

Background information for the CONT public hearing on Conflict of interests: application of the EU rules in the management of EU funds in the Member States

The Committee on Budgetary Control (CONT) holds a public hearing on 24 May 2023, with the objective to allow representatives from both Member States and the Commission to present the lessons learned and possible issues, and to contribute to the improvement of the efficiency and effectiveness of the EU rules on conflict of interests.

Introduction

With the last revision of the Financial Regulation in 2018 (FR 2018¹), the EU rules on conflicts of interest were strengthened. To promote a uniform interpretation and application of the rules across management modes, and to raise awareness among Member States, external partners and any other relevant actors, the Commission, in April 2021, issued guidance² that includes practical examples, suggestions and recommendations.

While the framework may still evolve, in particular with the [Financial Regulation recast](#) proposal³ currently on the table, it is useful to examine experiences with application at national level so far and possibilities for further improvement.

An evolving EU framework

Even before the FR 2018 entered into force, under the FR 2012⁴ it was implied that Member States were obliged, when implementing the EU budget in shared management, to take the necessary measures to avoid conflicts of interest, as part of the principles of sound financial management, transparency and non-discrimination. The FR 2018 has explicitly extended the scope of the provisions on conflicts of interest to all management modes and to all actors, **including national authorities at all levels, involved in the EU budget implementation** (at all stages, from carrying out preparatory acts and audits, to controlling execution).

The FR 2018 also **broadened the definition of conflict of interests**. Pursuant to Article 61 FR 2018, a conflict of interest exists where the 'impartial and objective exercise of the functions of a financial actor or other person' involved in budget implementation 'is compromised for reasons involving **family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest**.'

¹ Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018.

² [Guidance on the avoidance and management of conflicts of interest under the Financial Regulation](#), 9.4.2021, OJ C 121, page 1.

³ COM(2022)0223.

⁴ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012.

Situations which “may objectively be perceived as a conflict of interests” are also covered, with the objective of reinforcing prevention.

According to the Commission Guidance, “While Member States remain competent to apply their own supplementary and/or more detailed national rules (even if Article 61 FR 2018 is directly applicable), they should consider **aligning or supplementing any more lenient or incomplete national rules in order to improve the legal certainty** of the applicable rules where the EU budget is concerned.”

However certain Member states flagged issues due to divergences between the Commission Guidance, which has no binding value, and their national laws. For instance concerning the delineation of “family” contours, which is defined in the Guidance but not in FR 2018. Some national laws on Conflict of interest have a narrower concept of family, which would lead to some situations not breaching national law, while there would be a breach according to EU guidance, which has no legal value.

Chapter 5 of the Commission Guidance covers elements specific to **shared management**, an area in which FR 2018 is supplemented by sectoral legislation⁵, and makes clear that “for shared management funds, it is first for national authorities/bodies managing and controlling EU funds to prevent, detect, report and correct conflicts of interest situations. The measures taken by these authorities/bodies in this respect remain subject to audits by the national independent audit bodies, monitoring and audits by the Commission as well as audits by the European Court of Auditors and to investigations by OLAF in the exercise of its competences.” Moreover, Article 24 of the **Public Procurement Directive**⁶ “obliges Member States to ensure that contracting authorities take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising from procurement procedures and lays down a definition for the concept of a conflict of interest”.

Although the audit strategy for the **Recovery and Resilience Facility** provides that the Commission does not check compliance with EU and national rules, it still covers the Member States’ systems for preventing serious irregularities, including conflict of interest. The Commission will thus recover any amount due to the Union budget in this event, if the Member State failed to do so. The Commission intends to carry out at least one separate system audit per Member State in the course of the RRF implementation.

A significant and complementary recent evolution of the legal framework was the adoption of Regulation 2020/2092 on a **general regime of conditionality** for the protection of the Union budget, under which failing to ensure the absence of conflicts of interest may be indicative of breaches of the principles of the rule of law and may trigger the opening of a procedure under that Regulation if the conditions are fulfilled.

The European Court of Auditors’ Special report 06/2023 on Conflict of interest in EU cohesion and agricultural spending

In the sample for this recent report, “all Member States and regions have national or regional definitions and descriptions of conflicts of interest and rules for public officials and members of government.” The report however found these national or regional rules to be “spread across numerous administrative and criminal laws, resulting in a **highly fragmented legal framework** that is usually less detailed in scope than Article 61 of the Financial Regulation.”

Moreover, it found that “there had been **no major changes** in the sampled Member States’ rules and procedures governing EU funds since shared management was introduced into the Financial Regulation in

⁵ Annex II of the Guidance gives a list of sectoral legislation provisions relating to conflict of interests, however these are for the 2014-2020 programmes.

⁶ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014.

2018.” It also noted delays in the transposition of the EU **Whistleblower Directive**⁷ concerning the protection of people who report breaches of EU law, including conflicts of interest affecting the protection of the EU’s financial interests.

Among **procedures in place in some Member states**, the ECA Special report noted:

- most commonly as preventive measure, self-declarations of interest;
- regular declarations of income and assets by government ministers;
- training and information measures on fraud, with often conflict of interests a marginal component;
- annual corruption and integrity reports;
- functional division of tasks (segregation of duties);
- application of the “four-eyes” principle;
- checks during both the application and implementation phases of a project;
- checks, including by internal auditors or, in the case of subordinate/local authorities, by the higher authority;
- audits by the certification body/audit authority, the national or regional audit institutions, the Commission and the ECA;
- staff rotation where possible, or changing responsibilities;
- policies on “revolving doors”

The French High Authority for Transparency in Public life (Haute Autorité pour la transparence de la vie publique - HATVP) is an independent administrative authority entrusted with a public service mission to:

- monitor public officials and civil servants assets and prevent conflicts of interests, and monitor revolving doors between the public and private sectors

Key figures between 2014 and 2020:

- Over 51.000 declarations of assets and interests received
 - Around 13.000 declarations published on the website www.hatvp.fr
- manage the lobbyists digital register
 - provide advice and training

The HATVP is currently chairing the newly formed European Network for Public Ethics (ENPE), aimed at promoting public ethics and transparency.

In a position paper of April 2023, the members of the Network “underline the importance of preserving the specificities of the models of each Member State. However, they agree on the need to set common minimum standards to place personal and public integrity at the heart of the principles of the European Union. (...) **Harmonizing the definition of conflict of interest within the Member States** would be relevant in this regard.”

⁷ Directive(EU) 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law

The ECA Special Report notes that “**data mining**, by comparing information from different sources, has the potential to help detect possible conflicts of interest.” However **Arachne**, the risk-scoring tool provided by the Commission, is not interconnected with the Early Detection and Exclusion System (EDES), does not contain information on public officials involved in the management and control of EU funds and its use is voluntary. The Member State authorities sampled preferred to use **national databases**, such as national trade registries and population databases, as more up-to-date and complete. A number of authorities raised that “**information on individuals’ emotional lives, political affinities and personal interests was difficult to obtain** and in many cases covered by **data protection** rules. Therefore, not all reasons behind conflicts of interest can be detected through cross-checks against registers and databases.”

The ECA’s **recommendations** are mainly to improve capacity and transparency, based on guidance and the identification and dissemination of best practices.

The current Financial Regulation recast proposal

In its [Opinion 06/2022](#) concerning the FR recast proposal, the ECA welcomed “the **intention to create the single integrated IT system for datamining and risk-scoring**, its extended access to investigative and control bodies, and the possibility to make more use of automated tools and emerging technologies for control and audit purposes. Such a system would play an important role in the fight against fraud, corruption, and conflicts of interest affecting EU funds.” It suggested however not waiting for the next MFF to make it compulsory.

In its [report](#) of 4 May 2023 on the proposal, the European Parliament specified that such a system should “reduce the bureaucratic burden on the financial actors and other persons referred to in Article 61, on controllers and auditors, as well as on the recipients of Union funds.”

More generally, the EP report amends the proposal so that “**The provisions on conflicts of interests [...] be applied in a way that ensures legal certainty, be based on a clear and proportionate assessment of the risks and allow for practical application by the competent authorities.** The assessment of a conflict of interest should allow in particular the control of serious conflicts of interests that are linked to Union funding involving high-level officials. The Commission guidelines should provide clarity to applicants and decision-making bodies, avoid unnecessary administrative burden and respect the principle of proportionality. The special characteristics of Union programmes reliant on voluntary participation should be taken into account when assessing whether a situation may objectively be perceived as a conflict of interest. The authority assessing conflicts of interests should be able to conduct such evaluations with rules that are enforceable and comprehensible to tenderers.”

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