

When it comes to the IMS, interviewees have pointed out that reporting can only include irregularities that amount to €10,000 or over. This means several cases of fraud are not reported to the Commission because they fall below this threshold. Those in charge of reporting to the IMS can access the national prosecutor’s data which is not publicly available.

While Poland has demonstrated good practices (elaborated on further below) in its management of EU funds, some academics and investigative journalists have argued that the fight against fraud in Poland has been hampered due to the weakening of control mechanisms intended to safeguard EU funds. Concerns have been raised in Poland around the distribution of the NextGenerationEU funds^{111,112} as it is going to be a major recipient of the recovery programme. The Polish government has firmly rejected this characterisation in response to the European Commission letter.

Possible good practices

Poland has a **Central Anti-Corruption Bureau (CBA)** with policing and monitoring powers. Anyone can report incidents or irregularities via an online form.¹¹³ In 2012, it invested in the creation of anti-

¹⁰⁷ [Ibid](#)

¹⁰⁸ [Ibid](#)

¹⁰⁹ Anti-Fraud Knowledge Centre. (n.d.). Tenders GURU. European Commission. [online] Available at: https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/tenders-guru_en

¹¹⁰ European Commission. (2020). *Report from the Commission to the European Parliament and the Council 31st Annual Report on the Protection of the European Union’s financial interests—Fight against fraud- 2019*. Brussels. Available at: https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2019_en.pdf

¹¹¹ <https://www.euractiv.pl/section/instytucje-ue/interview/jak-fundusz-odbudowy-moze-wesprzec-wielka-korupcje-w-polsce-wywiad/>

¹¹² <https://www.politico.eu/article/eu-commission-questions-hungary-on-corruption-judiciary/>

¹¹³ Central Anti-Corruption Bureau. (n.d.). Submissions. CBA. [online] Available at: <https://cba.gov.pl/pl/zgloszenie>

fraud training e-learning platform.¹¹⁴ The platform launched in 2014 “was the first generally accessible internet platform in Poland containing anti-corruption training sessions.”¹¹⁵

Such training sessions include Corruption in public administration, Corruption in business, and Counteracting corruption, and are available in both Polish and English. Since 2014, the platform has adapted its course materials to reflect recent trends, as well as its data policies in light of the GDPR.

The CBA has promoted the English version of the platform among other European anti-corruption authorities, as well as Europol, GRECO, and the European Anti-Corruption Network; it has also utilised social media to update the public with the number of users registered for its courses. The good practices highlighted in this case include:

- Establishing a national anti-corruption strategy, which not only obliges public authorities to provide anti-corruption training to all employees, but also encourages public discussion on the matter among all ages;
- Free access to the platform;
- Access to a database of fraud case studies, as well as historical data to “forecast fraud trends and propose relevant content to the users”;
- Validity of certificate of completion is recognised, with some HR teams requiring it as part of a hiring process.¹¹⁶

The **Ministry of Funds and Regional Policy** has online forms that whistleblowers can fill out for suspected irregularities in different Operational Programmes, such as Digital Poland, the OP for Technical Assistance and the OP Infrastructure an Environment. Although these OPs are for the 2014-2020 period, the website specifies that the **deadline for reporting irregularities is 31 December 2022**.¹¹⁷ This allows for retroactive reporting, and gives stakeholders plenty of time to gather evidence for their cases. In addition, a Red Flag identification tool has been prepared for the financial period 2021-2027. Instead of analysing documents, this tool will analyse information about an entity. This will help administrators responsible for verification of application or control.

In addition, the examples mentioned above, such as RECORD and the Tenders GURU analytics tool, exemplify good practice, as they aim to develop a unified, free to use approach/toolkit across relevant stakeholders that policymakers, civil society organisations and journalists can use to monitor public procurement and identify corruption risks.

The *Register of Entities Excluded from the Possibility of Receiving Funds Allocated for the Implementation of Programs Financed with the Participation of European Funds* is a useful, updated list of convicted individuals and organisations. The circumstances that would cause a beneficiary to be excluded are:

- Forgery of documents on the basis of which the payment was made;
- No return of funds with interest within 14 days from the date of the lapse, or 14 days from the delivery of the final decision to return the funds;
- Committing a crime

Interviewees mentioned that the Managing Authorities’ administrative capacity is regularly checked during annual system audits. The final report is then published by the Ministry of Funds. They also suggested a **tool containing information on all countries**, including Eastern European countries that are not EU Member States. They cautioned that, should such a tool be implemented, it must be as horizontal and unified as possible, and not contrast national-level regulations and systems.

¹¹⁴ Central Anti-Corruption Bureau. (n.d.). Welcome to the e-learning platform. CBA. [online] Available at: <https://szkolenia-antykorypcyjne.edu.pl/>

¹¹⁵ Anti-Fraud Knowledge Centre. (n.d.). E-learning platform of the Central Anti-corruption Bureau. European Commission. [online] Available at: https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices/e-learning-platform-central-anti-corruption_en

¹¹⁶ Ibid

¹¹⁷ Ministerstwo Funduszy i Polityki Regionalnej. (n.d.). *eForms*. <https://nieprawidlowosci.mfipr.gov.pl/>

Portugal

Context

In 2014-2020, Portugal managed eleven operational programmes under EU Cohesion Policy. Seven regional operational programmes received funding from the European Regional Development Fund (ERDF) and the European Social Fund (ESF). One operational programme received funding from the ERDF, the ESF and the Cohesion Fund. Two operational programmes received funding from the ESF. One operational programme received funding from the Cohesion Fund.

For 2014-2020, Portugal had been allocated around **Euro 28.8 billion** in total Cohesion Policy funding:

- Euro 12.3 billion through ERDF
- Euro 7.4 billion through ESF
- Euro 5.4 billion through EAFRD
- Euro 2.7 billion through CF
- Euro 450 million through YEI
- Euro 392 million through EMFF

At a regional level:

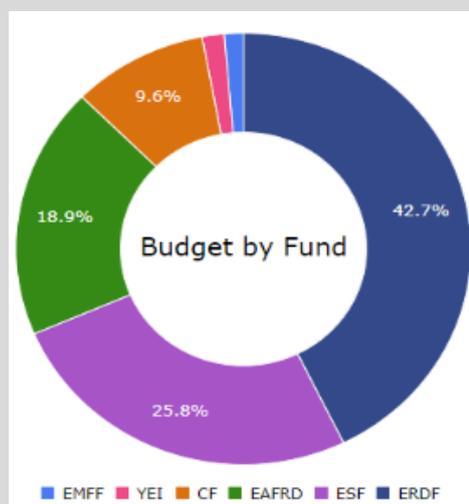
- **€ 16.67 billion** for less developed regions (Norte, Centro, Alentejo and Açores);
- **€ 257.6 million** for transition regions (Algarve);
- **€ 1.28 billion** for more developed regions (Lisboa and Madeira);
- **€ 2.86 billion** through the Cohesion Fund;
- **€ 122.4 million** for European Territorial Cooperation;
- **€ 115.7 million** special allocation for the outermost regions;
- **€ 160.8 million** for the Youth Employment Initiative.

Of this, ESF in Portugal represent **€ 7.6 billion** which aimed to redress the social impact of the economic crisis and support a job-rich recovery.¹¹⁸

In Portugal, the shared management funds are administrated by the national Managing Authorities (MAs) which in turn have Intermediate Bodies (IB) in charge of specific thematic areas of the programmes. In PT 2020 the MAs have delegated relevant functions in the scope of management and control to 27 Intermediate Bodies, whose financial, human and technological means are substantially different, thus:

- 63% of the entities with application approval functions are Intermediate Bodies
- 74 % of payment preparation entities are IB
- 70 % of payment approvers are IB
- 71 % of those with responsibilities for on-the-spot controls are IB

Figure 6 ESIF 2014-2020: Portugal Budget by Fund, EUR



¹¹⁸ https://ec.europa.eu/regional_policy/en/atlas/

Scale of the problem and types of fraud most common in Member State

Besides the figures reported via IMS, there is no information available on the scale of the problem in relation to fraud and other criminal activities in EU funds in Portugal. A study on fraud has been launched by Think Tank – Risco de Fraude Recursos Financeiros da Uniao Europeia¹¹⁹ which may shed light on how serious the problem is in Portugal, or possibly provide an estimate for fraud. However, the team responsible for that study is in the process of collecting data, the size and quality of which will determine the breadth and depth of the work to be done. An individual at the think tank noted in an interview that the study was confronted with the difficulty that the existing data, from different sources, is not consistent and an initial phase of the research will need to be dedicated towards its harmonization.

According to the PIF Report, Portugal has tendency to target projects involving a higher expenditure. For both the ERDF and the ESF, Portugal detected and reported fraudulent cases with large financial amounts, exceeding in some cases the financial amount of more than € 10 million. However, except for these cases, it has been argued that the declared fraud in Portugal does not correspond with the actual situation, since there are serious information gaps in the data reported to IMS. According to the interviewees, these gaps could be due to:

- The lack of reliable data by the Certification Authorities to the Audit Authority. The supply, provisioning and the source of information guaranteed by the Audit Authority is not subject to any cross-checking or validation.
- The lack of a manual of operation or similar document which articulates clearly the responsibilities of the different entities involved in the management and control of funds and the bodies responsible for criminal prosecution. To date, such procedures have been carried out on a case-by-case basis and have not been standardized.

In relation to the latter, there have been attempts to standardize the data managing authorities are required to send to the criminal prosecution authorities. In 2020, protocols were signed between the Central Department for Criminal Investigation (DCIAP), one Managing Authority (the Financing Institute for Agriculture and Fisheries (IFAP)), and the Competition Authority (ADC). In 2021, additions to the mentioned protocols were formalized in order to harmonize the procedures regarding the denunciations for the start of criminal investigations. A protocol was attempted with the audit authority, but with no response to date. Based on information from DCIAP, the Think Tank listed some recurrent fraudulent practices associated with certain types of expenses:

Fraudulent practice	Type of expenditure
Inflated costs with or without recourse to subcontracting	<ul style="list-style-type: none"> ▪ Training ▪ Consultancy ▪ Purchase of industrial equipment
Fictitious transactions in full or in part	<ul style="list-style-type: none"> ▪ Training ▪ Consultancy ▪ Purchasing of publicity items
Transactions carried out outside the eligibility period	<ul style="list-style-type: none"> ▪ N/A
Transactions carried out outside the scope of the project (period and purpose) or against eligibility rules	<ul style="list-style-type: none"> ▪ Purchase of industrial equipment ▪ Purchase of industrial equipment

Even though it is no possible to identify fraud patterns, the Think Tank noted that the intervention of certain entities with responsibilities in the management and control of funds (such as Intermediate Bodies) should be watched carefully, especially those that operate in geographically small areas within

¹¹⁹ <https://thinktank-fundosue.ministeriopublico.pt/node#sobre-think-tank>

the scope of regional programmes (easier collusion / conflict of interest) such as the Autonomous Regions of Madeira and Azores.

Measures to tackle fraud in shared management, policies and strategies

Since 1994, Portugal legislation allows the Public Ministry and the Judiciary Police to carry out preventive actions in relation to crimes of corruption, embezzlement, economic participation in business, fraud in obtaining or diversion of subsidy, subsidy or credit and infractions economic and financial activities with a transnational, international or organized dimension (Lei n.º 36/94, de 29 de setembro). Several policies have been implemented since, such as the National Strategy to Fight Corruption (2020-2024)¹²⁰.

The Strategy comes with an anti-corruption legislative package, which is, as of writing, pending approval. The legislative measures proposed within the package, include the approval of the Decree-Law establishing the National Anti-Corruption Mechanism and establishing the General Regime for the Prevention of Corruption. These measures oblige certain types of companies and institutions that employ 50 or more workers to adopt programs for risk prevention, codes of conduct, reporting channels, and training programs for the prevention of corruption and related offences.¹²¹

Although the Strategy to Fight Corruption mentions fraud, according to some investigative authorities consulted, it does not effectively address the issue. In their view, a specific strategy on anti-fraud would be necessary to tackle the problem. Portugal reported to the Commission that it already implemented a national **Anti-Fraud Strategy**; however, the Commission has not formally received the communication of this adoption. According to several articles, the anti-fraud strategy is not public and there is little information concerning its content. Although some sources affirm that the anti-fraud strategy will essentially include the adaptation of Codes of Ethics and Conduct; of Anti-Fraud Policy Statements; Corruption and Related Offences Risk Management Plans; Declarations of Inexistence of Impediments and Incompatibilities; Risk Management Manuals, and the implementation of schemes for whistleblowers.¹²²

These measures will have to be harmonised with the upcoming anti-corruption legislative package and with the "Recover Portugal Plan" - *Plano de Recuperação e Resiliência português* ("PRR"), which defines and plans a set of reforms and investments to transform the economy with grants and funds provided by the Next Generation EU Recovery and Resilience Facility ("MRR"). Both policies are developing various anti-fraud measures and instruments aimed at creating an effective internal control system for investments, which contributes to preventing, detecting, and reporting irregularities and fraud; taking the necessary corrective measures; preventing duplication of aid, and creating mechanisms for recovering amounts unduly paid or misused.

However, after more than six months since its announcement, sources have argued that there is no information when these measures will be submitted for approval by the President of the Republic, nor their content. While it is certain that the funds will be provided to Portugal, as long as the national anti-corruption strategy is not defined and legally enshrined, it cannot be guaranteed that the governance model of European funds will be fully implemented.^{123,124}

¹²⁰ <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3d%3dBQAAAB%2bLCAAAAAABAAzNDAXMQAAnRDZFAUAAAA%3d>

¹²¹ <https://www.dn.pt/politica/fraude-nos-fundos-europeus-portugal-entre-os-bons-alunos-14179064.html>

¹²² <https://adcecija.pt/en/flash-alert-plano-antifraude-como-medida-essencial-para-a-execucao-do-plano-de-recuperacao-e-resiliencia/>

¹²³ <https://observador.pt/2021/12/02/bruxelas-exige-que-portugal-transponha-corretamente-regras-da-uniao-europeia-contra-fraude/>

¹²⁴ <https://expresso.pt/economia/2021-12-05-Gestor-do-PRR-alia-se-a-Ordem-dos-Contabilistas-para-melhor-controlar-a-bazuca-e34dcfc7>

Some of the tools developed at the EU level are used in Portugal to help tackle fraud in the EU funds under shared management, this is particularly the case for the Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures. The Commission through this tool provides assistance and recommendations to managing authorities (MAs) for the implementation of Article 125(4)(c) CPR, which lays down that the MA shall put in place effective and proportionate anti-fraud measures taking into account the risks identified. The Commission also provides guidance for the audit authority's (AA) verification of the compliance of the MA with this article.

In Portugal, the majority of MAs use this tool, mainly because the audit authorities recommended MAs to implement risk assessment tools. However, according to the interviewees there are some MAs that are not using the self-risk assessment tool. The reasons given by these MAs were that in order to use this tool more human resources are needed; there is a lack of articulation between MAs and intermediate bodies; a non-existence of a systematized internal methodology; and an absence of attribution of the corresponding responsibility.

In relation to ARACHNE, the interviewees noted that its use is very limited. In their view, a possible reason for not using the tool or for the sporadic use by the few entities that do use it is the administrative burden that could mean for managing authorities. The effectiveness of ARACHE depends on its continuous supply of information by managing authorities and its articulation between entities. This translates into additional administrative responsibilities for the managing authorities that could go against their incentives to approve funding.

Possible good practices

Apart from the measures mentioned, Portugal have adopted some approaches to tackle fraud that could be considered 'good practices'. These include:

- The BASE Portal- It contains all relevant information on public procurement extracted from different sources such as the Public Works Observatory, an information system that monitors public procurement in Portugal (Observatório das Obras Públicas); the national electronic official journal; electronic public procurement platforms and contracting entities. The BASE portal centralises all the information on current, upcoming and concluded public contracts to serve as a forum for dialogue with the stakeholder involved in public procurement with citizens, who can monitor public spending.
- NUIX tools- The Department of Criminal Investigation of the Prosecutor General's Office (DCIAP) used a grant (Hercules) to design and furnish a computer forensics lab with NUIX, a hardware and software that facilitates the handling of digital evidence. The equipment purchased allows for the extraction, analysis, exportation and storage of mass data in a systematic, fast and secure way, substantially reducing the length of investigations.

However, without an integrated approach to the entire governance system, it is difficult to ensure that each entity implements best practices. Therefore, it will be up to the MA to ensure the dissemination of best practices. In addition, any anti-fraud measure or policy must be based on concrete knowledge of the situation on the ground. As noted earlier, there are evident information gaps in Portugal. As an interviewee noted, the best contribution would be a thorough evaluation of the situation with an aim to estimate the extent of undeclared and unknown fraud. Such an evaluation could be made part of a NAFS which, according to one individual consulted and in contrast to the PIF report, Portugal does not have.¹²⁵

¹²⁵ The PIF report notes that Portugal has a NAFS but that it has not been reported to the Commission. One interviewee argued that this is not in fact the case and that Portugal has not developed one.

Romania

Context

In the financial period 2014-2020, Romania benefited from an allocation of EUR 30,84 billion from ESI funds, with a national contribution of EUR 5.63 billion. Therefore, the total ESI budget for Romania in this programming period is **EURO 34.7 billion Euros**, for investments in various fields. For ESI funds, the allocation is distributed as follows:

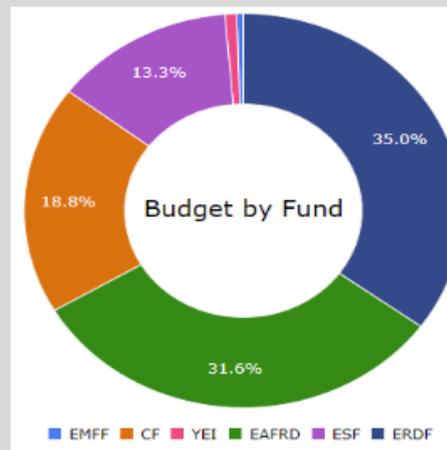
- EURO 12.1 billion through the ERDF
- EURO 10.9 billion through the EAFRD
- EURO 6.5 billion through the CF
- EURO 4.6 billion through the ESF
- EURO 168 million through the EMFF
- EURO 303 million through the YEI

After the Partnership Agreement was adopted, the European Commission together with the national authorities agreed on eight operational programmes to be financed through ESI, complemented by a set of European Territorial Cooperation Programmes:

- Operational Programme Large Infrastructure (OPLI);
- Regional Operational Programme (ROP);
- Operational Programme Administrative Capacity (OPAC);
- Operational Programme Human Capital (OPHC);
- Competitiveness Operational Programme (COP);
- Operational Programme on Technical Assistance (OPTA);
- National Rural Development Program (NRDP);
- Operational Programme for Fisheries and Maritime Affairs (OPFMA);
- Cross-Border, Interregional, Transnational Cooperation Programmes¹²⁶ (INTERREG).

Each Operational Programme is managed by a Managing Authority (MA). Related to the management of ESI funds, the MA responsible for the coordination and implementation of the funds allocated for one operation programme is also the main authorizing officer which centralizes the payments made to the beneficiaries and prepares the statements of expenditure which are sent to the Paying Certification Authority within the Ministry of Finance. The Certifying and Paying Authority (ACP) is the body that receives the ESI funds transferred by the European Commission and makes payments to the MA. In order to carry out the activities related to the flow of funds, an agreement between the Ministry of Finance (MoF) and the National Bank of Romania (NBR) was adopted. Based on this agreement, MoF opened a euro account at NBR, made available to ACP. From this account, the ACP transfers to the MAs the amounts necessary to be paid to the beneficiaries. All these transfers are based on the justified requests. Therefore, the ACP, on the basis of the expenditure statements submitted by the MA, issues the interim payment applications and send them to the EC for reimbursement¹²⁷.

Figure 7 ESIF 2014-2020: Romania Budget by Fund, EUR



¹²⁶ <https://www.fonduri-structurale.ro/fondurile-esi-pe-scurt>

¹²⁷ <https://www.curteadeconturi.ro/fondurile-europene-structurale-si-de-investitii-fesi>

Scale of the problem and types of fraud most common in Member State

According to 'Protection of the Financial Interests of the Union' 2020, Romania has the highest number of irregularities reported as fraudulent from the EU Member States. In 2020, the European Anti-Fraud Office (OLAF) estimated 237 irregularities reported as fraudulent, affecting the EU's financial interest in Romania, on the expenditure side. The reported cases have taken place in the context of the Common Agriculture Policy (148), the Cohesion Policy and Fisheries (87), plus two pre-accession fraudulent cases. The number of cases reported in Romania represent almost half of the irregularities reported to the EU level, which are 536 (in the context of the Common Agriculture Policy and the Cohesion Policy and Fisheries).¹²⁸

In Romania, the rate of detection of irregularities is a little over 2.5%, and the rate of detection of fraud is about 1.5%.¹²⁹

According to the data provided by DLAF for the 2014-2020 programming period, the institution has finalised 76 controls, for the following funds: FC, EAFRD, ERDF, FEPAM and ESF, as follows:

- in 20 cases the issues highlighted were not confirmed;
- 10 cases were closed because during the control action, the National Anti-Corruption Directorate (DNA) or EPPO ordered a judicial solution, for which no further verifications were required by DLAF;
- in one case, implementation irregularities were found;
- suspicions of fraud were found in 45 cases.

The 45 control actions completed with suspected fraud were related to the following non-reimbursable funds / programs:

- EAFRD (NDRP): 20
- ESF: 11 (OPHC:11)
- ERDF: 8 (COP: 3; ROP: 3; Interreg VA: 2)
- CF: 5 (OPLI: 4; 1 OP Environment 2007-2013 phased)
- EMFF: 1

Therefore, EAFRD-funded programmes are the most affected by fraud in Romania.

In the previous programming period, DLAF carried out 1,212 controls, of which 658 actions were completed on suspicion of fraud, the most affected programmes being at that time those financed through the ERDF, with 220 cases (ROP: 125; COP: 81; INTERREG: 12; OPTA: 2).

The interviews showed that in Romania the problem of fraud is serious, but that the country's system has been recognised as having very efficient mechanisms for identifying potential cases of fraud. This efficiency can explain the large number of cases of suspected fraud detected (i.e., currently, 23 cases on COP and 29 cases on OPLI).

In Romania, fraud has found to happen in the **application** phase for EU funds (procurement phase or awarding a contract), in the **implementation** phase or in the **sustainability** phase. Nevertheless, Interviews showed that most fraud cases occur in the award phase, during the procurement procedure. In this phase the most common type of fraud is the **falsification of documentation**: the bidders present false documents such as certificates attesting to a certain experience and forgery of signatures. In previous criminal offences identified, fraud has been found to occur throughout the project chain. Therefore, a false document from the award phase will be in the project documentation throughout the project.

In the implementation phase a type of fraud frequently found is the **changing of destination of planned investments** (i.e., once the money is obtained, it is used for other purposes, either in personal

¹²⁸ http://www.antifrauda.gov.ro/wp-content/uploads/2021/09/pif_report_2020_en.pdf

¹²⁹ European Court of Auditors, *Combating related fraud of EU spending: is necessary to act*, Special Report, 2019 https://www.eca.europa.eu/Lists/ECADocuments/SR19_01/SR_FRAUD_RISKS_RO.pdf

interest or for other projects of the company). Other forms of fraud mentioned by the interviewed authorities include: **illegal requests for VAT refunds**, tax evasion cases, **plagiarism** of research without intellectual property rights and **conflict of interests**.

Finally, in the sustainability phase, a form of fraud is the **production of false documents to justify compliance with sustainability obligations**.

A less common pattern is organized crime, DLAF representatives mentioned that these cases are quite rare.

One of the biggest cases of fraud with European funds was undertaken by the administrator of the Romstrade SRL Company. This specific case has been determined to be associated with organized crime. The administrator was accused of changing, without complying with the legal provisions, the destination of the amount of over 31.5 million lei, representing part of the advance payment received from CNADNR for the design and execution of works on the first section of the Nădlac - Arad highway (approximately 22.3 km). The project was co-financed by the EU Cohesion Fund. The amount was used to pay the outstanding debts of the company, but also to support other directly controlled companies or companies controlled through intermediaries. The money was also used for personal purposes.

Several employees of the company were directed to falsify invoices in order to show that the payments were related to the works on the Nădlac - Arad highway. The money was collected on the basis of invoices attesting to fictitious operations through certain companies. Subsequently, money was returned under premise of 'erroneous payment' or 'undue payment'. These funds were deposited in an account of SC Romstrade SRL which was opened at a different bank than the one through which the payment operations related to the contract for the construction were carried out. The financial size of the fraud reached to around 25,000,000 lei. Furthermore, the two partners in the public procurement contract were deceived by the administrator of Romstrade SRL. The administrator misled the representatives of the two companies as to how he secured the financing of the project, hiding that he had concluded a financing contract with a bank and transferred all the revenues of the association without their consent.

The consequences of this major fraud led to the suspension of payments made by the European Commission, the non-completion of the motorway construction project and a final conviction of the administrator to 11 years and 9 months in prison for fraud with European funds.¹³⁰

In Romania, cases of suspected fraud are found to be committed both on the part of the beneficiary and in other cases by the contractor. Interviews showed that companies, employees of the beneficiary, and subcontractors can all be responsible for committing fraud. Fraud has also been found to be enacted by individuals awarding contracts which can involve setting technical specifications which favour a certain bidder.

Our research has confirmed that all European Funds are affected by fraud. The largest case of possible fraud identified in interviews involves 46 projects funded by a ROP, through the Danube Delta ITI mechanism. The case was difficult to manage because it involves regional funding (i.e., funding in the Danube Delta, a sub-region in Romania, where the Integrated Territorial Investment – ITI is implemented in this programming period), and not national funding which is more common in Romania and for which authorities have more experience. The case came to the attention of the authorities after a press article which highlighted that several projects had not been implemented at the address indicated in the project documents.

On the issue of hidden fraud, it was found that this is very unlikely to exist given the high capacity of the system to identify irregularities in Romania.

¹³⁰ Businessman Nelu Iordache sentenced to 11 years and 9 months in prison for fraud with European funds, Digi 24, **08.09.2021** <https://www.digi24.ro/stiri/actualitate/justitie/afaceristul-nelu-iordache-condamnat-definitiv-la-11-ani-si-9-luni-de-inchisoare-pentru-fraude-cu-fonduri-europene-1661179>

Interviews with journalists have found that economic operators who intend to commit fraud tend not to do this with EU funds, but rather with national funds. EU funds are better audited, thus there is a higher risk of being caught.

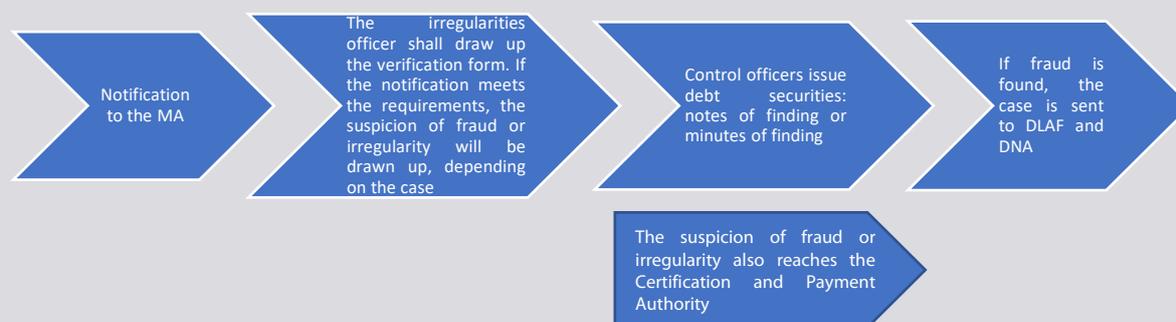
Measures to tackle fraud in shared management, policies and strategies

From an institutional perspective, Romania established in 2002 *the Directorate for the control of the contracting and use of funds granted by the European Union and the fight against fraud in connection with them* within the control body of the Prime Minister. Subsequently, in 2005, the *Anti-Fraud Department (DLAF)* was established.¹³¹ DLAF's main role is to ensure, support, coordinate, as appropriate, and fulfil Romania's obligations to protect the financial interests of the European Union.¹³² DLAF also carries out control actions as a result of notifications received from OLAF or from other sources, as well as a result of ex officio complaints related to possible irregularities, fraud or other activities that harm the financial interests of the European Union in Romania. If elements of a criminal nature are identified, the Department notifies the competent prosecutor's office to carry out the criminal investigation.¹³³

Related to the criminal prosecution, DLAF can notify the National Anticorruption Directorate (NAD/DNA) which investigates and prosecutes cases of fraud related to European funds.¹³⁴

Therefore, complaints about an irregularity or an irregularity that becomes fraud can be sent directly to DLAF, but also to OLAF, DG REGIO (in most cases targeting management actions) and can be made both internally and externally (e.g., by employees in the MA or third parties). First, from an internal point of view, any MA employee can notify if they identify an irregularity, i.e., the employees of the monitoring departments or those who verify the reimbursement requests, the findings contained in the audit reports. Many irregularities can be identified when the last request for reimbursement is submitted. Second, the source of the complaints may be external, so anyone who identifies a fraud can report it through several existing channels.

The process of a notification sent to the MA goes through is illustrated in the figure below:



In 2020, DLAF had in progress a number of 416 control actions, of which 238 have been completed by the end of the year. In 99 cases evidence was found regarding the commission of frauds that affect the financial interests of the European Union, being notified to the criminal investigation bodies. During

¹³¹ <http://www.antifrauda.gov.ro/w/scurt-istoric-dlaf/>

¹³² DLAF annual activity report, 2020 http://www.antifrauda.gov.ro/w/wp-content/uploads/2021/05/2021_05_27_Raport_anual_de_activitate_2020_RO.pdf

¹³³ Decision of the government of Romania for the approval of the Regulation of organization and functioning of the Department for the fight against fraud - DLAF http://www.antifrauda.gov.ro/w/wp-content/uploads/2017/02/HG_738_11_MOF.pdf

¹³⁴ The difference between error, irregularity and fraud in European-funded projects, No 34, 4-10 SEPT. 2018, CECCAR Business Magazine: <https://www.ceccarbusinessmagazine.ro/diferenta-dintre-eroare-neregula-si-frauda-in-cadrul-proiectelor-cu-finantare-europeana-a3827/>

the same period, the European Anti-Fraud Office - OLAF requested DLAF technical assistance in 36 cases.¹³⁵

According to Article 12a of Regulation 883/2013, Member States are required to designate an anti-fraud coordination service ('AFCO'); in this context DLAF has the quality of AFCO and national administrator of the Irregularities Management System.¹³⁶ The AFCO in Romania carries out coordination activities exclusively on the basis of bilateral agreements concluded with each of the authorities responsible for programmes, but there is no national multilateral coordination mechanism involving all stakeholders.¹³⁷

From the perspective of anti-fraud strategies, Romania is among the 13 States at European level that have adopted a national anti-fraud strategy¹³⁸. The first Anti - Fraud Strategy was adopted through the government decision in 2005¹³⁹ and was updated on the basis of a DLAF project in 2006.¹⁴⁰ On the other hand, the latest Anti-Fraud Strategy covers the period 2017-2023. The general objectives of this strategic document are the following:

- Strengthening the national anti-fraud system through prevention measures;
- Increasing the efficiency of the fraud / irregularity detection systems;
- Increasing the efficiency of administrative investigations / controls;
- Strengthening inter-institutional cooperation in the field of recovery of budget receivables;
- Gradual preparation of legal and institutional infrastructure of the national anti-fraud system in accordance with the European initiatives in the field;
- Operationalization of SNLAF infrastructure¹⁴¹

Besides this strategy, in Romania there are several legislative acts that regulate the prevention of fraud in the use of ESI funds, among which:

- Government Emergency Ordinance no. 66/2011 on the prevention, detection and sanctioning of irregularities in obtaining and using European funds and / or national public funds related to them, as subsequently amended and supplemented,
- Government Decision no. 875/2011 approving the implementing rules for the application of the provisions of GEO no.66/2011.
- Law no. 78/2000 for the prevention, discovery and sanctioning of acts of corruption, with subsequent amendments and completions.

The Law no. 78/2000 has recently been updated in order to allow the transposition into national law of the Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on combating fraud against the financial interests of the Union by means of criminal law. Member States had to transpose this directive into national law by July 2019, but infringement proceedings were filed

¹³⁵ https://ec.europa.eu/anti-fraud/media-corner/news/27-05-2021/romania-dlaf-publicat-raportul-anual-de-activitate-pentru-anul-2020-27_ro

¹³⁶ DLAF annual activity report, 2020: http://www.antifrauda.gov.ro/w/wp-content/uploads/2021/05/2021_05_27_Raport_anual_de_activitate_2020_RO.pdf

¹³⁷ European Court of Auditors, *Combating fraud related to policy expenditures EU cohesion policy: the authorities management must strengthen detection, reaction and coordination*, Special Report, 2019: https://www.eca.europa.eu/Lists/ECADocuments/SR19_06/SR_FRAUD_COHESION_RO.pdf

¹³⁸ European Commission - Léna Bonnemains, Mélissa Campagno, Brian Kessler, Olga Mala, and Goya Razavi Preventing fraud and corruption in the European Structural and Investment Funds – taking stock of practices in the EU Member States, October 2018: https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/preventing_fraud_en.pdf

¹³⁹ <https://lege5.ro/Gratuit/gv4tsnbw/strategia-nationala-de-lupta-antifrauda-pentru-protectia-intereselor-financiare-ale-uniunii-europene-in-romania-hotarare-793-2005?dp=qi3tcnrggi4de>

¹⁴⁰ Siclitaru, Lavinia, *National Anti-Fraud Strategy, updated, 16 Sep, 2006* <https://www.ziuaconstanta.ro/stiri/politic/strategia-nationala-de-lupta-antifrauda-actualizata-45542.html>

¹⁴¹ National Anti-Fraud Strategy – Romania 2017-2023: http://sgglegis.gov.ro/legislativ/docs/2017/05/pnqyfw0t91s7c5k_4drz.pdf

against Romania because the state delayed this process.¹⁴² The law was updated only in December 2020.¹⁴³

Concerning the use of IMS, our research has found that ongoing investigations or decisions to initiate criminal proceedings are not systematically reported in the database. As required by Romanian law, suspected fraud is only registered when a managing authority, audit authority, AFCOS or OLAF issues a separate control / investigation report, even if there is already an ongoing investigation or one that has ended. As a result, reporting in IMS is unduly delayed and some court cases could be completely excluded from the system.¹⁴⁴

A second tool used in Romania is ARACHNE. This instrument works with two types of data, internal data, provided by the SMIS system (Unique Information Management System) and external data, processed from international databases managed by private companies, data about companies, regarding their financial capacity or their legal status. The application can automatically calculate the risk score, based on several categories such as contract management, eligibility and other.¹⁴⁵

The interviews showed that the MAs use ARACHE and this instrument is found overall to be a useful tool for all MA staff members. However, the information from ARACHE needs to be complemented by data from other national databases, such as the Trade Register. It is necessary to complete the data with other sources of information, as the ARACHE system only issues alerts. A need has also been identified as regards to training for MA staff to use this tool; although some MAs have participated in several training to use the system, others consider that further knowledge of this system is needed. More information is needed in terms of how the data should be interpreted and how it should be used. The system could be improved if it is integrated with some national databases and if new categories of data are introduced, for example for subcontractors, where suspicions of frauds were identified.

DLAF, operating as the AFCO, does not use the ARACHNE system, but uses several national databases to which it has good and consistent access.

Therefore, in Romania the fraud identification system involves several institutions, the cases go through several filters. The efficiency of the system leads to a large number of identified irregularities, but not all of them prove to be fraud. There are many institutions through which the documents of the funds pass and this reduces the risk of a fraud going unnoticed.

Despite this rigorous system, institutions also identify a number of difficulties in the process of identifying or analysing a complaint, which may prove to be an irregularity, fraud or neither.

First of all, the biggest challenge is the **time** that elapses between when the crime is committed and it is discovered which generally makes subsequent investigations more difficult. Secondly, another difficulty is **the lack of collaboration between MAs and the other institutions involved in the system**. Although there is cooperation between DLAF and the MAs, when a case reaches DNA, the MA representatives no longer know the status of the case. As a consequence, it is difficult to report its status to the EU institutions. The involvement of the Ministry of European Investments and Projects, in charge of coordination of EU funds from all perspectives, is limited. Also not sufficiently extensive is

¹⁴² Călea Europeană, *The EU has started the infringement procedure against Romania for not transposing the Directive on the fight against fraud, fundamental in establishing the material competence of the European Public Prosecutor's Office led by Laura Codruța Kövesi*, 2020: <https://www.caleaeuropeana.ro/ue-a-demarat-procedura-de-infringement-impotriva-romaniei-pentru-netranspunerea-directivei-privind-lupta-anti-frauda-fundamentala-in-stabilirea-competentei-materiale-a-parchetului-european-condus-de/>

¹⁴³ <https://www.universuljuridic.ro/legea-nr-78-2000-pentru-prevenirea-descoperirea-si-sanctionarea-faptelor-de-coruptie-modificari-legea-nr-283-2020/>

¹⁴⁴ European Court of Auditors, *Combating fraud related to policy expenditures EU cohesion policy: the authorities management must strengthen detection, reaction and coordination*, Special Report, 2019: https://www.eca.europa.eu/Lists/ECADocuments/SR19_06/SR_FRAUD_COHESION_RO.pdf

¹⁴⁵ Vasile, Alin, *Risk detection in the public procurement system through the ARACHNE application*, Public Procurement Magazine, 2021: <https://www.revista-achizitii.ro/index.php/detectarea-riscurilor-sistemul-achizitiilor-publice-prin-aplicatia-arachne>

the peer learning and exchange between MAs, with DLAF involvement, that could harmonise procedures, solutions and even capacity which greatly vary from one ministry to the other.

Another difficulty is the small number of people who work in the fraud control departments within the MAs. Moreover, some interviewees pointed out the lack of training in identifying fraud as a difficulty in managing cases.

Possible good practices

In Romania, one of the good practice examples that can be identified is the IT system "PREVENT", that was developed by the National Integrity Agency. The system compares the information on public procurement provided by contracting authorities and tenderers with the information from other national databases (for example, the Trade Register Office).¹⁴⁶

The PREVENT system was launched at the end of June 2017 in order to prevent the conflicts of interest from the procedure of awarding public procurement contracts. This system works as an ex-ante verification mechanism. The check is done from the perspective of situations that may generate conflicts of interest in the initiated procedures through the electronic public procurement system, so these types of situations are removed without affecting those procedures. The innovative element of the PREVENT system is in the fact that it can automatically identify the presumed relationships that may exist between persons from the side of the contracting authority and persons within the economic operators, who have the quality of bidders in the procurement procedures. Between April and June 2021, a number of 2,827 public procurement procedures were analysed through the system, of which 20% referred to contracts financed from European funds. Moreover, between 20 June 2017 and 30 June 2021, 136 integrity warnings were issued for potential conflicts of interest in public procurement procedures in a total amount of over 1.36 billion lei (over 275 million euros).¹⁴⁷

The interviews showed that in Romania the best practices include:

- The use of audits results, as analysing audit reports can highlight certain situations of interest for the fraud officers.
- The use of modern search tools such as ARACHNE.

It is worth noting that no MA representative interviewed referred to the database managed by the Competition Council in Romania as a good practice or at least a tool to identify potential frauds stemming from a breach of competition law in Romania.

On the other hand, there are measures that could improve the prevention system and the whole anti-fraud process. Regarding the prevention system, improvement measures could include:

- Strengthening the verifications in the procurement process, extending the verification sample.
- Awareness campaigns with beneficiaries as regards what constitutes fraud and the consequences thereof.
- Training campaigns for the institutions involved in programme management such as MAs, county offices or intermediate offices. These campaigns are to improve the ability to identify suspected frauds. The representatives of the Managing Authority of the National Rural Development Programme initiated a training campaign for the county offices (structures part of the NRDP MA) during 2017-2018. These training campaigns proved to be effective, especially as practical exercises were carried out.

¹⁴⁶ European Court of Auditors, *Combating fraud related to policy expenditures EU cohesion policy: the authorities management must strengthen detection, reaction and coordination*, Special Report, 2019: https://www.eca.europa.eu/Lists/ECADocuments/SR19_06/SR_FRAUD_COHESION_RO.pdf

¹⁴⁷ National Integrity Agency, *The results of the Prevent system in the second quarter*, 2021: <https://www.integritate.eu/Comunicate.aspx?Action=1&NewsId=3164&M=NewsV2&PID=20>

- Use of the guidelines provided by the European Commission.

Measures identified by the current study to improve the entire anti-fraud process are:

- Strengthening cooperation between MA and DLAF and creation of a single communication channel through joint and frequent meetings; the latter could be useful given that in many cases the MA has more knowledge about a project. DLAF should also play a stronger role in the management of MAs.
- Training courses for MA representatives, both in terms of the correct use of specific terminology in cases of fraud, but also for the using of the ARACHNE system.
- Creating an inter-institutional system for the digital transmission of information, even creating the possibility of individual information extraction.
- Collaboration protocols between different institutions involved in case analysis, such as protocols between DNA and Ministries.
- Peer-learning between MAs (related to different solutions of the cases).
- Updating and harmonizing the legislation in the field (for example Law 78/2000 for preventing, identifying and sanctioning corruption does not clearly define fraud).
- Promoting dialogue with Audit Authority in Romania but also with ECA.
- Simplification of procedures for accessing ESI, clear stipulation of applicable rules.
- Simplification of control procedures.

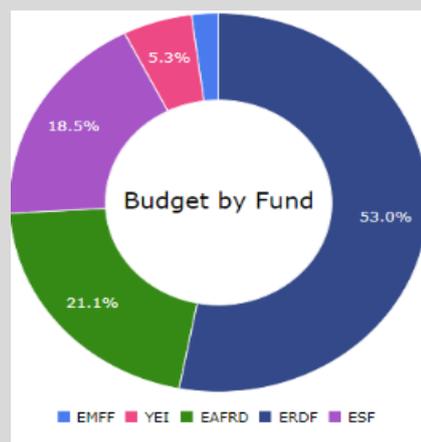
Spain

Context

In the period 2014-2020, Spain received a total of around **€52.1 billion** as part of the ESI funds¹⁴⁸. The list below provides an overview of the EU Funds to which Spain had access and the respective EU allocated amounts:

- Around EUR 27.6 billion from the European ERDF
- Around EUR 9.6 billion from ESF
- Around EUR 10.9 billion from EAFRD
- Around EUR 1 billion from the EMFF
- Around EUR 2.7 billion for the Youth Employment Initiative
- Spain no longer has access to the Cohesion Fund (CF, in Spanish *Fondo de Cohesión, FC*):

Figure 8 ESIF 2014-2020: Spain Budget by Fund, EUR



In Spain, coordination and cooperation with territorial administrations regarding the programming, monitoring, evaluation and control of programmes co-financed with EU funds is responsibility of the Directorate General of European Funds, located

under the Secretary of State for Budgets and Expenditure of the Ministry of Finance.¹⁴⁹ This body also acts as the administrative unit for some of the EU funds under shared management like the ERDF and, as such, performs the functions of managing authority and certification authority for this fund.

As for the ESF, its Administrative Unit (in Spanish: *Unidad Administradora del FSE, UAFSE*) acts as managing authority and certification authority. It is located within the Ministry of Labour, Migration and Social Security, which is assigned national competence in matters of employment¹⁵⁰.

The **General Comptroller of the State Administration** (in Spanish: *Intervención General de la Administración del Estado, IGAE*) is the audit authority for all operational programmes except for the multi-regional operational programmes of the ESF.

A slightly different system with a higher degree of decentralisation is in place for the management of EU funds in the context of the Common Agriculture policy (CAP). The Ministry of Agriculture, Fisheries and Food is the competent authority and managing authority for EAFRD, with the Spanish Agrarian Guarantee Fund (*Fondo Español de Garantía Agraria, FEAGA*) acting as the only accredited coordinating body among paying agencies¹⁵¹. As such, it is in charge of coordination across paying agencies for EAFRD (and the European Agricultural Guarantee Fund, EAGF) of all Autonomous Communities and one at state level (18 in total), main bodies responsible for the management of payments linked to their respective territories.

The **National Anti-Fraud Coordination Service** (in Spanish: *Servicio Nacional de Coordinación Antifraude, SNCA*), which also serves as Spanish AFCOS, is the entity responsible for coordinating actions to enhance the protection of the EU's financial interests against fraud, together with the European Anti-Fraud Office (OLAF). Among its main responsibilities are those of leading and implementing national strategies, identifying possible shortcomings in the national system to

¹⁴⁸ <https://cohesiondata.ec.europa.eu/countries/ES>

¹⁴⁹ <https://www.dgfc.sepg.hacienda.gob.es/sitios/dgfc/es-ES/Paginas/DireccionGeneralFondosEuropeos.aspx>

¹⁵⁰ <https://www.mites.gob.es/uafse/index.htm>

¹⁵¹ <https://www.fega.es/es/financiacion-pac/gestion-de-los-fondos/el-organismo-de-coordinacion-en-espana>

manage EU funds, establishing the methods of coordination and information on irregularities and suspected fraud between the different national institutions and OLAF, and promoting training on the prevention of and fight against fraud.¹⁵²

The SNCA is assisted by the **Advisory Council for the Prevention and Fight against fraud to European Union's financial interests** (in Spanish: *Consejo Asesor de Prevención y Lucha contra el fraude a los intereses financieros de la UE*), which brings together the different levels and bodies involved in the fight against fraud. Represented on the Advisory Council are not only the bodies and entities with competencies for the management and auditing of European funds, but also, among others, the State Attorney General's Office, the general directorates of the National Police and the Guardia Civil, the Asset Recovery and Management Office and the Tax Agency which is involved in customs duties and other traditional own resources of the EU budget. The autonomous communities and local entities are also represented.

Scale of the problem and types of fraud most common in Member State

According to OLAF, the number of **irregularities reported as fraudulent** affecting the EU's financial interests in Spain in 2020 was as follows: on the expenditure side, two cases in the area of agriculture, estimated to account for about EUR 1.2million, one case in the field of internal policies estimated at EUR 48,160 and four cases in the area of cohesion policy and fisheries estimated at a total of EUR 217,770. On the revenue side, 9 cases make up about EUR 3 million.¹⁵³

Fraud in EU funds of shared management is considered by managing authorities and the AFCOS to be minimal in Spain. Control mechanisms in place are perceived as effective in detecting irregularities suspected of fraud and of these, only very few are determined as actually being fraud. This has also been noted in an article in El País which highlights that the Commission has positively assessed Spain's control mechanisms and that there has been a steadily declining error rate of audits and apparent fraud levels when it comes to EU funds.¹⁵⁴

Nevertheless, the European Court of Auditors highlighted in the Special Report 06 of 2019 that one major flaw is the absence of mandatory requirements on managing authorities to systematically report all suspected cases of fraud to prosecution bodies. It is stressed that this could "limit the deterrent effect of possible investigation and prosecution"¹⁵⁵ Furthermore, as noted in the ECA's Special Report, Spain has yet to develop and report a NAFS to the Commission.

The SNCA considers it possible to establish certain patterns of fraud in EU funds under shared management through several sources. These are the analysis of cases reported to OLAF and the assistance to OLAF of its own investigations in Spain, the analysis of complaints through the specific online communication channel (see next section), and cases detected by the MA and paying agencies themselves. The most common forms of fraud affecting EU funding are: manipulated tendering procedures and falsified documentation to obtain funding, false or inflated invoices, double funding, over-declaration of working hours, actions not implemented/not completed in a project co-financed by ERDF and false condition of farmer and absence of entitlement in direct aid to farmers. Observed patterns of fraud relate to research and development projects financed by ERDF and those financed by means of direct management, where there are some cases of over-declaration and overlapping of labour costs.

In terms of the **recovery of funds** from cases where fraud and irregularities were detected, Spain recovered EUR 35 million and is, in absolute terms, one of the countries recovering the most in 2020,

¹⁵² <https://www.igae.pap.hacienda.gob.es/sitios/igae/en-GB/snca/paginas/presentacion.aspx>

¹⁵³ https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2020_annexes_en.pdf

¹⁵⁴ https://cincodias.elpais.com/cincodias/2021/03/08/opinion/1615166281_337555.html

¹⁵⁵ <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=49940>

together with Germany (EUR 144 million) and UK (EUR 50 million). This constitutes a recovery rate¹⁵⁶ for Spain of 91% in 2020, though this is a provisional figure as recovery is ongoing and likely to increase in the future.¹⁵⁷

No estimation is available at national level regarding the extent of unreported or “hidden” fraud affecting EU funds under shared management in Spain.

Measures to tackle fraud in shared management, policies and strategies

Managing authorities have implemented, to a large extent, the guidance as provided by the European Commission on fraud risk assessment and effective and proportionate anti-fraud measures for the period 2014-2020¹⁵⁸. An exception is the ESF, which has developed its own anti-fraud system called “*Self-assessment instrument for the identification and coverage of Risk*” (*Risk Matrix*), considered a valid approach by the European Court of Auditors¹⁵⁹.

As reported by El País, in 2021 in the context of the COVID-19 Recovery and Resilience Facility (not under shared management), the Ministry of Finance further developed the instruments to prevent fraud by providing additional level of detail and making them mandatory.¹⁶⁰ For example, systems must include processes for the follow-up of suspicious cases, the interruption of disbursements, the withdrawal of funds and the recovery of money that has been spent fraudulently. The requirements remain flexible to be adjusted according to the risks of fraud and the nature and size of each entity, and guidance is provided in the form of a list of checks to ensure compliance, guides and compendiums of practical cases.

The SNCA was created in 2014 to coordinate actions to protect the financial interests of the EU against fraud and took on an advisory role in assisting Managing Authorities implementing such measures in the early stages of the financial period. The National Audit Office verifies the implementation of effective and proportionate measures and the SNCA assists the MA in resolving queries on conceptual and communication issues, e.g. regarding notification of irregularities suspected of fraud via the IMS system. As for EAGF and EAFRD, due to the decentralized competences for the agricultural funds, FEAGA further assists in the coordination among paying agencies, and provides guidance in relation to the implementation of measures in the prevention, detection and fight against fraud since 2015¹⁶¹.

In terms of tools used, most Managing Authorities (MA) use the **fraud risk self-assessment tool for 2014-2020 provided by the European Commission**¹⁶². This tool is used in relation to three dimensions, namely the selection of applicants, the implementation of the projects by the beneficiaries, focusing on public procurement and labour costs, and the certification of costs by the

¹⁵⁶ The overall recovery rate is a correlation between the detection rate, the established amount, and the current recovery stage of individual cases (large, additional-duty claims are more frequently associated with long-lasting administrative and criminal procedures).

¹⁵⁷ https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2020_statistics1_en.pdf

¹⁵⁸ https://ec.europa.eu/regional_policy/en/information/publications/guidelines/2014/fraud-risk-assessment-and-effective-and-proportionate-anti-fraud-measures

¹⁵⁹ <https://www.mites.gob.es/uafse/es/antifraude/declaracion/index.htm>

¹⁶⁰ <https://elpais.com/economia/2021-10-01/comunidades-y-municipios-tendran-tres-meses-para-crear-planos-que-eviten-el-fraude-con-los-fondos-europeos.html>

¹⁶¹ This guidance includes the specific areas in which the FEAGA believes it is necessary to influence: design of horizontal guidelines for the prevention, detection and fight against fraud, training and information dissemination to FEAGA staff, ensuring that there is an effective internal control system for the management of potential conflicts of interest, maintain and improve communication channels with the European Anti-Fraud Office and the SNCA in Spain.

¹⁶² Guidance Note on fraud risk assessment for 2014-2020 (DG REGIO)
https://ec.europa.eu/regional_policy/en/information/publications/guidelines/2014/fraud-risk-assessment-and-effective-and-proportionate-anti-fraud-measures

MA and payments¹⁶³. In each of these areas, the risk assessment covers four aspects: gross risk (risk prior to any measures being taken), current mitigating controls, net risk (level of risk after accounting for existing controls) and target risk (level of risk after taking into account current and planned controls).

In terms of detecting irregularities and suspected cases of fraud, **fund managers are at the forefront of the effort and are responsible for notifying red flags and report cases to their superiors**. Suspected cases of fraud are reported to OLAF by the authority that detected them through the IMS application. Likewise, in the event of evidence of a crime, the facts are to be reported to the European Public Prosecutor's Office (if they took place after 20 November 2017) or to the General State Prosecutor's Office (Anti-Corruption Prosecutor's Office) if they are prior to that date. The authority communicating with the Prosecutor's Office also does so to the National Anti-Fraud Coordination Service (SNCA) for the purposes of its monitoring of judicialized cases.

In terms of tools, **Arachne is used in combination with some other national databases**. For example, in the case of ERDF, Arachne is the main tool, whereas for ESF Arachne is complemented with other national tools. Arachne is not used in the context of EAFRD although stakeholders mentioned there is currently a pilot project in place. Interviewees explained that Arachne is not used in the context of the ESF, as it is not considered appropriate for the control of the many small lines of funds with specific requirements and due to IT limitations. The use of Arachne is, interviewees indicate, subject to its appropriateness based on the type of beneficiary: it is mostly useful when the end users are companies as opposed to grants for individual people.

The main channel for detection of fraud, towards EU funds as well as more generally, are complaints. For that reason, and in order to maximise the opportunities to engage citizens in the reporting of irregularities to the relevant authorities, the SNCA opened an **online communication channel in 2017** in relation to projects or operations financed with EU funds. This channel is however not anonymous, as it requires those submitting a claim to give their name. Nevertheless, outside of the authorities handling the claims, the system guarantees anonymity in an effort to involve citizens in the fight against fraud. It aims to serve as additional means of identifying irregularities and to allow public authorities to carry out the corresponding investigations and is being updated and adjusted to serve also as main channel for complaints regarding the Recovery and Resilience Facility (RRF).¹⁶⁴

The SNCA provides training to MAs in relation to the entire anti-fraud cycle. The training takes place online and is addressed at staff involved in the management of EU funds within the Autonomous Communities as well as the General State Administration. Indeed, training was highlighted by stakeholders as a key measure to fight against fraud at all levels of the administration.

As for recent developments, the latest PIF report highlights the consolidation of the cooperation among the national, regional and local anti-fraud authorities, which take place in the framework of the newly created **Network of Anti-Fraud Offices and Agencies of Spain** (see best practices section), as well as the Cooperation Agreement between the SNCA and the Guardia Civil¹⁶⁵. The General Directorate of the Civil Guard and the General State Inspection (IGAE, under which the SNCA is integrated) signed a **General Action Protocol in October 2020 for the coordination and cooperation in matters of prevention, detection and investigation of fraud**, corruption and any other illegal activity that affects the EU's financial interests.¹⁶⁶ This legal instrument is meant to further enhance cooperation with OLAF.

¹⁶³

https://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_fraud_risk_assessment_annex1.pdf

¹⁶⁴ <https://www.igae.pap.hacienda.gob.es/sitios/igae/es-ES/snca/Paginas/ComunicacionSNCA.aspx>

¹⁶⁵ https://ec.europa.eu/anti-fraud/sites/default/files/pif_report_2020_en.pdf

¹⁶⁶ <https://www.hacienda.gob.es/Documentacion/Publico/PortalVarios/Protocolo-firmado.pdf>

Currently, no **National Anti-Fraud Strategy** exists in Spain. It is, however currently being developed. The process is being led by the SCNA with the technical assistance from the Organisation for Economic Co-operation and Development (OECD). Funded by the European Commission through the Technical Support Instrument, the aim is to thereby provide coherence to the actions to fight against fraud and corruption to the financial interests of the EU at national, regional and local level.

The transposition of the **Whistleblower directive** aiming to protect individuals making anonymous claims is also currently being debated, but Spain has missed the deadline of the 17 December to transpose it into national law.

Possible good practices

In the context of the EAFRD, efforts have been made to implement clear responsibilities in anti-fraud measures at the level of individual agencies involved. This implies for example having anti-fraud responsibilities assigned to a specific position or unit and having a contact person by agency with whom to communicate on actions, which strengthens ownership and coordination.

At national level, the creation of the **Network of Anti-Fraud Offices and Agencies of Spain** (in Spanish: *Red de Oficinas y Agencias Antifraude de España*)¹⁶⁷, which works since 2018 on the fight against corruption from an administrative perspective, presents a good opportunity for the exchange of best practices. It comprises of 10 agencies from the local and national level and is considered by stakeholders involved as a well functioning network for a decentralized model like the Spanish one. At one of its latest meetings, the network adopted an institutional declaration in which it urged the competent authorities to transpose the Whistleblower Directive into the legal system and advocated for competent authorities and entities involved to promote a culture of denunciation; promote alert channels; recognize the exemplary nature of those who report; guarantee confidentiality; protect whistleblowers; promote and implement corrective actions; provide whistleblowers with support measures, as well as deploy dissemination, training and awareness-raising actions¹⁶⁸.

Other best practices implemented in Spain identified by OLAF are¹⁶⁹:

- **Blue Book Manual** - comprehensive manual of procedures developed by the Managing Authority (MA) together with the Certifying Authority (CA) for ERDF in Spain. It describes all the functions and procedures relating to the management and control system for ERDF, including anti-fraud measures for Operational Programmes (OPs).
- **Tenders GURU** – RECORD project (REducing CORruption Risks with Data) analyses EU and national level public procurement processes and tackles inefficient spending of public funds to reduce corruption risk.
- **SALER Rapid Alert System** – this computer system helps raise early alarms by analysing the data generated by the Administration of the Generalitat of Valencia, which aims to help to detect any possible irregularities, malpractice or risks of fraud and corruption in a preventive way and thereby avoid cases of corruption.

¹⁶⁷ The following entities are part of this state Network of anti-fraud agencies and offices: Oficina Antifrau de Catalunya, Oficina de Prevención y Lucha contra la Corrupción en las Illes Balears, Oficina de Transparència i Bones Pràctiques del Ajuntament de Barcelona, Oficina Municipal contra el Fraude y la Corrupción del Ayuntamiento de Madrid, Servicio de Prevención de la Corrupción de la Audiencia de Cuentas de Canarias, Servicio de Prevención de la Corrupción del Consello de Contas de Galicia, Agència de Transparència de l'Àrea Metropolitana de Barcelona, Servicio Nacional de Coordinación Antifraude (SNCA), Oficina Independiente de Regulación y Supervisión de la Contratación (OIReSCon), Agencia Valenciana Antifraude.

¹⁶⁸ <https://antifrau.cat/en/oficinas-agencias-antifraude-espana-urgen-transposicion-directiva-europea-proteccion-personas-alertadoras>

¹⁶⁹ https://ec.europa.eu/antifraud-knowledge-centre/library-good-practices-and-case-studies/good-practices_en

PE 702.671

Print ISBN 978-92-846-8773-2 | doi: 10.2861/88832 | QA-06-21-184-EN-C

PDF ISBN 978-92-846-8774-9 | doi: 10.2861/84191 | QA-06-21-184-EN-N