

BALANCING URGENCY WITH CONTROL

HOW TO PREVENT FRAUD IN THE USE OF THE EU RECOVERY FUNDS WITHOUT DELAYING THEIR IMPLEMENTATION

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Executive summary ■

The EU Recovery and Resilience Facility (RRF) raises specific challenges for the prevention and fight against fraud. It will provide a massive amount of money to be implemented in only six years. To spend it quickly, many governments will make generalised use of emergency procurement processes and relax budgetary controls. At the same time, the EU's oversight over the use of RRF funding will be performance-oriented. While this will allow a speedy implementation and ensure the achievement of results, it will also render more difficult the detection of abuse of EU funds .

This paper explores ways to reconcile the need for a speedy implementation with the necessary actions to combat fraud in the use of EU Covid funds. A key message is that urgency should not lead to an elimination of anti-fraud controls, but the latter should be more cost-effective to allow a quick disbursement of the funds. With less reporting obligations for Member States, the EU will have to rely more on its own investigative capacities to identify cases of suspected fraud. It is thus essential to guarantee an appropriate budget for the two EU institutions in charge of investigating fraud, OLAF (the EU's anti-fraud office) and the new European Public Prosecutor's Office (EPPO). Finally, the focus should be on combating institutionalised fraud and large-scale corruption. In those Member States having received Country Specific Recommendations (CSRs) linked to the integrity of the public administration and judicial system, access to the RRF funds should be strictly conditioned to a credible reform path to resolve these institutional weaknesses.

1 ■ INTRODUCTION

In spring 2020, the [IMF](#) asked governments to do whatever it takes to address the adverse impact of the COVID-19 pandemic on people and firms, “but to keep the receipts”. The [OECD](#) made a similar point in April 2020. Both calls were driven by fears of seeing the massive amounts of Covid-19 emergency and recovery spending being misused as a result of little or weak oversight. Indeed, experience with previous crises - from the 2014 Ebola outbreak in Africa to the 2008 global financial crisis - shows that crisis management and subsequent economic stimulus spending often result in higher risks of fraud and corruption. The significant scale of spending itself increases the incentives for rent-seeking behaviour. The speed with which interventions have to be implemented results in a general relaxation of budgetary controls. Less ex-ante controls are not always compensated by a reinforcement of ex-post oversight.

In Europe, the bulk of Covid-related spending is coming from national governments. It is thus at the national level where these risks are more pronounced. However, there are also concerns about the risks of fraud in the use of the EU’s special €750bn Covid Fund (aka “Next Generation EU”) and particularly its centrepiece, the Recovery and Resilience Facility (RRF).

The RRF raises specific challenges for the prevention, detection and fight of fraud. It will provide a massive amount of money to governments to be allocated and implemented in only six years. To spend it quickly, many governments will make generalised use of emergency procurement processes and relax budgetary controls, thus raising the risks of misuse and fraud. At the same time, the EU’s oversight over the use of RRF funding will be performance-oriented. Payments will not be subject to detailed controls on the costs actually incurred but based on the achievement of aggregate results by reference to pre-defined milestones and targets. While this will allow a speedy implementation and ensure the achievement of results, it will also render more difficult the detection of abuse of EU funds.

This paper explores ways to reconcile the need for a speedy implementation of RRF funds with the necessary actions to prevent and combat fraud in the use of EU Covid funds. A key message is that urgency should not lead to an elimination of controls, or restrict them to an assessment of performance. Anti-fraud actions shall remain, but they should be more cost-effective to allow a quick disbursement of the funds. This implies, among other things, a generalised use of data analytic tools to detect high-risk projects and a policy of full transparency on the beneficiaries of RRF funds.

A second message is that, with less reporting obligations from Member States and less detailed oversight on costs incurred, EU institutions will have to rely more on its own investigative capacities to detect fraud and corruption in the use of RRF funds. This calls for a reinforcement of the EU’s capacity to investigate fraud or corruption, by securing an appropriate budget for the two EU-level institutions in charge of it, OLAF (the EU’s anti-fraud office) and the new European Public Prosecutor’s Office (EPPO).

A third important message is that the focus should be on combatting institutionalised fraud and large-scale corruption. There have been various scandals of high-level corruption in the use of EU funds over the last years, such as in [Czech Republic](#) (with prime minister Andrej Babiš being one of the largest recipients of CAP subsidies), [Hungary](#) (where the use of EU funds to favour clientelist practices and nepotism is well documented) or [Bulgaria](#) (with large

demonstrations taking place last year to protest against government corruption over the use of European funds and the country's budget). As these cases and others prove, negative repercussions when EU funds are misused by high-level politicians are much larger than in cases of isolated fraud, or corruption committed by private actors. Not only are the amounts of misspent EU funds higher but the EU budget ends up reinforcing national governance malpractices and even supporting intentional attempts to distort political pluralism and dismantle the rule of law, ultimately posing an existential threat to the Union.

The recent creation of the European Public Prosecutor's Office (EPPO)— which will investigate and prosecute crimes against the EU's financial interests from 2021— and the establishment of the new Rule of Law conditionality mechanism may help combat institutional fraud with EU funds. Yet, they will be insufficient if not accompanied by other bold EU actions to put an end to these malpractices. The RRF, in this respect, offers an opportunity. The EU Commission should be firm when assessing national RRF plans. In countries presenting risks of high-level corruption, access to RRF funds should be strictly conditioned on the introduction of the necessary reforms in the administrative and judiciary system to guarantee integrity in the management of EU funds.

The remainder of the paper develops these arguments as follows. The next section describes in detail the current EU anti-fraud system, with a focus on how it works in the area of EU cohesion policy. Section three summarises the main weaknesses of the current EU anti-fraud system. Section four explains why the RRF poses particular challenges as regards to the prevention and detection of, and fight against fraud. Section five formulates various recommendations on how to combat fraud and corruption in the use of EU Covid funds. Section six concludes.

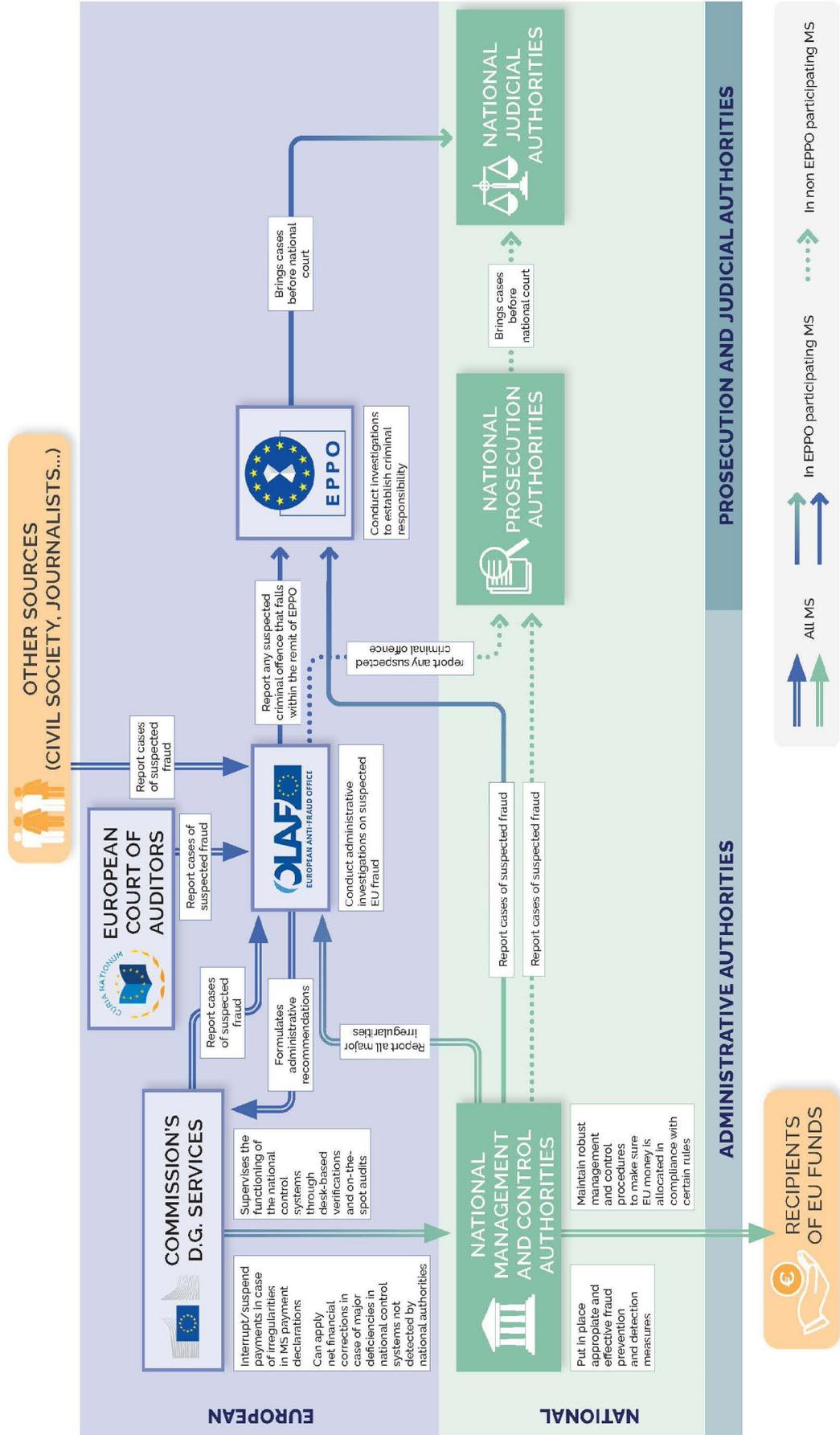
2 ■ A SNAPSHOT OF THE EU'S ANTI-FRAUD MEASURES APPLIED IN COHESION POLICY

Fraud against the EU budget can be defined as an act intended to result in a misappropriation of or unlawful retention of EU funds. It is sometimes linked to corruption, defined as an abuse of public power for a private gain. This is the case, for instance, when there are kick-backs to manipulate a public procurement process. Other times, however, the fraud is committed by private actors without colluding with public actors (e.g. when a beneficiary artificially inflates the costs for reimbursement).

The EU has various procedures in place aimed at protecting the EU budget from fraud. These involve different bodies at the EU and national levels. Since almost 80% of EU expenditure is managed by Member States, and the RRF will also be managed at national level, it is worth looking at the anti-fraud measures applied in the area of EU cohesion funds.

Figure 1 provides a schema of the system. It distinguishes between two levels of action –national and European– and two types of actions: those actions taken by administrative bodies, aimed at preventing and detecting fraud (1, 2) or providing an administrative response to fraudsters (3) and actions taken by prosecutor and judicial bodies –criminal investigation and eventually judicial indictment of fraudsters (4).

Figure 1 ■ The EU's anti-fraud system as applied in EU cohesion policy



Source: created by the author

2.1 ■ Fraud prevention and detection measures

National authorities are the main actors responsible for preventing and detecting fraud in the use of EU cohesion funds¹. As managers of the funds, they should make sure that EU money is allocated according to certain rules –e.g. that public procurement procedures respect the principles of transparency, non-discrimination and equal treatment– and validate that all payments made to beneficiaries are compliant with the legal or contractual requirements. They should also have an independent audit authority, with powers to check the overall functioning of the national control system and carry out regular checks of samples of invoices and other documentation.

In addition, the EU cohesion policy regulation requires national authorities to put in place appropriate and effective fraud prevention and detection measures². The EU Commission provides some guidelines but Member States are rather free to choose the measures to put in place. For instance, the Commission strongly encourages the use of data analytic tools to identify “red flags” (e.g. projects which present high risk of fraud, double funding or conflict of interest). This is a very cost-effective tool to detect fraud. The Commission even offers national authorities, free of charge, a specific data analysis tool to do so, called ARACHNE³. However, by the end of 2019 seven countries were not using ARACHNE⁴ and only 55% of all cohesion expenditure had been uploaded to ARACHNE⁵.

The EU level provides a second layer of control. At the beginning of the programming period, the EU Commission checks that all Member States have put into place an appropriate and robust management and control system. In addition, over the entire programming period, the Commission oversees the functioning of Member States’ control systems. EU supervision focuses on compliance, that is, on checking that EU funds have been spent according to EU rules and eligibility criteria. The main indicator used for this control is the level of “irregularities” (the amount of EU spending presenting errors). Irregularities can be intentional (e.g. fraudulent) or the result of unintentional mistakes committed by beneficiaries or public authorities.

To monitor the functioning of national control systems, the Commission carries out both desk-based verifications of documents presented by national authorities and on-the-spot audits. The latter target those national authorities having declared a higher error rate in their payment declarations (e.g. a higher percentage of EU funds affected by irregularities). When the Commission finds irregularities in a programme which have not been corrected by the national authority, it preventively interrupts or suspends the payment and asks the national authority to correct the irregularity. If the Commission thinks the irregularity may be fraudulent, it sends the information to the EU’s anti-fraud Office (OLAF) for further investigation (see box 1).

1. Art 63.2 Common Provisions Regulation (CPR) 2021-2027.

2. Art 68.1.c. CPR 2021-2027.

3. ARACHNE pools Member State data with information from various external sources such as company, fiscal and accounting databases on a wide number of companies. By crossing data and with the use of indicators, it provides a scoring on specific categories of risks (e.g. “public procurement”, “conflict of interests” or “fraud”). The managing authority entirely preserves its discretion in decision-making but benefits from the warnings provided to detect projects at risk.

4. Germany, Poland, Sweden, Finland, Denmark, Cyprus and Estonia.

5. DG Regio, 2019 Annual activity Report, p.37.

If, through its verifications and audits, the Commission detects irregularities which demonstrate serious deficiencies in the national management and control system, and the latter have not been previously reported by national authorities, it can apply “net financial corrections”. In this case, the Member State cannot re-use the EU funds affected by the correction and suffers a permanent cut in its EU cohesion policy allocation. This is a new legal provision included in the 2014-2020 EU cohesion policy rules. However, the procedure to apply net Art 68.1.c. CPR 2021-2027 corrections is long and gives much room to Member States to prevent the final decision. As of November 2019, the Commission had never applied a net correction to a Member State⁶.

Officially, since 1st January 2021, the EU has another tool to react in case of serious deficiencies in national control systems: the Rule of Law conditionality. Under this new mechanism, the Commission can propose to the Council a cut in EU spending in the event that it detects a serious malfunctioning of the national authorities in charge of implementing or controlling the use of the EU funds. Unlike in the classic system of financial corrections, with the Rule of Law conditionality the Commission does not need to prove the misuse of EU funds; it only has to prove that the malfunctioning of these institutions “seriously risk[s] affecting the sound financial management of the Union budget” (art 4.1. Rule of Law conditionality mechanism regulation). Another difference with the system of net corrections is that the decision is not taken by the Commission but by the Council acting under qualified majority. For the moment, however, the application of the Rule of Law conditionality is on hold as the Commission has decided to suspend it until the EU Court of Justice judges on its legality.

Finally, the EU has an independent auditor which oversees the management of the entire EU budget, the European Court of Auditors (ECA). The ECA conducts independent audits of the different EU spending programmes to verify that the EU money has been well spent and according to the objectives. However, it focuses on the aggregate EU results rather than on what happens at the Member States’ level. If, during its work, the ECA identifies cases of suspected fraud, these are reported to the European Anti-fraud Office (OLAF) for preliminary analysis and possible investigation (see box 1).

⁶. See 2018 Discharge to the Commission, Written questions to Commissioner Hahn, Hearing on 11 November 2019, question 6.

2.2 ■ Reporting and disclosure of information

In addition to being subject to the control of the Commission's DG services, national cohesion authorities have an obligation to report all major cases of irregularities (cases involving more than €10,000) to the EU's anti-fraud Office (OLAF). They should also indicate if they suspect the irregularity to be fraudulent or not.

Box 1. ■ The EU's Anti-Fraud Office (OLAF)

Created in 1999, the EU's Anti-Fraud Office (OLAF) is an administrative body entrusted with carrying out independent investigations on fraud and corruption in the use of EU funds. OLAF also helps the European Commission in drafting anti-fraud policies and conducts internal investigations on corruption and serious misconduct within the EU institutions.

OLAF is part of the European Commission, but has operational independence. It has an annual budget of around €60bn and the total number of OLAF staff members was 394 at the end of 2019. OLAF receives information on suspected fraud from different sources such as national management authorities, the Commission's DG services, the European Court of Auditors (ECA) or private sources. If OLAF finds that there is sufficient suspicion of fraud in a given project or operation, it launches an investigation. Once the investigation is concluded, it can send recommendations to the Commission (e.g. a recommendation to recover a certain amount of EU money) or to the competent prosecutor and judicial authorities.

In 2019 OLAF concluded 181 investigations, issuing 254 recommendations to the relevant national and EU authorities. It recommended the recovery of €485m to the EU budget.

Under EU cohesion policy rules, national authorities are also subject to some disclosure obligations. They shall publish the list of operations financed by the EU funds on a public website⁷. This is an effective tool against fraud, as it allows private actors –citizens, investigative journalists, NGOs– to track who has used the EU funds and potentially signal any evidence of suspected fraud to OLAF or other national investigative bodies. However, the information is often presented in a variety of formats on each national website, and in the national language only. This makes it difficult for citizens, private actors or the EU parliament to pool this information and get a complete overview of who gets what from the EU budget. Besides, there is no legal obligation to report information about the ultimate beneficiaries of the funds –e.g. owners of beneficiary firms or sub-contractors⁸.

2.3 ■ Recovery of funds and other administrative sanctions for fraudsters

In the EU cohesion policy area, if there is fraud, Member State authorities should apply "financial corrections" (that is, withdraw the affected expenditures from the payment requests sent to the Commission). Once the financial correction is applied, however, it is left to the Member State to decide what corrective action to take against the perpetrator of fraud. In principle, national authorities should recover the money unduly used from the final beneficiary but the Commission does not have any powers to control that this happens as, once the financial correction has been done, the EU money is no longer at risk.

The administrative response to fraud can also include the application of financial penalties or other administrative sanctions to fraudsters. Since 2016 the EU has a system for the exclu-

⁷ Art 115.2 of the Common Provisions Regulation for 2014-2020 or art 44.3 of the Common Provisions Regulation for 2021-27.

⁸ De Groen *et al.* 2021. "The Largest 50 Beneficiaries in each EU Member State of CAP and Cohesion Funds, Study prepared at the request of the CONT committee of the European Parliament (pre-release)", January 2021.

sion of unreliable operators, called EDES (Early Exclusion and Detection System). EDES is a database that includes operators which are in bankruptcy, have committed a grave professional misconduct or have perpetrated fraud or corruption in the past. The introduction of an operator into EDES is done at the request of an EU institution. It does not automatically lead to a sanction but can serve as a basis for the EU Commission to start a procedure which can eventually conclude with the application of a financial penalty or by banning the economic operator from participating in future EU tenders. The EDES system, however, only covers EU funds under direct or indirect management –that is, managed by the EU commission or EU-level agencies. National authorities managing EU cohesion funds can request access to the list of operators under EDES but they are not obliged to take exclusion decisions into account when allocating their EU cohesion funds.

2.4 ■ Judicial response to fraud

Under EU cohesion policy, national authorities are required to communicate suspicions of fraud to the relevant prosecution bodies. OLAF can also send judicial recommendations to the competent prosecution and law-enforcement bodies if it concludes an investigation and finds evidence of a financial crime. Until recently, these recommendations and information were sent to the national prosecution authorities. The zeal in prosecution however was often missing, as national authorities generally consider fraud against the EU budget to be of secondary importance.

The establishment of the new [European Public Prosecutors Office \(EPPO\)](#) is expected to lead to more expedient and effective prosecution of fraud against the EU budget. In effect, while not fully operational at the moment of writing this paper, EPPO has now the exclusive competence to investigate all crimes against the EU's financial interests committed after November 2017 (the entry into force of the EPPO regulation). Yet not all EU Member States participate in the EPPO scheme. Three Member States (Hungary, Poland and Sweden) have decided not to join the EPPO and two other members (Denmark and Ireland) are excluded as they benefit from an opt-out from the area of freedom, security and justice (AFSJ).

On top of that, [it is not clear that the EPPO will have sufficient staff and resources to undertake its tasks effectively](#). The EPPO budget for 2020 is €11.6m. While it will be increased to €45m in 2021, it is still lower than the [€55m that the EU prosecutor's office](#) asked for 2021. Moreover, the EU budget only covers the costs of the EPPO's central offices. The day-to-day investigative work will be carried out by European delegated prosecutors at the national level, paid out of national budgets. The appointment of delegated prosecutors has not been completed at the time of writing this paper but some Member States have already announced their intention to appoint part-time prosecutors, something which will hinder their capacity to investigate EU affairs.

3 ■ FOUR WEAKNESSES OF THE CURRENT EU ANTI-FRAUD SYSTEM

The description above points at four **main weaknesses** of the current EU approach to combatting fraud in the use of EU cohesion funds.

First, **the whole system strongly relies on Member States' capacity and willingness to prevent, detect and report fraud to EU funds**. This is inevitable in a system under shared management but should be highlighted, as it puts important limits on the capacity to fight EU fraud. Even if the Commission provides detailed guidance on how to report irregularities, there is a general suspicion that many Member States under-report irregularities to OLAF⁹. Besides, the Commission is rather powerless in relation to a Member State which does not put in place effective anti-fraud prevention and detection measures. As said above, even the use of IT tools to detect fraud is not compulsory. In fact, having effective and proportionate anti-fraud measures is not considered as one of the "enabling conditions" which Member States must meet before they can start allocating EU cohesion funding¹⁰. Finally, many national authorities fail to refer the cases of EU suspected fraud to investigative and prosecution bodies. This will continue to be a problem for non-participating EPPO member states.

Second, the **system is particularly ill-suited to tackle situations of institutionalised fraud and large-scale corruption**. In principle, the Commission could exert pressure on a Member State to correct systemic deficiencies in its management and control system by applying net corrections. In practice, the Commission privileges the use of preventive measures such as warning letters and suspensions of payments, allowing Member States to correct the irregularities and re-use the EU funds. The Commission insists that the threat of net corrections is sufficient to induce Member States to remedy the deficiency which has occasioned the irregularities. However, the fact that the Commission has never dared to apply net corrections makes this threat hardly credible, as exemplified by the Hungarian case (box 2).

Box 2 ■ Financial corrections in Hungary

In 2017, the Commission identified serious deficiencies in the work of the Hungarian central public authority responsible for controls on public procurement contracts. Rather than applying a net correction, the Commission pushed the Hungarian government to apply itself a net correction (a 10% flat rate cut) on all contracts awarded under this authority. This represented a huge sum, of approximately €1.6bn.

Even if this was presented by the media as a "big penalty" from the EU Commission for mismanagement of EU funds, in practice it consisted of a financial correction applied by the Member State, not by the Commission. This allowed the Hungarian government to re-use the EU funds allocated to finance new projects. Despite the application of this correction, the Hungarian government did not correct the deficiency in its public procurement system. Indeed, as evidenced by recent press articles, [the Commission is still worried about the "systemic irregularities" in the Hungarian public procurement system](#).

⁹. European Court of Auditors, Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination, Special Report 2019/6.

¹⁰. Annex III of the Common Provisions Regulations for 2021-27 (COM/2018/375 final).

Third, **financial corrections do not work as an effective deterrent for fraudsters**. The European Court of Auditors reports that many national authorities do not recover the funds from the perpetrators of fraud once the financial correction is applied, even in cases when fraud has been established by judicial authorities¹¹. A more effective measure would be the application of financial penalties or the exclusion of fraud perpetrators from future EU tenders but, as said above, EU institutions are not able to apply these measures in the area of EU cohesion policy.

Fourth, the level of **transparency in the use of EU funds is sub-optimal**. National authorities are obliged to disclose information on the beneficiaries of the funds but the information is often presented in a format that does not allow citizens to sort, search or extract data. Besides, there is no legal obligation to report information about the ultimate beneficiaries of the funds –e.g. owners of beneficiary firms or sub-contractors- to the EU authorities.

4 ■ WHY THE RECOVERY AND RESILIENCE FACILITY CALLS FOR A RE-THINK OF THE EU'S APPROACH TO COMBATTING FRAUD

Another feature of the EU's current anti-fraud procedures is that they impose many obligations of reporting to national authorities. As a result, the management of EU funds becomes complex and burdensome. This is not a problem for anti-fraud measures alone, but for all of the EU's control over the use of EU cohesion funds. Over the last years, the Commission has made an effort to streamline and simplify EU controls but the existing procedures and rules still impose high administrative costs to beneficiaries and managing authorities, thus slowing down the allocation and disbursement of EU money.

The RRF is based on a different philosophy of management. With the aim of speeding up the implementation, EU monitoring will be focused on the attainment of results rather than on rules compliance. More specifically, RRF payments will not be linked to detailed verifications of costs incurred but to the achievement of pre-defined targets and milestones. Member States will have to accompany biannual payment requests with a "management declaration" and a summary of the national audits carried out, but reporting obligations will surely be much lighter than in EU cohesion policy.

This different approach obliges a re-think of the ways of combatting EU fraud. A first point of departure is to **review the level of ambition**. The Commission works under the principle of "zero tolerance for fraud", yet in practice it is not possible to prevent fraud entirely. Fraudulent uses of the EU funds are difficult to detect as in most of the cases there are no direct victims who spontaneously denounce it. An important part rests uncovered, despite the numerous controls to which the EU funds are subjected.

Rather than sticking to this ambitious goal, **the EU Commission should concentrate on combatting cases of institutionalised fraud and large-scale corruption**. The negative effects are much more considerable when the misuse of EU funds is connected to high-level corruption. Not only are the amounts of misspent EU funds higher but the political implications are more severe, as the EU budget ends up reinforcing national governance malpractices, favouring clientelism and even supporting intentional attempts to distort political pluralism and dismantle the rule of law.

¹¹. ECA, Special Report 2019/6.

As for non-corruption-related fraud, we can assume that it is in Member States' own interests to prevent, detect and correct it. They should be encouraged to do so in a cost-effective way. Two measures are particularly cost-effective: **the use of data analytic tools to identify “red flags” and the publication of data on beneficiaries in an open, easily readable, re-usable way.** Under RRF rules, Member States are not obliged to apply any of these two measures. The Commission should find the way to push them to do it.

Finally, there is a need to **strengthen the EU's capacity to investigate fraud and corruption.** The amount of EU funding to be disbursed over the next year will significantly increase, and this will create more opportunities for fraudulent uses of EU funds. Even though national authorities remain the main players in the fight against fraud, OLAF and EPPO's investigations will be essential to deal with complex and cross-border fraud schemes. Besides, without the regular reporting of fraudulent irregularities coming from Member States, OLAF will have to rely more on its own investigative capacities to detect fraud in the use of EU spending.

5 ■ COMBATTING FRAUD IN THE USE OF EU COVID FUNDS: FIVE RECOMMENDATIONS

A different EU anti-fraud approach as described in the previous section needs to be reflected in concrete policy choices. Here are five policy recommendations to move towards this direction.

5.1 ■ Focus on institutionalised fraud and large-scale corruption

As said above, the EU level should primarily focus on addressing the problems of institutionalised fraud and large-scale corruption. This requires bold actions to be taken at the moment of assessing the national RRFs and monitoring their implementation.

To start with, the Commission has to **make sure that all Member States propose appropriate control and management systems for the use of RRF funds**, even if not subject to the same level of reporting and control as the EU cohesion funds. The minimum standards required are defined in very generic terms in the RRF regulation (see point 2.10 of annex V of the RRF regulation). This can be seen as an advantage, as it may allow the Commission to tailor its requests to the different needs and capacities of Member State.

Secondly, the disbursement of RRF funds will be conditioned on making progress in addressing challenges identified in the Country Specific Recommendations (CSRs). In principle it is up to the Member States to choose those CSRs in which they want to make progress, but **the Commission should put special emphasis on the Country Specific Recommendations (CSRs) linked to the integrity of the public administration and judicial system.** A look at the CSRs addressed in 2019 and 2020 (the ones that will be taken into account for the assessment of NRRP) shows that 8 Member States have received recommendations to strengthen their anti-corruption framework¹² and 5 Member States have been asked to improve the independence of their judicial systems¹³. For these countries, the adoption of the RRF Plan

¹². Croatia, Cyprus, Czech Republic, Hungary, Italy, Malta, Slovakia and Slovenia.

¹³. Cyprus, Hungary, Malta, Poland, Slovakia.

and the subsequent payments shall be conditioned on a credible reform path to resolve these institutional weaknesses.

Finally, during the implementation of the RRF, the Commission can always step in and impose a reduction of the RRF allocation to a Member State if it detects cases of fraud, corruption or conflict of interests which have not been corrected by the Member State (art 22.5 RRF regulation). This is comparable to the capacity to apply “net financial corrections” in the cohesion policy area. The RRF regulation does not detail the procedure to apply recoveries. Again, this can be seen as an advantage. **The Commission can define a shorter, more automatic procedure for recoveries** than the one applied in the area of EU cohesion policy, thus rendering the threat of recoveries more credible.

5.2 ■ Allow the Commission to blacklist unreliable operators from RRF tenders

Even with a more automatic and shorter procedure for recoveries, the decision to cut a Member State’s RRF allocation will remain a very last-resort, politically difficult decision.

A complementary, more effective tool to tackle problems of institutionalised fraud could be to allow the Commission to **exclude operators which have already committed fraud or corruption against the EU budget from participating in RRF tenders**. As explained before, the EU has a system for this purpose, called EDES (Early Exclusion and Detection System). EDES allows the Commission to blacklist some economic operators and exclude them from future EU tenders in the areas of direct or indirect management. As the Facility is, legally speaking, under direct management (art 8 RRF regulation) it could be in principle included in the EDES system. However, the application of EDES to the RRF is not straightforward. This is because the legal beneficiaries of the RRF (e.g. the ones that will sign the grant agreement with the Commission) will be the Member States, not the final recipients of the funds. The Commission should propose a reform to the legal basis of EDES to allow its effective application to the RRF area.

5.3 ■ Generalise the use of data analytic tools

Data analytic tools are the most cost-effective way of detecting fraud. As in the EU cohesion policy area, the RRF regulation requests the Commission to offer to Member States, free of charge, a single EU data-mining and risk-scoring tool to analyse the relevant data. This data-mining tool will be an improved version of ARACHNE. It will allow national authorities not only to detect fraud, corruption or conflicts of interest but also to identify possible cases of double funding. However, despite the efforts of the Commission and the Parliament, the RRF regulation does not make the use of this single data-mining tool obligatory. This is unfortunate. The advantage of using a single EU data-mining tool is that it gathers the information filed by all national authorities. The more the system is used, the more data it gathers and the more useful it is to detect fraud cases or unreliable operators across the Union.

The Commission has insisted on various occasions that it will work with a view to generalising the use of this IT tool. **There should be concrete measures to achieve this goal**. Specific training and more awareness could help convince reticent national authorities to use it. The Commission could also envisage the possibility of imposing the use of ARACHNE

in countries presenting very high risks of fraud and corruption. Another alternative could be to give OLAF the possibility of introducing into ARACHNE data on RRF operations implemented in those countries which refuse to use ARACHNE themselves.

5.4 ■ Provide maximum transparency over the use of EU Covid funds

Another cost-effective way to detect fraud and corruption is to give maximum transparency over the use of EU funds, thus allowing civil society and/or investigative journalists to track where the EU money is going.

Under the RRF, Member States will have to collect data on the beneficiaries of RRF funds. Contrary to what happens in the area of EU cohesion policy, this will have to include data on final recipients, that is, the contractors and sub-contractors working for the firms receiving RRF funds as well as the beneficial owners of these firms or contractors. However, this data will be only collected for “purposes of control and audit” by the Commission, OLAF or the EPPO. Nothing is said about the obligations to disclose the data.

The Commission should impose **some minimum disclosure obligations on Member States as regards the beneficiaries of RRF funds**. Full disclosure of information on final beneficiaries may not be in accordance with the limits imposed by the EU General Data Protection Regulation (GDPR) but the level of disclosure should be at least equivalent to that applied under the EU cohesion policy.

5.5 ■ Ensure that OLAF and the EPPO have sufficient resources and staff

Over the next three years, the amount of EU funds spent (both through the RRF and through classic cohesion policy funds) will roughly double. This sharp increase in EU spending should be matched with more EU resources and capacities to detect and investigate fraud.

As explained in section 3, it is not clear that the EPPO will have sufficient staff and resources to undertake the tasks entrusted in an effective way. As for OLAF, without the regular reporting of fraudulent irregularities by Member States, it will have to rely more on its own investigative capacities. Yet, over the period 2019 -2023, OLAF staff numbers are expected to remain stable or even decrease due to the transfer of posts to the EPPO.

The Commission, the Parliament and the Council should be attentive to the future needs of these two EU institutions and increase their resources in the next EU annual budgets if needed.

6 ■ FINAL REMARKS: LOOKING BEYOND THE RRF

The adoption of a different anti-fraud approach to control the use of RFF funds is a necessity. If well applied, it will prove that a much lighter, performance-oriented approach to monitoring the use of EU funds is compatible with an effective protection of the EU's financial interests. This will have implications for the management of other EU funds, above all the EU cohesion policy funds.

Over the last years, there has been a steady effort to simplify the EU cohesion policy rules and procedures. The rules for 2014-2020 encourage the use of a simplified cost option for the reimbursement of expenditure. They reduce the reporting obligations for managing authorities and subject Member States to fewer controls, particularly those with good track records and proper functioning of their management and control systems. All these simplification measures have led to a more proportionate, cost-effective and risk-oriented EU control system. However, the shift has not been radical enough, and management and implementation of EU cohesion funds is still perceived as excessively lengthy and bureaucratic by Member States' authorities and beneficiaries.

The RRF governance constitutes a radical departure from the status quo. It allows the Commission to test a completely different philosophy of management, based on performance rather than rules compliance. **If it proves effective both to support a quick implementation and prevent major misappropriations of EU money, there will be pressures to extend this new approach to other EU spending areas, particularly cohesion policy.** While nobody knows if the special EU Recovery Instrument will become the first step towards the establishment of a fully-fledged EU fiscal union, it could already be a game changer as regards the governance of the EU budget funds.



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