

Public Hearing CONT Committee

WRITTEN QUESTIONS IN FOLLOW-UP TO THE HEARING

Hearing on 5 December 2022

Questions asked by Jan Olbrycht

1. The use of ARACHNE should become compulsory by the Member States in 2028, but for some funds it is already in use and for other it seemed to be mandatory. For whom and in what funds is the use of ARACHNE mandatory and from whom it is voluntary? Could the Commission explain this to me?

Commission's answer:

ARACHNE is currently used on a voluntary basis for all funds in shared management. Member States are free to use other adequate and effective systems. However, if the Member State authorities decide to use ARACHNE, they have two obligations to make the system work. These obligations are included in the Arachne Charter.

When the Member State authorities decide to start using ARACHNE, they are requested:

- firstly, to extract data from their computerised system and to compile it in a data file in XML format in order to allow uploading the programme data in ARACHNE.
- secondly, to upload updated project data to ARACHNE on a regular basis, at least every three months.

The initial creation of the XML file requires support from the Commission Arachne team. Then, updating the files with the new data from the Member States' IT systems is a light procedure. There are 8 project data fields that are mandatory to allow Arachne to calculate risk indicators (out of a total of 105 possible data fields that can be uploaded in ARACHNE for each programme). The eight mandatory data fields are the Project Identifier, Project Name, Project Status, Beneficiary Identifier, Beneficiary Name, Project Costs, Project Type and Directorate General (DG responsible for the fund). Data on contractors implementing public contracts for beneficiaries was recommended but not mandatory in 2014-2020. For 2021-2027, data on contractors and on beneficial owners of beneficiaries and contractors will be added to the list of mandatory data to be uploaded in Arachne.

Questions asked by Caterina Chinnici

2. ARACHNE is a complex instrument with fundamental importance, especially for the prevention of risks on the basis of risk indicators. The risk profile depends on information coming from Member States' programmes and information coming from external sources, such as ORBIS. We all agree that identifying risks is vital for the protection of the EU financial interests, but this very much depends on the quality of information, and not on the quantity. How does the Commission ensure the quality of data? And how does the Commission ensure that data across Member States is comparable?

Commission's answer:

The data quality is ensured through the use of trustworthy sources and the regular verification of the data.

With respect to the data related to the programme, these are extracted from the Member States' IT management and monitoring systems kept in line with their obligations under the Common Provisions Regulation (CPR) and used to certify expenditure to the Commission. Member States' authorities are responsible for the quality of the projects data they upload to ARACHNE. The Commission services support the authorities in the setup and test phase by checking the quality and quantity of the data sourced. Users can perform validation of the data file they have uploaded by using the 'File validation' functionality available in the ARACHNE tool. This functionality allows the user to retrieve the eventual functional errors and warnings.

As regards the public data sources, which allow to enrich the programme operational data, the contract and license agreement with the ARACHNE external data providers (ORBIS, World Compliance) includes an obligation of the data providers to ensure an adequate quality of data used to produce the ARACHNE database. The Data Controller performs regular quality checks. The data providers collect data on companies from publicly available information such as official annual reports or balance sheets submitted to regulatory bodies by the concerned companies and published. Data on politically exposed persons, sanction lists and enforcement lists are received from regulatory and governmental authorities. Adverse media data is collected via the websites of a dedicated list of newspapers and magazines. The high quality of data is ensured by the external data providers as part of their commercial obligations to put quality review and quality assurance procedures in place and ensure that the provided data is correct, up to date and reliable.

Moreover, a procedure called "Feedback loop" allows ARACHNE users to report errors or inconsistencies and correct wrong data mapping between the programme operational data (uploaded by the Member State) and the public data sources.

3. I understand that Member States and their regional authorities use their own instruments. I would like to understand how the Commission ensures effective coordination between ARACHNE and the other instruments?

Commission's answer:

Under the CPR, Member States are required to put in place effective and proportionate anti-fraud measures and procedures taking into account the risks identified (Article 125(4)(c) CPR). The use of a data-mining system is a recommended measure. Member States are free to use their own systems, if they are adequate and effective. ARACHNE is a complementary tool to support the Member States in their administrative controls and management checks. The use of the different tools depends on the self-assessment made by the national authorities, the fraud risks identified, and the mitigating measures included in their management and control procedures. Sometimes Member States report that national registers or tools are more specialised or precise than Arachne and can provide better information (for example on certain types of companies). In other cases, ARACHNE complements the information or tools available at national level, for some types of risk indicators beyond purely national information, as illustrated by the intervention of the Polish representative in the CONT public hearing.

ARACHNE allows Member States to calculate risk indicators for their projects and contracts based on a set of data extracted from the programme monitoring system. Member States can extract the enriched information from ARACHNE and then use it in their own tools. In 2023, the Commission services intend to expand further those ARACHNE capabilities by enabling a

direct technical connection between ARACHNE and the national monitoring systems of Member States to ensure automatised transfers of data.

The Commission services help the interested programme authorities to design how to integrate ARACHNE in their daily management verifications. Documentation is available from the Commission services for all technical and administrative aspects of ARACHNE. The Commission services also provides technical support to ARACHNE users by phone, online, on-the-spot or via the functional mailbox. They also help organise meetings between programme users, possibly together with other Member States, to exchange experience and share best practices.

Questions asked by Ramona Strugariu

4. What are the most important improvements needed at technical level to the current set-up of ARACHNE in order to make ARACHNE more effective?

Commission's answer:

ARACHNE's functionality is constantly being expanded by the Commission services based on feedback received from users and at the Commission's own initiative to better meet the needs of Member States in the context of their management and control procedures and to make the data-mining tool always more effective and more user-friendly.

To improve the quality of data and allow more updated and precise results for risk-indicators, the Commission services are currently investigating the possibility of increasing the frequency of refresh of the data retrieved from the external sources (ORBIS, World Compliance), from every three months currently to month refresh. The Commission services also intend to analyse and assess any potential connections between various systems, databases, and registers that are already in place in the Member States and the Commission. Recently the Commission services implemented the EU Login two-factor authentication to improve the security of the tool. The upcoming implementations aim at delivering a new web services to automate the data transmission between ARACHNE and the Member States' monitoring IT systems and the provision of e-learning tutorials for users. Additionally, the Commission services are looking into possibilities of using the modern and flexible technologies, based on Artificial Intelligence and Machine Learning that are capable to cater for new extended functionalities and use cases.

5. Germany, Finland and Austria have all cited concerns on the compatibility of ARACHNE with national data protection rules. Has the Commission started a dialogue with these Member States to address these issues and what were the answers in case this dialogue started?

Commission's answer:

The Commission services are working actively in reaching out on the use of ARACHNE in Germany, Finland and Austria, providing the assistance and clarifications also on data protections concerns. In February 2022 the Commission services provided a general presentation of the tool to some Member States (FR, DE, ES, AT and SE), whereas on 14 September 2022 a dedicated presentation has been delivered to over a hundred representatives of the Federal government of Germany and of ERDF and ESF regional managing authorities and audit authorities and on 17 November 2022 for RRF coordinating and implementing bodies. The Commission services also provided to Germany on 22 December 2022 answers on a set of questions related to data protection that German authorities or Länder had raised on the IT tool Arachne, describing among others the activities carried out by the Commission services

to ensure compliance of the tool with Regulation (EU) 2018/1725 of 23 October 2018 (EUDPR) and its corresponding Implementing Rules (Commission Decision (EU) 2020/969). Further bilateral presentations were also organised with Finland and Austria. During these presentations the Commission services provided an update on the data protection rules applicable to ARACHNE.

As a result of these presentations and exchanges the Federal Ministry of Economy in Germany showed increased interest in introducing the use of the tool in the management of programmes. Austria is currently using ARACHNE for the ESF and for three ERDF ETC programmes. Finland is discussing internally the introduction of the use of ARACHNE in the management and control system and informed they will inform the Commission about their decision in 2023. Please also refer to the reply to question 8 below.

6. Looking at the latest ECJ decision regarding registers of beneficial ownership and the public access to these registers, what is the impact of this decision on all of the work on ARACHNE? (this question was also asked by Members Peksa and Hohlmeier)

Commission's answer:

The various concerned Commission services are assessing the impact of the ECJ decision regarding the registers of beneficial ownership under the AML Directive and the public access to these registers. Based on the output of this internal consultation, the Commission will put in place any required measure to ensure that Arachne is fed with the necessary data on beneficial ownership in compliance with this decision.

Questions asked by Mikulas Peksa

7. Do you foresee a further development of the IT-architecture of the database? Will the changes in the legal framework (the anticipated recast of the Financial Regulation) make further development necessary?

Commission's answer:

The IT-architecture of ARACHNE will be revised (1) to guarantee alignment with the existing and new legislations, including the Financial Regulation recast, once adopted and (2) to extend the functionalities of the tool to cover other business needs (e.g. to address some concerns raised by Member States) and promptly respond to change requests that aim to improve the tool. The proposal for a recast of the Financial Regulation foresees to make the use of a data-mining tool mandatory for all programmes of the post-2027 MFF under different management modes. This expansion of the tool would also require an adaptation of the current IT-architecture.

8. I noted that 9 Member States are not using ARACHNE or use a national tool. Can you give a perspective on the pace of inclusion of more Member States using ARACHNE?

Commission's answer:

The Commission services are constantly encouraging Member States to use the tool through pilot actions expanding over time to one or more Cohesion policy programmes. Since the launch of the tool the Commission convinced 19 Member States and the UK to use the data-mining tool for at least one programme. Up to 2022 Germany, Sweden, Finland, Denmark,

Poland, Estonia and Cyprus were not using Arachne for Cohesion policy (Greece having only launched a pilot exercise).

In 2022, several meetings and presentations were organised with Member States not yet or not fully using the tool to let them understand better the added value of the tool and encourage them to integrate ARACHNE in their management verification processes.

As a result, Sweden already managed to upload their first data to Arachne for ESF/ERDF programmes on 8 July 2022, becoming the twentieth Member State to use Arachne. Further trainings on the tool are being currently planned in this country to expand the use of the tool. Germany has shown a new interest in the tool for Cohesion policy, after the presentations on 14 September 2022 (see reply to question 5 above). The Commission will approach in 2023 the Austrian ERDF authorities to expand the use of the tool for ERDF programmes. Finland is discussing internally the introduction of the use of ARACHNE in the management and control system and will inform the Commission of their decision in 2023. The Commission will also re-activate the pilot exercise in Greece in 2023 and will continue to encourage remaining Member States to use the tool.

9. As regards the Commission's Data Protection Officer's opinion on ARACHNE, and the concerns of some Member States concerning data protection, what is the progress and can we also expect a new opinion of the European Data Protection Supervisor (EDPS) on ARACHNE (in addition to the opinion on the proposal for the recast of the Financial Regulation)?

Commission's answer:

The EDPS provided their first opinion on the current ARACHNE in 2017. Due to the novelties introduced into the system and the updated legal framework on data protection, the Commission services carried out a new data protection impact assessment on the current version of ARACHNE. This impact assessment was approved by the Commission Data Protection Officer on 22 July 2022, without notification obligation to the EDPS.

On the Financial Regulation recast, the EDPS provided its opinion 14/2022 and issued recommendations, some of which having been addressed by the record on processing of personal data on ARACHNE that is publicly available (DPR-EC-00598.3). The Commission services are currently working on the textual proposals of the recast of the Financial Regulation in order to address the remaining EDPS recommendations.

The Commission services might consult the EDPS on ARACHNE in the future, in case any changes needed in the tool would require a new impact assessment and identification of higher risks to the rights and freedoms of natural persons than currently assessed.

Question asked by Sabrina Pignedoli

10. ARACHNE provides a risk score, but does not automatically trigger decisions, but waits for Member States' authorities to act. In the absence of action from a Member State, can the Commission then take action instead?

Commission's answer:

The use of ARACHNE is voluntary. The ARACHNE Risk Scoring Tool alerts the users in the managing authorities by identifying most risky projects, contracts, contractors and beneficiaries and helps the agents in these authorities to identify possible red-flags and focus their administrative verifications. This is particularly useful as from the 2021-2027 programming period, with the obligation for managing authorities to carry out their verifications based on risk-assessments.

The tool is providing many risk-indicators to the managing authorities who obviously have to set a balance between their administrative capacity and the need to progress with programme implementation. The managing authorities using ARACHNE are encouraged to set a strategy for addressing the red-flags raised by the risk-scoring tool, for example based on the level of the risk-scoring. Possibly, not all red-flags are worrying nor pertinent to an experienced managing authority. However, if the managing authority does not act upon the highest identified scores, the managing authorities take the risk to miss possible irregularities. The Commission services can only encourage the Member States to use ARACHNE and check if they have put in place other proportionate and effective measures to prevent irregularities or risks of fraud.

It is to be noted that the Commission auditors have access to the results of the historical risk scoring calculated by ARACHNE and can assess in the framework of system audits if the anti-fraud measures put in place are proportionate and effective according to Article 74 (1)(c) of the Regulation (EU) 2021/1060. The Commission can also use the risk-scoring tool in the course of its audits, assess what actions were taken by the authorities and, if needed, investigate itself an operation or beneficiary resulting with a high risk score.

Questions asked by Joachim Kuhs

11. ARACHNE has been discussed a number of times and seems to come back now and again and it is good to look at the matter systematically. I note that the system only beneficial in fighting fraud if all Member States are involved and if all programmes and all financial flows are included, right down to the final beneficiary. And to be honest, I don't see either of them happening in the next 20 years. The question therefore is whether all the money and efforts we are investing is paying off?

Commission's answer:

The Commission services consider that the investment in the IT tool ARACHNE effectively helps Member States to discharge their responsibilities for improved management verifications and controls to prevent irregularities (including for anti-fraud measures), to enhance the protection of the Union's budget and to help mitigate risks such as double funding (in particular between Cohesion policy programmes and projects under the Resilience and Recovery Facility). Moreover, for the 2021-2027 programming period, the co-legislator has introduced in various legal bases (for example agriculture, RRF, ...) the call to the Commission to make available a data-mining tool for Member States in order to enhance the protection of the Union's budget.

The Commission agrees that the data-mining and risk-scoring tool becomes even more efficient and precise with the expansion of its data to more programmes and Member States.

12. It has always been the case that OLAF does not have free access to ARACHNE data. Can OLAF now call up all the data in ARACHNE, or are they still prevented from doing that?

Commission's answer:

In accordance with the opinion concerning the "risk analysis for the prevention and detection of fraud" of 17 February 2014 (2013-0340), the European Data Protection Supervisor (EDPS) states that OLAF and the European Court of Auditors may submit formal requests to the Commission on a case-by-case basis for access to the information held in ARACHNE, for individual cases. These requests are examined by the DG to whom the request is addressed and, where appropriate, OLAF may obtain access to information held in ARACHNE for a specific operation or beneficiary, allowing it to perform ad hoc research only for the case in

question. The use of ARACHNE by OLAF will be subject to the regulatory framework for OLAF investigations. The research must therefore be legal, proportionate and linked to an investigation.

As of the second quarter 2023, a “case by case” direct access to ARACHNE will be made available to OLAF (extended as well to ECA and EPPO), replacing the current procedure of ad hoc requests described above. This will be a first step to improve access of OLAF to the results of the risk-scoring. Finally, the proposal for a recast of the Financial Regulation contains a provision to provide full access to the data-mining tool that would be made mandatory, would the regulation be adopted.

Questions asked by Monika Hohlmeier

13. Are the IT specialists in the Commission working on ARACHNE working together with IT specialist in Europol and/or OLAF?

Commission’s answer:

No, IT specialists in Europol and OLAF are not involved in the development of ARACHNE.

14. What is being done to ensure better data quality and comparability?

Commission’s answer:

Reference is made to the reply to question 2 above.

15. What is being done to ensure better data quality and comparability, in light of the many ‘false positives’ that ARACHNE gives?

Commission’s answer:

A high risk score in ARACHNE is an indication that, according to the data available in ARACHNE and the applied calculation rules, a specific circumstance is detected. A high score can indicate, among others, the existence of a link between companies involved in the project, the involvement of a person in a bankruptcy, tax haven or in a PEP list, a project ratio above a threshold, the involvement of a company in multiple projects etc. A high score is presented with a red bullet in ARACHNE (red flag) in order to attract the attention of the user to the indicator and to decide the need to check if an irregularity can be established. The benefit is that ARACHNE allows the user to reduce unnecessary management verifications and to concentrate only on so-called ‘risky’ projects. If ARACHNE produces a high score for an indicator and the user considers it as irrelevant for the project, the user is not obliged to further investigate that risk. Several mechanisms and procedures exist to eliminate this ‘false’ high score, depending on its source.

- Quality of operational data: a new functionality ‘File validation’ was deployed in June 2022 which enables authorities to verify if data quality issues occur in the project, contract or expense data. After subsequent correction of the operational data by the authority, subsequent risk scores in ARACHNE will be adapted automatically.
- Quantity of operational data: ARACHNE calculates for several risk indicators peer group averages for the whole operational programme. If not all projects and contracts are provided, the peer group averages will not be accurate which may lead to “false positive” risks. Enriching the uploaded data will reduce in such cases the calculated risk. This principle is explained in trainings and in dedicated technical documentation.

- Public sources: during trainings provided to ARACHNE users, the ARACHNE team systematically asks to communicate about missing or incorrect external data. The external data providers ensure the Commission to rectify the data as quickly as possible when it can be confirmed with the data from the public source. Every quarter the public source data is refreshed, resulting in updated risk calculations.

- Matching between operational data and public sources: The procedure called “Feedback loop” must be used by the ARACHNE users to request to the Commission service a correction of an invalid matching between operational data and data from public sources. The modifications introduced by the feedback loop impact the subsequent risk score calculations that are adjusted accordingly.

Risk score calculation rules: During training sessions, presentations and informal contact with the authorities, the ARACHNE team draws attention to the possibility to fine-tune risk indicator calculation rules. Based on Member States’ feedback several improvements were implemented in the past and the ARACHNE team will continue to do so based on future proposals.

16. Is there any limitation on the data accumulated by ARACHNE based on proportionality and necessity?

17. I noted the statement in this hearing that ‘the more data, the better’ (quantity), which is contested by security experts I hear from that say that the quality of the data should be good, with adequate quantity, that is comparable and that integrity of the data must be ensured. Is there any limitation on the data accumulated by ARACHNE based on proportionality and necessity?

Commission’s answer:

Data quantity has two different aspects: the number of projects, contracts and expenses and the number of data fields.

With respect to the number of projects, contracts and expenses:

Firstly, ARACHNE calculates peer group averages for the whole programme. Lots of individual risk scores are calculated using these peer group values, based on the average of projects in the programme. If not all projects/contracts/expenses are provided, the peer group averages will not reflect the reality. Secondly, ARACHNE calculates over 100 risk indicators; for many of them it is necessary to possess the complete programme data to generate a correct risk score. For instance, when a contractor is involved in multiple projects, in the same constellation with the beneficiary, this cannot be detected when not all these projects are uploaded. The same goes for the indicator on concentration, for example in other Member States, if ARACHNE is not used in the other Member State. Finally, to help detecting potential double funding, it is necessary that all the EU funded projects be uploaded in ARACHNE.

As regards the number of data fields:

It goes without saying that as a data-mining tool ARACHNE works better if there is data to mine into. The more data fields for which data is provided, the more risk indicators can be calculated and the more precise will be the result of the risk calculation. In view of the foregoing the Commission considers it proportional and necessary that all the data fields that are available in the authorities’ databases and for which an upload to ARACHNE is possible, are uploaded by the authorities to ARACHNE.

18. So far, ARACHNE is ‘just’ a risk scoring tool and the question is whether it can be expanded to become a genuinely interoperable database that aggregates data across borders and that can apply artificial intelligence to not just raise a red flag, carrying out an identification?

Commission’s answer:

With the Financial Regulation recast, the Commission proposed to have an interoperable data mining and risk-scoring tool by using current Commission and national databases. This requires a legal provision to make the use of such a tool mandatory at European level, for all Member States and programmes.

The Commission is exploring the application of artificial intelligence (i.a. algorithms as per the request of Member States in the survey on ARACHNE). However, ARACHNE will remain a management tool, i.e. a tool supporting managing/contracting authorities decisions to further investigate and identify risks. It will not replace the human decision-making but can provide convincing evidence to support such administrative decisions.

19. As regards the previous question, for the interoperable database/ ARACHNE to be successful and to use artificial intelligence, the data that ARACHNE uses should be of very good quality. What is the quality of the data used in ARACHNE? Does apply data protection by design? Does the data in ARACHNE adhere to the principles of proportionality, necessity and integrity?

Commission’s answer:

Concerning the data protection, the accuracy principle is established by means of data verification at the moment of its collection, as well as their regular verification in order to keep them up-to-date. Processing of personal data via ARACHNE applies also the basic principles, such as data minimisation, storage limitation, as well as additional technical safeguards (e.g. encryption within the flow from web application to ARACHNE database, data stored and accessed via SCSI protocol isolated from external access) that lead to protection of personal data by design. The principles of proportionality, necessity and integrity were all assessed within the Data Protection Impact Assessment carried out by the Commission Arachne team, and which was validated by the Commission Data Protection Officer on 22 July 2022.