Financial Interests of European Scale FIES

Assessing the Effectiveness of Preventive Administrative Approach

Daniele Senzani

Editoriale Scientifica

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holds a general interest which also must consider those affected as potentially held by (all) the Member States.

Under this view, proposing a more robust (thus, harmonized) legal protection of the financial interests at stake would be possible. In other words, it is essential to distinguish the "financial interests of European scale" from "EU financial interests" as there is a different perspective of the public benefit at stake. Their protection requires a preventive approach matching EU and Managing Authorities' roles. The former, by setting the frame and consequent homogenous common standards; the latter, by tangibly implementing preventive measures fitting their specific administrative environment.

This new frame could be possible only under the Commission's powers (along with OLAF's essential technical support).

For this reason, it is essential to make plain the legal properties of the financial interest on a European scale when private financing sources are involved in ESI funds operations, such as in PPP Contracts. Reliable preventive protection may only be based on an accurate assessment of legal tools and funding systems and the consequences related to in term of risks.

3. Contrasting fraud and irregularities in shared management: an overview on current issues related to preventino, *Piergiorgio Novaro*

In the most recent years, the EU regulatory framework on ESI funds has seen significant changes for the purpose of improving competent European and National authorities' powers to prevent, detect and contrast fraud and other illegal activities,

on the one hand and the capacity of ESI fund to increase their leverage by attracting private financial resources.

EU Institutions are aware that "*in addition to known risks, new challenges are emerging. They are linked to new ways of managing and spending EU funds, linked to performance and achieving specific targets, areas of reinforced spending… Coping effectively with* ***these risks will require new approaches and tools and a renewed and joint European vision for fighting fraud, corruption and other illegal activities affecting the EU's financial interests.*** *This vision will build on the achievements of recent years and include a more efficient collection and use of data, improved transparency, better coordinated, coherent anti-fraud efforts by Member States through national anti-fraud strategies,* ***reinforced cooperation*** *within national authorities, between EU Member States and with the EU*" (PIF Report 2020).

In line with the overall objectives of the present study, the analysis will now focus on the role of those public authorities in the prevention of illegal activities and cooperation mechanisms in force, taking into account peculiarities of the most recent legal tools involving private financial initiative such as financial instruments and public-private partnerships.

Eventually, it should be stressed that the following analysis will not cover instead preventive measures adopted by the Commission against a Member State (*rectius* the authority responsible for the implementation of an operational programme) that may result in a deferral of payments from the EU budget when the EU Institution claims evidence of severe deficiencies in the management and control system.

3.1 The role of the European Commission and OLAF

Exploring the extent of the mission carried on by the European Commission and OLAF about the prevention of fraud and other illegal activities (including irregularities) related to the allocation of ESI funds under shared management requires focusing primarily on cooperation. Cooperation may play a decisive role in boosting an effective preventive approach, as we will describe later.

For that purpose, the analysis should start from the principle of loyal cooperation established by article 235 TFEU and the relevant European legislation.

Having regard to the earlier – as it is well known – the European Commission and the Member States should "*coordinate their action aimed at protecting the financial interests of the Union against fraud*" by setting up adequate cooperation mechanisms.

Regarding the latter, it should be said that the relevant legal framework is characterised by a combination of powers directly entrusted to the Commission through OLAF, on the one hand, and a set of tasks provided for the Member States, on the other.

So, among the general powers OLAF is vested with, Article 1(2) of Regulation (EU, EURATOM) no. 883/2013 concerning investigations conducted by OLAF expressly states that "*the Office shall provide the Member States with assistance from the Commission in organising* ***close and regular cooperation*** *between their competent authorities in order to coordinate their action aimed at protecting the financial interests of the Union against fraud. The Office shall contribute to the design and development of methods of* ***preventing and combating fraud, corruption and any other illegal activity*** *affecting the financial interests of the Union*".

This provision is consistent with the mission entrusted initially to OLAF by the decision 1999/352/EC, ECSC, Euratom establishing the Office. Article 2 gives OLAF the task not only to carry out administrative investigations to strengthen the fight against fraud, corruption and any other illegal activity adversely affecting the Union's financial interests but also to provide the Commission's support in cooperating with the Member States in the area of the fight against fraud. In addition, OLAF is responsible for the preparation of the legislative and regulatory initiatives of the Commission with the objective of fraud prevention.

Similarly, the current Regulation (EU, Euratom) no. 2018/1046 on the financial rules applicable to the general budget of the Union provides at article 63 on shared management that when executing tasks relating to budget implementation, Member States shall take all the necessary measures, including legislative, regulatory and administrative measures, to protect the financial interests of the Union. In particular, those measures should have as an object: preventing, detecting and correcting irregularities and fraud; and cooperating with the Commission and OLAF, in accordance with that Regulation and other sector-specific rules.

Having said that, how this cooperation should be implemented is the result of a delicate balance between the need for effective vertical coordination of activities and the institutional autonomy of Member States.

In general terms, the problem of finding an adequate balance between the aforementioned principle of loyal cooperation and the institutional autonomy of Member States cuts across all relationships between European Institutions and National administrations (Le Barbier Le Gris, 2006). Nonetheless, when the

Union has exclusive competences, Member States have an actual duty to cooperate. That is the case of the financial interest of the European Union at issue, whose protection requires the establishment of clear duties of administrative coordination.

Yet, how far European Institutions may go in setting up cooperation mechanisms is still critical since it may imply a breach in the institutional autonomy of the Member States (La Farge, 2010). No specific orientations may be found in the Court of Justice case law, which has never directly coped with the problem, so general or predetermined solutions may not be found.

Notwithstanding, regarding ESI funds shared management, some specific orientations are given by recital 22 of Regulation no. 2018/1046. Under that recital, for information purposes, the Commission only should be able to make available to national or local authorities responsible for management and control activities "*a* ***non-binding methodological guide*** *setting out its* ***control strategy and approach****, including checklists and examples of best practice*" in order to promote best practices in the implementation of the ESI Funds.

The Regulation thus seems to confirm the approach EU Institutions have followed so far to adopt soft law tools aiming to progressively standardise proceedings adopted by National and local managing authorities by stimulating more efficient management of those funds (Macchia 2012).

However, that recital could be considered a stepping stone for analysing how cooperation mechanisms should be put into practice in the subject at issue, as long as the two main points are clear.

Firstly, the mentioned recital does not cover all the powers OLAF – as representative of the Commission for the matter –

may exercise to protect the financial interests of the Union. The orientation toward a non-binding approach set by that Recital seems to be limited to *ex-post* measures, that is, to "*control strategy and approach*". On the contrary, no references are made to prevention, even if we saw that it is the primary duty of managing authorities in the light of the broader duty to cooperate set by article 63 of the current financial regulation.

Secondly, it should be noted that non-binding legal tools are not the only solution theoretically applicable to the cooperation problem above. Based on the interpretation of Article 197 TFEU, some studies have broadened the capability of European Institutions to set forth binding legal tools since "*the future 'binding measures' will represent the European parameter to direct administrative action in the Member States, and consequently evaluate their effectiveness, even without providing a full and uniform discipline*" (Chiti 2010). In other words, given the lack of legal provisions explicitly prohibiting the European Commission from adopting binding measures concerning prevention in the field of ESI Funds management and allocation, **there are no theoretical constraints in speculating the adoption of binding cooperation schemes** under article 197 TFEU to enhance a coordinated approach towards prevention of risks related to fraud and other illegal activities (including irregularities).

Therefore, vesting the EU Commission with this mission, supported by OLAF for all technical aspects, should prevent any criticism even in the light of a rigorous interpretation of the Treaties also consistent with limits stated in "*Meroni case*" and the subsequent well-known "*Meroni doctrine*" on delegation of regulatory powers to 2nd level EU agencies[1].

[1] CJEU cases C-9/56 and C-10/56 *Meroni v High Authority* [1957/1958]

Focusing now on the preventive perspective, the EU Commission has fulfilled its mission of organising a "*close and regular cooperation*" conformingly to the non-binding approach described before. More precisely, OLAF has attempted to stimulate Member States and managing authorities to adopt more coordinated or homogeneous measures concerning both prevention and contrast of illegal activities related to ESI Funds following three directions: a. improving coordination among managing authorities, stimulating strategies adopted at the National level; b. guiding managing authorities in building up an efficient set of anti-fraud measures; c. providing managing authorities with some operational tools to support their preventive approach.

a. Having regard to anti-fraud strategies, OLAF attempted to encourage the adoption of National anti-fraud strategies (or NAFS) by issuing specific guidelines in 2014[2].

The reasons behind those guidelines mainly rested on the radically changed approach provided at article 125(4)(c) by regulation EU no. 1303/2013 and now article 74(1)(c) of Regulation EU no. 1060/2022. Under that provision, for the first time, managing authorities must put in place "*effective and proportionate anti-fraud measures taking into account the risks identified*".

In OLAF's view, that change in the legal requirements would have allowed the Member States to adopt National anti-fraud strategies to "*ensure homogenous and effective practices,*

ECR 133. On the theoretical implications of the so-called Meroni Doctrine see Schneider 2008 and Simoncini 2018.

[2] OLAF, Guidelines for national anti-fraud strategies for European Structural and Investment Funds (ESIF), Ref. Ares (2014)4344594 - 23/12/2014.

especially where their organisational structures are decentralised" (Guidelines on national anti-fraud strategies, 2014).

The idea was, in sum, to replicate for each Member State the same scheme proved quite successful for the European Commission, which already adopted its own Commission Anti-fraud Strategies (CAFS) in 2011, as updated and modified in 2019[3]. NAFS would have been crucial for identifying vulnerabilities to fraud within the managing systems and assessing the main fraud risks. For that purpose, OLAF suggested designing the Anti-Fraud Coordination Service (AFCOS) as the national service responsible for elaborating the strategy and adopting it with a legal act to make it binding.

According to the Guidelines, prevention should have played a crucial role in the fight against fraud since it was considered easier and more cost-effective to prevent fraud than to make repairs. So the Member States should have been fully committed to developing and implementing fraud prevention (Guidelines on national anti-fraud strategies, 2014). That is why those guidelines gave great attention to fraud risk assessment and methodology, to the point that a possible structure is proposed in Annex 3. In this perspective, National Strategies would have coordinated the efforts made by AFCOS, managing authorities and certifying authorities.

[3] EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions and the court of Auditors on the Commission Anti-fraud Strategy*, COM(2011) 376 final and *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions and the court of Auditors* Commission Anti-Fraud Strategy: enhanced action to protect the EU budget, COM(2019) 196 final.

Unfortunately, experience so far has demonstrated that the attempt to give impulse to National strategies has been scarcely effective for at least two main reasons.

Firstly, not all Member States have responded to the orientation given by OLAF. As emerged by the last PIF report available, barely half of the Member States have adopted a NAFS (PIF Report 2020)[4]. Plus, among those who reported having drafted a NAFS, none seems to have followed the scheme provided by the mentioned guidelines (PWC, 2019).

Secondly, as emerged by the PIF reports issued after those guidelines, measures adopted by the Member States are far from those "*better coordinated, holistic anti-fraud efforts at EU Member State level, based on developing and implementing national anti-fraud strategies*" EU Institutions have tried to promote (PIF Report 2020). Up-to-date NAFS could be relevant from an institutional perspective rather than a legal one. In essence, **the elaboration of a NAFS today is a chance for inter-institutional dialogues** on the topic of fraud deterrence and contrast in the view of sharing policies among competent authorities, **rather than a proper legal tool providing binding legal rules** in such details that it may effectively coordinate the performance of tasks vested on managing authorities. That is even more true in the case of prevention strategies since all recommendations made in the 2014 guidelines about risk assessment and risk assessment methodology have been scarcely followed.

[4] COMMISSION STAFF WORKING DOCUMENT Measures adopted by the Member States to protect the EU's financial interests in 2020 Implementation of Article 325 TFEU Accompanying the document REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL 32nd Annual Report on the protection of the European Union's financial interests – Fight against fraud – 2020 SWD(2021) 264 final.

b. Having regard to the role played by EU Institutions in guiding managing authorities during the process of building up an efficient set of anti-fraud preventive measures, we should move from a fundamental soft law tool issued in 2014 by the European Commission: the Guidance for the Member States and Programme Authorities concerning Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures[5].

The Guidance provides fundamental orientations to managing authorities, whose overall objective is to address the main fraud risks in a targeted manner. The Guidance stimulates those authorities to evaluate the impact and likelihood of specific fraud scenarios during their self-assessment process. So that in adopting the consequent measures managing authorities may balance the overall benefit of any additional anti-fraud measures and their overall costs, e.g. the high reputational cost linked to fraud and corruption, under the principle of proportionality.

To better orientate managing authorities in this complex evaluation, the Guidance also provides in Annex 1 a fraud risk assessment tool, covering the likelihood and impact of specific and commonly recognised fraud risks particularly relevant to the key processes. Plus, it gives a list of recommended mitigating controls in Annex 2.

Moreover, OLAF itself issued three important documents giving those authorities practical orientations on specific topics related to fraud (and other illegal activities) prevention, namely: a practical guide on detection of forged documents in the field of structural actions; a practical guide on identifying conflicts of

[5] EUROPEAN COMMISSION, European Structural and Investment Funds Guidance for Member States and Programme Authorities Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures, EGESIF_14-0021-00.

interests in public procurement procedures for structural actions; and, a compendium of anonymised cases. It should be underlined that those further documents pay special attention to prevention and risk-based analysis. In particular, in OLAF's view, the effectiveness and intensity of *ex-post* measures implemented by managing authorities, such as on-the-spot checks, are grandly determined by the accuracy of the risks identified (OLAF, Practical guide on detection of forged documents).

Unlike with NAFS, these practical orientations had a considerable impact, especially the guidance above. Most managing authorities have largely accepted the perspective of improving their preventive approach toward frauds and irregularities (PWC 2019).

The importance of those orientations provided by the Commission and OLAF derives primarily from **the complexity of the assessment vested on managing authorities to establish an effective management and control system**. The overall success of the guidance underlines the need for orientation managing authorities still have.

Nonetheless, the current **lack of financial instruments' support should be stressed**. As noted by the European Court of Auditors, those orientations do not cover financial instruments or risks about state aid (ECA, special report no. 6/2019).

It could be said that preventive measures templates available today do not consider specific risks related to financial instruments. For this reason, the same Court warns that "*the Commission should provide guidance in respect of the provisions allowing financial instruments to continue to be used into the following programme period, in particular for cases where fund managers are selected on the basis of public procurement*" (ECA, Special report no. 19/2016).

More generally, the same conclusions may apply to other alternative private financing sources, such as PPPs. Although those guidelines focus primarily on public procurement, they do not consider the peculiarities of those public contracts as analysed below.

c. Eventually, to stimulate the competent National authorities toward a more effective preventive approach, the EU institutions created two important operational tools: **ARACHNE and EDES**.

In essence, ARACHNE is an integrated IT tool for data mining and data enrichment that the EU Commission has developed since 2009. ARACHNE may thus give managing authorities precious information on risk levels associated with a specific operation to be co-financed by elaborating data coming from two external databases (Orbis and World Compliance) on public reputational, financial and person-related information as well as from an internal database, which is constantly fed by managing authorities with data on projects and contracts already awarded.

More precisely, ARACHNE provides managing authorities with historical data on a particular beneficiary since it keeps a log of the risk evolution, including all the details used to calculate the risk scores and the data deliveries related to the beneficiary. Plus, it provides *ex-ante* risk calculations so that managing authorities can identify potential risks associated with the likely beneficiary in the pre-selection process.

In the light of the ongoing analysis, three key factors should be remarked about ARACHNE. Firstly, the IT tool has been developed, **focusing on the beneficiary situation**. Hence, ARACHNE may give competent authorities valuable information on the beneficiary's financial capacity, involvement in

criminal sanctions or convictions, tax evasion, etc. We will see *infra* what implications this circumstance has in cases of financial instruments, especially when fund managers are selected following a public procurement procedure and of PPPs.

Secondly, being a mere IT risk scoring tool, **ARACHNE does not solve *per se* the prevention problem, nor is it the only instrument authorities under share management are requested to use to lower fraud** (and other illegal activities or irregularities) **risk levels**. It is instead considered by the EU Institutions "*as a good tool amongst anti-fraud measures*".

Besides, as recognised by the same EU Commission, "*it is the responsibility of Member States' authorities to define the sample or the population of projects which will be further investigated, based on the risk indicators and risk scores calculated by the Arachne tool. Member States are, however, strongly recommended to define upfront their risk score analysis strategy which will lead to the identification of projects selected for investigation*" (EUROPEAN COMMISSION, 2016).

Thirdly, once again, it should be recalled that applying **ARACHNE is not a legal requirement** for the management and control system built up by managing authorities since that service is provided voluntarily. However, "*it is recommended that it becomes a part of effective and proportionate anti-fraud measures*" (*Ibidem*). The initiative taken by competent Directorates of the EU Commission about creating ARACHNE falls outside the scope of the regulation package concerning ESI Funds.

On the opposite, the Early Detection and Exclusion System (EDES) – *id est* the second IT tool described above – is regulated in detail by Chapter 2, section 2 of the current financial regulation.

Preliminarily, it should be said that **EDES is a horizontal**

measure capable of being applied in all cases related to the implementation of the EU budget. Under article 135 of the current financial regulation, EDES applies to participants or recipients of European funds regardless of the kind of management, being direct, indirect or shared.

The mentioned legal framework establishes thus two primary duties. On the one hand, the European Commission has the duty to set up and operate an early detection and exclusion system to protect the financial interests of the Union. In sum, the Commission has the duty to keep a constantly updated and centralised database of economic operators and entities that have infringed one of the rules set by article 136. Those subjects are in an exclusion situation compared to the exclusion grounds set by article 57 of Directive 2014/24/EU on public procurement.

On the other, all the authorities involved in implementing the EU budget have the duty to exchange information with the Commission so that the latter may determine the inclusion or not of those recipients of EU funds within the EDES database.

A critical point here is to determine how early the detection of those situations potentially hazardous to the EU budget should be because of the legal effects registration on the EDES database may have. Under article 136, competent authorities must report the exclusion situation despite the lack of a final judgment or a final administrative decision on the point. When it occurs, in principle, the decision should be taken "*on the basis of a preliminary classification in law of a conduct as referred to in those points*", as article 136(2) states.

According to the General Court, the case's referral does not presuppose a final judgment or a final administrative decision already exists. The authority is then to refer the case "*in the absence of a judgment or a decision of that kind, where it finds that*

a possible financial irregularity… is likely to create 'risks threatening the Union's financial interests". The contracting authority must nevertheless assess "*whether such a risk exists and, if so, if it is likely to threaten the financial interests of the European Union*" (Case T-228/18 *Transtec*).

As to the legal effects, the inclusion of an economic operator into the 'black list' may determine its exclusion of it from further comparative selection procedures for at least three years unless the duration is set by the final judgment in case of an exclusion situation ascertained by a National or European Court. Besides, the inclusion may follow a financial penalty.

On this point, the same Court has stated that "*the registration of an early detection case in the EDES database enables the competent authorising officers merely to carry out the necessary verification in respect of ongoing procurement procedures and existing contracts. It follows that such registration merely makes it possible for authorising officers to satisfy themselves that the rules of sound financial management have been observed and that the agreements have been properly performed, but does not result in an automatic measure or penalty. It does not therefore in itself produce any binding legal effects*" since the binding effect of the inclusion takes place only after a verification made according to the centralised assessment provided by article 135(4) of the current financial regulation (T-477/16, *Epsilon International SA*).

From the perspective of the ongoing analysis, we should make two remarks. Firstly, **it is doubtful that EDES may be qualified as a proper preventive measure**. In this case, prevention seems to be an indirect consequence of the sanctioning effect (exclusion). That is to say, applying EDES may prevent fraud and irregularities in general just because, according to the already mentioned provisions set by the financial regulation,

registered economic operators are excluded from future selection procedures, as we saw before. From our perspective, sharing information among managing authorities prevents other authorities from making the same mistake in the future. However, even though the EDES tool may be helpful to prevent further managing authorities from awarding ESI Funds to economic operators already sanctioned, it may not be appropriately seen as an administrative measure to lowering risk levels. Secondly, it should be remarked that being a fully horizontal measure, as we described before, the application of EDES to financial instruments or PPPs does not differ from its general application.

3.2 The role of National Authorities

To better describe the role played by National Authorities in prevention, we should focus separately on National Governments (Member States) and managing authorities.

a. Having regard to the first, we have already seen that in the view of EU Institutions, **National Governments are recommended to coordinate and uniform the missions vested on managing authorities**. In this perspective, the primary tool to reach those objectives should be the definition of an accurate National anti-fraud strategy. However, we have already described the problems related to the application of those recommendations.

An example of it may be found in the selected national legal systems since they are included in the Member States that have adopted a NAFS.

In Italy, the Italian AFCOS, namely *Comitato per la lotta contro le frodi nei confronti dell'Unione europea* (Committee for the fight against frauds affecting the European Union), is head-

ed by the Minister for European Affairs, and it is composed of other members designated by the same Minister and the Regions. It is vested with the mission to elaborate the National Anti-fraud strategy, being the strategy part of the annual report the Committee is obliged to present to the Parliament. Although this is a legal requirement provided by article 1(54) of law no. 234/2012, the National strategy implemented by the Italian AFCOS varies utterly from the scheme elaborated by OLAF in the 2014 guidelines. Besides, it does not provide a proper "action plan": it establishes no detailed rules or measures managing authorities must comply with. As we said before, it could be classified as a policy-setting document. Among those policies, it should be remarked the objective of "*consolidat*[ing] *the analysis and assessment of the risk of fraud, corruption, conflict of interest and double funding (regarding the protection of the EU's financial interests)*" even though no specific orientations may be found for managing authorities other than the quoted reference (Committee annual report 2020).

Plus, France has a more complex organisation involving central and local authorities. First of all, it should be noted that in France, there is no specific legislation regarding fraud (and other illegal activities) affecting the financial interests of the European Union since the same authorities are in charge of the fight against fraud harming the National interest. That is undoubtedly compatible with article 325 TFEU when it states that the Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud involving their financial interests. On the opposite, it seems less consistent with the approach followed by EU Institutions in the 2014 guidelines, as described before.

Recently designed by decree no. 2020-872[6], the *Comité interministériel anti-fraude* (Anti-fraud Inter-ministerial Committee) is entitled to define 'common operational strategies' by coordinating the action of the National anti-fraud working group, that is, groups of experts organised within the same Committee to address frauds in specialised fields. The presence of different groups may be easily explained by the broad scope of the mission carried out by the Committee. Besides, the Committee's mission is to coordinate the activities of *Comités opérationnels départementaux anti-fraude* (Departmental Operational Anti-fraud Committee). Those regional committees are in charge of coordination measures adopted by the relevant public authorities.

So far, the mission of the National Committee has been primarily focused on raising awareness of the importance of contrasting frauds and on training addressed to managing authorities officers and personnel (Yoli, 2019).

b. Regarding the second, **preventing irregularities, including fraud and other illegal activities, rests today entirely on managing authorities**.

Article 72(h) of Regulation EU no. 1303/2013 includes prevention among the general principles concerning management and control systems. Besides, the already mentioned article 125(4)(c) of the same regulation establishes prevention as one of the primary missions of managing authorities since they are

[6] Décret n° 2020-872 du 15 juillet 2020 relatif à la coordination interministérielle en matière de lutte contre la fraude et à la création d'une mission interministérielle de coordination anti-fraude. The new act of primary legislation extinguishes the previous one created by Décret n° 2008-371 du 18 avril 2008 relatif à la coordination de la lutte contre les fraudes et créant une délégation nationale à la lutte contre la fraude.

called to elaborate effective and proportionate anti-fraud measures. The same approach may be found in the new Regulation EU no. 1060/2021 at article 74, where those authorities are again charged with setting up not only effective and proportionate anti-fraud measures but also specific procedures to apply those measures (**table 1**).

It follows that **managing authorities have broad discretion in determining the extent of the self-assessment** since the fraud risk assessment tool provided by the 2014 Guidelines described earlier has as its primary objective to facilitate managing authorities in that task, whilst "*any other known risks for the specific programme/region under assessment should be added by the self-assessment team*". In fact, according to those guidelines, any managing authorities should build up a self-assessment team, whose composition should be proportionate to the complexity and size of each programme, according to §3.2 of the same guidelines. That team should be composed of members internal to the authority since "*the self-assessment should not be outsourced as it requires a good knowledge of the operating management and control system and the programme's beneficiaries*". Moreover, managing authorities have the same discretion in determining the frequency of the self-assessment, although the Guidelines recommend that it should be proportionate and adequate to the risk levels assessed.

Besides, Audit authorities must control the completed risk assessment. They could participate in the assessment process in an advisory role or as an observer. Audit authorities should pursue fulfilling their mission as long as they avoid taking direct decisions on the level of risk exposure because that could be seen as an infringement of independence.

To sum up, in the lack of specific orientations given by

NAFS or other equivalent legal acts issued by central governments, managing authorities are fully autonomous in selecting the most appropriate preventive approach to implement their management and control system.

Such autonomy inevitably brings a wide variety of solutions adopted. The success of the 2014 guidelines and the wide application of those operational IT tools described in paragraph 3.1 stress how favourably those authorities receive orientations because of the complexity **of setting up an efficient preventive approach towards irregularities, fraud and other illegal activities**.

As we saw above, the lack of orientation is even more severe concerning financial instruments and PPPs. No specific directions or guidelines at all address the topic. Consequently, up-to-date coordination among managing authorities to share experiences or common solutions is left again to the autonomous initiative of single authorities.

Programme management	
Regulation EU no. 1303/2013	**Regulation EU no. 1060/2021**
Article 72 **General principles of management and control systems** Management and control systems shall, in accordance with Article 4(8), provide for: […] (h) the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.	*Article 74* **Programme management by the managing authority** 1. The managing authority shall […] (c) have effective and proportionate anti-fraud measures and procedures in place, taking into account the risks identified; (d) prevent, detect and correct irregularities;

	[…] (f) draw up the management declaration in accordance with the template set out in Annex XVIII.
Article 125 **Functions of the managing authority** […] 4. As regards the financial management and control of the operational programme, the managing authority shall: […] (c) put in place effective and proportionate anti-fraud measures taking into account the risks identified; […]	

Table 1

4. Preventing fraud or other illegal activities when private sources of financing are involvde, *Piergiorgio Novaro*

Having addressed the main functions entrusted to European and National authorities regarding the prevention of fraudulent and other illegal activities (i.e., corruption) related to ESI funds allocation, it is now possible to concentrate on those special legal instruments provided by the past and current common provisions regulations where both public and private financing resources are concerned.