

Questions' Paper – Workshop Oct. 2023 (AFRADE)

According to the core premises explained and debated during the Workshop, here as follows the most urgent needs:

1. **Methodological advices** for the drafting of national reports and for the research activities (not only legislation should be included but also administrative documents, management and control systems, audit trails and internal procedures in Paying Agencies can be considered as affordable tools);
2. **Timeframe** of the comparative study.

In order, to keep in mind the practical goal that the research should reach, it can be useful to remind the EC recommendations enlisted in the [34th Annual Report on the Protection of the EU financial interests and the Fight against fraud – 2022 \(COM\(2023\)464 final\)](#).

Recommendation 1: Improving detection, reporting and follow-up of suspected fraud

Detection and reporting of suspected fraud can still be significantly improved, as can their follow-up. Significant differences between Member States can still be seen. In the Member States with low incidence of fraud, the competent authorities should invest in fraud risk analysis in order to assess the degree to which low detection is the result of low levels of actual fraud affecting their operations or the result of systemic weaknesses in detection or reporting systems.

If any weakness in detection is identified, Member States should focus on detecting signals of fraud and, where irregularities are found, carefully addressing the question of intentionality.

If the identified issues point to reporting practices (e.g. delaying classification as suspected fraud) Member States should review them also taking into account the need for a better information flow to and from judicial authorities.

Recommendation 2: Digitalisation of the fight against fraud high on Member States' agenda

Digitalisation of the fight against fraud needs to be at the heart of anti-fraud strategies. It represents both a resource and a threat, as fraudsters are also increasingly using and exploiting new technologies in order to commit their crimes. Member States should ensure that the digitalisation of the fight against fraud is part of their NAFS. That approach should define strategies to: (i) identify existing and future threats arising from new technologies; (ii) develop

the necessary IT architecture (inventorying existing tools, developing new ones, ensuring appropriate interoperability between them); and (iii) identify and address existing gaps, also in terms of the skills needed.

Recommendation 3: Reinforcing anti-fraud governance in the Member States

National anti-fraud networks have been developing in several Member States, with the national AFCOS playing a key role. The Commission supports and encourages this process, which should be extended to all actors concerned, involving the relevant law enforcement and judicial authorities

at national and European level. Member States should also ensure that the national structures coordinating this process are properly staffed.

Anti-fraud networks provide the ideal structure for the development and updating of NAFS. The Commission reiterates its recommendation that the Member States which have not yet adopted a NAFS should do so.

1. How should we structure the research

In order to organize activities, our research could be divided in three main steps, that approximately follow the scheduled seminars dedicated to paying agencies and shared-management funds (I), criminal patterns of transnational frauds in agricultural subsidies (II); procedural obstacles related to information exchange strategies among national authorities involved in administrative and criminal investigation (e.g. AFCOS-OLAF-EPPO).

Each field of study can require different research methods (desk research, interviews etc.). For each field of study, the research should be divided in two different phases: recognition of state of art and related problems concerning detection and reporting of frauds in EU shared-management funds; possible solutions or potential means to fill the gaps.

Since the output should be practical and oriented to prevent obstacles that hinder investigations, our research should be strictly goal-oriented so to understand how detection and reporting can be strengthened and become more effective.

Virtual meetings will be planned in order to stay in contact on the development of the research during each phase and for each part of our analysis.

Core Questions for each field of study (to be implemented as soon as the analysis goes further):

I) Payments

1. What are shared-management CAP funds, how do they work and what do they finance?
2. Since shared-management funds require an active role of States for the paying, what are the bodies responsible for the payment of EU agricultural funds in each country and what are their main activities?
3. What are eligibility conditions for beneficiaries in each country? What is the standard procedure in order to advance a funding request? How are these conditions evaluated?
4. Who is responsible for detection and reporting of irregularities and suspected frauds?
5. How do detection and reporting work in practice?
6. Are these activities supported by IT-Tools?
7. Do administrative offices follow some guidelines in order to identify risky situations? Are there common indicators that administrative authorities rely on?
8. Do Paying Agencies provide for a communication system with EC and/or national authorities competent in the fight against fraud (AFCOS)? Once that a suspected fraud or irregularity is detected, what is the standard procedure to be applied?

See, as EU legal basis:

- [EU Reg. 2021/2115](#) establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013;

- [EU Reg. 2021/2116](#) on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013;
- [EU Reg. 2021/2117](#) amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union

II) Fraudulent schemes and criminal law analysis

1. What are the differences between ‘irregularity’, ‘fraud’ and ‘suspected fraud’ at the European level and in the selected countries for the comparative study? What practical consequences derive from this difference (in information-exchange strategies as well as in investigative activities)?
2. What are the most frequent “red flags”? What are the most common criminal schemes in this sector (according to [sectorial reports](#), or scientific literature);
3. What are the most relevant practical implications of cross-border agricultural frauds?
4. Are the legal definitions of these offences clear enough in order to identify them in practice?
5. Can evidence of these offences always be easily collected?
6. What are the offences that most frequently recur?

See [PIF Directive](#) for the definition of ‘**fraud**’; see [Reg. \(EC, EURATOM\) n. 2988/95](#) for ‘**irregularity**’ (*any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure*); see [Reg. 2015/1970](#), [2015/1971](#), [2015/1972](#), [2015/1973](#) for ‘**suspected fraud**’ (*irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests*).

III) Procedural aspects related to information-exchange between authorities largely involved in fight against fraud (Paying Agencies-AFCOS-OLAF-EPPO)

1. What are the most relevant and problematic implications of cross-border agricultural frauds? Can national authorities exchange information efficiently? What obstacles can hinder effective communication among national authorities?
2. What databases are provided for collecting information on frauds (and irregularities) concerning agricultural funds and how do they work? Does each country have implemented [IMS \(Irregularity Management System\)](#)? If yes, how does this tool work? What authority is in charge of using it?
3. What are the most relevant consequences of national differences related to the aforementioned topics? What impact do they have on information-exchange activities?
4. What solutions can be outlined?

2. Timeframe

AFRADE’s Proposal was presented in Oct. 2021 and was planned to cover 24 months from August 2022 to August 2024 for research activities related to the previous period (2021-2022). Given that our activities are starting now and that we have to rely on consolidated information, our analysis will still concern the last period of the old CAP (from Oct. 2021 to 2023). But we should at least examine

if the new CAP brought changes in detection and reporting of suspected frauds and irregularities in payments of shared management funds (that actually seem to be the same as before).