EUROPEAN COMMISSION
EUROPEAN ANTI-FRAUD OFFICE (OLAF)

Directorate C – Anti-Fraud Knowledge Centre
Unit Anti-Corruption, Anti-Fraud Strategy and Analysis

Handbook

on

Reporting irregularities in shared management

2025

DISCLAIMER: This is a working document prepared by the European Anti-Fraud Office (OLAF) assisted by a group of Member States' experts under the Advisory Committee for Coordination of Fraud Prevention (COCOLAF) — Reporting and Analysis Group. It is intended to explain and streamline Member States' obligation to report irregularities to the Commission under the applicable European Union (EU) law. It clarifies the obligations set out in legislation but does not change them. The document is without prejudice to how the Court of Justice of the European Union interprets these obligations.

Contents

List of Abbreviations

AA	Audit Authority
AFCOS	Anti-Fraud Coordination Service
AFIS	Anti-Fraud Information System
AMIF	Asylum, Migration and Integration Fund
ARES	Advanced Records System
BAR	Brexit Adjustment Reserve
BMVI	Instrument for Financial Support for Border Management and Visa Policy
CBC	Cross Border Cooperation
CCI	Character Code Identifying the Country or Geographical Region
CF	Cohesion Fund
CIRCABC	Communication and Information Resource Centre for Administrations, Businesses and Citizens
CPR	Common Provisions Regulation
DG	Directorate General of the European Commission
DG ECFIN	Directorate General for Economic and Financial Affairs
DG EMPL	Directorate General for Employment, Social Affairs and Inclusion
DG REGIO	Directorate General for Regional and Urban Policy
DR	Commission Delegated Regulation
EAFRD	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EC	European Commission
ECA	European Court of Auditors
EDES	Early Detection and Exclusion System
EGF	European Globalisation Adjustment Fund
EMFAF	European Maritime, Fisheries and Aquaculture Fund
ERDF	European Regional Development Fund
EP	European Parliament
EPPO	European Public Prosecutor's Office
ESF (+)	European Social Fund Plus
EU	European Union
EUSF	European Union Solidarity Fund
FR	Financial Regulation
IMS	Irregularity Management System
INTERREG	European territorial cooperation goal
IPA	Instrument for Pre-Accession Assistance
IR	Commission Implementing Regulation
ISF	Internal Security Fund
JTF	Just Transition Fund
MA	Managing Authority
OJ	Official Journal
OLAF	European Anti-Fraud Office

PA	Paying Agency
PACA	Premier Acte de Constat Administratif ou judiciaire (primary administrative or judicial finding)
PIF Report	Annual Report on the protection of the EU's financial interests and the fight against fraud
RRF	Recovery and Resilience Facility
SCF	Social Climate Fund
SM	Shared Management

1. INTRODUCTION

This document provides guidance on the **reporting of irregularities** by Member States (and certain non-EU countries, including candidate countries)[1] implementing the European Union (EU) budget under **shared management.** It stems from a collaborative process within the Advisory Committee for Coordination of Fraud Prevention (COCOLAF) - Reporting and Analysis Group[2] and revises the 2017 Handbook on 'Reporting of Irregularities in Shared Management'[3] for the **programming period 2021-2027.** Compared to the previous version which covered the 2014-2020 programming period, this revised version of the Handbook, recognises the overall continuity of the rules for the reporting of irregularities, while also placing a new focus on issues most frequently discussed by the professionals working in this field and the experience gained in this context in recent years.

The document features colour-coded text boxes for clarity:

- orange text boxes highlight particularly important information,
- blue text boxes contain definitions/provisions from relevant legislation,
- green text boxes provide instructions on how to enter information into the Irregularity Management System (IMS).

Hyperlinks are part of this document for navigation purposes.

Under the applicable EU regulatory framework, Member States[4] must report cases of irregularities to the Commission, including suspected and established fraud, related to EU-funded programmes, operations and projects. These irregularity reports are submitted via the **Irregularity Management System (IMS)**, an electronic system developed and managed by the European Anti-Fraud Office (OLAF) on the Commission's behalf.

This Handbook clarifies the reporting requirements and conditions that all Member States must meet, aiming at reducing disparities in the reporting process and standardising it to the maximum extent allowed by the specific characteristics of each country's legal system.

The Handbook seeks to improve Member State reporting of irregularities by ensuring a consistent application of definitions, promoting prompt reporting and follow-up and securing high quality and comparable data. In addition to focusing on the need to report accurate and

[1] See Section 9 of this Handbook on the reporting or irregularities in European Territorial Cooperation programmes- Interreg.

2 Endorsed by the Advisory Committee for Coordination of Fraud Prevention (COCOLAF), 'Reporting and Analysis Group' on 5 September 2025 following the COCOLAF meetings of 10 December 2024 and 15 May 2025. Contributions came from experts from the following Member States: Belgium, Bulgaria, Denmark, Estonia, Spain, Italy, Latvia, Hungary, Poland, Portugal, Romania, Finland and Sweden. Meetings of the experts' group were held on 21 March, 23 May, 10 July, 26 September 2024 and 13 May 2025.

[3] For the 2014-2020 programming period, the 2017 Handbook will continue to apply; the latter also covers previous programming periods where the applicable rules do not conflict.

[4] In the following, references to 'Member States' are understood to include those non-EU countries, including candidate countries that participate in European Territorial Cooperation programmes.

complete data, the Handbook supports a proactive, structured and targeted approach to managing the risks of fraud and irregularity.

The Commission (including OLAF) has issued other anti-fraud guidance documents covering important aspects and contributing to a better understanding of irregularities and fraud[5]. Most of them can be found in the online 'EU Funds Anti-Fraud Knowledge & Resource Centre' [6] and in the library '4. Handbook, Guidance Manuals' on CIRCABC.

2. REPORTING OBLIGATION

2.1 Content and context

To protect the EU financial interests, EU legislation requires irregularities in the area of shared management to be reported. The Member States must send regular reports of irregularities (including suspected and established fraud) that have been the subject of a 'primary administrative or judicial finding' (PACA) to the Commission. They must also keep the Commission informed of the progress of any administrative and legal proceedings in relation to such irregularities.

This reporting is done electronically using the IMS.

The rules for the Member States' obligation to report irregularities through the IMS in the programming period 2021-2027 are laid down in different EU regulations for the different shared management funds concerned, as listed below.

EU fund concerned	Policy area	Regulation(s)
• European Regional Development Fund (ERDF) • European Social Fund Plus (ESF+) • Cohesion Fund (CF) • Just Transition Fund (JTF) • European Maritime, Fisheries and	Cohesion	Article 69 and Annex XII of Regulation (EU) 2021/1060 of the European Parliament and of the Council[7]

[5] For example: Fraud risk assessment and anti-fraud measures for the 2014-2020 programming period; Anonymised irregularity cases related to structural actions; Practical guides on conflict of interest and forged documents; Fraud in Public Procurement – A collection of Red Flags and Best Practices.

[6] https://antifraud-knowledge-centre.ec.europa.eu/index_en

[7] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy ; OJ L 231, 30.6.2021, p. 159.

Aquaculture Fund (EMFAF) European territorial cooperation goal (Interreg)		(reporting requirements and format of reporting)
• Asylum, Migration and Integration Fund (AMIF) • Internal Security Fund (ISF) • Instrument for Financial Support for Border Management and Visa Policy (BMVI)	Home Affairs	Article 69 and Annex XII of Regulation (EU) 2021/1060 of the European Parliament and of the Council (reporting requirements and format of reporting)
• European Agricultural Guarantee Fund (EAGF) • European Agricultural Fund for Rural Development (EAFRD)	Agriculture	• Commission Delegated Regulation (EU) 2024/205[8] (reporting requirements) • Commission Implementing Regulation (EU) 2024/206[9] (format of reporting)
European Globalisation Adjustment Fund (EGF)		• Commission Delegated Regulation (EU)2024/204[10] (reporting requirements)

[8] Commission Delegated Regulation (EU) 2024/205 of 18 December 2023 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, and repealing Commission Delegated Regulation (EU) 2015/1971; OJ L, 2024/205, 29.2.2024.

[9] Commission Implementing Regulation (EU) 2024/206 of 18 December 2023 setting out the frequency and the format of the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, under Regulation (EU) 2021/2116 of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2015/1975; OJ L, 2024/206, 29.2.2024.

[10] Commission Delegated Regulation (EU) 2024/204 of 18 December 2023 supplementing Regulation (EU) 2021/691 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Globalisation Adjustment Fund for Displaced Workers (EGF); OJ L, 2024/204, 29.2.2024.

		• Commission Implementing Regulation (EU) 2024/203[11] (format of reporting)

The reporting of irregularities **through the IMS** is **NOT** provided for under the European Union Solidarity Fund (EUSF)[12], the Brexit Adjustment Reserve (BAR)[13], the Recovery and Resilience Facility (RRF)[14] or the Social Climate Fund (SCF)[15]. Nevertheless, for the EUSF and BAR, the Member States (or the Entrusted Bodies) must provide the Commission with information on irregularities in the final Implementation Reports; for the RRF and the SCF, the information on serious irregularities[16] has to be included in the documents accompanying the payment requests, i.e. the Management Declaration and Audit Summary[17].

The legislation listed above provides **definitions** of the main terms relevant for the reporting of irregularities. To process the information reported by the Member States to the Commission, the applicable rules also detail the **data** to be submitted[18].

The reporting and information system established by the EU legislation is a practical feature of the **principle of cooperation** between the Member States and the EU to **counter fraud and any other illegal activities affecting the EU's financial interests**[19]**. The protection of the**

[11] Commission Implementing Regulation (EU) 2024/203 of 18 December 2023 setting out the format to be used for the reporting of irregularities concerning the European Globalisation Adjustment Fund for Displaced Workers (EGF) under Regulation (EU) 2021/691 of the European Parliament and of the Council; OJ L, 2024/203, 29.2.2024.

[12] Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund, OJ L 311, 14.11.2002, p. 3, last amended by Regulation (EU) 2020/461 of the European Parliament and of the Council of 30 March 2020 amending Council Regulation (EC) No 2012/2002 in order to provide financial assistance to Member States and to countries negotiating their accession to the Union that are seriously affected by a major public health emergency; OJ L 99, 31.3.2020, p. 9.

[13] Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021 establishing the Brexit Adjustment Reserve; OJ L 357, 8.10.2021, p. 1.

[14] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility; OJ L 57, 18.2.2021, p. 17.

[15] Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060; OJ L 130 16.5.2023, p. 1.

[16] The RRF Regulation introduced the term 'serious irregularity', which is defined as 'fraud, corruption, and conflicts of interest' (see Recital 53 of the RRF Regulation, referred to in footnote 14). The term also features in the SCF Regulation, where it has the same meaning (see Recital 41 of the SCF Regulation, referred to in footnote 15). However, the legislation on the reporting of irregularities under shared management and related legislation cited in there do not contain a notion of serious irregularities. These texts refer to 'serious deficiencies', which have a different meaning, as indicated above, and which do not apply to the reporting framework.

[17] See Article 22(2) c) of the RRF Regulation and Article 21(2)c) of the SFC Regulation as referred to above. On the reporting of irregularities in relation to the RRF, see also the reply to question 10 in Annex II 'Frequently Asked Questions' (FAQ) to this Handbook.

[18] See Section 7.1 of this Handbook.

[19] As laid down in Article 4(3) of the Treaty on European Union (TEU) and Article 325(1) of the Treaty on the Functioning of the European Union (TFEU).

EU's financial interests by the Member States and the Commission[20] is governed by Council Regulation (EC, Euratom) No 2988/95 laying down common rules on the general principles, administrative measures, penalties and checks needed to achieve this goal[21]. In this context of irregularity reporting, the obligation for Member States to designate an Anti-Fraud Coordination Service (AFCOS)[22], in order to facilitate effective cooperation and exchange of information with OLAF, is also relevant, as most of the AFCOS are responsible for coordination and also reporting of irregularities.

Reporting should also be seen as a practical expression of the Commission's right to receive information and carry out checks, which is enshrined in several existing regulations. This applies in conjunction with its obligation to analyse the information and return it to the Member States.

2.2 Aim of the reporting obligations

Detailed reporting of irregularities serves **several purposes for both Member States and the Commission** within their responsibilities to protect the EU's financial interests and fight fraud when implementing the EU budget.

- The reporting of irregularities is a **preventive measure**. It supports the proactive risk assessment carried out by the Member States and the Commission. The Commission (including OLAF) uses the information communicated by Member States to **'perform risk analyses**' and may, on the basis of the information obtained, produce reports and **'develop systems serving to identify risks more effectively'**[23]. One of the key outputs of the Commission's analyses of irregularities reported by the Member States is the annual report on the protection of the European Union's financial interests and the fight against fraud (PIF). This report fulfils the Commission's obligation, laid down in Article 325(5) of the Treaty on the Functioning of the European Union (TFEU), to inform the European Parliament (EP) and the Council every year on measures taken at EU and national levels to strengthen the protection of the EU's financial interests. This ensures transparency and accountability to the public and fulfils the Commission's duty to return analysed information to the Member States.
- Reporting of irregularities enables the Member States and the Commission to **monitor** actions taken by Member States from an administrative and judicial perspective.

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[20] The EU legislation enabling the Commission to carry out its responsibility to protect the Union's financial interests and fight fraud is closely linked to its responsibility to implement the budget, Article 317 TFEU and its role as guardian of the Treaties under Article 17(1) TEU.

[21] Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests; OJ L 312, 23.12.1995, p. 1.

[22] See Article 12a of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999; OJ L 248, 18.9.2013, p. 1.

[23] Paragraph 1.5, second subparagraph, Annex XII, Section 1 CPR and Article 4(1) of Commission Delegated Regulations (EU) 2024/205 and 2024/204.

- It provides assurance that the Member States' management and control systems for assistance under shared management work properly, thereby acting as a **tool for sound financial management.**
- When OLAF processes and analyses the information provided for fraud prevention purposes, it acts in accordance with Regulation (EU) No 883/2013[24]. The Regulation confers operational powers on OLAF to: (i) conduct, as an entirely independent investigation department, administrative investigations; and (ii) contribute, as a Commission department, to **designing and developing methods to fight fraud**. In this capacity, OLAF prepares further analysis reports, which it makes available to the competent national authorities[25].
- Analysing the results of Member States' actions helps the Commission **make EU legislation on EU assistance more resilient to fraud**[26]**.**

The purpose of reporting irregularities through the IMS is **NOT** to inform the investigative part of OLAF about suspicions of irregularity, including fraud, with the aim to trigger a preliminary analysis by the OLAF to decide whether to open an investigation – since there are specific channels for this elsewhere (as further specified in the reply to question 7 of Annex II to this Handbook).
However, when OLAF is required to decide about opening an investigation, Member States' reporting of irregularities keeps the Office informed of potential ongoing investigations in a Member State, which might involve the same economic operator or operation/project.
This is in line with Article 8 of Regulation (EU) No 883/2013 providing for the exchange of information between OLAF and the competent authorities, including judicial authorities, within the framework of the internal or external investigations of the Office.

3. THE CONCEPT OF 'IRREGULARITY'

3.1 Definition of irregularity

The EU regulations listed in Chapter 2.1 of this Handbook, which set out the reporting obligations for the various funds, are based on the definition of irregularities contained in the cited regulations or provided for in the related legislation.

[24] See exact reference in footnote 22.
[25] See for example: 'Analysis of the decline in non-fraudulent irregularities in the programming period 2007-2013 to programming period 2014-2020'; 'Irregularities and fraud by areas of intervention – comparing risks'; 'Covid-19 related fraud risks in EU spending' or 'Potential risk in the funding of health infrastructure'. These reports are available in the library '4. Handbook, Guidance Manuals' on CIRCABC.
[26] Fraud proofing of EU spending programmes is one of the guidance principles of the 2019 Commission Anti-Fraud Strategy, COM (2019) 196 final.

Definition for the funds covered by the Common Provisions Regulation (CPR) (including Interreg):

Article 2(31) CPR: ‘‘irregularity’ means any breach of applicable law, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the budget of the Union by charging unjustified expenditure to that budget’.

Definition for the EU Agricultural Funds:

Article 2(a) of Regulation (EU) 2021/2116: ‘‘irregularity’ means an irregularity within the meaning of Article 1(2) of Regulation (EC, Euratom) No 2988/95.’

Article 1(2) of Council Regulation No 2988/95 states that: ‘‘Irregularity” shall mean 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.’

Definition for the EGF:

Regulation (EU) 2021/691, Article 3(4): ‘‘irregularity’ means a breach of applicable law, resulting from an act or omission by an economic operator involved in the implementation of the EGF, which has, or would have, the effect of prejudicing the budget of the Union by charging unjustified expenditures to that budget.’

Although the definitions differ slightly from one area to another, an irregularity is always characterised by four basic elements, which are described in more detail below.

An irregularity means:

1. any infringement of a provision of applicable law;
2. resulting from an act or omission;
3. by an economic operator;
4. which has, or would have, the effect of ‘prejudicing the budget of the Union by charging unjustified expenditure to that budget’.

The definition of irregularity, independently from the EU fund policy field concerned, is to be interpreted within the context of the entire legislative framework for protecting the EU’s financial interests.

3.1.1. 'Infringement of a provision of applicable law'

The infringement or breach of a provision of applicable law covers the entire normative framework and binding procedures relevant to EU funding. Accordingly, the provisions of applicable law referred to here include both **EU and national provisions**[27]. They pertain specifically to:

- granting EU assistance (including co-financing from the national budget of the Member State (regardless of whether it is at national, regional or municipal level) and from any private resources of grant beneficiaries or final recipients);
- managing public funds in general (at national or authority level);
- contracts signed following a grant or procurement procedure and their implementation.

An irregularity may occur at any moment in the programme, action or project cycle, during programming up to audit, *ex post* monitoring or evaluation. Checks at any stage may indicate that the conditions that a beneficiary, contractor or a final recipient of EU assistance has to comply with are not being met, even after project implementation (e.g. operation of infrastructure). These conditions – laid down in EU or national law – may concern, directly or indirectly, the eligibility, regularity, management or checks of operations and the corresponding expenditure.

The information to be provided in the IMS field 6.3 "Legislation EU" should be as precise as possible, including the article of the legislation infringed. For example, in the field of agriculture, where specific provisions may lay down conditions to be respected and where the infringement has led to the recovery order, the relevant article and paragraph of the EU legislation should be indicated in the dedicated field (6.3.4). This would make it possible to identify the weakest elements of the legal framework which may require corrective action.

The information to be provided in IMS field 6.4 "Provisions - national" is the main source for national authorities to make a similar kind of assessment of the national legislation in force.

3.1.2. Irregularities resulting from an 'act or an omission'

Irregularities can stem from action or lack of action by an economic operator.

Irregularities may be committed intentionally or unintentionally. The subjective part of whether the behaviour was intentional (deliberate or non-deliberate action or omission in violation of a rule) and its purpose (potential damage to the EU budget) are not relevant for determining if an irregularity has occurred: an irregularity is defined by its objective parts (action or omission that violates a rule, resulting in potential damage to the EU budget).

[27] As explicitly set out in Article 2(3) CPR: ''applicable law' means Union law and the national law relating to its application'.

Irregularities can be one-off or systemic. Systemic irregularities[28] are 'any irregularity that may be of a recurring nature, with a high probability of occurrence in similar types of operations, which result from a serious deficiency in the effective functioning of the management and control systems, including a failure to establish appropriate procedures in accordance with applicable rules.'

Irregularities might have an impact in other Member States or non-EU countries.

3.1.3. Irregularities stemming from behaviour 'by an economic operator'

The sectoral regulations define the concept of economic operator.

Definition for the Funds covered by the CPR:

Article 2(30) CPR:

*''**economic operator'** means any natural or legal person, or other entity involved in the implementation of the Funds, with the exception of a Member State exercising its prerogatives as a public authority;'*

Definition for the European Agricultural Funds:

Recital (4) of Commission Delegated Regulation (EU) 2024/205:

*'It is necessary to clarify that the expression '**economic operator'** for the purposes of applying the notion of 'irregularity' within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 (6) and of the other cases of non-compliance with the conditions set out by Member States in the common agriculture policy strategic plans in the context of Article 50(3) of Regulation (EU) 2021/2116, should mean any natural or legal person, or other entity taking part in the implementation of assistance from the funds, with the exception of a Member State authority exercising its prerogatives as a public authority, as provided for in Article 2, point (30), of Regulation (EU) 2021/1060, or paying assigned revenue within the meaning of Article 45 of Regulation (EU) 2021/2116.'*

Definition for the EGF:

Recital (5) of Commission Delegated Regulation (EU) 2024/204:

*'It is necessary to clarify that the expression **'economic operator'** for the purposes of applying the notion of 'irregularity' within the meaning of Article 3(4) of Regulation*

[28] Definition of systemic irregularities can be found in Article 2(33) of CPR and in Article 2(d) of Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/201; OJ L435, 6.12.2021, p. 187.

(EU) 2021/691, should mean any natural or legal person or other entity taking part in the implementation of assistance from the Fund, with the exception of a Member State exercising its prerogatives as a public authority within the meaning of Article 2, point (30), of Regulation (EU) 2021/1060.'

It follows from the above provisions that a distinction must be made between cases where a Member State authority involved in EU-funded programmes or operations is acting as an 'economic operator" and cases where it is acting as a body 'exercising its prerogatives as a public authority'.

The existing case-law of the Court of Justice of the European Union on the reporting of irregularities to protect the EU's financial interests, as well as the case-law on the exercise of Member States' public prerogatives in other areas of EU law (i.e. the freedom of establishment and competition law, which could be used by way of analogy) provide **only a few general rules to help make this distinction**: it has been retained that – in order to give meaningful effect to the concept of 'irregularity' - the notion of 'economic operator' should be interpreted in a broad sense[29]. On the contrary, the wording 'a Member State exercising its prerogatives as public authority' has to be interpreted narrowly since it constitutes an exception limiting the concept of 'irregularity'. The Court has considered 'economic operators' bodies of Member States (such as managing authorities or intermediate bodies, i.e. ministries or regional administrations) having received EU funds and acting as contracting authorities[30]. It has also made clear that it does not depend on whether the Member State takes the form of a public or private body to determine whether it is acting as an 'economic operator' or 'in the exercise of its prerogatives as a public authority'; what matters is the nature of the activity carried out by that body[31]. **Examples of specific situations** (those at the heart of cases brought before the Court of Justice) in which a Member State's authority involved in an EU-funded programme or operation has acted in the exercise of its prerogatives as a public authority or as an economic operator can **serve to supplement the general principles set out above.**

However, neither the case-law nor the assessments of the situations dealt with in it are sufficient in number to allow an exhaustive list of distinguishing criteria to be drawn up.

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[29] According to the relevant case-law (see, for instance, judgment of 1 October 2020 in Case C 743/18, LSEZ SIA "*Elme Messer Metalurgs' v Latvijas Investīciju un attīstības aģentūra*, EU:C:2020:767, paragraphs 59 and 63, and the case-law cited), the notion of 'irregularity' has to be broadly interpreted; it follows therefrom that also the definition of 'economic operator' has to be broadly interpreted in order to give useful effect to the notion of 'irregularity'.

[30] See, for example, judgments of 4 October 2024 in Case C-175/23, *Obshtina Svishtov v Rakovoditel na Upravlyavashtia organ na Operativna programa 'Regioni v rastezh*' 2014-2020, EU:C:2024:853, paragraphs 11-13 and 25; of 31 March 2022 in Case C-195/21, *LB v Smetna palata na Republika Bulgaria*, EU:C:2022:239, paragraphs 21-22 and 28-29; and of 14 July 2016 in Case C-406/14, *Wrocław — Miasto na prawach powiatu v Minister Infrastruktury i Rozwoju*, EU:C:2016:562, paragraphs 15-16.

[31] See judgment of 23 April 1991, *Klaus Höfner and Fritz Elser v Macrotron GmbH*, EU:C:1991:161, paragraphs 21 and 29-30, and judgment of 18 March 1997 in Case C-343/95, *Diego Calì & Figli Srl v Servizi ecologici porto di Genova SpA (SEPG)*, EU:C:1997:160, paragraphs 22-23.

A **case-by-case assessment will always be required** to determine whether a Member State authority has to be considered an economic operator or not for the purposes of applying the concept of 'irregularity'.

Some further information relevant to the distinction between 'economic operator' and 'Member State exercising its prerogatives as a public authority' can be found in the answer to question 9 in Annex II to this Handbook.

3.1.4. Irregularities 'have, or would have, the effect of prejudicing the general budget of the Union by charging an unjustified item of expenditure to the general budget'

An irregularity does not have to have resulted in the Member State declaring ineligible expenditure to the Commission as eligible, nor does the EU budget have to have been harmed. It is an irregularity even if the behaviour is detected before the expenditure is declared to the Commission as eligible since it 'would have' affected the EU budget if it had not been detected.

However, this irregularity might not have to be reported, i.e. if covered by any of the exceptions/derogations to the reporting obligation[32].

3.2 Irregularities and errors

The legal framework applicable to shared management frequently refers to errors without defining this term. It is important to note that any error can be considered an irregularity if it fulfils all four basic parts of the definition of irregularity described above. If the error does not meet one or more parts of that definition, then it is not an irregularity. However, it still must be determined whether such an error has to be reported in the IMS.[33]

In summary, no complete and exhaustive list of what is or is not an irregularity can be given - decisions can only be made on a case-by-case basis and are therefore subject to institutional judgment. In a given situation, the following questions should be asked:

a) Have legal or contractual provisions been infringed?

b) If so, did or could this have a negative impact on the EU budget?

c) Was the infringement made by an economic operator or a Member State authority exercising its prerogatives as a public authority[34]?

[32] See Section 6 of this Handbook.
[33] See the reply to question 1 in Annex II to this Handbook.
[34] See also the reply to question 9 in Annex II to this Handbook.

4. THE CONCEPT OF FRAUD

Member States must report irregularities, including fraud.

The objective elements of the concept of 'irregularity' have been described in Section 3. Under the current legal framework, the definition of fraud (described in this section) is a subset of the broader category 'irregularity'. The main difficulty in correctly qualifying and categorising an irregularity is that fraud is a criminal concept, which implies the need to prove the intent (*mens rea*) of the behaviour detected and is also subject to the guarantees provided by criminal procedural rules, such as the presumption of innocence until a final judgment. This implies that before an irregularity could be qualified/categorised as 'fraud', many years may have elapsed from its detection, and the usefulness of the information for timely risk analysis may be lost.

To help the reporting authorities in their tasks and to provide the Commission with timely and relevant information, an intermediate category of 'suspected fraud' was created. This category is not based on a description of a (criminal) behaviour, but on the identification of specific procedural steps taken.

On the basis of these considerations, Member States are requested to clearly identify and distinguish between cases of: (i) administrative (non-fraudulent) irregularities; (ii) suspected fraud; and (iii) established fraud.

The following section clarifies the notions of fraud, suspected fraud and established fraud.

4.1 Definitions

4.1.1 Fraud

The definition of fraud used in the reporting framework[35] is contained in Directive (EU) 2017/1371[36], in points (a) and (b) of Article 3(2)[37].

> *'1. Member States shall take the necessary measures to ensure that fraud affecting the Union's financial interests constitutes a criminal offence when committed intentionally.*
>
> *2. [...] the following shall be regarded as fraud affecting the Union's financial interests:*
>
> *(a) in respect of non-procurement-related expenditure, any act or omission relating to:*

[35] See paragraph 1.1 (b), Annex XII, Section 1 CPR and Article 2(a) of Commission Delegated Regulations (EU) 2024/205 and 2024/204.

[36] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198/29, 28.7.2017.

[37] Or point (a) of Article 1(1) 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 for the Member States not bound by that Directive.

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted;

(b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to:

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;'

Under the reporting provisions, **other criminal offences** referred to in Article 4(1), (2) and (3) of Directive (EU) 2017/1371, i.e. money laundering, active and passive corruption, and misappropriations, are to be regarded as fraud.

The definition provided in Article 3 of the Directive refers to both subjective ('*[…] when committed intentionally'*) and objective elements (the behaviour described in Article 3(2)) that must constitute '*criminal offences'* in the national legal orders in compliance with the Directive.

Examples of types of behaviour that should be considered as suggesting fraud because of their intentional nature can be found in Annex I.2 to this Handbook.

However, apart from a few obvious situations (described in the definition of fraud above), it is not always easy to distinguish between unintentional and intentional behaviour, since the decision on the existence of the subjective element falls within the competence of a specific authority (administrative or judicial) at the end of a well-defined procedure.

Moreover, when individuals are charged with criminal offences, such as fraud, only a criminal court can decide at the end of a criminal procedure with all the guarantees provided by the law whether such a charge is established or not. This could take several years and would not provide the Commission with immediately available information for risk analysis and alerts,

which is why an intermediate concept between irregularity and fraud – suspected fraud - has been introduced into EU legislation since 2005.

4.1.2 Suspected fraud

The 'definition' of suspected fraud is contained in several pieces of EU legislation[38].

Suspected fraud

Suspected fraud means an irregularity giving rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, or other criminal offences, [...].

The following main aspects emerge from the above definition.

1) The concept of suspected fraud does not primarily relate to a specific behaviour as described, for instance in Article 3(2) of Directive (EU) 2017/1371. It is first and foremost a **procedural definition:** all irregularities for which the national authorities have initiated a specific procedure to establish the existence of intentional behaviour are to be categorised as suspected fraud.
2) The deliberate intention to infringe a provision that determines the opening of specific proceedings to establish its occurrence is key to distinguishing irregularities.
3) Such proceedings include:
   a) criminal proceedings initiated to establish intentional behaviour relating to fraud or other criminal offences[39], but also
   b) administrative proceedings aimed at establishing the intentionality of a behaviour, implying a deliberate infringement of a provision, which is subject to administrative penalties[40].

An irregularity that gives rise to national administrative or judicial proceedings to determine intentional behaviour should be treated as suspected fraud.

Administrative proceedings aimed at determining intentional behaviour may only be relevant for some Member States. For others, the irregularities to be classified as 'suspected fraud' will only include those that lead to the initiation of criminal proceedings.

[38] See Article 2(a) of Commission Delegated Regulations (EU) 2024/205 and 2024/204 as well as paragraph 1.1(b), Annex XII, Section 1 CPR. In contrast to the Commission Delegated Regulations, the term 'suspected fraud', in Annex XII of the CPR, is not given as a separate definition, but as part of the provision on irregularities to be reported.

[39] See in particular Annex XII, Section 2 CPR requesting Member States to indicate in the IMS the 'Offences pursuant to Directive (EU) 2017/1371'.

[40] See articles 4, 5 and 6 of Council Regulation (EC, EURATOM) No 2988/95.

The relevant rules[41] provide for the obligation to indicate in the irregularity report, 'where appropriate, whether the practice gives rise to suspected fraud'.

If one of the procedures described in points 3) a) or b) above is initiated in relation to an irregularity, that irregularity is classified in the IMS as 'IRQ3 – Suspected fraud'. These classifications should be used when reporting or updating any such irregularities to the Commission.

While national rules may vary as regards the automatic (*ex officio*) prosecution of behaviour suspected of being a criminal offence, all Member States participating in the European Public Prosecutor's Office (EPPO) must also take its competence into account and regard any proceedings initiated by the EPPO as suspected fraud.

Sectoral rules or national legislation may also provide for the possibility of initiating specific administrative procedures (and related sanctions) in addition to criminal proceedings[42].

4.2 Classifying irregularities in the IMS

The correct and timely classification of an irregularity is a key element of the reporting process, as it provides the Commission with the information it needs to carry out fraud risk analyses and assessments required to improve prevention and detection. This classification is also the basis for distinguishing between 'irregularities reported as fraudulent' and 'irregularities not reported as fraudulent' as used in the annual PIF reports[43].

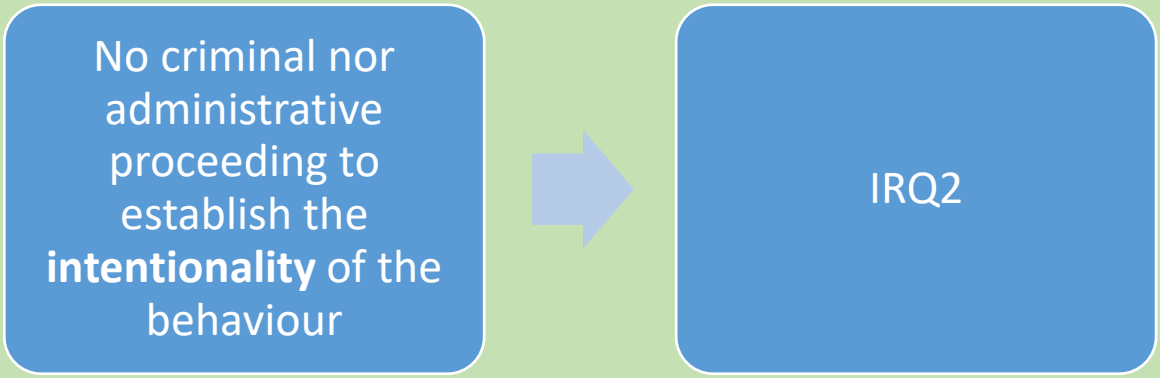
Any reported irregularity can be correctly classified in the IMS by selecting one of these four options in the corresponding field (field 6.12):

IRQ 2 – (Administrative) Irregularity
IRQ 3 – Suspected fraud[44]
IRQ 4 – Established intentional irregularity (Article 5 of Council Regulation No 2988/95) - see further explanations below in Section 4.3.
IRQ 5 –- Established fraud and other criminal behaviour[45].

Most irregularities do not lead to the initiation of administrative or judicial proceedings to establish whether behaviour was intentional. For these irregularities, the related infringement would lead to the correction of the ineligible expenditure and, where necessary, to the initiation of recovery or, where possible, write-off procedures from subsequent payment claims.

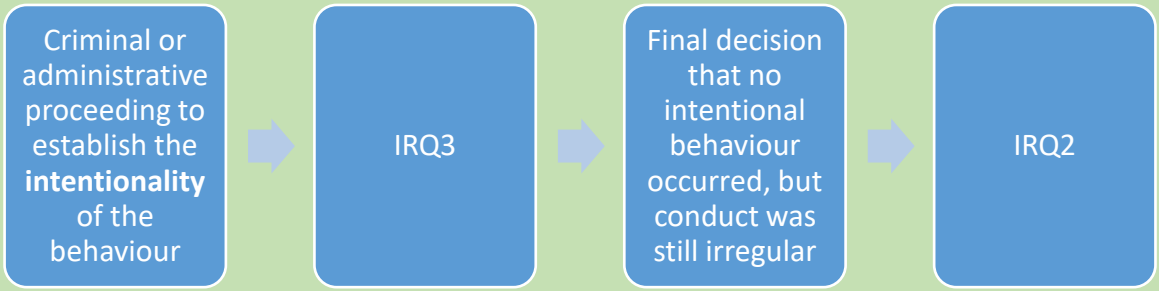
[41] See Article 3(3)(j) of Commission Delegated Regulation (EU) 2024/205 and Article 3(3)(i) of Commission Delegated Regulation (EU) 2024/204.
[42] See in particular Article 6 of Council Regulation No 2988/95 as to the interaction between concurring criminal and administrative proceedings in relation to intentional irregularities.
[43] And in other documents mentioned in footnote 25.
[44] And other criminal offences as referred to in Article 4(1), (2) and (3) of Directive (EU) 2017/1371.
[45] And other criminal offences as referred to in Article 4(1), (2) and (3) of Directive (EU) 2017/1371.

If an irregularity does not lead to the initiation of proceedings to establish the intentionality of the behaviour, as described under 3) a) or b) in Section 4.1.2, it is classified as 'IRQ2 – Irregularity' in the IMS.



The same code should be used when updating an irregularity previously classified as 'IRQ3 – Suspected fraud', if a decision is taken in these proceedings that clears the person concerned from any allegation of intentional behaviour.

The description of the proceedings in field 1.15 must be modified accordingly (e.g. from PP to AP)



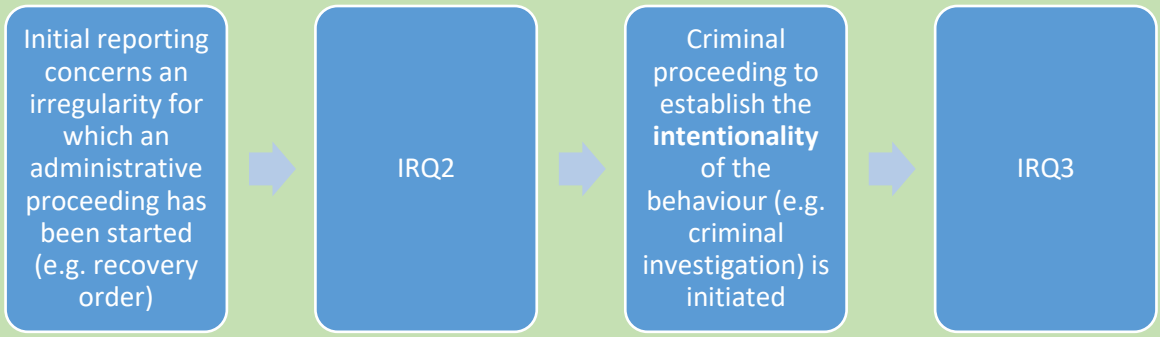
Experience shows that Member States have had different approaches to the classification of irregularities, in particular when reporting fraudulent cases and these differences reduce the usefulness and comparability of the reported information. In order to harmonise the way Member States classify suspected fraud cases, **common points in the procedure** must be identified.

The point at which the national authorities classify the irregularity as suspected fraud inevitably depends very much on when the authorities reporting to the Commission become aware that the case has entered one of the procedural stages outlined under Section 4.1. For example, if an authority conducting a specific check identifies possible criminal behaviour and refers the file to a prosecution service or law enforcement body for investigation, the reporting authority should classify the case as suspected fraud when it receives the information that an

investigation has been initiated. Conversely, if the national police carry out their investigation independently, leading to the opening of a criminal investigation against a beneficiary of EU funding or a contractor, the authorities responsible for reporting to the Commission may not be informed of the ongoing activities until later in the process. As soon as the reporting authorities become aware of it (whether by the police informing them of the ongoing investigations or by a judicial authority providing or seeking information following a request for indictment), the irregularity should be correctly reclassified or reported with the correct classification.

However, it needs to be emphasised that close attention has to be paid to national and EU rules on confidentiality (see Section 11. of this Handbook) when reporting on ongoing investigations.

If the irregularity has already been reported and classified (in field 6.12) as 'IRQ2 – Irregularity', it must be updated with any additional information, especially in relation to ongoing proceedings (e.g. changing from AP to PP), and the classification must be changed to 'IRQ3 – Suspected fraud'.



The following points have been identified, each representing a phase in the procedure that fits the definition of suspected fraud:

1. Decision to initiate administrative proceedings to establish whether the irregularity has been committed intentionally (e.g. competition authority opening proceedings to address bid rigging)[46].
2. Transmission of information by the administrative authority: the authority forwards the case to the prosecution service concerning a possible infringement of EU or national

[46] Please note that some Member States may consider specific administrative proceedings (for instance in relation to the assessment of the artificial creation of conditions to be eligible for EU assistance) as 'administrative proceedings to establish the intentionality of the behaviour' and, as such, classify the related irregularities as IRQ3. Some others may use the IRQ3 classification exclusively in relation to irregularities giving rise to criminal proceedings. Both approaches are in line with the current legal framework.

provisions to the detriment of the EU's financial interests and the prosecutor decides for the opening of an investigation.

3. Opening of a criminal investigation: a prosecutor opens a file concerning a possible infringement of EU or national provisions to the detriment of the EU's financial interests.
4. Request of indictment: a prosecutor requests the indictment of a person in relation to a possible infringement of provisions to the EU's financial interests.

It is important to ensure that the 'suspected fraud' classification is made at the earliest possible point in time. Therefore, the situations described above in points 3 and 4 (and to a lesser extent in point 1) are to be understood as being those where investigations have been initiated without the knowledge of the reporting authorities, who are only informed at a later stage.

It is therefore evident that the indictment (point 4) is the latest point in time at which the irregularity can be classified as IRQ3 if, and only if, no information was previously available.

The classification of the irregularity in IMS field 6.12 must be duly accompanied by the correct identification of the related proceedings in field 1.15.

4.3 The outcome of proceedings to establish the presence of intentional behaviour

Member States must keep the Commission informed of the initiation, conclusion or abandonment of any procedures or proceedings for imposing administrative measures, administrative penalties or criminal penalties, regarding the reported irregularities, as well as of the outcome of those procedures or proceedings[47].

The final decision on the intentionality of the behaviour is the responsibility of the relevant authorities of the Member State concerned. This means that a case initially detected by an administrative body and referred to a prosecution service or law enforcement body, which decides to open a criminal investigation (case consequently reported in the IMS as IRQ3 – suspected fraud) may later be dismissed by the judicial authorities or end in an acquittal of the criminal charges. Concurrent administrative proceedings initiated and suspended during criminal proceedings may be resumed and result in the imposition of administrative sanctions (see section 'Administrative proceedings' below).

[47] See Article 3(6) of Commission Delegated Regulations (EU) 2024/205 and 2024/204 and Annex XII, Section 2 CPR.

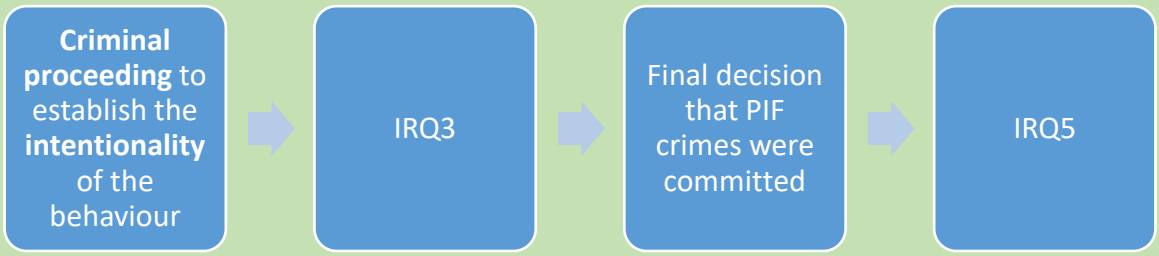
Criminal proceedings

An adjudicating court may establish the criminal behaviour as the outcome of criminal proceedings and impose sanctions on the person found guilty. In line with the legal framework in place, if a guilty verdict is pronounced and not appealed, the case can be considered **established fraud**, in line with the legal principle of *res iudicata* (or 'claim preclusion').

The relevant rules[48] require Member States to indicate whether fraud has been established regarding irregularities for which penalties have been imposed. This would also apply to the other criminal offences as referred to in Article 4(1), (2) and (3) of Directive (EU) 2017/1371, i.e. money laundering, active and passive corruption, and misappropriations.

If the irregularity was initially reported correctly, a case of suspected fraud already exists in the IMS. Update the case by modifying the relevant tabs and fields or adding new information, such as:

- Proceedings: PP should be indicated in field 1.15.
- Classification: change from IRQ3 to IRQ5 in field 6.12.
- Fill in the sanctions (penalties) in tab 10 and the relevant information in tab 11.
- Supporting documents (e.g. court decisions, judgment, sentences) may also be uploaded in tab 11.



For those cases in which both criminal and administrative proceedings are finalised, the criminal classification prevails (therefore, the case should be classified as IRQ5).

Administrative proceedings

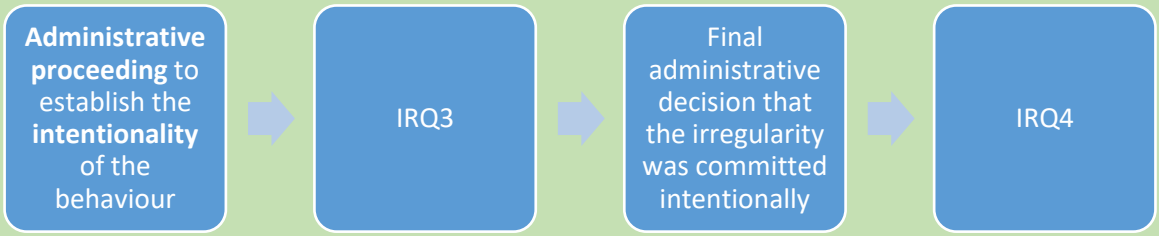
As a result of administrative proceedings, the deciding body (e.g. a national competition authority) may establish the intentionality of the conduct in question (e.g. bid rigging) leading to the withdrawal of financing and the imposition of administrative penalties and sanctions. In line with the legal framework in place, such a decision by this administrative body would establish the intentionality of the conduct.

[48] See in particular Article 3(6)(c) of Commission Delegated Regulations (EU) 2024/205 and 2024/204.

In accordance with Regulation No 2988/95, sectoral rules or national legislation indicate the conditions for imposing administrative measures, penalties and sanctions. The relevant reporting provisions[49] require Member States to indicate whether penalties imposed on irregularities were based on national or EU law.

If the irregularity was initially reported correctly as IRQ3, a case of suspected fraud already exists in the IMS. Update the case by modifying the relevant tabs and fields or adding new information, such as:

- Proceedings: AP should be indicated in field 1.15.
- Classification: change from IRQ3 to IRQ4 in field 6.12.
- Fill in the sanctions (penalties) in tab 10 and the relevant information in tab 11.
- Supporting documents (e.g. decisions…) may also be uploaded in tab 11.



[49] See in particular Article 3(6) (b) of Commission Delegated Regulations (EU) 2024/205 and 2024/204.

5. FACTS TRIGGERING THE OBLIGATION TO REPORT

5.1 Definition of a primary administrative or judicial finding

The EU legislation requires Member States to report cases of irregularity and fraud that have been the subject of a 'primary administrative or judicial finding' (generally referred to as PACA)[50].

Primary administrative or judicial finding (PACA) means

(Annex XII, Section 1, paragraph 1.1 (a) CPR; Articles 2(b) of Commission Delegated Regulations (EU) 2024/204 and 2024/205)[51]

'a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed. This is without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.'

For the reporting system to be fully effective, the primary finding under an administrative or judicial procedure or proceedings must be the **first record** by the administration or the courts that an irregularity exists. This holds even if the record is merely an internal document, as long as it is based on facts. This indication that an irregularity exists **does not prevent the administrative or judicial authorities from subsequently withdrawing or revising this first finding based on developments in administrative or judicial proceedings**[52]. In any case, the Member State must provide any new information about the irregularity that was not available when the facts were first reported in a subsequent report[53]. This approach fits the requirement for Member States to communicate any additional information on the reported irregularities as soon as this information becomes available[54].

According to the definition of PACA, it must be a **written document** with the following mandatory elements:

- a **description of the facts and elements** of the irregularity;
- an **assessment** by a competent authority;
- a **conclusion** that an irregularity has been committed**.**

The document can take various forms as shown by the list of examples below.

[50] PACA is the French acronym for premier acte de constat administratif ou judiciaire.
[51] This term is presented descriptively in the CPR whilst it is provided as a definition in the Commission Delegated Regulations (EU) 2024/204 and 2024/205.
[52] As explicitly set out in paragraph 1.4, Annex XII, Section 1 CPR; Articles 2(b) of Commission Delegated Regulations (EU) 2024/204 and 2024/205.
[53] See Section 7.4 of this document.
[54] See Annex XII, Section 1, paragraph 1.1(a) CPR; Articles 3(5) of Commission Delegated Regulations (EU) 2024/204 and 2024/205.

Examples of documents that meet the PACA definition[55]:

- management verification or control report (setting out the results of the verifications/control) by a Managing Authority, Intermediate Body or Paying Agency
- decision to reject the application of the funding, to refuse to sign the co-financing contract, to refuse the reimbursement of expenses, to refuse to settle expenses within the advance payment, to reduce funding, to withdraw unduly paid funding, to terminate the co-financing agreement
- audit reports (by the national audit authority, certifying body, supreme audit institutions)
- (audit) report by the European Commission
- investigation report by the European Anti-Fraud Office (OLAF)
- report by the European Court of Auditors
- investigation report by the European Public Prosecutor's Office (EPPO)
- report, resolution, decision or agreement to initiate the recovery procedure
- recovery order
- report by an investigative body
- other reports or memoranda issued by public bodies (internal audit, management reports, etc.) indicating the occurrence of irregularities
- transmission document to the public prosecutor
- (decision to initiate an investigation by public prosecution or law enforcement authorities)
- (request or decision of) indictment
- sentence, judgment (court verdict).

This list of documents is not exhaustive; rather it is an open catalogue, meaning that other documents not included in the list may also be considered as documents constituting a PACA. The competent authority decides each time, based on the documentation collected in a given case, which document meets the requirements set out in the PACA definition. The selection of the correct document constituting the PACA in a given case is crucial to ensuring the timeliness of the reporting process (the date of this document is particularly important as it determines the period within which the irregularity must be reported to the Commission). The internal procedures of the reporting authorities should indicate what types of documents are used for the purposes of the PACA for a given (operational) programme or fund and ensure that all cases for which the date of the PACA falls within a given quarter are reported in the same reporting period.

Some of the examples of documents listed above should not be seen as a reason to postpone the reporting obligation. For instance, a request for indictment, similarly to what is described in Section 4.2, is only considered the PACA if it is **also** the point when the

[55] The examples of PACA documents have been developed by the Member States. They relate to the situation in the legal system of a particular Member State and therefore may not be directly applicable to the legal system of another Member State.

authorities reporting the irregularity to the Commission first learn of the irregularity (suspected fraud, in this case). In this situation, the request for indictment would typically happen before any recovery order is issued. However, if the request is the result of a previous transmission of documents or reports by, for instance, the managing authority to the public prosecutor, that earlier communication would be the PACA.

The document considered to be the PACA should be the earliest written assessment for a given case concluding that an irregularity has occurred. It may be subject to changes later.

For cases of irregularities classified by an administrative authority as suspected fraud, the primary finding should be made no later than when a report is drawn up to be sent to the competent authorities (public prosecutor /judicial authority or administrative authority) to initiate proceedings to establish the intentionality of the behaviour (see Section 4.2 of this Handbook).

Based on the above, articles in the press hinting at possible irregularities are not regarded as PACA but only as sources for further checks to determine whether an irregularity has occurred (and, possibly leading to a first written assessment by a competent authority). Press articles referring to criminal investigations by a public prosecutor might indicate a need for reporting authorities to contact the prosecution service to gather the necessary information to submit the irregularity notification via the IMS.

Annex I.1 provides more examples illustrating the PACA.

National and EU rules might provide for the confidentiality of any related investigations and lead to the deferral of reporting (see Section 11. of this Handbook)

5.2 PACA and detection (Who detects irregularities?)

Detection of an irregularity and the PACA go together. Generally, when checks are carried out by a competent authority or body of the management and control system and lead to the conclusion that an irregularity has occurred, a PACA is established. The authorities that detect the irregularity are those that ascertain, through a written assessment that an irregularity has indeed occurred.

However, these authorities are not always those who first suspect that an irregularity might have taken place. For example, it could be that body X (e.g. the police or the tax administration) identifies a suspicious situation and decides that a specific operation or a specific economic operator (beneficiary or contractor) should be examined more closely in

relation to EU financing received. However, body X is not in charge of carrying out the checks in question and therefore sends the relevant information to body Y (e.g. the managing authority), which is responsible for the checks. Body Y then carries out the checks and concludes, based on its assessment set out in a written document that an irregularity has occurred. Body Y is then considered as the authority that has detected the irregularity.

The Member State is required to record the authority that detected the irregularity in the IMS (tab page 2, field 2.2 'Authorities involved')[56].

5.3 Link between PACA and recovery of funds

The aim of reporting irregularities by Member States is not to trigger a procedure for the recovery of funds[57] but to report the case to the Commission for information and analysis.

However, in many cases, a PACA can be linked to initiating the recovery procedure. This is because once an irregularity has been detected, the next step for the competent authority (managing authority, intermediate body, paying agency) is to recover the funds that were improperly paid.

The date of the PACA should be no later than the launch of the recovery procedure. Although the specific procedures for collecting debt can vary from one Member State to another, the recovery procedure begins (in most cases) on the date when the competent authority takes administrative action to recover the money. This may lead to a Member State's authority notifying an economic operator for the first time in writing that an amount of financing should be reimbursed and reporting the irregularity to the Commission.

5.4 PACA and the calculation of the exact irregular amount for reporting and recovery (registration of the debt)

When reporting irregularities (following a PACA), the Member State must indicate the **amount of the irregularity** in the initial report in the IMS.

It is not a problem if, at that point, the exact irregular amount is **not yet known or cannot yet be calculated** (e.g. the audit is not final – in particular if the contradictory procedure with the auditee has not been finalised – or the irregularities classified as suspected fraud are under scrutiny by the judicial authorities).

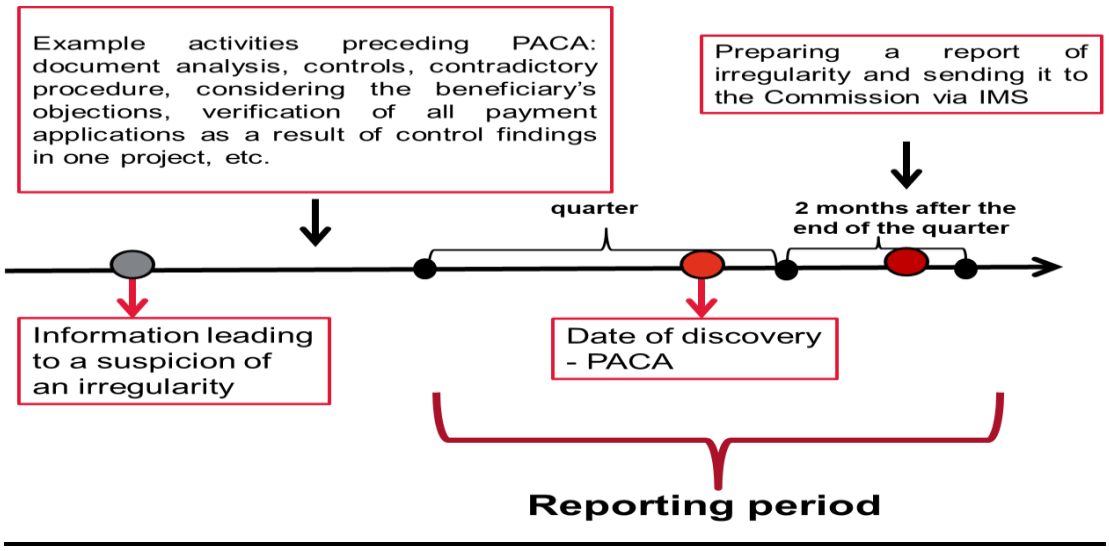
[56] Previously IMS field 7.5.

[57] Recovery of funds also includes other financial corrections such as deduction of irregular expenditure from, for example, the final payment request.

As soon as the exact irregular amount is determined, the Member State should report it by submitting a **follow-up report** in the IMS[58].

The circumstances described above are also relevant for the **recovery** of the irregular amount by the competent authority of the Member State or for any **financial corrections** the Commission may impose. The Member State and the Commission, for their respective procedures, need the exact irregular amounts to register them as debt. **However, this is independent from the irregularity reporting through the IMS, which is not an accounting tool, but a source of information for preventive action and analysis.**

5.5 The sequence of actions taken in the process of detecting, establishing and reporting irregularities – diagram



6. EXCEPTIONS TO THE REPORTING OBLIGATION

The rules governing the reporting of irregularities contain some exceptions to the reporting obligation[59].

6.1 Notification threshold

Member States have to report irregularities to the Commission only for amounts higher than EUR 10 000 in contribution from the funds (paragraph 1.2(a), first half-sentence of

[58] Paragraph 1.4 of Annex XII, section 1 of the CPR; Article 3(5) of Commission Delegated Regulations (EU) 2024/205 and 2024/204.

[59] However, Member States have to report annually to the Commission – as part of the annual assurance exercise - on all amounts resulting from any irregularity, even in cases covered by exceptions.

Section 1 of Annex XII to the CPR and Article 3(2) (a) of the Commission Delegated Regulations (EU) 2024/204 and 2024/205).

This rule represents a first, **general exception to the reporting obligation.**

Irregularities below EUR 10 000 in contribution from the funds do not have to be reported via the IMS.

This also applies where irregularities concern suspected (or established) fraud.

The concept of "linked irregularities" must be borne in mind when considering the EUR

10 000 reporting threshold.

Interlinked irregularities ('exception to the exception')

The general exception to the reporting obligation, i.e. the reporting threshold, 'does **not** apply in the case of irregularities which are interlinked and the total amount of which exceeds EUR 10 000 in contribution from the funds, even when none of them exceeds that ceiling on its own' (paragraph 1.2(a), second half-sentence of Section 1 of Annex XII to the CPR and Article 3(2)(a) of the Commission Delegated Regulations (EU) 2024/204 and 2024/205).

The idea behind this 'exception to the exception' is to avoid interlinked irregularities being artificially split so as to circumvent the reporting requirements, which would be contrary to the objectives pursued by the legislation.

No exhaustive list of the elements constituting 'a link' between irregularities can be provided considering the variety of possible underlying situations. Nevertheless, the following elements are generally seen as constituting 'a link' between irregularities:

- irregularities (even of different kinds) committed by the same person/economic operator (or group of persons/economic operators) and concerning the same operation (project, contract, action or group of projects);
- irregularities (even of different kinds) committed by the same economic operator (or group of persons/economic operators) and concerning different operations (project, contract, action or group of projects;
- irregularities committed by different persons/economic operators and concerning the same operation (project, contract, action or group of projects).

It is important to point out that interlinked irregularities may or may not be reported together, as explained in more detail in Section 7.3 of this Handbook.

Member States can indicate in the IMS that irregularities (that were/are not reported together) are linked because they involve the same person/economic operator.

In field 1.14, the box is changed to YES if the person(s)/economic operator(s) involved in the case can be linked to other cases.

For the EUR 10 000 reporting threshold, it is also important to draw attention to cases where an irregularity was initially reported for an amount of more than EUR 10 000 but later turned out to involve an amount of less than EUR 10 000. Such irregularities, whether initially classified as suspected (or established) fraud or not, cannot be cancelled in the IMS. Rather, for these cases, only one update requesting the closure of the case would be sent upon finalisation of all national proceedings. There would be no need to update these cases regularly in between. This approach does not apply to interlinked irregularities.

6.2 Specific exceptions to the reporting obligation

In addition to the general exception from the reporting obligation described above, the applicable legal provisions for the reporting of irregularities lay down **a series of specific exceptions.**

Accordingly, irregularities do not have to be reported in:

1) cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed operational programme owing to the **non-fraudulent bankruptcy**[60] of the beneficiary;
2) cases brought to the attention of the managing authority or the authority in charge of the accounting function by the beneficiary **voluntarily and before detection** by either authority, whether before or after the payment of the public contribution- **UNLESS FRAUD IS SUSPECTED** (‘exception to the exception’);
3) cases which are detected and corrected by the managing authority or certifying authority **before inclusion of the expenditure concerned in a statement of**

[60] See also the reply to question 8 of Annex II to this Handbook.

expenditure submitted to the Commission - **UNLESS FRAUD IS SUSPECTED!** ('exception to the exception').

There are several exceptions to the reporting obligation; one is general and three are specific exceptions. However, there are also 'exceptions to the exceptions'.

7. REPORTING AND CLOSING THE IRREGULARITY IN THE IMS

7.1. Initial reporting

When reporting irregularities to the Commission, Member States must provide all the information listed by the applicable legislation: Annex XII, Section 2, CPR and Article 3(3) of the Commission Delegated Regulations (EU) 2024/205 and 2024/204.

The reply to question 12 of Annex II to this Handbook indicates where in the IMS (and how) some of the information required is to be introduced.

Where an irregularity is the subject of an OLAF investigation, Member States must also provide the complete OLAF case number in the IMS.

The OLAF case number should also be provided where the case was registered by OLAF but subsequently dismissed on the basis of the principle of subsidiarity. Where the competent authority of a Member State, because of actions taken following the dismissal by OLAF, concludes that an irregularity has occurred, the Member State must provide the OLAF case number when reporting the irregularity in the IMS.

The reporting authority will ensure that the information provided is accurate and clear, without affecting the possibility of integrating or correcting it through follow-ups ('requests to update a case' in the IMS – see Section 7.4).

The information in the IMS is provided through different types of fields that can be broadly described as structured (single or multi-choices from defined picklists) or unstructured (free text fields).

Initial reporting would entail, in most cases, a description of the type of irregularity detected. This description is done in two ways, one through a structured field (6.8 type of irregularity) that allows the introduction of multiple types of irregularities, and an unstructured field (6.9 modus operandi) where the reporting authority is requested to provide a description of the method used to commit the irregularity, which would allow for an explanation and understanding of the codes used in field 6.8.

For an example, see questions 5 and 6 in Annex II.

7.1.1. Cases with no initial obligation to report

Irregularities that are below the reporting threshold (or meet the criteria for the other exceptions to the reporting obligation, as described in Section 6. of this Handbook) and are consequently not reported to the Commission, are still to be recorded in the Member States' annual financial reports or statements/annual accounts. In some cases, after a certain period of time (which could be years), new findings may emerge making those irregularities reportable to the Commission. For example, this could happen if the irregular amount now exceeds the reporting threshold or the irregular amount, which was detected and corrected by the Member State before being included in a payment application to the Commission, is now considered as a case of suspected or established fraud.

To avoid statistical distortions in 'reporting efficiency', i.e. the average time between the establishment of an irregularity and its reporting to the Commission, and to avoid the impression that the Member State concerned did not comply with the reporting rules, the date on which information became known leading to a change in the irregularity's status as reportable to the Commission is entered in the IMS as the detection date (PACA). The date on which the irregularity was actually detected but was not yet reportable is entered in the comments section.

7.1.2. Time limit for reporting

The EU legislation obliging Member States to report irregularities to the Commission via the IMS does not set a time limit for the reporting obligation[61]. Consequently, this obligation does not expire, and Member States should also report irregularities concerning programmes that have been closed/financially settled. There are other provisions in the EU legislation, closely linked to irregularities, namely those on financial corrections, which make it clear that certain obligations of Member States continue even after the closure of programmes[62].

Nevertheless, Member States have expressed the wish to set a time limit for reporting obligations for several reasons. When new irregularities are detected in relation to a closed programme, often the time limits for keeping supporting documents have expired. This makes it difficult or impossible to obtain the relevant information. Also, the time limits for controls, audits, and investigations may have expired, reducing the likelihood of detecting irregularities. Finally, reporting irregularities concerning a closed programme would be a huge administrative and financial burden.

While it is understandable that these reasons may be invoked, a guide such as this Handbook cannot introduce a time limit for the reporting of irregularities. This could only be done by the

[61] The reporting requirements do not constitute measures within the meaning of Regulation (EC) No 2988/95 and therefore the time limits referred to therein do not apply.

[62] See the Guidelines on the closure of operational programmes adopted for assistance from the ERDF, the ESF, the CF and the EMFAF and the CBC programmes under IPA II, programming period 2014-2020 (Commission Notice published in the OJ C 474 of 14.12.2022, p. 1) and the Guidelines on closure of 2014-2022 rural development programmes *(publication still to come)*

EU legislative body, if deemed appropriate, by making the necessary changes to the current legislation in force. Nor would it be an option to simply transpose time limits from other provisions of EU law (on audits, on the preservation of documents or on the imposition of sanctions), as this would risk undermining the objective of legal certainty and clarity that these provisions seek to ensure.

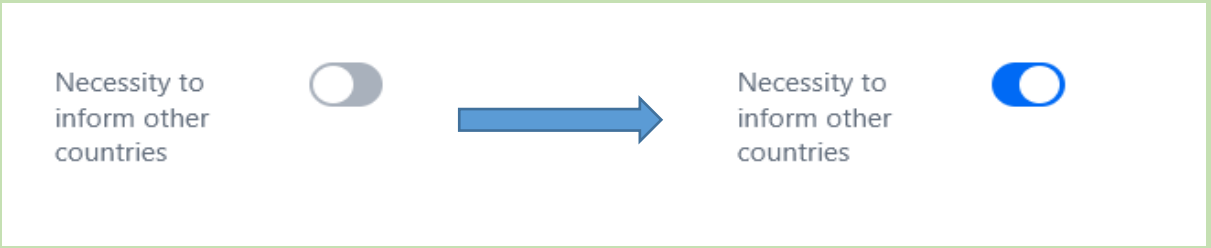
7.2. Special reports

Irregularities are to be reported within two months following the end of each quarter from their detection (paragraph 1.4 Annex XII, Section 1 CPR and Article 2(1), first sentence of Commission Implementing Regulation (EU) 2024/206 – area of agriculture) or without delay after the irregularities are discovered (Article 2(2) of Commission Implementing Regulation (EU) 2024/203 – EGF area).

However, these timing rules change in cases where irregularities may have an impact in other EU Member States (or in other non-EU countries). Accordingly, paragraph 1.4, second sentence of Annex XII, Section 1 CPR and Article 2(1), second sentence of Commission Implementing Regulation (EU) 2024/206 provide that a Member State must immediately report to the Commission any irregularities discovered or supposed to have occurred, where such irregularities may have repercussions outside the Member State's territory[63].

How can these special reports be identified in the IMS?

Member States can change the box for field 1.13 from NO (0) to YES (I).



IMS fields 6.5 and/or 6.6 must also be completed by indicating the Member State(s)/third country(ies) concerned.

7.3. Compiling several irregularity reports (joint reports)

The rule is that the irregularity reports cover individual cases, meaning one irregularity committed by one specific economic operator (or group of economic operators) in an operation (project, contract, action or group of projects). However, Member States have the **possibility of combining reports** in situations where irregularities are **interlinked** (as described in Section

[63] The reporting rules applicable to the EGF area always require reporting 'without delay'.

6.1 of this Handbook), regardless of whether or not the individual irregularity is below the EUR 10 000 reporting threshold (and only above it when aggregated with the other irregularity/ies).

However, putting interlinked irregularities together in a single report may not always be appropriate or feasible.

If the same economic operator commits irregularities on operations from different programming periods (e.g. 2014-2020 and 2021-2027) or different (operational) programmes or funds, the reporting should be done separately for each programming period, each programme and each fund. This is to facilitate the update of the individual irregularity cases (e.g. on the outcome of proceedings launched that could lead to the closure or cancellation of one or the other irregularity) or because of the technical limitations of the IMS[64]. Member States with a very broad reporting structure might not to be able to do otherwise in any way, as a reporting authority responsible for a specific programme/fund may not have access to and may not know the cases reported by other authorities in the IMS (as they are separated in the reporting structure).

Where interlinked irregularities are not reported in a single report, a cross-reference to the linked case(s) should be included in the IMS whenever possible. This is to be done either in field 1.14, if interlinked irregularities concern the same economic operator, or in field 11.1 if the link between the irregularities is of a different nature.

In view of the above, for the purposes of the IMS, interlinked irregularities should be reported in a single IMS report ONLY if ALL of the following conditions are met.

1) The irregularities concern the same economic operator and/or the same operation.
2) The irregularities concern the same programming period, fund and (operational) programme.
3) The irregularities have been established by one reporting authority and during one reporting period.
4) The financial impact of all irregularities combined exceeds EUR 10 000.

If conditions 1) to 4) are met, but the value of EACH individual irregularity exceeds EUR 10 000, they may be reported separately (as there is no risk of artificial splitting).

7.4. Follow-ups

It is an established principle of the reporting rules[65] that where some of the information to be provided in the IMS was unavailable at the time of the initial reporting or needs to be corrected later, the Member State has to supply the missing or correct information to the Commission without delay once it is obtained in a ‘follow-up report’, which means that the IMS must be

[64] For example, the IMS allows only one CCI code to be selected.

[65] See for the 2021-2027 period, paragraph 1.4, Annex XII, Section 1 CPR and Article 3(5) of the Commission Delegated Regulations (EU) 2024/205 and 2024/204; the EU legislation on the reporting of irregularities applicable in the previous programming period contained equivalent provisions.

brought up-to date. This concerns all the information requested by the applicable regulation but is particularly the case for information on the methods used to commit the irregularity and how it was discovered.

In the follow-up reports ('request to update a case' in the IMS), the Member States must also provide information about the progress of any administrative or judicial proceedings connected to the reported irregularity. Member States are required[66] to communicate details about the launch, conclusion or abandonment of any procedures or proceedings to impose administrative measures, or administrative or criminal penalties related to the reported irregularities, as well as the outcome of such procedures or proceedings.

When penalties have been applied due to irregularities, the Member State must also indicate:

(a) whether the penalties are of an administrative or criminal nature and details of the penalties;

(b) whether the penalties result from a breach of EU law or national law;

(c) whether fraud was established.

As stated in paragraph 1.1.(d) of Annex XII, Section 1 CPR and Article 3(7) of Commission Delegated Regulations (EU) 2024/205 and 2024/204, the Member State must also provide additional information about a specific irregularity or group of irregularities if the Commission requests such information in writing.

In the IMS, the relevant information is provided / updated in fields:

- 1.15 Proceedings, if there are ongoing or concluded criminal and administrative proceedings: the system allows multiple types of proceedings to be indicated for each case (e.g. criminal **and** administrative).

- 1.16 Financial status: select the code that best describes the current status of the recovery procedure.

- Tab 10 for the status of the procedures initiated to impose sanctions (fields from 10.1 to 10.5) and of the sanctions imposed (fields 10.6 to 10.7).

7.5. Closing the case

Once all procedures at the national level[67] have been completed and finalised and the Commission has been informed of their outcome, the Member State should close the

[66] See Article 3(6) of Commission Delegated Regulations (EU) 2024/205 and 204 and Annex XII, section 2 CPR.
[67] "At the national level" indicates that the completion and finalisation of procedures only at the level of the single national authority responsible for the case is not considered to be a sufficient justification.

irregularity case; no further activities or developments are expected from the reporting country[68].

The following checklist can be used to determine whether national procedures can be considered finalised, and the irregularity case can be closed.

Status of procedure	YES	NO	Not applicable
Have the irregular amounts been settled financially vis-à-vis the EU?[69]			
Have administrative or judicial proceedings initiated to establish the intentionality of the behaviour (cases of suspected fraud) been completed?			
For irregularities involving non-fulfilment of obligations, has the economic operator now fulfilled the obligation[70]?			
If the Managing Authority discovered the irregularity before a payment was made, was the funding agreement cancelled or did the recipient agree to assume the financial consequences of the irregularity?			

If any of the replies in this list is NO, the case cannot be closed.

Closing of cases covered by overbooking

When irregular expenditure is removed from payment declarations submitted to the Commission and replaced by regular overbooked expenditure, there is no longer an impact on the EU budget and the related irregularities previously reported can be closed in the IMS[71].

However, the situation is different if relevant proceedings are ongoing because there is a **suspicion of fraud.** In such a case, the irregularities should **not** be closed in the IMS. This is in line with the rules on the reporting of irregularities, which treat cases of suspected fraud differently, as it is shown by the provisions on exceptions to the reporting obligation.

[68] Exceptionally, OLAF may reopen cases that have already been closed; see reply to question 4 in Annex II to this Handbook.

[69] See also reply to question 11 in Annex II to this Handbook.

[70] For example: A company that had built a road with materials that do not correspond to those contractually required was asked to redo the work with the agreed-upon materials.

[71] It is one thing to close a previously reported irregularity where the related expenditure has been withdrawn because it no longer has an impact on the EU budget, but it is quite another to avoid reporting. There can be no doubt that irregularities relating to expenditure included in a payment claim must be reported, even if the expenditure is subsequently withdrawn.

7.6 Cancelling a case

When updating the initial report, the reporting authority of the Member State can also indicate that following further inquiries a case initially reported as an irregularity no longer constitutes a breach of a provision of applicable rules and contracts and is therefore a non-irregularity. As a result, the Member State can cancel the case. The cancellation request must be accompanied by a clear justification.

A case of suspected fraud that is brought to trial and results in a judgment finding no fraud, might, and in most cases does, still constitute an irregularity. Such a case does not qualify for cancellation. Likewise, a court's decision to dismiss a case due to prescription/statute of limitations does not mean that an irregularity was not committed and that it can therefore be cancelled. Such irregularities can only be closed if the conditions for closure are met[72].

How to cancel a case in the IMS?

When updating a case, a 'request' option is available to cancel the case.

Making a cancellation request will permanently remove all information from the IMS that could lead to identifying the operation initially reported as affected by the irregularity, as well as the economic operator involved. Once a cancellation request is sent to the Commission/OLAF, the information is no longer recoverable.

8. FINANCIAL ASPECTS OF THE IRREGULARITY[73]

According to the legislation governing the reporting of irregularities, the information the Member State must provide includes the following[74].

- The total amount of expenditure, expressed in terms of the EU's contribution, the national contribution and the private contribution.

- The amount affected by the irregularity expressed in terms of the EU's contribution and the national co-financing (including private contributions, if any).

- In cases of suspected fraud, and where no payment of the public contribution has been made to the beneficiary, the amount that would have been unduly paid, had the irregularity not been identified, expressed in terms of the EU's contribution and the national co-financing, (including private contributions, if any).

[72] See also the reply to question 16 of Annex II to this Handbook on the cancellation of open irregularity cases notified to the Commission (OLAF) on the basis of Regulation (EC) No 1681/94 for the 1989-1993, 1994-1999 and 2000-2006 programmes.
[73] See also the reply to question 13 of Annex II to this Handbook concerning the co-financing rate to be taken into account when providing information on the financial aspects of the irregularities.
[74] See Annex XII, Section 2 CPR and Article 3(3) of Commission Delegated Regulations (EU) 2024/205 and 2024/204.

8.1. The total amount of expenditure

The total amount of expenditure refers to the approved total financing (the EU and the Member State's shares of the public contribution and any private contribution) of the operation concerned (project, contract, action or group of projects). The entire budget of the approved operation should be reported.

1. For example, in the case of a large infrastructure project comprising several components or contracts:

The reporting authority can indicate the **specific contract(s) affected by irregularities** in tab pages 4 or 5 (as appropriate) and enter the total value of the contract(s) in question (i.e. the amount of expenditure) in these fields. The system will then automatically calculate the sum of the contracts indicated in tab pages 4 or 5 in field 8.1. This value must then be amended manually in field 8.1 to reflect the total **project** value.

2. If, for example, **more than one project** run by the same economic operator is affected by irregularities that are reported together[75]:

The reporting authority can indicate the financial value of the projects (i.e. the amount of expenditure) in tab pages 4 or 5 (as appropriate). The system will then automatically calculate the sum of the projects indicated in tab pages 4 or 5 in field 8.1. This value must not be modified in field 8.1.

8.2. The amount of the irregularity

The amount of the irregularity (irregular sum) should be calculated by combining the actual and potential financial impact of the case. This should cover not only the irregular expenditure already paid to the recipients and declared to the Commission but also the affected amounts before payment and declaration. Any amount considered ineligible because an irregularity was detected in connection with a co-financed operation should be taken into account (from the EU and the Member State's share of the public contribution).

The actual irregular amount may sometimes differ from the total amount of the expenditure affected by the irregularity. This could happen, for example, when proportionality is applied in determining the related financial correction. In such cases, the report/IMS should contain the amount of the actual financial correction that should be seen as constituting the financial impact of the irregularity.

[75] See Section 7.3 of this Handbook on the joint reporting of irregularities.

The amount of the irregularity should only be updated or modified if subsequent assessments review and correct the initial estimate. Successful recoveries or repayments by the recipient should not be deducted from this amount.

In IMS field 8.2, the full irregular amount is reported (including what has been paid and what has not been paid yet). Fields 8.2.1 and 8.2.2 must be used to specify the paid and unpaid amounts.

Interest, fines and penalties do not form part of the irregular amounts to be reported in IMS tab page 8. However, fines and penalties imposed as a result of administrative or criminal proceedings must be indicated in tab 10, and any interest charged must be set out in IMS field 9.12.

Annex I.3 to this Handbook contains an example of how the financial aspects of irregularities should be determined.

9. IRREGULARITY REPORTING UNDER THE– EUROPEAN TERRITORIAL COOPERATION PROGRAMMES (ETC) - INTERREG

Certain ETC/Interreg programmes are implemented under shared management. This is the case for **all Interreg strands**[76] (funding period 2021-2027), except for strand D, including cross-border cooperation between one or more Member States and one or more beneficiaries of Pre-Accession Assistance (IPA) III[77] and the participation of IPA III beneficiaries in ERDF transnational, and interregional cooperation programmes.

These programmes are regulated by the ETC – Interreg Regulation 2021/1059[78], the CPR and the European Regional Development Fund and the Cohesion Fund Regulation 2021/1058[79].

For the reporting of irregularities under these programmes, the rules applicable in the 2021-2027 programming period are those set out in Annex XII to the CPR. Paragraph 1.3 of Annex XII, section 1 of the CPR specifies with regard to the **determination of the reporting Member State**[80] that:

[76] Strand A: cross-border between at least two EU Member States; strand B: trans-national involving several regions from several EU countries; strand C: interregional; strand D: outermost regions.
[77] IPA III refers to the programming period 2021-2027.
[78] Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments; OJ L 231, 30.6.2021, p. 94.
[79] Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund; OJ L 231 30.6.2021, p. 60.
[80] For Interreg-IPA, the IPA beneficiary should report the irregularity outside the IMS (e.g. via secured mail) to the EU Member State, which then should enter it in the IMS.

‘The Member State in which the irregular expenditure is incurred by the beneficiary and paid in implementing the operation shall be responsible for reporting the irregularity in accordance with Article 69(2). **For programmes under the European territorial cooperation goal (Interreg), the reporting Member State shall inform the managing authority and the audit authority of the programme.**’

IMS is a highly customisable tool. Thanks to its integration within the AFIS platform, as well as the ability to exchange information and documents via the secure AFIS mailbox, it offers several possibilities to ensure an efficient flow of information, including in relation to programmes under the ETC.

For instance, if the reporting Member State is the one that holds the Managing and Audit Authority of the programme, it might be best to set up a hierarchical workflow in a cascade structure within this Member State so that all the ETC authorities can be informed.

If the reporting Member State does not hold the Managing and Audit Authorities of the programme, it would be advisable for the reporting Member State to use the AFIS mailbox to send these authorities information on reported cases, as the authorities cannot access the information directly.

10. FINANCIAL INSTRUMENTS, SIMPLIFIED COST OPTIONS AND FINANCING NOT LINKED TO COSTS

Shared management funds can be used by Member States to provide support to beneficiaries in the form of financial instruments[81] or grants[82], including grants where the settlement of expenditure may take the form of simplified cost options and/or financing not linked to costs (FNLTC)[83].

Expenditure incurred in the implementation of financial instruments or grants in the form of simplified cost options and FNLTC, co-financed by these funds, is overall subject to the same rules as any other type of expenditure must comply with on **requirements for how the management and control system set up by the Member States** for the programmes supported should function. The responsibilities of Member States in this regard, as laid down in Article 69 CPR, in accordance with the principle of sound financial management[84], **include the obligation to report irregularities** to the Commission (Article 69(2) CPR).

For the reporting of irregularities linked to financial instruments it is important to remember that Article 2(4) CPR defines ‘operation’ in the context of financial instruments, as a

[81] Financial instruments are defined in Article 2(16) of the CPR.
[82] Article 52 of the CPR: ‘Member States shall use the contribution from the Funds to provide support to beneficiaries in the form of grants, financial instruments or prizes or a combination thereof.’
[83] Article 53(1) and 95(1) CPR as well Article 211(4) of the 2024 Financial Regulation.
[84] And the related key requirements, listed in Annex XI to the CPR.

'programme contribution to a financial instrument and the subsequent financial support provided to final recipients by that financial instrument.'

For irregularities related to financial instruments, the full amount associated to the financial instrument – e.g. the specific guarantee - must be reported in the IMS as total amount of expenditure.

For irregularities in the framework of FNLTC, see also the reply to question 19 in Annex II to this Handbook.

11. CONFIDENTIALITY OF INVESTIGATIONS

The reporting obligations imposed on Member States by EU legislation can in principle only be limited by the requirements for the confidentiality of investigations set out in the national legislation (criminal procedure law) of the Member State.

Accordingly, paragraph 1.5, first subparagraph of Annex XII, section 1 CPR and Article 3(4) of Commission Delegated Regulations (EU) 2024/205 and 2024/203 stipulate that where national provisions provide for the confidentiality of investigations, only information subject to the authorisation of the competent tribunal, court or other body – including the EPPO[85] – may be reported.

This means that the confidentiality of an ongoing investigation may result in a judicial or special administrative authority (e.g. anti-trust authority) not authorising the disclosure of information relating to an irregularity to the Commission. In this situation, an irregularity case is not immediately reported to the Commission once a PACA is established or, if the case was already reported, additional information is not immediately provided once it becomes available. However, this does not mean that the case should never be reported, or the information should never be submitted. It only means that the reporting or sending of the information is deferred. The information must be reported in the IMS as soon as the reason for the original deferral no longer applies (and no later than following the closure of the investigation).

A competent tribunal, court of other body may restrict disclosure in full or in part. Where there is a partial authorisation of disclosure, the reporting authority should enter the part of the information not covered by confidentiality in the IMS, unless the information authorised is too sparse or general to be considered significant for reporting purposes.

In line with the principle of cooperation to protect of the EU's financial interests, invoking confidentiality to refuse to report irregularities or to provide information without delay to the Commission should not be used as a rule. There can be no systematic refusal to report cases of irregularity or provide related information. The power conferred on the judicial or special administrative authorities of the Member State to decide, for reasons of confidentiality, whether

[85] See the reply to question 15 in Annex II to this Handbook on situations where national (reporting) authorities have to request authorisation from the EPPO.

irregularities are reported or related information is provided should be applied in a balanced manner evaluated case by case.

Invoking confidentiality rules should be limited to their main purpose, which is to avoid the risk of jeopardising ongoing proceedings, in particular gathering evidence and determining facts. Preventing the reporting of irregularities or the communication of information to the Commission ultimately hinders the full effectiveness of EU legislation since it could lead to the legal requirements to report irregularities within two months of the end of the quarter in which they were detected, and to provide additional information on the reported irregularities as soon as it becomes available not being complied with.

12. CURRENCY OF THE REPORTED AMOUNTS

Member States are required to **use the euro** as the currency when reporting irregularities (Article 87 CPR and Article 3 of the Commission Implementing Regulation (EU) 2024/206 and Article 4 of the Commission Implementing Regulation (EU) 2024/203).

The relevant legal provisions (Article 76(1)c) CPR and article 4(2) IR 2024/206 (with reference to Article 94 of Regulation (EU) 2021/2116[86]) and Article 4(2) IR 2024/203) also lay down the rules on the **exchange rate to be used** by Member States that have not adopted the euro as their currency when converting the amount of expenditure incurred in its own currency into euro.

Different rules on the conversion rate apply, depending on the financial scenario in which an irregularity may occur.

- An irregularity is discovered 'after payment'. This is when the entire irregular expenditure was recorded in the responsible body's accounts. The exchange rate to be used is the one from the month during which the expenditure was recorded[87].
- An irregularity is discovered 'before payment'. This is when no irregular expenditure was recorded in the accounts of the paying authority or the accounting body of the programme. Here, the most recent monthly accounting exchange rate published electronically by the Commission at the time of the initial reporting[88] is to be used.[89]
- An irregularity is discovered 'after and before payment'. This is when part of the irregular amount was recorded in the responsible body's accounts and part of the irregular amount was not yet recorded in those accounts. This leads to a situation where the amounts are registered in the accounts of the Member State's over a period of time.

[86] For the exact reference, see footnote 28.

[87] Article 76(1)c) CPR and Article 4(2), first sentence IR 2024/206 (with reference to Article 94 of Regulation (EU) 2021/2116) and Article 4(2), first sentence IR 2024/203.

[88] Reporting such irregularities implies here that they constitute suspected fraud. Otherwise, cases for which expenditure has not been paid out nor included in a statement submitted to the Commission would be exempt from the reporting obligation (see Section 6.2 of this Handbook).

[89] Article 4(2), second sentence IR 2024/206 and Article 4(2) second sentence IR 2024/203.

In this situation, if this period is longer than one month, the exchange rate to be used is from the month during which the incorrect expenditure was last registered.

IMS fields 1.7, 1.8 and 1.9 are to be used for the collection of information in this context.

13. CONFIDENTIALITY OF INFORMATION AND PROTECTION OF PERSONAL DATA

Member States must collect the information referred to Annex XII, Section 2 CPR and Article 3(3) and (6) of Commission Delegated Regulations (EU) 2024/205 and 2024/204 and report it to the Commission via the IMS (for more details, see Section 14 of this Handbook.

When Member States collect and report this information to the Commission for the purpose specified in the legislation, the Member State and the Commission are processing confidential and personal data.

The Member State and the Commission must respect the confidentiality of information and ensure the protection of personal data.

Article 4 CPR:

'Processing and protection of personal data

The Member States and the Commission shall be allowed to process personal data only where necessary for the purpose of carrying out their respective obligations under this Regulation, in particular for monitoring, reporting, communication, publication, evaluation, financial management, verifications and audits and, where applicable, for determining the eligibility of participants. The personal data shall be processed in accordance with Regulation (EU) 2016/679[90] or Regulation (EU) 2018/1725 of the European Parliament and of the Council[91], whichever is applicable.'

Last sentence of paragraph 1.5, ANNEX XII, Section 1 CPR

'This information shall be covered by professional secrecy and may not be disclosed to persons other than those in the Member States or within the Union's institutions, agencies, offices and bodies whose duties require that they have access to it.'

[90] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/ES (General Data Protection Regulation); OJ L 119; 4.4.2016, p. 1.

[91] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EU) No 45/2001 and Decision No 1247/2002/EC; OJ L 295, 21.11.2018, p.39.

Commission Delegated Regulations (EU) 2024/204 and 2024/205

Whereas 8 and 9 respectively: 'Where it is necessary for the purpose of this Regulation to process personal data, this should be carried out in accordance with Union law on the protection of personal data. In light of Regulation (EU) 2016/679 of the European Parliament and of the Council and Regulation (EU) 2018/1725 of the European Parliament and of the Council, the Commission and the Member States should, in relation to the information provided pursuant to this Regulation, prevent any unauthorised disclosure of, or access to, personal data. In addition, this Regulation should specify the purposes for which the Commission and the Member States may process that data. Any further use thereof is without prejudice to Article 6(4) of Regulation (EU) 2016/679.'

Article 4:

'(2) Information provided under this Regulation shall be covered by professional secrecy and protected in the same way as it would be protected by the national legislation of the Member State that provided it and by the relevant provisions applicable to the Union's institutions. Member States and the Commission shall take all necessary precautions to ensure that the information remains confidential.

(3) The information referred to in paragraph 2 shall not, in particular, be disclosed to persons other than those in the Member States or within the Union's institutions, agencies, offices and bodies whose duties require that they have access to it, unless the Member State providing it has given its express consent.'

The IMS is a secure electronic tool that allows for reporting, managing and analysing irregularities in line with the provisions above.

Any personal data reported by the Member State stays in the IMS for a limited period of time; data in a closed irregularity case is anonymised if the conditions for anonymisation are met[92].

The following personal data on IMS users who must register for access to the system via the Anti-Fraud Information System (AFIS) user registration tool is stored in the system: login ID, first name and surname, email, the administration the user belongs to, preferred interface language, application preferences and role. Personal data is stored and maintained in a secure electronic directory accessible only to duly authorised AFIS users. The data is accessible to the OLAF staff responsible for managing the registration process and managing users and technical issues. The data is kept as long as the users are authorised to access the application and access rights are reviewed periodically to ascertain their validity. Once a user is deleted, their creation/modification/deletion record is kept for a maximum of 10 years.

IMS users have the right to access the information held by OLAF and request rectification, blocking or erasure of the data by contacting the controller (olaf-fmb-data-

[92] See reply to question 3 of Annex II to this Handbook.

protection@ec.europa.eu). Users also have recourse to the European Data Protection Supervisor if they consider that their data protection rights have been breached by OLAF.

14. TRANSMISSION OF IRREGULARITY REPORTS

Under the applicable legal provisions, information related to the reporting of irregularities must be sent by electronic means, using the **IMS** set up by the Commission. No information, including cover letters, should be sent by post or email. All information must be sent via the IMS.

The IMS enables Member States to report irregularities related to expenditure to the Commission. The IMS is part of the Anti-Fraud Information System (AFIS) (see Section 15).

The information submitted by the Member States via the IMS may be taken into account by the Commission when applying the provisions of the Early Detection and Exclusion system (EDES). Information contained in the IMS is accessible through the EDES database via a specific interface.

For EDES and its use in shared management, see Annex IV as well as the reply to question 17 of Annex II to this Handbook.

15. ACTORS AND STRUCTURES INVOLVED IN THE REPORTING VIA THE IMS

The IMS is part of the AFIS. It is based on a cascaded reporting structure, which makes it possible to feed the system with data at various levels and to perform checks at different levels on data reliability and completeness.

Each reporting authority should apply the four-eye-principle: one person enters the data into the IMS, and another person checks and approves that input before it is sent. To facilitate this, the roles of IMS-creator and IMS-manager were created. The IMS-creator enters the data in the IMS, and the IMS-manager checks, approves, and sends it to the next level. In addition, the roles of the national IMS-country-officer and observers were created. The IMS-country-officer has the ultimate responsibility for the process of reporting irregularities, coordinating and possessing broad administrator rights, including directly in the database. Observers can only view IMS data and cannot change them.

The national reporting structures determine which national authorities can enter detected cases in the IMS.

ANNEXES

I. Examples of:

1. PACA (primary administrative or judicial finding) and classification of irregularities as suspected fraud

2. Types of irregularity reflecting intentional behaviour that suggests fraud

3. Determination of the financial impact of irregularities

II. Frequently Asked Questions

III. Flow chart – From detection to the closure of an irregularity in the IMS

IV. Early Detection and Exclusion System (EDES)

ANNEX I. EXAMPLES

1. Examples of PACA (primary administrative or judicial finding) and classification of irregularities

Most of the following examples have been developed by the Member States. They relate to the situation in the legal system of a specific Member State and therefore may not be directly applicable to the legal system of another Member State.

1) In the context of a rural development programme, the Managing Authority (MA), when reviewing the grant beneficiary's final report, spotted a possible irregularity; it appeared that the implementation of the project – investment in the purchase of milk processing equipment – was not consistent with the project's technical specifications. Specifically, the processing capacities of some of the equipment purchased were lower than the minimum values agreed upon under the grant contract. The MA decided to carry out an on-the-spot visit, which confirmed the non-compliance issue. The MA then issued a control report setting out the results of its checks and concluded that an irregularity had occurred. It declared the expenditure concerned as ineligible and decided to recover the amount already paid. **The MA's control report constitutes the PACA.** As the MA concluded that there were no elements suggesting intent, **the irregularity was reported as IRQ2.**

2) A private person (external source) filed a complaint with the national competition authority (hereafter referred to as 'authority X'), claiming that the economic operator that had won the procurement procedure led by the beneficiary of the ERDF-funded grant had been selected due to existing family ties. As authority X is not responsible for carrying out control activities, it sent the information about the potential conflict of interest to the Managing Authority (hereafter referred to as 'authority Y') that has the relevant responsibilities, and that authority started an administrative control. While a first control report was being established, authority Y decided to put on hold any outstanding payments to the grant's beneficiary. **The decision to suspend payments constitutes the PACA.**
Authority Y also sent the information to the national prosecution office. **The irregularity was reported as IRQ2 and would be reclassified as IRQ3 if the national prosecution office decided to initiate an investigation.**

Case variations:

(a) Authority X directly informed the national public prosecutor's office that a procurement procedure was flawed due to a suspected conflict of interest involving the grant beneficiary, given that the national public prosecutor's office is the sole body that –- according to the national legislation of the Member State – is entitled to investigate suspicions of fraud. The

prosecutor's office decided to open an investigation and informed the MA accordingly. **The decision to open an investigation was considered the PACA. The irregularity was reported as IRQ3.**

(b) Authority X directly informed the national public prosecutor's office that a procurement procedure was flawed due to a suspected conflict of interest involving the grant beneficiary. . Once the investigation had been completed, charges were brought against the beneficiary. Only at this point did the MA learn of the indictment. **The indictment was considered the PACA**. **The irregularity was reported as IRQ3.** As a result of criminal proceedings, the court concluded that fraud had been committed, and the judgment was not appealed. The irregularity was reclassified as IRQ5.

3) DG EMPL communicated to a Member State the report of an audit that it had carried out on an ESF+ funded contract supporting Human Resources Management in the country's public sector. The audit report that DG EMPL sent to the Member State included findings about several irregularities, i.e. the failure to respect public procurement rules outlined in the grant contract, namely those on equal treatment of tenderers and on competitiveness. **This audit report was considered the PACA**. **The irregularity was reported as IRQ2.**

4) DG EMPL received the final report of an investigation carried out by OLAF. It was accompanied by a recommendation from OLAF to DG EMPL to recover an amount of EUR 600 000 from the Member State in consideration of the irregularities detected during OLAF's investigation into the implementation of ESF+ funded projects. DG EMPL (the competent authorising officer) checked the amount and started the procedure to recover the (agreed) amount affected by the irregularities including the relevant elements contained in the OLAF final report in the follow-up letter sent to the national authorities. It was in the context of this procedure that the national authority responsible for recovering the EU funding from those having committed the irregularities became aware of the situation. **OLAF's final report was considered the PACA. The irregularity was reported as IRQ2.**

5) The national Paying Agency received an application for funding under the rural development programme for a project investing in a refrigerator for poultry slaughterhouses. The agency checked that the funding request for the investment was reasonable and visited the applicant to evaluate the project proposal. During the visit, the agency discovered that the information the applicant had provided in their application about the fulfilment of one of the call's selection criteria did not reflect reality. The agency decided to reject the application. **The decision to reject the application was considered as the PACA.** The Paying Agency sent the case to the prosecution service that subsequently opened an investigation. **The irregularity was reported as IRQ3**.

6) In the context of an Interreg programme, the Audit Authority for the cross-border cooperation programme carried out an audit on a project to preserve traditional architecture as part of the cultural heritage of the cross-border area. An on-the-spot check took place, and it was found that there was no sufficient evidence of implementation of a certain part of the

project. The Audit Authority issued the audit report, identified the ineligible expenditure and communicated it to the project beneficiaries. The administrative act for the recovery of the irregular amount concerned was adopted some weeks later. **The audit report issued by the Audit Authority constituted the PACA. The irregularity was reported as IRQ2**.

7) The Paying Agency, before executing a payment to the beneficiary of a project to improve food safety, found out via administrative controls that the criminal record of the beneficiary's legal representative had been falsified. Instead of being clear, the criminal record showed that the person in question had been convicted in the past. The case was considered as suspected fraud by decision of the legal department of the Paying Agency. **A report was drawn up, which constituted the PACA**; it was transferred to the national prosecution service and **reported as IRQ2 in the IMS**. The contract with the beneficiary was terminated and the recovery process was opened. The beneficiary reimbursed the funding received. In parallel, a penal procedure was started, and the case was **reclassified as IRQ3**. (The case was closed in the IMS once the penal procedure had come to an end.)

8) The Audit Authority carried out an audit on an ESF+ funded project that included the running of several training courses. According to the attendance lists provided by the project's beneficiary it appeared that the same persons were present in many of the training courses. The data was cross-checked with information held by the Managing Authority about other training courses for which the beneficiary had received EU funding under another project. As part of its checks the Audit Authority contacted the courses' participants and found out that in most cases the latter had in fact attended only one single course. **The audit report established constituted the PACA.** The AFCOS of the Member State country was informed and the **case was reported via the IMS as IRQ2.** The AFCOS also sent the relevant information to the national prosecution services.

Case variations:

a) The prosecution service decided that there were not enough grounds to open an investigation. However, the administrative level maintained its view that there was a suspicion of fraud and followed an administrative procedure to prove the intentionality of the conduct. The case was classified in the IMS as IRQ3. It was closed with an IRQ4 when the administrative proceedings were finalised and had concluded that the beneficiary's conduct was intentional.
b) The prosecution service started an investigation. At this point in time, the case was reclassified as IRQ3. However, the prosecutor subsequently came to the conclusion that no crime had been committed. The administrative level agreed and reclassified the case in the IMS as an administrative irregularity (IRQ2). It was closed once the administrative proceedings were finalised.
c) The prosecution service started an investigation. At this point in time, the case was reclassified as IRQ3. However, the prosecutor subsequently came to the conclusion that no crime had occurred and that no infringement of applicable rules and contracts

was given. The administrative level agreed and proceeded to cancel the case as no irregularity.

9) In the call for proposals issued by the Managing Authority of an EMFAF programme, applicants were informed that in projects for which the EU grant exceeds EUR 100 000 they must provide – before submitting the final financial statements – an audit or expenditure control report drawn up by an independent body. During the management verifications of the final financial statements and the related supporting documents of one grant beneficiary, it was found that the control report submitted had been drawn up by a person closely linked to the beneficiary. It was also found that the beneficiary had submitted invoices for the purchase of supposedly new but in reality, second-hand equipment. **The management verification report was considered as the PACA.** An administrative procedure was opened to prove the intentionality of the conduct, and **the irregularity was reported as IRQ3**.

2. Examples of types of irregularity reflecting intentional behaviour that suggests fraud

Based on irregularity reports received from Member States, the Commission has drawn up the following **indicative list of types of irregularity that should be considered as suggesting fraud because of the intentional nature of the behaviour involved** in order to illustrate the definition of fraud.

In the following scenarios, **the deliberate nature of the irregularity** is obvious since it is clear that the person or body that committed the irregularity was aware that its acts or omissions would have an impact on public funds (the EU and national contribution to the expenditure in question).

- The person or body that knowingly committed the presumed irregularity makes **declarations or uses documents that do not reflect reality**. Typical cases include:
    - false/falsified accounts;
    - false/falsified documents (e.g. invoices) or supporting documents;
    - a description of the facts, products, operations, goods, an origin, or a destination known to be false (e.g. material which the beneficiary claimed to have purchased for the implementation of the EU-funded project, but which was already in its possession and used for another project);
    - the presentation of funding applications that are known to be false.

- The person/body that knowingly committed the presumed irregularity strives to **conceal or mask the facts in full knowledge of those facts.** Typical cases include:
    - inventing a purely fictitious situation;

- falsely claiming to have carried out an action, project, or processing (e.g. the beneficiary claiming to have received three offers from different suppliers under a tendering procedure whereas in reality the offers had been prepared by the same person);
- misrepresenting or falsifying the nature, quality or quantity of an action/project/product;
- economic operators refusing to allow checks by e.g. the Managing Authority;
- creating a fictitious economic operator (or creating a new company in order to receive additional subsidies when the aid ceiling has already been reached under an existing company).

- In other scenarios, the **intent to commit an irregularity** should be evaluated case by case, as the person/body might have acted in good faith or negligently. For example, the failure to present supporting documents might be a simple oversight or it could be an attempt to hide a potentially problematic situation.

3. Example of how the financial aspects of irregularities are to be determined

A grant beneficiary carries out a project with an approved budget of EUR 70 000. The public contribution was EUR 60 000 (45 000 EU share; 15 000 Member State share) + EUR 10 000 private contribution.
In the context of an administrative verification by the Managing Authority during project implementation, an irregularity is detected: consulting services for an equivalent of EUR 20 000 had been purchased by the beneficiary without appropriately advertising the contract. The MA decides to declare the entire amount contracted as irregular. Of the EUR 20 000, 16 000 came from the EU share, EUR 3 000 from the Member State share and 1 000 from private contributions.
Part of these consulting services had already been paid to the beneficiary: EUR 16 000 (EUR 14 000 from EU contribution and EUR 2 000 from national contribution) and declared to the Commission.
The following information should be provided in an irregularity report (under either IMS tab pages 4 or 5[93] and 8) on the financial aspects of the case:

Example:

	EU share	National share	Public contribution	Private share	Total
Value of the project (co-financing decision): EUR 70 000	45 000	15 000	60 000	10 000	70 000

[93] Providing this information in tab page 5 regarding the irregularities in the agricultural sector is required only if co-financing rates apply.

Co-financing rate:	(64.42%) 45 000/70000	(21.42%) 15 000/70 000	(85.71%) EU + national	(14.28%) 10 000/70 000	100%
Amount of irregularity – e.g. 20 000	16 000	3 000	19 000	(1 000) not indicated in IMS	(20 000) not indicated in IMS
Whereof not paid Whereof paid	2 000 14 000	1 000 2 000	3 000 16 000	Not indicated in IMS	Not indicated in IMS

ANNEX II. FREQUENTLY ASKED QUESTIONS

1. Errors and irregularities

Question: How to distinguish errors from irregularities and how does this distinction affect the reporting obligations?

Answer: The applicable regulatory framework does not provide a definition of 'errors' only of 'irregularities' and it is silent about the impact of this distinction on the reporting obligations. As indicated in this Handbook, Section 3.2, an error can constitute a (non-fraudulent) irregularity if it meets all four fundamental parts of the definition of irregularities (described in Chapter 3 of this Handbook). If the error does not meet one or more parts, then it is not an irregularity and does not have to be reported. If an error constitutes an irregularity, then it remains to be checked whether it needs to be reported, in other words, whether it is above the reporting threshold, whether the PACA has been established, and whether or not it is covered by a reporting exception.

The following examples serve as an illustration.

Example 1: the Managing Authority, when making an interim payment, unintentionally types a wrong number into the system so that the beneficiary receives EUR 1 600 EUR instead of EUR 16 000.
This is a clerical error. It is not an irregularity as it does not have any negative financial impact on the EU budget. It does not have to be reported via the IMS.

Example 2: the Managing Authority, when making an interim payment, unintentionally types a wrong number into the system so that the beneficiary receives EUR 60 000 EUR instead of EUR 6 000.
This is a clerical error. However, it is also a (non-fraudulent) irregularity, as the rules on the eligibility of expenditure would be deemed as not complied with and there would be a negative financial impact on the EU budget. As such, it must be reported via the IMS, unless there are grounds to apply one of the reporting exceptions.

2. Classification of irregularities concerned by appeals to the Constitutional Court

Question: A case of suspected fraud – reported in the IMS and classified as IRQ3 – was concluded with a final court decision. However, after the final court decision, the accused lodged an appeal with the Constitutional Court. Should the IMS classification in this case be changed from IRQ3 (suspected fraud) to IRQ5 (established fraud)?

Answer: Yes, the case should be classified as IRQ5. In most judicial systems, an appeal to the Constitutional Court is no longer about the subject matter of the case, but rather about compliance with procedural guarantees where there may be a breach of constitutionally protected rights.

3. Anonymisation of cases

Question: Why and at what point in time are cases placed in 'anonymised' status?

Answer: Irregularity cases in IMS will be anonymised (subject to the conditions listed below) in order to delete personal data and information that could allow the identification of natural or legal persons.

Only cases in 'expired' status will be anonymised.

The IMS operating system automatically moves closed cases to 'expired' status (i.e. the status changes from closed to 'expired'), if:

- at least five calendar years have elapsed since the date of registration of the irregularity, AND
- at least three calendar years have elapsed since the date of closure of the irregularity case, AND
- at least three years have elapsed since the closure date of the programme. A case with 'expired' status is anonymised by OLAF (the status changes from 'expired' to 'anonymised'), i.e. the operating system automatically deletes nominal data, attachments to the case and all requests related to the case.

This deletion takes place if at least 20 calendar years have elapsed since the registration of the case.
A case that has been anonymised cannot be reopened or updated.

4. Reopening of cases because of data quality concerns

Question: Cases of irregularities where the national authorities had completed all administrative measures, including the full recovery of the irregular amount, and where no judicial action was pending, were closed in the IMS. OLAF has now reopened them. What is the reason for this?

Answer: OLAF carries out quality checks on IMS data at regular intervals. Ensuring data quality is of paramount importance; only with complete and reliable data can reporting irregularities objectives be achieved.

OLAF also checks the data quality of closed irregularity cases. When a case is closed, this means that all procedures at national level have been finalised and the national authorities should have complete information on the cases. If OLAF finds that information is missing in closed cases (e.g. on modus operandi or irregular amounts), it reopens the cases and requests the completion of the specific IMS fields.

5. Reporting irregularities involving conflicts of interest

Question: What is specific to the reporting of irregularities involving conflicts of interest?

Answer: In IMS, irregularities involving conflicts of interest can be reported using three different codes:

- T19/00 in the 'ethics and integrity' category;
- T40/21 in the category 'public procurement' for the programming period 2007-13;
- T41/21 in the category 'public procurement' for the programming period 2014-20 and 2021-27.

Codes T40/21 and T41/21 refer to public procurement within the implementation of EU assistance, where the contracting authority is a public authority, or a body governed by public law. This definition would clearly cover all irregularities identified in the pre-tendering and tendering phase.
In all other cases, i.e. contract execution phase and all other situations possibly covered by national legislation, category T19/00 should be used when reporting an irregularity, implying the existence of a conflict of interest. This code should also be used in situations where a conflict of interest concerns a public official and a participant in or beneficiary of a grant award.

The description of the modus operandi in field 6.9 should clearly highlight the nature of the conflict of interest identified and the stage in the project cycle in which it was identified, indicating, for example, the role of the public official involved and their relation to the economic operator.
Often, cases of conflict of interest would be associated to other irregularities (e.g. infringements of public procurement rules). In field 6.8 all relevant codes should be indicated and the description in field 6.9 should provide sufficient information to encompass all the codes that have been used.

6. Reporting irregularities involving bribery

Question: How should a case of bribery be reported in IMS?

Answer: There are currently two codes in the IMS for reporting bribery in the typology of irregularities field 6.8: 'T19/01 - passive bribery' and 'T19/02 - active bribery'.

Passive bribery is typically defined as the request or receipt by a public official, directly or through an intermediary, of an advantage of any kind or the promise of such an advantage for that official or for a third party, for the public official to act or to refrain from acting in accordance with their duty or in the exercise of that official's functions.

Active bribery is typically defined as the promise, offer or giving, directly or through an intermediary, of an advantage of any kind to a public official for that official or for a third party for the public official to act or refrain from acting in accordance with their duty or in the exercise of that official's functions.

In addition to the type of irregularity, the reporting officer must always provide an adequate description of the modus operandi in the dedicated field in the IMS (field 6.9). For example, in the case of passive bribery, this description will include the role of the public official, the advantage given (or promised) by the public official to the briber (essentially the act or omission in breach of their duty or in the exercise of their functions), and the advantage given (or promised) by the briber to the public official.
Depending on the national legal framework, the reporting officer may also be called upon to report cases of bribery in the private sector. This infringement could be defined as involving a person, other than a public official, who directs or works in any capacity for a private sector entity and who receives a bribe (see above) to act or refrain from acting in breach of their duties. These cases would be reported as T19/01 or T19/02. However, the description of the modus operandi in the IMS should clearly state that these are cases of bribery in the private sector and not bribery of a public official.

7. Signalling irregularities to OLAF for investigative purposes

a) Question: How can a Member State inform the investigative part of OLAF of suspicions or allegations of irregularities affecting the EU's financial interests, including fraud?

Answer: In general, OLAF does not open an investigation based on IMS reporting. If a Member State would like to report a suspicion or allegation to OLAF with the aim of triggering a preliminary analysis of whether the opening of an OLAF investigation would be justified, it can:

- send an email to OLAF.01, OPERATIONS & INVESTIGATIONS SELECTION, for the attention of the Head of Unit, OLAF-FMB-SPE@ec.europa.eu;

- use the online Fraud Notification System (anonymous, with secured document transmission) accessible under https://anti-fraud.ec.europa.eu/olaf-and-you/report-fraud_en

If it should happen that the case referred to OLAF has already been reported via IMS, in the notification (via email or via the Fraud Notification System) the reference number of the reporting via IMS should be clearly indicated.

b) Question: When should a Member State inform the investigative part of OLAF of suspicions or allegations of irregularities affecting the EU's financial interests, including fraud?

Answer: Any authority of a Member State may inform the investigative part of OLAF of suspicions or allegations, at any point in time, i.e. regardless of whether they have been subject to a primary administrative or judicial finding as defined in the relevant legislation, or not.

c) Question: If a Member State informed the investigative part of OLAF of a suspicion or allegation, as mentioned above, should the same case be reported in the IMS?

Answer: If the suspicion or allegation is subject to a primary administrative or judicial finding as defined in the relevant legislation, then it also needs to be reported in the IMS. In this case, the IMS entry should specify (in the comments field) that the investigative part of OLAF was informed as well.

If a national authority reported a case in IMS and afterwards would like to request investigative action from OLAF, the national authority should also use the means indicated under 7(a). The IMS entry should be updated (in the comments field) to specify that the investigative part of OLAF was informed.

8. Concept of bankruptcy

Question: Has the concept of bankruptcy, which is currently relevant for the reporting of irregularities, changed compared to the 2014-2020 programming period?

Answer: No, the concept remains exactly the same. The only difference compared to the 2014-2020 programming period is that the relevant provisions are phrased slightly differently in the current programming period. It is now explicitly stated that 'irregularities preceding a bankruptcy' have to be reported (1.1 (c) Annex XII, Section 1, CPR) and that 'cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed programme owing to the

non-fraudulent bankruptcy of the beneficiary' are exempted from reporting (1.2(b) Annex XII, Section 1, CPR). Previously, these rules were provided by the 'exceptions to the exceptions' mechanism.

It is important to note that Regulation (EU) 2015/848[94], which entered into force on 26 June 2017 and replaced Regulation (EC) 1346/2000 is the main regulation dealing with and defining the legal framework for bankruptcy proceedings across EU Member States.

9. Economic operator vs Member State exercising its prerogatives as a public authority

Question: What criteria can be used to distinguish whether a Member State authority is acting as an 'economic operator' or as a body 'exercising its prerogatives as a public authority'?

Answer: As stated in point 3.1.3 of this Handbook, for the application of the concept of 'irregularity' in the reporting context, it is necessary to assess on a case-by-case basis whether a Member State authority is acting as an economic operator or as a body exercising its prerogatives as a public authority. Some principles that could serve as criteria for this assessment are included in point 3.1.3.

In addition, useful elements for assessment can be found in the following examples of situations which the Court of Justice has examined:

- **Cases of a Member State acting as an 'economic operator':**
  - The Court regarded as 'economic operators' Member State municipalities which had received grants from EU funds, such as for projects partly financed by the ERDF, and which were 'contracting authorities' under public procurement legislation[95].
  - The Court considered as an 'economic operator' an Italian 'body governed by public law' which had received funding for a road modernisation project under an EU funding regulation and which, as contracting authority, had launched a restricted tender procedure for the award of the public works contract[96].

[94] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), OJ L 141, 5.6.2015, p. 19-72.

[95] See in addition to the case law referred to in footnote 30, Judgments of 4 October 2024 in Case C-175/23, *Obshtina Svishtov v Rakovoditel na Upravlyavashtia organ na Operativna programa 'Regioni v rastezh'* 2014-2020, EU:C:2024:853, paragraph 12; of 31 March 2022 in Case C-195/21, *LB v Smetna palata na Republika Bulgaria*, EU:C:2022:239, paragraph 22-24; of 14 July 2016 in Case C-406/14, *Wrocław — Miasto na prawach powiatu v Minister Infrastruktury i Rozwoju*, EU:C:2016:562, paragraph 17.

[96] Judgments of 4 October 2024 in Case C-175/23, Obshtina Svishtov v Rakovoditel na Upravlyavashtia organ na Operativna programa 'Regioni v rastezh' 2014-2020, EU:C:2024:853, paragraph 12; of 31 March 2022 in Case

- The Court considered the Chamber of Commerce of a French department to be an 'economic operator'. This Chamber, a public body, had received funds to carry out research on industrial policy issues and, as a contracting authority, had appointed a company to carry out the research[97].

- **Cases of a Member State acting as a body exercising its prerogatives as a public authority:**
  - The Court concluded that the customs authorities' actions to check goods leaving the EU and taking the corresponding decision on export refunds is to be regarded as an action carried out by that authority of a Member State acting in the exercise of its prerogatives as a public authority[98].
  - The Court confirmed that a public body, when carrying out an export certification, is not acting as an 'economic operator', but is exercising its prerogatives as a public authority[99].

10. Reporting of irregularities in RRF (Recovery and Resilience Facility)

Question: Is the IMS to be used for reporting irregularities and fraud related to RRF?

Answer: The RRF regulation does not request that Member States report irregularities via the IMS. However, Member States are free to decide to do so.
Accordingly, OLAF

- has adapted the IMS to allow for the reporting of RRF-related irregularities by creating the RRF competency;
- has ensured that the Commission services responsible for the RRF (DG ECFIN) have access to the IMS;
- is providing technical support to Member States who want to use IMS for the reporting of RRF-related irregularities.

C-195/21, LB v Smetna palata na Republika Bulgaria, EU:C:2022:239, paragraph 22-24; of 14 July 2016 in Case C-406/14, Wrocław — Miasto na prawach powiatu v Minister Infrastruktury i Rozwoju, EU:C:2016:562, paragraph 17. Judgment of 8 June 2023 in Case C 545/21, Azienda Nazionale Autonoma Strade SpA (ANAS) v Ministero delle Infrastrutture e dei Trasporti, EU:C:2023:451, paragraphs 14-15.

97 Judgment of 21 December 2011 in Case C-465/10, Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration v Chambre de commerce et d'industrie de l'Indre, EU:C:2011:867, paragraphs 12-13.

98 Judgment of 15 January 2009 in Case C 281/07, *Hauptzollamt Hamburg-Jonas v Bayerische Hypotheken- und Vereinsbank AG*, EU:C:2009:6, paragraphs 20-21.

99 Judgment of 28 October 2010 in case C-367/09, Belgisch Interventie- en Restitutiebureau v SGS Belgium NV, Firme Derwa NV and Centraal Beheer Achmea NV, EU: C: 2010:648, paragraph 45.

Reporting in the IMS does not replace the obligation to provide information on irregularities required by the RRF Regulation (documents accompanying a payment request, i.e. the audit summary).

RRF-related irregularities reported via the IMS will not be published in the annual PIF reports as long as not all Member States use the system.

11. Closing irregularity cases in IMS

Question: Can irregularity cases be closed in IMS if recovery is still ongoing at the national level, but all other proceedings have been completed (considering that according to Annex XII CPR no information on financial data related to recovery has to be provided)?

Answer: If recovery is still ongoing at the national level while the irregular amounts have been financially settled with regard to the EU, the irregularity case can be closed. However, Annex XII CPR needs to be understood in continuation of the reporting practices and in agreement with the other rules defining reporting in shared management, such as those set in Commission Delegated Regulations (EU) 2024/205 and 2024/204. According to those rules, Member States must keep the Commission informed of the **initiation, conclusion or abandonment** of any procedures or proceedings for imposing administrative measures. In particular in relation to shared management funds other than agricultural funds, if the irregular amounts have been duly corrected, reporting will still be necessary if the administrative or criminal proceedings results in sanctions or penalties.

12. Specific IMS fields

Question: How are the specific IMS fields listed below to be filled in?

- Personal data section
  - Legal person / natural person section
  - Field 2.1.2 National ID number
  - Field 2.1.3 VAT number
  - Field 2.1.4 Beneficiary ID number.

  - ‘Flagged’ section:
  - Field 2.1.15 On the basis of Reg. 1469/1995
  - Field 2.1.16 On the basis of Reg. 2018/1046 (Art. 142 FR)
  - 2.3 Justification for non-disclosure.

- Amounts section:
  - Field 8.4 Decertified.

- Recovery section:
  - Field 9.4 Amount deducted, written off
  - Field 9.7 Amount charged to the EU budget
  - Field 9.9 Final outstanding amount
  - Field 9.10 Amount repaid to the EU budget
  - Field 9.11 Amount retained by the country
  - Field 9.12 Amount of interest charged.

- Sanctions section:
  - Field 10.5: Status.

Answer: The explanations provided below correspond to the information given in the IMS User Manual 5 'Create a case', available in the AFIS library, in its latest version.

Field 2.1.2: National ID number

Member States must provide the national identification number of the person that the irregularity concerns. In many countries, a national identification number is used to identify citizens or permanent/temporary residents for the purposes of work, taxation, government benefits, healthcare and other government-related functions. Sometimes this number is set out on the ID card issued by the country.

Field 2.1.3: VAT number

The VAT number of the beneficiary (and any other person concerned) must be provided[100].

OLAF confirms that if the beneficiary (or any other person concerned) does not have a VAT number, the Member State is exempted from providing information in this respect.

Field 2.1.4: Beneficiary ID number

The identification number of the beneficiary is only of application to the competence for agriculture (EAGF and EAFRD).

All beneficiaries must have a unique beneficiary identification number, otherwise no agricultural aid can be granted. This number must be entered in the IMS.

[100] See Articles 3(3)(d) of DR 2024/205 and DR 2024/204. As to the funds covered by the CPR: Annex XII to the CPR regulation does not explicitly request Member States to provide information on the VAT number of the persons concerned. However, OLAF considers that information on the VAT number should be provided, in programming period 2021-2027, also when reporting irregularities under regulation 2020/1060 as the CPR includes - according to its Article 72.1 e) and Annex XVII ('Data to be recorded and stored electronically on each operation') - the obligation for Member States to record and store electronically also data on the VAT identification number of beneficiaries and other entities for monitoring, evaluation, financial management, verifications and audits.

Field 2.1.15 On the basis of Reg. 1469/1995

This field is only relevant for irregularities related to the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee section.

The EAGGF ceased to exist in 2007 (when it was replaced by the EAGF (guidance section) and the EAFRD (guarantee section)). Although the Council Regulation (EC) No 1469/1995 on 'Measures to be taken regarding certain beneficiaries of operations financed by the Guarantee Section of the EAGGF' has not been repealed, it must however be considered as obsolete. In fact, Council Regulation (EC) No 1469/95 was somewhat superseded by more recent legislation, i.e. Regulation (EU) No 1306/2013**,** which contains provisions on unreliable beneficiaries in the context of the Common Agricultural Policy (CAP) and the European Agricultural Fund for Rural Development (EAFRD).

In view of the above, the IMS field 2.1.15 is to be considered obsolete.

Field 2.1.16: On the basis of Reg. 2018/1046 (Article 142(2) Financial Regulation)

Setting the switch in field 2.1.16 to 'yes' means that the Member State signals that the information it provides to the Commission in accordance with Article 142(2) point (d) of the 2018 Financial Regulation (FR) should be part of the 'facts and findings' on which the EU authorising officer could potentially base an exclusion decision (after involvement of the EDES panel). However, the activation of this field cannot be understood as a request by the Member State that the person concerned should be registered in the Early Detection and Exclusion System (EDES). In the current situation, and until 2028, a person in a shared management project could in any case only be subject to an EDES measure if that person was also present in any direct or indirect management project. For more details, see Annex IV to this Handbook.

As the 2018 FR was redesigned in 2024 and Article 142(2)(d) of the 2018 FR has become Article 144(2)(d) of the 2024 FR, field 2.1.16 will be renamed accordingly.

Field 2.3: Justification for non-disclosure (of personal data)

Member States are obliged to report the identity of legal/natural persons involved in an irregularity. However, in certain cases, the requested personal data cannot be provided due to, for instance, an ongoing investigation. In such cases, Member States must provide a justification for the non-disclosure of personal data. This justification should not just be a general statement, e.g. that national data protection rules do not allow the transfer of personal data. It should be a clear and specific explanation of the reasons that the personal data was not processed.

Amounts section

Field 8.4 Decertified

This field is applicable only for the 2007-2013 programming period.

Member States must switch the box in this field if the irregular amount/expenditure has been excluded from EU support, which means it has been decertified).

In relation to irregularities related to PP2007-13 the box must be switched whenever a case is to be closed.

The amount that was decertified can be indicated on tab page 9 in field 9.4 ‘Amount deducted, written off, etc’.

Recovery section

The provision of information under IMS tab page 9 is only mandatory for cases concerning funding periods before the 2007-2013 programming period.

The fields under tab page 9 were changed in 2023. Three new, additional fields (new 9.7, 9.8 and 9.9) have been introduced. Fields under tab page 9 are therefore currently as follows:

9.1 Start date of procedure
9.2 Expected end date of procedure
9.3 Amount to recover
9.4 Amount deducted, written off etc.
9.5 Amount recovered
9.6 Balance to recover
9.7 Amount charged to the EU budget
9.8 Amount charged to the national budget
9.9 Final outstanding amount
9.10 Amount repaid to the EU budget
9.11 Amount retained by the country
9.12 Amount of interest charged
9.13 Recovery procedures already launched
9.14 Recovery measures already taken
9.15 End date of procedure

Field 9.4 Amount deducted, written off, etc

Member States can indicate here the amount of the operation excluded/irregular expenditure decertified/withdrawn. This amount is not considered as ‘amount to recover’; it corresponds to the amount for instance deducted or written off from an interim or final payment.

The point of this field is that all amounts are indicated that have not been recovered from the beneficiary but that do have an impact on the amount to recover.

Field 9.7 Amount charged to the EU budget

OLAF indicates here the amounts paid back to the EU budget following an 'Article 5.2 decision' on irrecoverable amounts (concerning programming periods before 2007-2013).

(If the 'Article 5(2) decision' concludes that the irrecoverable amounts are to be charged to the national budget, the amounts concerned are indicated in field 9.8).

Field 9.9 Final outstanding amount

In field 9.9, OLAF indicates the final outstanding amount after any financial correction decision by the European Commission - especially in cases falling under Article 5(2) of Regulation (EC) No 1681/94. This field therefore only applies to cases related to programming periods older than the 2007-13 programming period.

Field 9.10 Amount repaid to the EU budget

Member States must indicate here the amount paid back to the EU budget.

Field 9.11 Amount retained by the country

For some funds a country can retain a percentage of the recovered amounts, if specific conditions are fulfilled (see the applicable regulations). If that is the case, Member States need to indicate that amount in this field. This field does not apply for the programming period 2021-2027.

This amount should be a subset of the total recovered amount reported in Field 9.5. If the full recovery was transferred back to the EU, then Field 9.11 should be zero.

Field 9.12 Amount of interest charged

Member States must indicate here any interest that might have been charged.

Interest is not part of the irregular amounts that Member States must indicate in fields 8.3 and field 9.3 as 'amount to recover'.

Sanctions section

The fields in tab 10 of the requests are used to provide information on administrative or criminal proceedings initiated and corresponding sanctions/penalties.

Field 10.5 Status

Member States must indicate here the status of the procedure initiated to impose penalties. The status can be either initiated (INIT), completed (COMP) or abandoned (ABAN).

13. Co-financing rate

Question: Where does the information on the co-financing rate to be reported in IMS field 4.1.3 come from?

Answer: The Commission decision that approves the (operational) programme fixes the maximum co-financing rate for each of its priorities. This rate can differ for the various priorities. In field 4.1.3, the co-financing rate to be indicated is the rate agreed and applied to the project (operation/assistance measure) in question, stemming from the specific co-financing agreement signed with the beneficiary to whom the irregularity report relates.

Where IMS Sections 4 (part 'Financial impact'), 8 ('Amounts') and 9 ('Recovery') require the reporting of amounts broken down by EU share and national share, the agreed and actually applied co-financing rate must be taken into account.

14. Closure of programmes of programming period 2014-2020 and reporting of irregularities

Question: How does the closure of programmes from the programming period 2014-2020 impact the reporting of irregularities?

Answer: Member State can detect irregularities during or after closure of a 2014-2020 programme. In these cases, the competent authorities must still report or update them (e.g. on legal proceedings started, ongoing or finalised) in the IMS in accordance with the reporting rules for the programming period 2014-2020.

The 'Guidelines on the closure of operational programmes adopted for assistance from the ERDF, the ESF, the CF and the EMFAF and the CBC programmes under IPA II, programming period 2014-2020'[101] and the 'Guidelines on closure of Rural Development Programmes from European Agricultural Fund for Rural Development 2014-2022'[102] provide the relevant information on the accounting and financial treatment of such irregularities.

15. Requesting authorisation from the EPPO (European Public Prosecutor's Office) to report irregularities in the IMS

Question: What should be done if the reporting authority learns that the EPPO has opened or is conducting an investigation?

[101] See document reference in footnote 62.
[102] See document reference in footnote 62.

Answer: If the investigation has been started or is ongoing, the EPPO is to be contacted to check whether and what information can be communicated via IMS or whether confidentiality rules apply.

The experience gathered from the Member States suggests that the EPPO, as well as many of the national investigating authorities, does not disclose information on ongoing investigations in most cases. This means that IMS reporting usually occurs when EPPO's investigations are concluded. This should not prevent national authorities from seeking the authorisation of the EPPO to communicate within the IMS when they become aware of an existing, ongoing investigation.

16. Cancellation of open 'old' irregularity cases

Question: Can irregularity cases notified to the Commission (OLAF) on the basis of Regulation (EC) No 1681/94 for the 1989-1993, 1994-1999 and 2000-2006 programmes which are still open in the IMS be cancelled if it was found that no irregularity had occurred?

Answer: It has been OLAF's consistent practice not to accept requests for cancellation of irregularities relating to the pre-2007-2013 programming periods, and instead to authorise closure of such cases. The reasons for this refusal relate to the need for the Commission services (including OLAF) to ensure the proper, accurate and correct traceability of information having a direct financial impact on the EU budget. In fact, for programming periods before 2007-2013, the obligation to report irregularities follows an accounting approach, where information on the financial aspects of irregularities (and on any underlying recovery, judicial or administrative procedures) is decisive for their financial settlement. Given that the cancellation of an irregularity case removes from the IMS all the information that would allow it to be properly traced, it is not an acceptable solution.

This interpretation of the reporting obligation is also in line with the provisions of Article 5 of Regulation (EC) No 1681/94: "*During the two months following the end of each quarter, Member States shall inform the Commission, with reference back to any previous report made under Article 3, of the procedures instituted following all irregularities previously notified and of important changes resulting therefrom, including: […]*
- the reasons for any abandonment of recovery procedures; the Commission shall, as far as possible, be notified before a decision is taken,
- any abandonment of criminal prosecutions.

Member States shall notify the Commission of administrative or judicial decisions, or the main points thereof, concerning the termination of these procedures."

17. IMS field 2.1.17

Question: What is the meaning of the EDES 'hit' in IMS field 2.1.17?

Please note that in the future field 2.1.17 will be re-labelled to 'EDES-IMS record'.

Answer: (As also described in Annex IV to this Handbook) The Commission, and other EU institutions, agencies and bodies (the responsible authorising officers)[103], e.g. in the context of a procurement procedure, check via the EDES, using the EDES/IMS interface, whether there is a match/record in IMS for the economic operator(s) involved.

When the responsible authorising officers carry out their checks via the EDES/IMS interface, they will check the information in IMS on open and closed cases as of 1 January 2016 (which corresponds to the date of entry of force of the 2016 amendment of the Financial Regulation).

In the event of an IMS record, the Authorising Officer in question will inform OLAF. OLAF will then activate the IMS field 2.1.17[104] for the irregularity case for which the IMS record was found. This triggers an automatic email notification to the reporting authority concerned. At the same time, OLAF checks whether the economic operator is involved in other cases in the IMS. OLAF then sends an email to the IMS-country-officer of the country concerned and to the IMS-manager(s) of the reporting authority concerned, giving an overview of the irregularity case(s) in which the economic operator in question appears and requesting them to:

- double-check on their side whether the EDES 'hit' may relate to other cases in IMS;
- verify whether the case(s) in IMS are complete and up-to-date;
- to update the case(s) in IMS, if necessary.

OLAF informs the authorising officer who has identified through EDES the IMS record:

- that the steps described above have been taken;
- of the deadline given to the reporting authority to update the case(s);
- that OLAF (IMS team) can:
    - provide background information on the overall process of reporting irregularities;
    - provide explanations on the case(s) concerned;
    - establish contacts between the authority that reported the IMS case(s) and the authorising officer.

[103] Not only authorising officers of the Commission, other EU institutions, agencies and bodies, but also of Joint Undertakings set up by the EU, as public-private partnerships within the meaning of the Financial Regulation, have access to EDES and can therefore also use the EDES/IMS interface.
[104] Field 2.1.17 was introduced with the IMS-release-5.25 (put in production on 13 June 2023).

On the basis of the finally available information, the authorising officer responsible, where appropriate, could initiate an exclusion procedure in accordance with the FR (including the involvement of the EDES panel) with a view to registering the exclusion case in the EDES database. In this process, OLAF has no say. The authority that reported the IMS case might not be notified of the potential initiation of the exclusion procedure nor of its result. However, the list of economic operators excluded is published, in the most severe cases, on the Commission's internet site.

It follows from the above that activating the IMS field 2.1.17 has no direct impact on the economic operator, since it only informs that the entity checked by the responsible authorising officer is involved in an irregularity concerning funds under shared management. It depends on the decision of the authorising officer, if any, whether the economic operator will ultimately be affected by a possible EDES measure; if the economic operator would be excluded from EU funding under direct and indirect management, this exclusion will be visible on the EDES website and not in IMS. The IMS record has no legal impact in this respect.

Field 2.1.17 of the IMS remains active until disabled by OLAF. To guarantee procedural traceability and for statistical purposes, OLAF will only deactivate it if it was activated by mistake, or if the case is deleted upon anonymisation.

18. Reporting cases of circumvention

Question: How are cases of 'circumvention' for agricultural funding (cases of 'artificially created conditions') to be reported in IMS?

Answer: OLAF has developed the following irregularity typologies to be used in cases of circumvention under IMS field 6.8:

- 'artificially created conditions: artificial splitting of estates, agricultural holdings or creation of linked companies to qualify for (more) financial aid'
- 'artificially created conditions: artificial creation of a company to meet the eligibility conditions'
- 'artificially created conditions: artificial registration as farmer'
- 'artificially created conditions: other'

These categories cover the majority of cases of artificially created conditions.

19. Reporting of irregularities in the framework of 'financing not linked to costs' (FNLTC)

Question: In the context of the FNLTC, how should the amounts that Member States need to communicate through the IMS be identified?

Answer: Member States are requested to include information on the financial impact of irregularities (including of those relating to FNLTC) in the IMS. As set out in Annex XII of the CPR, Section 2 (template for electronic reporting via the IMS)[105], the amounts to be communicated in the IMS are the amount of 'expenditure' (broken down in EU and national contribution) and the 'irregular amount' (broken down in EU and national contribution).

FNLTC can be used on two different levels:

- (EU -level FNLTC/'upper level'): the EU supports the Member State through a financing scheme not linked to costs for the implementation of specific operations/projects.
- (Grants in the form of FNLTC/'lower level'): the Member State provides grants to beneficiaries in the form of FNLTC[106].

In case of FNLTC, reimbursement (from EU to MS, respectively from MS to beneficiaries) is based on the fulfilment of conditions or the achievement of targets (results).

Irregularities can occur at either of the two different levels above. They can happen for example at the level of the overall FNLTC scheme or of a single operation/project contributing to the overall (or individual) target(s). Once an irregularity has been detected in the context of FNLTC, determining the irregular amount (in relation to the total amount of expenditure) becomes a more nuanced and complex task because payments were made based on predefined results or outputs, not specific costs. However, there are ways to quantify and determine irregular amounts, which align with the performance-based nature of non-cost-linked financing (even in the absence of traditional cost-based verifications). For example, comparing the actual achievement of a result or target (as impacted by the irregularity)[107] to the predefined result or target to which the payment is tied (as laid down in a performance scheme or agreement) and calculating the proportion of the funding that corresponds to the unachieved part of the agreed-upon result, would allow determining the irregular amount.

[105] And in Article 3(3) of Commission Delegated Regulations (EU) 2024/205 and 2024/204.
[106] Or in the form of SCOs or based on costs actually incurred.
[107] For example, because of the manipulation of the tender procedure by one beneficiary, a given condition of the specific FNLTC scheme to which a payment of 10% of the scheme is tied is not fulfilled.

20. Administrative proceedings aimed at establishing the intentionality of behaviour and the related classification of the irregularity in IMS

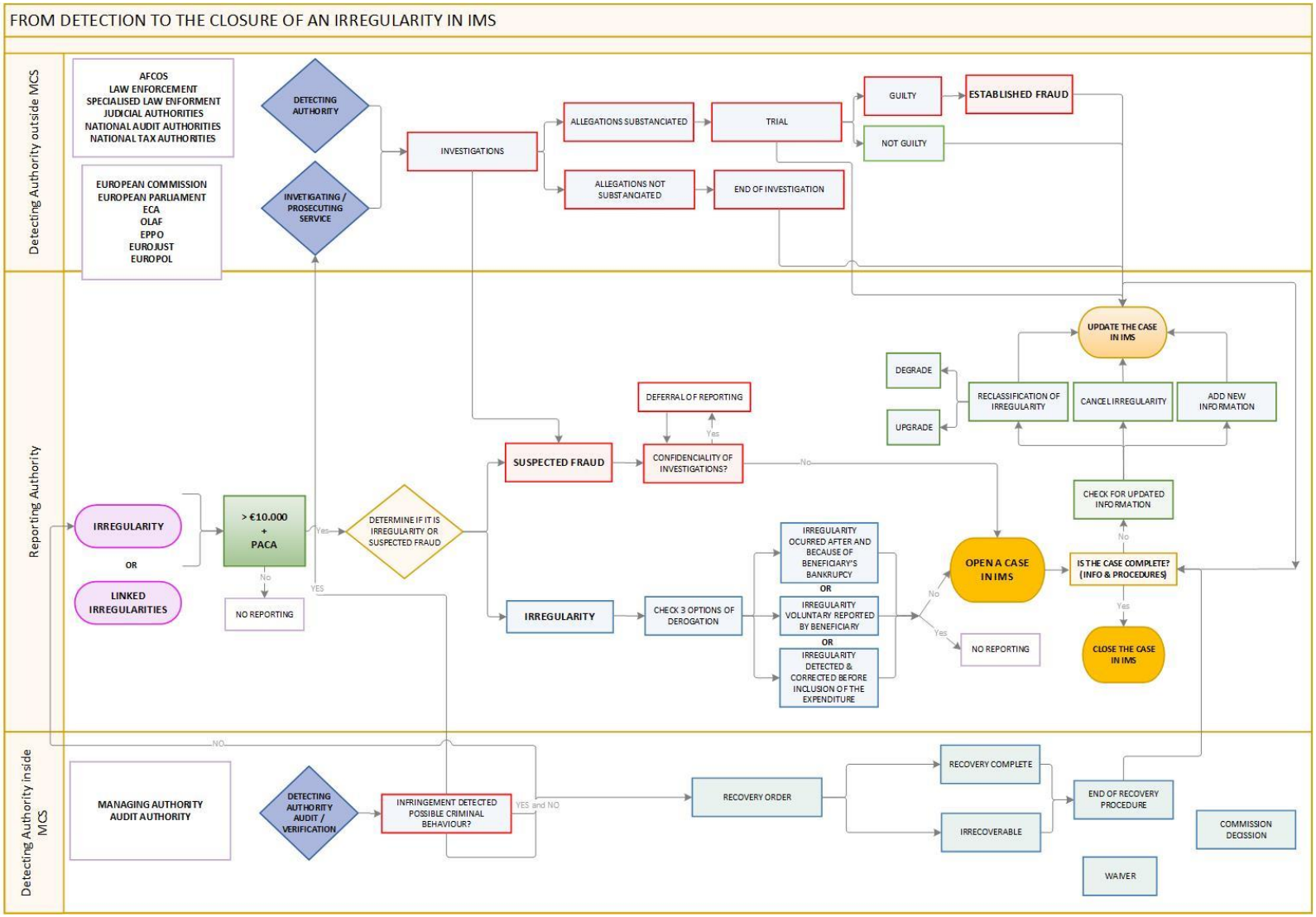
Question: What concrete example of administrative proceedings initiated to determine the intentionality of an irregular conduct, resulting in its confirmation, can be given?

Answer: An entrepreneur who had already reached the applicable limit for receiving EU support used a related company to apply for additional support, falsely presenting the latter as an independent entity. The two entities acted in a shared economic interest.

During the administrative procedure led by the Paying Agency, the case was classified as IRQ3 (interim status: suspected fraud). It was later confirmed by an administrative decision signed by the Director General of the Paying Agency that the conditions on which the entrepreneur's funding application was based had been created artificially to bypass the funding limit. The Paying Agency rejected the application. As no objection was filed by the applicant, the case was closed in IMS with a IRQ4 classification (established intentional irregularity).

The case could not be closed as an IRQ5 (fraud established as the outcome of criminal proceedings) or an IRQ2 (administrative irregularity) because the manipulation was deliberate, structured and financially significant, i.e. it exceeded the scope of a typical breach.

ANNEX III. FLOW CHART – FROM DETECTION TO THE CLOSURE OF AN IRREGULARITY IN IMS



ANNEX IV. EARLY DETECTION AND EXCLUSION SYSTEM (EDES)

The EDES is a system established by the Commission to reinforce the protection of the EU's financial interests and to ensure sound financial management. It operates against unreliable persons or entities applying for EU funds or having concluded legal commitments with the Commission or, other EU institutions, bodies, offices or agencies[108]. EDES replaced, as of 1 January 2016, the former Early Warning System and the Central Exclusion Database.

EDES encompasses:

- the early detection of a person or entity representing risks threatening the EU's financial interests;

- the exclusion of a person or entity from receiving EU funds and/or the imposition of a financial penalty;

- the publication, in the most severe cases, on the Commission's internet site of information related to the exclusion and where applicable the financial penalty, in order to reinforce their deterrent effect.

An interinstitutional panel is established to guarantee a central assessment of facts (the 'preliminary classification in law') and to issue a recommendation to the EU authorising officer before taking a decision to exclude and/or apply a financial penalty against an entity. At the core of the panel procedure is the adversarial procedure, which must take place before any measure that may adversely affect the rights of the person or entity concerned is taken.

EDES also includes a central database (the 'EDES database'), managed by the European Commission where all information related to early detection, exclusion and imposition of financial penalties is stored.

The 2024 Financial Regulation (FR)[109] (Articles 137 to 145) sets out the rules and procedures to be followed to determine whether EDES measures should be taken regarding a person or entity representing a threat to the EU's financial interests.

Where a case of early detection is registered, there is only a suspicion of risk, which leads to an increased monitoring of the person or entity concerned. In contrast, the exclusion of a person or entity and/or the imposition of financial penalties are based on established facts and findings, including final judgments or final administrative decisions, and in their absence, the preliminary classification in law made by the EDES panel. The 2024 FR (Article 138(1)) has

[108] Joint Undertakings set up by the EU also have access to and use EDES. See Article 41 of Commission Delegated Regulation (EU) 2019/887 of 13 March 2019 on the model financial regulation for public-private partnership bodies referred to in Article 71 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council, OJ L 142, 29.5.2019, p.16.

[109] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast, OJ L 26.9.2024) The 2024 Financial Regulation entered into force on 29 September 2024 and is applicable as from 30 September 2024.

added additional grounds for exclusion (conflict of interest, incitement to hatred, refusal to cooperate).

EDES in shared management

The scope of application of EDES is currently still very much limited to direct and indirect management. At present, EDES measures (i.e. early detection, exclusion, financial penalties) can be taken against participants and recipients of funds in shared management, but only if the aforementioned entities are also participants or recipients in direct or indirect management.

The 2024 FR has introduced new provisions that extend the scope of EDES to funds disbursed in shared management[110]. However, these provisions, which provide for a partial applicability of the exclusion system to shared management (Article 130 FR 2024), will only apply after a transitional period, i.e. only to programmes adopted or financed as from 1 January 2028 (Article 277(1) FR 2024) and at the conditions set in Article 138(2) FR 2024. EDES will be applicable to shared management only for the most serious misconducts (fraud, corruption etc.) and for final judgments or administrative decisions or findings established at EU level (OLAF, ECA, EPPO).

The EDES provisions of the FR (Article 144(2) (d)) require that entities implementing the budget under shared management communicate to the Commission information on cases of detected fraud and/or irregularity and their follow up, where provided for in the sector-specific rules. The information reported to the Commission through the Irregularity Management System (IMS), where the transmission of information is required by sector-specific rules, may be used for EDES purposes (Article 147(1) FR 2024).

The EU competent authorising officer/contracting authority can make use of the data in IMS through the EDES-IMS interface, operational since 1 January 2017. For example, before signing an award decision in a public procurement procedure, the Commission and other EU institutions, agencies and bodies can use the EDES-IMS interface to check whether a given economic operator is involved in an irregularity. If there is an IMS record on the checked entity, the authorising officer informs OLAF. OLAF checks whether the entity in question is involved in other cases in IMS and activates the relevant IMS field[111]. The activation of the IMS field automatically triggers an email notification to the reporting authority(ies) concerned. OLAF contacts the IMS-country-officer of the Member State(s) concerned, and the IMS managers of the reporting authority(ies) involved to check that the information in IMS on the case(s) is up to date and, if necessary, to ask for an update within a short deadline (in line with Article 147(2) FR 2024). Only then would the competent authorising officer be in a position to take account of the available information, i.e. to eventually initiate an exclusion procedure.

When the extension of EDES to shared management comes into effect beginning of 2028, the authorising officer responsible will be able to exclude participants and recipients of funds in

[110] And direct management with Member States.
[111] This is IMS field 2.1.17. See also reply to question 17 in Annex II to this Handbook.

shared management[112], where they are found guilty of the most serious misconducts: fraud, corruption, criminal organisation, money laundering, terrorism, child labour, human trafficking, and breach of conflict of interest[113]. For this purpose and with reference to these exclusion situations, Member States authorities must send to the Commission, through any official channel, such as the IMS, information on facts and findings established in the context of final judgments or final administrative decisions as soon as they become aware of the relevant information. Member States must transmit other necessary information requested by the Commission, relating to the assessment of the need of administrative measures within the context of EDES. [114]

Since 2016, all persons and entities implementing the budget under shared management are granted access the EDES database. Such access is meant to enable them to verify whether there is a decision of exclusion in the system (taken at EU level by the authorising officer) with a view to taking this information into account, as appropriate and on their own responsibility, when awarding contracts or selecting beneficiaries to implement Unions funds. According to Article 144(5) FR 2024, for programmes adopted or financed as from 1ˢ January 2028, in order to ensure the effective implementation of EDES, Member State authorities implementing the budget under shared management must enforce the exclusions recorded in the EDES database for the entire duration of the exclusion. When submitting payment requests under shared management, managing authorities must ensure that these requests do not include expenditure related to excluded persons or entities (Article 138(2), last subparagraph FR 2024). If such expenditure is included, the payment request will not be reimbursed (Recital 107 FR 2024). The exclusion decision operates only for future legal commitments. Therefore, payments must be reimbursed for honoured legal commitments signed before the exclusion decision.

[112] Within the context of shared management, EDES will apply not only to (i) participants and recipients, but also to (ii) subcontractors and any other entities on whose capacity the participant relies, and (iii) beneficial owners and affiliates of an excluded entity (Article 137(2) FR 2024).
[113] This list is defined in Article 138, paragraph 1, points (c)(iv) and (d) of the 2024 FR.
[114] According to Article 36(8) FR 2024.