

Financial Interests of European Scale FIES

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Assessing the Effectiveness
of Preventive Administrative Approach

Daniele Senzani

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<p>3. The funds paid into the escrow account referred to in paragraph 2 shall be used for payments in accordance with the PPP agreement, including any payments to be made in the event of termination of the PPP agreement.</p>	
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Table 4

5. National survey findings, *Piergiorgio Novaro - Emiliano Treré*

As emerged during the previous analysis about the role of National authorities, prevention of irregularities, fraud, and other illegal activities related to ESI funds still rests entirely on managing authorities. Not only do those authorities have broad discretion in determining which administrative preventive measures are the most appropriate concerning their ESI funds allocation operations, but they have the same degree of discretion in determining the extent of the self-assessment related to the application and efficacy of those measures.

The study has also shown so far that efforts made by EU Institutions to give managing authorities specific orientations on the topic, as well as IT tools provided to those authorities (e.g. ARACHNE), do not fully solve problems related to particular forms of support involving private finance sources as described above. In essence, those mentioned orientations do not provide specific measures for financial instruments or PPP contracts. Likewise, IT tools do not fit well for beneficiaries under a fi-

nancial instrument scheme, nor do they apply immediately to private or financing partners under a PPP scheme.

For those reasons, the study intended to explore if and how, on their initiative, ESI Funds managing authorities would have implemented an efficient system of preventive administrative measures initially designed for those forms of support involving private financing, being that one of its main objectives.

The goal here was to support the effort of drafting a scheme of administrative preventive measures aimed to protect FIES compared with measures previously experienced in managing operational programs. Consistently with the original project, the research has focused on the selected national legal systems. Plus, the preliminary results of the analysis described in the previous chapters of the present study suggested furtherly concentrating the attention on managing authorities designed as such during the 2014-2020 programming period.

For this reason, the analysis of the role of competent authorities and the legal framework concerning financial instruments and PPPs has shown that reliable data could only come from managing authorities since National Authorities have not fully implemented specific prevention strategies. Plus, no other organisations (neither institutional nor civil society ones) would have already participated in creating those measures before, since under past and current CPRs, the self-assessment mentioned above does not fall under the principle of partnership for reasons explained earlier.

To do so, the team designed and launched a survey to collect valuable data provided by the same managing authorities.

In summary, the survey aimed to ascertain whether and what kind of preventive measures MAs have implemented for financial instruments or, more generally, private finance initia-

tives in the lack of specific orientations EU Institutions gave during the 2014-2020 programming period.

5.1 Design of the survey

From the preliminary findings of the project, it emerged that the information that needed to be gathered was highly complex; thus, the team opted for designing and implementing a written questionnaire. Semi-structured interviews were not carried out in the first phase as respondents needed enough time to ponder and adequately reflect on the specific dynamics and details related to the forms of support and the implemented measures. For this reason, the team considered a written survey the most appropriate methodological tool to provide the required information. Furthermore, the delays in the survey responses were more extended than what was initially foreseen. Hence, it was impossible to conduct follow-up interviews with some key respondents within the project's timeframe. Again, this speaks of the complexity of the matter and the need to plan accordingly, leaving enough time for the respondents to gather the required information.

The focus was on the French and Italian legal systems in line with the project's overall aims.

The survey was composed of three parts: 1) Financial Instruments, 2) Public-private Partnership, and 3) Suggestions. The first part included ten questions: seven were closed-ended and three open-ended. The second part had six questions, four closed-ended and two open-ended. The third part included only an extended open-ended question. The survey was developed between 01/09/2021 and 31/03/2022 and administered between 26/04/2022 and 15/06/2022.

The survey was split into three parts.

The first part regarded financial instruments. MAs were required to indicate what kind of financial instruments they had implemented according to the definition given by article 37 of regulation EU 1303/2013 and, essentially, if they had awarded their implementation directly to a public financial intermediate, to a private financial intermediate or, as an alternative, if they managed them directly. The goal was to understand better what financial instruments MAs used.

Plus, more importantly, how often they are supported by public or private intermediates, since the risk level related to the management of a fund implementing financial instruments may utterly vary depending on the public or private nature of the fund manager.

Afterwards, MAs were required to indicate which kind of preventive measures they were used to apply by allowing them to choose among measures already used for grants (as established in 2014 orientations issued by OLAF) or other measures. In the latter case, MAs were given the possibility to explain the main characteristics of those further measures in an open question.

The second part of the questionnaire was focused on PPP operations instead. It followed the same approach as part one. Eventually, the third part was left to suggestions to improve the efficacy of anti-fraud (or irregularities) preventive measures based on the experience of each MA.

A total of 50 Italian Mas/AAs and 40 French Mas/AAs were contacted, and six surveys were returned: one from the “Regione Emilia-Romagna”; one from “Région Centre Val de Loire”; one from the “Regione Sardegna”; one from the “Regione Sicilia”; one from “Région Bourgogne Franche Comté”

and one from the “Autonomous Province of Bolzano”. The limited number of feedbacks has been balanced by the relevance and size of the Mas/AAs actively answering the survey.

5.2 Key findings

Preliminarily, it should be said that the survey has confirmed two main features of the topic at issue, which have already emerged during the previous steps of the ongoing research and were actually at the base of the approach adopted for the survey as explained above.

On the one hand, the complexity of ESI funds’ legal framework concerning financial instruments and PPP operations reflects the utter complexity of implementing those instruments and the related form of support. That may partially explain the low response rate to the survey and, in particular, to open questions.

On the other hand, the great variety of measures adopted by those authorities who have responded reflects the lack of orientation by EU Institutions on the topic and the struggle of each MA to find an efficient and effective approach toward prevention. We are in the presence of a complex scenario, ranging from the non-use of financial instruments to the adoption of one or more of these instruments. Most have implemented one or more financial instruments such as loans, investments in the capital of existing or newly created entities, or guarantees.

It is interesting to note that MAs have sometimes implemented specific preventive measures about one or more financial instruments, such as the following: “drafting and compilation of a specific control check-list”; “on-site audits to verify the real and correct implementation of the intervention”; and pro-

cedures “aimed to verify that the Implementing body has adopted and properly implements its policy regarding the reduction of conflicts of interest risks (especially in the “selection of applicants” process), as stated in formal agreements and official documents”.

With regards to measures to align interests and mitigate possible conflicts of interest, MAs have introduced different measures such as the “Consultation of the “self-assessment tool-matrix” of fraud risk”: “periodical checks to verify that the Implementing body has selected final recipients in line with the requirements established by the ROP/other operational guidelines” and “direct participation of MA staff -attached to the Financial Instrument unit-in the Evaluation Committee meetings (organised by the implementing body) in charge of the selection of final recipients”. In the case of PPP operations, other specific preventive anti-fraud measures put in place by the Managing Authority have emerged, such as tailor-made checks on the expenses declared by beneficiaries. These checks (implemented before the payment is made to beneficiaries) cover the regularity of procurement procedures for the totality of operations (from contract awards to contract complete execution, and in the case of PPP, the correctness of financing agreements between the private partner and financial institutions co-financing the operation), and on the sample basis the regular implementation and the correct accounting of planned interventions. The elements acquired during these checks also aim to prevent irregularities and fraud, particularly before certification of expenditures to the EC.

Another critical issue was to ascertain how effective current digital measures in supporting preventive action could be. More precisely, one of the ancillary aims of the survey was to collect

data on the use of ARACHNE by MAs, a tool that we saw is not fully calibrated for the peculiarities of financial instruments and public-private partnerships when private financial intermediates are involved.

Despite the limitations of ARACHNE that we just mentioned, the results show that ARACHNE is primarily used among our respondents. MAs considered the use of IT tools insufficient to prevent those illegal activities the study focuses on if that is not supported by training activities and raising awareness among staff. Strengthening training activities has been seen as one of the critical points to correctly addressing fraud and other illegal activities risks.

In one case, a MA is reported to have developed a targeted and differentiated analysis tool for each financial instrument established in accordance with the Operational Programme. This tool has been based on the 2014 “Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures” orientations. According to the information given by the MA, this analysis tool has followed the same approach suggested by the Orientations for other target areas/processes (that is: quantification of gross risk in terms of impact and likelihood, assessment of the effectiveness of the current controls to mitigate the gross risk, assessment of the net/residual risk). Fraud-risk evaluation applied to financial instruments has taken into account two different levels of analysis: relations between MA and the Implementing body (selected key process: “implementation and verifications of the operations”) and relations between the Implementing body and the final recipients (selected key processes: “selection of applicants”; “implementation and verification of the operations”).

Furthermore, in building up this new tool, the MA has con-

sidered other key processes identified by the EGESIF document based on broad compatibility criteria. However, those were not specifically addressed with regard to financial instruments.

Moreover, given the high technicality of operations related to financial instruments, the MA has created a special Working Group. While implementing the fraud-risk assessment on financial instruments, MA Working Group members are also demanded to coordinate it with relevant anti-corruption prevention measures provided by a specific plan concerning corruption prevention and transparency adopted by the Authority designed as MA because of its general activity as public administration of the Member State, consistently with national legislation. For that purpose, the plan has been implemented on purpose, so to include specific risk areas associated with ESI funds management.

Additionally, the final “suggestions section” has yielded interesting results, for instance, the need for the Implementation body to commit to establishing and developing a managing information system (where all kinds of supporting documentation should be uploaded) to be shared with the MA. This would enable full access to relevant information. The information to be uploaded should be formally agreed upon. The participation of MA staff in Committees responsible for the selection of operations should be agreed upon with the Implementation body. As part of the Manual of procedures of each financial instrument, procedures related to the reduction of conflicts of interests (from the side of the Implementing body) should be clearly defined, including the evidence (traceability) of their effective implementation.

5.3 Reflections and future developments

Overall, the results of the surveys are in line with the expectations as well as the partial conclusions reached during the previous part of the present study. Forms of support involving private finance sources require an extra effort to prevent and detect fraud and other illegal activities risks because of the number of actors involved and due to what we have called an elongated chain of control.

It seems of utmost importance for future research stemming from the results of the present study to set up a stronger collaboration with the MA, who has created that original analysis tool to assess risk levels related to both the relationship between the MA and the Implementation body as well as those relationships between the Implementation body and final recipients.

More profound knowledge of that instrument may give fundamental clues on the possibility of extending its application to MAs in general and may provide an understanding of the possibilities of furtherly developing that tool to cover PPP operations.

Moreover, this survey has demonstrated that the followed approach may bring interesting results if extended to Managing authorities based throughout the European Union. In a future perspective, to overcome the actual lack of specific orientations at the European level, a fundamental stepping stone may be a confrontation with those – very few, might we say – managing authorities that tried to implement their original tool.

Even if the number of surveys received was relatively low, the findings have proven to be promising and illuminating, especially the open-ended questions that enrich our understanding of the topic shedding light on the measures adopted in dif-

ferent contexts by various actors. There is a need to develop a more robust follow-up with the respondents, given the specificity and complexity of the topic and the nature of the research participants. Indeed, the survey was vital to identify and better foreground the issues we would like to focus on, that is, prevented measures, in our future research endeavours. Furthermore, the findings from the survey strongly suggest that a future research design should contemplate a deeper involvement of the MAs who have been proactive and responsive.

6. A possible new frame to protect the Financial Interest of European Scale. Some proposals on administrative preventive measures, *Daniele Senzani*

The outcome of such a complex framework makes clear the need for more robust coordination between European Institutions and National Managing Authorities and for establishing **a homogeneous anti-fraud preventive system based on (EU) guidelines or standards** leveraging on risk assessment and risk management methodologies.

The attempt is to draft anti-fraud (and other relevant illegal activities) preventive measures that could be generally implemented and applied by Managing Authorities. Such a purpose, which could be achieved in the future, lays in the idea of progressively building up a common anti-fraud administrative frame under guidelines issued by EU Institutions vested with the power to protect EU financial interests: namely, the Commission along with OLAF's fundamental technical support.

For those reasons, paragraphs of this chapter focus on some issues and proposals related to a preventive system deriving