



# Implementing the Recovery and Resilience Facility

## *A general risk framework*

OLAF Anti-fraud Knowledge Centre

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### **OLAF Anti-fraud Knowledge Centre**

OLAF fights against fraud, corruption and any other illegal activity affecting the financial interests of the EU. Besides carrying out investigations, OLAF develops knowledge to inform sound anti-fraud policies, both at the EU and Member States level. This knowledge is the result of the analysis of information from various sources, including irregularities and fraud detected by the Member States.

## Introduction

### *The RRF context*

**The pandemic has hit hard on the EU economy and society. However, the EU response has been strong and timely.** EU funding was directed where it was most needed, such as to health systems and to the unemployed, a common vaccine strategy was built, protective equipment was delivered, supplies were bought together, faster and at a cheaper price, the EU Civil Protection Mechanism got in motion, the first stockpile of medical equipment was created, etc.

Then, **the EU has taken decisive action to shape Europe's post-COVID-19 future.** The Recovery and Resilience Facility (RRF)<sup>1</sup> provides the Member States with more than EUR 700 billion, to support by 2026 reforms and investments on agreed priorities. This is a unique chance to emerge stronger from the pandemic, transform the EU economies, create new opportunities and jobs.

**In May 2022, in response to the hardships and global energy market disruption caused by Russia's invasion of Ukraine, the Commission presented the REPowerEU Plan.** This Plan focuses on measures for energy savings, diversification of energy supplies and accelerated roll-out of renewable energy. In this context, the Commission proposed targeted amendments to the RRF Regulation to integrate dedicated REPowerEU chapters in the national recovery and resilience plans (NRRP) and to increase the RRF financial envelope.<sup>2</sup> Regulation (EU) 2023/435 on REPowerEU chapters in the NRRPs was agreed by the co-legislators and has entered into force in February 2023.<sup>3</sup>

**The objectives of the RRF are ambitious and proper implementation is vital for the Member States.** There are inherent risks, as in any human activity. This does not diminish the relevance and key importance of the RRF for the future of the EU and all Member States. This rather reminds all stakeholders of the importance of ensuring adequate prevention and control to protect the RRF and allow it to deploy its benefits to the advantage of all citizens of the EU.

**The RRF funds must be protected against irregularities, fraud, corruption and conflict of interests.** The huge amounts at stake, the number and variety of investments, pressure to use these funds quickly to push recovery and build resilience are factors feeding into the risks to which the RRF is exposed. Fraudsters are fast and effective in adapting to new opportunities.

**The RRF introduces a new way of funding operations in the Member States.** The release of RRF funds follows the fulfilment of the milestones and targets set out in the NRRPs. However, the Member States must also take appropriate action to ensure that the use of funds for RRF measures complies with applicable Union and national law. In particular, the Member States must ensure that fraud, corruption and conflicts of interests are prevented, detected and corrected, and that double funding is avoided. In implementing the Facility, the Member States must ensure the functioning of an effective and efficient internal control system and recover amounts unduly paid or misused. This makes past experience in relation to 'traditional' EU funding relevant also for public expenditure in the RRF framework. Risks are related both to the achievement of the targets and to wider compliance with Union and national law, in particular in relation to sound financial management, fraud, corruption, conflict of interests and double funding.

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<sup>1</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021.

<sup>2</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_3131](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3131) and COM(2022)231.

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0241> To support REPowerEU, EUR 225 billion are already available in loans under the initial RRF financial envelope. In addition, new RRF grants worth €20 billion are made available to Member states, provided by the Innovation Fund (60%) and the sale of Emission Trading System (ETS) allowances. Member states can also transfer funds allocated to them under cohesion policy (up to 5% from cohesion policy funds, *i.e.* up to €17.9 billion) and/or the up to €5.4 billion Brexit Adjustment Reserve.

### *A general risk framework for a common vision and approach*

**This paper proposes a general risk framework as a building block for a common vision and approach in protecting the RRF.** The NRRPs include the widest range of investments. This general framework introduces a 3D vision of the risks, by looking at them from three different perspectives:

- The nature and complexity of the type of **investment**,<sup>4</sup> including the type and number of final recipients and implementation procedures;
- The expected output and related indicators, as summarised in the **milestones and targets**<sup>5</sup> of the investment.
- The third perspective brings into the picture the **threat, meaning the persons or organisations that may cause a damage to the RRF, such as fraudsters**. This perspective is brought into the picture through the factors that may increase their capability to cause damage by triggering a vulnerability related to the type of intervention (the enabling factors).

**This paper is consequently structured along three sections.** The *first* section explores the general risks associated to the type of investment, outlining six different situations. *Second*, the paper focuses on the risks related to three types of targets. The *third* section acknowledges that these risks point to vulnerabilities that can be exploited by potential wrongdoers, such as fraudsters. The extent to which these vulnerabilities are actually exploited also depends on a number of enabling factors that feed into the capability of potential wrongdoers.

**The policy field may also have an influence on risks.** The analyses of this risk factor in relation to the cohesion funding may be relevant also for the investments in the RRF context.

It should be noted that while this general framework can help build a common vision of the risks, **each investment requires a specific, dedicated fraud risk assessment**, based on knowledge about its own specificities and about the existing national management and control framework.

**This general risk framework is not an exhaustive, rigid and static reference.** Practitioners are invited to extend it based on additional types of investments funded by their NRRPs and based on the increasing experience in managing the RRF, including detected irregularities and fraud.

**The current paper is an update of the risk framework, following the first release in June 2022.** It has benefited from OLAF's past experience in the prevention, analysis and investigation of irregularities and fraud in relation on the traditional EU Funds as well as the more recent experience of the Commission Services in charge of controlling the use of RRF resources.

The risks outlined in this framework are based on a funding scheme including an implementation body that awards financing directly to the final recipients. The final recipients may then rely on contractors (suppliers, providers of services or works). For certain investments, the chain of implementation might be more complex, possibly with some kind of intermediate recipients before the final recipients. If this is the case, the risks outlined in this framework apply *mutatis mutandis*.

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<sup>4</sup> While the RRF is related to the implementation of both reforms and investments, this paper focuses on the investments.

<sup>5</sup> Article 2(4) of the RRF Regulation includes a definition of milestones and targets. A target is a quantitative result on an agreed indicator. A milestone does not reflect amounts but rather an objectively verifiable qualitative achievement (adopted legislation, realised investment project, full operationalisation of IT systems, etc.). From now onwards in this paper, reference may be made to targets only, but findings may apply also to milestones.

## About the nature and complexity of the investment

This section outlines different types of investments that may be included in the NRRP. For each situation, it provides concrete examples and lists potential risks, as a common, initial reference to be complemented with additional risks that are to be identified through dedicated risk assessments based on the specificities of each project.

### Investments A: Public procurement for one large project

#### *Situation*

The plan may include a **specific project** with large financial amounts involved, to be implemented by one body through the **public procurement** of (possibly a combination of) significant works, supplies or services. Similarly, the project could be implemented through a concession<sup>6</sup> or a public-private partnership<sup>7</sup>.

#### **Examples of investments A**

Renewals of the fleet of specific national bodies - such as fire brigade, police, customs - to switch to vehicles with lower impact on the environment. In general, also projects for the modernisation of State-level administrations, such as in the IT or digitalisation domain, may fall under type A.

Creation of national digital platforms, IT systems, for example in the areas of public services to citizens, education, health. The objective of increasing digitalisation may also lead to projects to improve interoperability, exchange of data, systems to ensure the verification of identities and documents online, which may require centralisation at State level. In case implementation requires actions at regional or local level, the intervention may fit better into type D (see below).

Digitalisation of the health system, which may include building or strengthening the technological infrastructure, improving the tools for data collection, data processing, data analysis and simulation or ensuring interoperability. This type of intervention may also envisage support and training to healthcare professionals across the Member State, to facilitate the digital transition.

Creation of a national cloud-based hybrid infrastructure, operated by a technological provider selected through a European tender.

Acceleration of the deployment of fast internet connections, including where it is more difficult to attract private investment. This type of investment may include the award of a concession.

Building of railway connections - including high-speed connections -, renovation of national railway networks (replacing tracks, crossing bars, ballast, switches, catenaries, signalisation, revamping tunnels), building or renovation of stations, including their digitalisation (security systems, passenger information, access control, ticket vending machines, facilities adaptation). Interventions may also be focused on short distance rail lines, to improve urban mobility.

Strengthening surveillance over fishing activities, through purchase or modernisation of vessels, of technology for control and monitoring, drones.

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<sup>6</sup> Concession means a contract through which the contracting authority entrusts the execution of works (or the provision and management of services) to one or more economic operators. Then the economic operators have the right to exploit the works (or the services) that are the subject of the contract (sometimes together with payment) (based on Directive 23/2014 on the award of concession contracts).

<sup>7</sup> Public-private partnership (PPP) is a long-term contract between a private party and a government entity for providing a public asset or service, in which the private party bears significant risk and management responsibility and remuneration is linked to performance. When a PPP is used for new infrastructure assets, it typically requires the private party to construct the asset, install all equipment and maintain the asset to a specific standard over the life of the contract. The private party is typically required to finance the necessary capital expenditure. Then the private party operates the asset and gets paid by government or users (See 'Public-private Partnerships – Reference Guide', International Bank for Reconstruction and Development / the World Bank, 2017).

## General risks

Investments A are subject to public procurement risks, such as:

- **Pre-tendering phase:**

- **Unduly limiting information to potential tenderers.** The openness of the procurement procedure may be undermined by irregularities related to the 'how', 'what' and 'timing' of the publication of the contract notice. This may facilitate certain potential tenderers, especially in case they benefit from illegal leaks of privileged/confidential information.
- **Unduly resorting to accelerated restricted procedures,** such as negotiated procedures without publication or even direct awards. This may also be the result of artificially creating the conditions for the adoption of these 'less open' procedures, such as through artificial splitting of the contract, undervaluation of the estimated contract value, reference to conditions of emergency that are not actually satisfied. With 'less open' procedures, it is easier to facilitate favoured tenderers. Risks related to the abuse of conflict of interests, corruption and collusion may be higher. Given the overall situation, undue recourse to emergency/urgency procedures may be even more relevant in the framework of the COVID crisis, including for projects that are funded retrospectively (see also later in this paper). Another risk is that, when conditions for recourse to emergency procedures are actually satisfied, even the simplified rules may be disregarded, such as about keeping sufficient audit trails, which is key for ex-post investigations.
- **Unduly excluding or discouraging potential tenderers.**
  - **Excessive or discriminatory qualification requirements concerning the tenderer** may unduly reduce the number of bidders. These requirements may touch upon the economic and financial capacity or the knowledge and experience of the tenderer. Contracting authorities may restrict access to procurement also by requesting unnecessary documents (possibly different documents for national and foreign tenderers) or by unduly requesting being established in the country where the contract is to be implemented or being authorised by certain national authorities.
  - **Discriminatory requirements may touch also upon cooperation** between economic operators, by undue limitations to subcontracting or consortium agreements.
  - **Low quality of the tender documentation and specifications may make participation more difficult for certain potential tenderers.** This includes unclear or changing terms and conditions.<sup>8</sup> In general, low quality of the tender specifications may more easily happen when there is **pressure to spend quickly, such as during a crisis, and there is not enough administrative capacity.** The more terms and conditions are unclear, the more they require clarifications during the procedure. This creates a 'moving target' setting. It is key that all participants get the same additional information at the same time.<sup>9</sup> The contracting authority may fail to respect this obligation.

In addition, **low quality of the tender specifications may more easily lead to changes to the contract during implementation.** Besides hindering fair competition among bidders, it involves making changes during implementation (increasing costs or reducing quality), when competitors are out of the game. This can be abused by fraudsters (see also below about the post-tendering phase).

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<sup>8</sup> This may include unclear or absent indications in the tender documentation on how foreign potential tenderers are supposed to comply or certify compliance with certain qualification requirements, such as registration in national or local trade or professional registers, authorisations from specific national authorities.

<sup>9</sup> Certain clarifications may be so substantial to require the update of previous publications of the contract notice and the extension of the time limits for presenting the offers.

- **The contracting authority may artificially shape the subject matter of the tender.** Artificial grouping, no partial tendering and discriminatory tender specifications have a role in unduly reducing competition. Performance deadlines may be too strict (just to be extended during implementation) and technical specifications may be too narrow, unnecessarily referring to certain standards or even brands.

The above mentioned risks are all related to the possibility that **competition is unduly restricted. This points to vulnerabilities that may be exploited by wrongdoers to unduly favour a specific tenderer.** Restriction to competition may contribute to increase the number of instances where there is only a single bidder participating in the public procurement procedure. **Single bidding** might indicate potential corruption or a lack of competition, including collusion between companies (see also below about the tendering phase).

- **Tendering phase:**

- Insufficient documentation of the **evaluation process**, making it non-transparent.
- Vague or irregular **evaluation criteria** or irregular application of the evaluation criteria unduly favouring the winning tender.
- Award to a tenderer that **do not satisfy the qualification criteria**. This may happen also in a context where disproportionate requirements had been set, which probably impeded participation of other operators. The excessive and the disregarded qualification criteria are not necessarily the same.
- Award to a tender that **do not satisfy the criteria specified in the tender specifications**.
- **Changing the selection criteria** after the opening of the tenders.
- **Changing/manipulating tenders after they have been presented** (based on collusion with staff of the contracting authority). For example, this may allow changing the quotations to win over the other offers, while maximising profits.
- Bidders may be not given the same possibilities to **provide additional information**. Offers may be excluded as abnormally low, without giving the possibility to provide further information to justify the more advantageous price.
- **Bidders may collude** to coordinate price quotations and participation in tenders (market sharing). Suspicious similarities in the offers (possibly different from the template that is part of the tender documentation) may suggest cooperation among bidders. The contracting authority may have even unduly sent the invitation to tender to companies that are owned/managed by the same persons.

- **Post-tendering phase:**

- **Changing contracts after the award.** The contract may be different from the tender specifications already at the first signature or may be changed during implementation. These changes may concern the performance deadline, the scope, the technical content, the price, the experience of experts/staff involved, the performance guarantee, advance payments, etc. These changes may be necessary because the winning offer was not realistic and they may generate extra-profits for the economic operator<sup>10</sup>, which might be used also to pay bribes or might be the outcome of abusing conflict of interests. Documentation that should prove the need for the amendments to the original contract may be poor or even absent. Existing

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<sup>10</sup> Cheaper/less materials or less works for the same price, or additional supplies or works, for a higher price. The scope and value of the contract also may be reduced. Even if the reduction in scope is accompanied by a reduction in price (or the increase in price is accompanied by additional supplies/works), it is difficult to estimate whether this is proportional, in the absence of competition with other economic operators.

contracts may be amended or additional contracts may be awarded to the current contractor, directly or after a negotiated procedure without publication.

- **Implementation shortcomings.** Shortcomings may take various forms, such as works that the contractor (i) has not carried out; (ii) has delivered after the deadline; (iii) has carried out with cheaper materials; (iv) has carried out deviating from the technical specifications, etc. Contractors may not deliver properly also with reference to the supply of goods (not in the agreed quantity or quality) and the provision of services. Shortcomings may be **hidden by the contractor (towards the final recipient)**, through documents or statements that do not match with actual implementation on the ground. Compulsory documentation of the works carried out by the contractor may be not or only partially kept. Implementation shortcomings **may be also facilitated by collusion between the contractor and the final recipient/contracting authority.** In this case, the profit from the shortcoming would be shared and, for example, companies acting as sub-contractors or suppliers to the main contractor (but linked to the final recipient/contracting authority) may play a role in moving illegal profits back to the final recipient/contracting authority.

Also these risks related to the tendering and post-tendering phases **point to vulnerabilities that may be exploited by the potential wrongdoers during the tendering and post tendering phase.**

In view of admitting it to public funding, the project may have been subject to a preliminary Cost Benefit Analysis (CBA) or similar analysis (such as feasibility studies). The situation could arise where the **CBA was not correctly carried out**; this might have been done intentionally or by mistake. Unrealistic or wrong data might be used; with correct data (about expected benefits and/or expected costs), the project would not have been accepted for funding or the costs (and the funding) would have been lower. This risk applies also in case the final recipient does not have to resort to public procurement (so also when it is not an investment type A).

## Investments B: Selection and implementation of many projects

### *Situation*

The plan allocates financial resources for an intervention to be implemented through a bottom-up approach, providing support to final **recipients that do not have to resort to public procurement** (otherwise, see investments D, below). **Projects are selected through one or more calls for proposals by one or more implementing bodies.** According to the call, projects are eligible only if the operation and/or the potential final recipients satisfy certain requirements.

### **Examples of investments B**

*In case the final recipients have to resort to public procurement procedures, these examples may fit better under type D (see below).*

Interventions to support projects for **(i)** reduction of energy consumption or greenhouse emissions of industrial companies; **(ii)** energy renovations of residential dwellings, also at neighbourhood level in urban areas; **(iii)** repairing, recycling and reusing plastic products and packaging; **(iv)** development of high-efficiency photo-voltaic panels and batteries; **(v)** infrastructure to produce, transport and store renewable hydrogen; **(vi)** electro-mobility, such as development of charging infrastructure for e-vehicles; **(vii)** production of processors and other electronic components; **(viii)** cloud infrastructure and services, **(ix)** construction of agri-voltaic systems; **(x)** support to agricultural holdings to improve efficiency and sustainability of irrigation, biosecurity, to develop supply chains devoted to plant proteins, to invest in precision agriculture, energy efficiency, circular economy.

Intervention for the development of innovative renewable energies, integrated into buildings and production processes. The intervention supports renewable self-consumption and technologies that are not fully competitive yet. Support takes the form of investment aid or direct equity support. Efforts to increase renewable generation may be accompanied by other interventions to increase storage capacity and digitalisation of the distribution network.



Interventions for the rehabilitation of brownfield (abandoned industrial areas) or wasteland sites. This type of intervention may also aim at funding specific activities, such as production of hydrogen in these rehabilitated brownfield sites.

Interventions to support research and innovation. For this type of interventions, calls for proposals may follow strategies focusing on specific sectors, such as **(i)** decarbonised hydrogen; **(ii)** decarbonisation of industry; **(iii)** reduction of greenhouse emissions; **(iv)** sustainable agricultural systems; **(v)** recycling and reuse; **(vi)** sustainable cities and innovative buildings; **(vii)** digitalisation and decarbonisation of mobility; **(viii)** bio-based products and industrial biotechnologies; **(ix)** quantum technologies; **(x)** high-performance computing; **(xi)** cybersecurity; **(x)** digitalisation, including data anonymization, digitalisation of production processes; **(xi)** sensor technologies; **(xii)** automated driving, innovative powertrains and light building in vehicle technologies; **(xiii)** artificial intelligence and robotics; **(xiv)** space. The calls for proposals define the selection criteria, which may include (a) consistency with the objectives of the call; (b) scientific profile of researchers; (c) originality; (d) methodological approach; (e) impact and feasibility; (f) involvement of stakeholders to combine technology readiness level and societal readiness level, etc.

Interventions to strengthen health biomedical research, such as on rare diseases and diseases with high impact on health, which require both high competences and advanced technologies.

Interventions to increase digital awareness among the population, including training for individuals at risk of digital exclusion. Calls for proposal may be open only to non-profit organisations.

### *General risks*

Investments B are exposed to risks related to **the selection of projects**, such as:

- **Low quality of calls for proposals**, which may make room for potential wrongdoers. This may more easily happen when there is pressure to spend quickly, such as during a crisis, and there is not enough administrative capacity. On the one side, low quality of calls makes more difficult for honest potential final recipients to participate, reducing competition. This may include unclear (i) objectives; (ii) eligibility criteria concerning final recipients or operations; (iii) evaluation criteria concerning projects, etc. On the other side, this affects the assessment of the proposals in view of selecting quality projects.
- **The call for proposals may be shaped to unduly favour specific final recipients**. The call sets the criteria that final recipients and projects must satisfy and on the basis of which proposals are to be assessed. This phase may be vulnerable to undue influence.
- **The final recipient may not satisfy the eligibility criteria**. The final recipient could also hide the lack of eligibility by creating artificial conditions, by submitting false, incorrect statements/documents or by omitting information.
- **The final recipient may not have the financial and organisational/operational potential** for implementing the project. This should be carefully assessed at project selection, but this requires time, expertise - that are not necessarily available in due quality and quantity - and documents that are not necessarily attached to the application or available to the implementing body. The final recipient could use false, incorrect statements/documents (or could omit information) about its potential or the potential of loan givers (which support its financial capacity). Advance payments may allow final recipients to receive public funds without the financial capacity to contribute the agreed share of own resources. All of this may then translate in incomplete implementation and in irregularities (such as inflated costs), including to avoid using own resources in the project (see also below). When interventions are focused on SMEs, these risks may be higher because it is easier to use shell companies or companies that have been created (or bought) just to apply for the public funding.
- **The project may not satisfy the eligibility/quality criteria**. Projects/operations of dubious effectiveness, efficiency, economic value could get funded, also because of pressure to spend.

The sudden increase in resources can create a mismatch between the funding offer and the projects/skills the market/society can propose in the short run. This may worsen problems of funds absorption and can be exploited by potential wrongdoers. In the case of the RRF, pressure could be even higher because of minimum percentages of expenditure to be made in specific sectors (green investments, digital transition, etc.) and because of massive support to innovative projects (which makes even more difficult to (i) find a great number of valuable proposals shouldered by adequate knowledge, skills, resources and (ii) to assess the value of the proposals, cost estimations and statements, adequacy of the outputs, etc.)

- **The project may be non-eligible because (part of) the activities had already be funded through other sources (of the final recipient) and implemented before.** Investments usually support future actions to stimulate activities that otherwise would not have taken place (however, see below about retrospective funding).
- **The project could be already financed by other national or local public funds or even by other EU funds (double funding).**<sup>11</sup> The RRF Regulation (Art. 9) provides that reforms and investment projects may receive support from other Union programmes and instruments provided that such support does not cover the same cost. The risk of undue overlapping of RRF funds with other EU funds with reference to the same costs is particularly relevant in relation to investments under the operational programmes that have been funded during the programming period 2014-2020 and/or under the operational programmes that will be funded during the programming period 2021-2027.
- **The costs of goods and services estimated in the applications for funding may be excessive.** These estimations could be supported through false, incorrect statements/documents, such as pro-forma invoices issued by colluding economic operators.
- Projects may be subject to a preliminary Cost Benefit Analysis (CBA) or similar analysis (such as feasibility studies), such as in the case of environmental projects.<sup>12</sup> The situation could arise where the **CBA at project level is not correctly carried out**; this might have been done intentionally or by mistake. Unrealistic or wrong data might be used; with correct data (about expected benefits and/or expected costs), the project would not have been eligible for public financing or would have received less financing.
- Following a CBA, the expected benefits from the implementation of the project should be translated into project targets in the grant agreement, based on proper indicators. These indicators should then be used in the framework of assessing the successful implementation of the project. The relevant indicators should be actually related to the expected benefits, and be measurable, verifiable, based on official sources. This would also help mitigate risks related to the actual implementation of the project (see below) and actual achievement of the targets/benefits.

Investments B are exposed to risks related **to the implementation** of projects:

- **The project may be not implemented as agreed.** The final recipient may not respect its contractual obligations. More in general, the final recipient may not respect the applicable law while implementing the project. The final recipient could hide this situation through false, incorrect, incomplete documents/statements or by omitting relevant information.<sup>13</sup> In addition,

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<sup>11</sup> The risk of double funding at final recipient level could also concern RRF funding and funding from other donors, such as International Organisations or private foundations.

<sup>12</sup> This is to make sure that the project is worth being co-financed (from an economic point of view) and needs (co-)financing (from a financial point of view), that it will indeed serve the purpose of the funding provided, contribute to the intended general and specific policy objectives in a cost efficient manner and, under the RRF, allow achieving the milestones and targets as set in the national plans.

<sup>13</sup> This covers a wide range of documents, depending on the type of project, including, for example, invoices, progress reports, final reports, acceptance reports, technical reports, quality certificates, energy saving certificates, etc.

final recipients may unduly invoke the impact of the COVID-19 crisis or the energy crisis to justify no or incomplete implementation, while the project was never meant to be (fully) implemented.

**Increasing adoption of performance-based management modes, based for example on simplified cost options, moves the focus of control from the input into the process to the output of the process.** Adequate control of the output requires specific expertise (depending on the type of output) that should be available during the overall implementation of the project. Certain elements of the project cannot be efficiently checked once the output is complete and, even if this were possible, discovering such issues at the end of a project would be problematic, because not only would the objective not be achieved, but advanced and interim payments from the Member State to the final recipient could possibly be lost, for example in case there are not enough assets left for the Member State to confiscate in the context of recovery actions.

- **The final recipient may (fraudulently) go bankrupt.** In addition, fraudulent bankruptcies may be 'masked' as bankruptcies caused by the COVID-19 crisis or the energy crisis. This risk is relevant, also considering an overall context where certain financial institutions, affected by the severe economic downturn, might be more willing to take unnecessary risks to maintain margins and fees levels.
- **Costs during implementation may be inflated.** The final recipient may resort to false invoices from fake or unaware companies, invoices from colluded companies, from companies belonging to the same group of fraudsters. Artificially long supply chains may be used to inflate costs. A context of high inflation could facilitate these fraudulent practices. Wrongdoers may inflate the cost for works, possibly invoiced by foreign companies, while these works are actually implemented by local workers employed by sub-contractors at lower costs. These *modi operandi* may be accompanied by paying back to the final recipient part of the inflated amounts paid. Second hand equipment may be bought and then declared as new (with a corresponding inflated price). Labour costs can also be inflated, because (i) staff and external experts work on several tasks simultaneously (charging the same costs to several projects or incorrectly apportioning staff costs between EU projects or other activities); (ii) actual work can be done by other (less qualified/experienced) persons; (iii) manipulation of time-sheets (including claiming overtime while no credit for extra hours is given to staff); (iv) manipulation of hourly rates, etc. Falsification may even involve claiming labour costs for personnel that is not employed or that do not exist. For certain projects, such as in the research and innovation fields, assessing whether the actual deliverable justifies the resources that have been declared as involved is even more difficult. For the cases of plagiarism or double funding, automated tools can help detecting fraud.
- **Costs submitted for reimbursement may be inflated to avoid using own resources.** The intervention may require that the final recipient does not receive public funds covering 100% of the investment. The final recipient may then inflate costs to avoid the obligation to pay part of the project with its own funds. For example, the intervention may envisage public funding for 70% of 'X' (the cost of the project). The final recipient may launch a tender procedure, with a bidder winning the tender for 'X' amount. The successful bidder (contractor) and the final recipient may sign a fake contract for a value of 'X' which meets the terms laid down in the tender procedure and, at the same time, they may sign another contract for a value of 70% of 'X', which does not meet these terms as regards the quality and quantity of the deliverables. The final recipient will then submit for reimbursement the fake contract with a value of 'X'. The result is that 100% of the project is paid using public funds, through manipulation of the tender procedure and false documents.
- **Costs included in the requests for reimbursement may be non-eligible.** The final recipient may simply include in the reimbursement requests costs for works, for the supply of goods or the provision of services that are not in line with the approved project. This may include labour costs, where the description of tasks may be manipulated to ensure that costs claimed are considered

eligible. Ineligibility may also follow, for example, unauthorised sub-contracting, missing supporting documents or irregular private or public procurement. For example, the final recipient must show that the costs submitted for reimbursement are reasonable, for instances by showing several offers for the same item from independent economic operators. The final recipient may fail to get these offers, they may be not issued by the declared supplier or issued by it but with no real intention to supply that item for that price, they may concern different items, they may come from non-independent economic operators, etc.

- **Especially with reference to the purchase of IT hardware and software, prices and sub-contracting chain may be non-transparent.** This risk may be described as follows:
  - The final recipient or the contracting authority does not know what potential special prices it is entitled to receive and whether/what extra discount was obtained by the supplier from the producer;
  - The final recipient might not be aware of the full sub-contracting chain. Chains that are complex, that cross borders, that include sub-suppliers with no relevant experience or operational capacity may be considered as red flags;
  - Corruption might appear because of the opacity of prices and sub-contracting chains for the final user or contracting authority.
- **Certain cost items could have been already reimbursed by other national or local public funds or even by other EU funds (double funding).**<sup>14</sup> A final recipient may even submit claims for the same items of expenditure more than once to the same donor, in the same project, possibly with slightly different descriptions or under different budget categories (e.g. both direct and indirect costs).

With specific reference to **double funding between RRF and other EU funding**, investments supported by RRF may receive support from other Union programmes and instruments provided that such support does not cover the same cost. In case double funding (*i.e.* that two funds cover the same costs) is detected and the envisaged correction is just the **withdrawal of one of the two contributions** (in case this limited correction would be allowed by EU and national law), due consideration should be given to the risk represented by a final recipient involved in double funding that will continue benefitting from EU financing. In case intentionality can be envisaged, this final recipient may be a **potential fraudster**. Which solution can be envisaged in case double funding is detected which affects reporting for milestones and targets, depends a lot on the nature of the investments, how they are implemented and how the milestones and targets are defined. In any case, **rushed spending to address a detected problem can cause new risks**. For example, this should not justify emergency, accelerated, simplified procedures, which would increase the risks of fraud, conflict of interests, corruption. In addition, if the additional investments are requested from a final recipient involved in the double funding, this would mean an expansion of the turnover of this recipient, which may create **incentives** to the double funding. As mentioned, in case intentionality can be envisaged, this final recipient may be a potential fraudster.

- **If a measure includes a significant number of small projects**, for example IT innovative projects, implemented by private companies, members of the same group of **companies may alternate as final recipients and suppliers/sub-suppliers of the final recipients**. In such a context, *inter alia*, risks may be higher that project applications and project implementation reports could be affected by plagiarism, that cost could be inflated or that implementation could be incomplete.

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<sup>14</sup> The risk of double funding at final recipient level could also concern RRF funding and funding from other donors, such as International Organisations or private foundations.

- **At the level of individual projects, there may be incentives to artificially shift costs between parts of a project if the reimbursement conditions differ.** This may be relevant where part of an investment gets support not linked to costs and another part of the investment with the same final recipient gets support on the basis of reimbursement of costs. In a **context of rising prices**, the final recipient may be tempted to artificially shifting costs to the reimbursement-based part of the project, where the recipient can ask for an increase of funding due to higher costs.
- **The output of the project may be not maintained/used as it should be.** Usually projects envisage that the output produces certain results at least for a period of time. For example, the purchase of medical equipment should lead to certain health services for a number of years, delivered free of charge to the population. The final recipient could not use the medical equipment at the level mentioned in the project agreement or could request the payment of a fee.

**At project level, funds may be granted conditional to the achievement of a specific target by the final recipient.** The project target could be set as an improvement of the value of an indicator (e.g. tonnes of waste recycled) from a baseline value (meaning without the project, e.g. X tonnes recycled per year) to a target value (meaning after implementation of the project, e.g. X+5 tonnes recycled per year). The indicators on the basis of which targets are set and then assessed for achievement must be measurable, verifiable, and based on sound methodologies and reasonable assumptions. In this case, even if indicators are adequate, the following risks may apply:

- **the baseline stated by the final recipient (in the absence of the project) is in reality higher.** The declared baseline must be clearly defined and must be checked by the authorities. It could even happen that the target value is already reached by the final recipient (equal or below the baseline) without the implementation of the project. In such situations, the project may not achieve the improvement it was supposed to achieve, while declared data may show the opposite. Setting a target value (of course on the basis of a baseline) means targeting a specific improvement to be achieved by the specific project. If this improvement does not take place, the project target cannot be considered as achieved. In addition, if the complete implementation of the project is not necessary for the final beneficiary to achieve the target value, this makes more unlikely the detection of irregularities and fraud related, for example, to incomplete or non-implementation.

*Example: Company X applies for the funding of a project to increase the recycling of waste material from 100 to 150. In reality, Company X is already recycling 120. If control is simply focused on ascertaining that at the end of the project period Company X is actually recycling 150, the non-achievement of the target (increasing recycling capacity by 50) will not be spotted. In any case, the improvement declared by Company X will be overestimated (50 instead of 30). In addition, as the target is considered as achieved, there will be no red flags suggesting further controls that could lead to ascertain no or incomplete implementation of the project by the final recipient.*

The baseline in the absence of the project could be higher also because **a similar previous or parallel project contributed or is contributing to the same indicators by the final recipient.** This previous or parallel project does not necessarily concern the same costs. In the case it concerns the same costs, this would also be a case of 'traditional' double funding (see above). In the case different costs are involved, the final recipient would receive funding without achieving the agreed improvement (because the actual improvement is fed (also) by the other project).

*Example (continued): Company X recycles waste in 2 sites: site A and site B. Because of a project in site A, financed by the cohesion fund, Company X is already increasing the recycling of waste from 100 to 120. Then, Company X applies for funding for another project in site B, declaring that this would improve recycling from 100 to 150 (omitting that the other project is already bringing or has already brought the recycling capacity to 120). The project in site B feeds into an*

*investment included in the RRF national plan. In this case there is no ‘traditional’ double funding, because the project in site B does not concern the same costs as the project in site A (this in principle, because the risk of some overlapping of costs is high). However, the improvement brought by the project in site B will be overestimated (50 instead of 30).*

- **Target value is in reality not achieved.**

**The RRF Regulation provides that measures started from 1 February 2020 are eligible for support under the Facility (Article 17(2)).** Projects may therefore have been already implemented or be in progress. The funding is awarded on the condition that the project satisfies all the conditions of the intervention. In the framework of the ‘traditional’ ESI funds, these projects were particularly prone to errors. The implementing body of the intervention should implement thorough management and control systems which can be difficult if documentation or audit trails are not up to standards or ex-post checks for compliance are not easily feasible (*e.g.* verifying the material used in a renovation was adequate). Certain checks that would have made sense before or during implementation might not be possible.

The situation is even more complex when the intervention supports many projects that are **selected and supervised by different implementing (local) bodies, possibly scattered throughout the Member State.** This adds to the risks because these implementing bodies may have **different levels of administrative capacity/expertise**, may be **nearer to the final recipients** (which may strengthen enabling factors, such as conflict of interests, collusion or complacency) and may operate in **different contexts**, for example in terms of infiltration by organised crime. See also investments D for the risks related to the lack of expertise, as *mutatis mutandis* that may apply also to investments B.

**The risks mentioned above could materialise because of lack of administrative capacity, but they also point to vulnerabilities that may be exploited by potential wrongdoers, both on the implementing body side and the side of the final recipient.**

#### **Example of risks related to investments B**

The investment may consist in funding projects following a call for proposals. The applications may be reviewed by employees of the implementing body (evaluators). One of these evaluators could be in a conflict of interests situation, for example because the evaluator holds a position within one of the project partners related to one of the applications. In such a context, (i) the declaration of absence of conflict of interests could be missing; (ii) procedures and rules on how to evaluate the applications and how to fill the evaluation sheets could be poor or missing; (iii) the evaluators could use selection criteria that are different from the ones published with the call; (iv) the evaluation sheets of different evaluators could show discrepancies; (v) The selection criteria could include subjective criteria, for which justification of the points awarded is crucial and the audit trail could be insufficient to conclude on the transparency and objectivity of the evaluation. The call for applications could be the first in a series to obtain incremental achievements. If this is the case, being selected in the first call would increase the chances of being selected in the framework of the following calls, and vice versa. The evaluator with a conflict of interest situation could provide information to the project partner, for example about future calls, that is not made equally available to other potential applicants.

## Investments C: Framework contract for many decentralised projects

### *Situation*

The plan allocates financial resources to an **operation to be implemented by multiple players.** Through a public procurement procedure, a central body signs a **framework contract** with economic operators. Then, the ‘downstream’ implementing players procure works/goods or services from

these economic operators based on the framework contract. The final multiple projects to be funded may be selected through one or more calls for proposals.

#### **Examples of investments C**

*Migration to a secure cloud infrastructure of the databases and applications of local public administrations:* The measure envisages a 'migration as a service' support package to local administrations. At central level, a number of qualified providers are certified and a set of standard support packages is negotiated. Support packages are tailored to the size of the administration and the type of services involved in the migration. Each administration can choose within this set of certified public cloud environments. Calls are launched to collect and assess migration plans, on the basis of which local administrations are selected for funding.

*Intervention for the digital update of hospitals' technological equipment:* This includes the publication of a framework agreement and the conclusion of contracts with service providers. Contracts include the purchase of data processing centres, and the purchase of hardware and software information technology, electro-medical technologies, additional technologies (to achieve computerization of hospital departments).

#### *General risks*

General risks are similar to investments A (because of the tender procedure related to the framework contract) and B (in case of projects selected through calls for proposals).

An additional level of complexity may be due to the following:

- A kind of **multiplier effect**: irregularities in awarding the framework contract may have an impact on many downstream contracts.
- The downstream contracts are implemented under the supervision of bodies that are different from (and possibly less expert in the subject than) the central contracting authority that awarded the framework contract. This may **increase vulnerabilities to implementation shortcomings**.

**Inadequate use may be made of framework agreements, for example for the purchase of IT hardware equipment and software licenses and services.** The problem can be described as follows:

- Public/contracting authorities frequently use (or are obliged to use) framework agreements (with re-opening of competition) to purchase a large number of IT hardware equipment and software licenses and services. In some specific situations, those framework agreements might not be adequate.
- When different types of contracting authorities use the same framework agreement, best value for money might not be guaranteed as the prices under the agreement might not include any specific preferential price potentially applicable (*e.g.* for large quantities procured, for a specific category of public entity).
- When framework agreements are used, transparency is reduced as all flows of information stay between the contracting authority and the economic operators signatories to the agreement.
- Competition is reduced as framework agreements limit the number of potential bidders at the re-opening of competition. Hence, companies that signed a framework contract could more easily share out the (national) market.

#### **Investments D: Many decentralised projects through public procurement**

##### *Situation*

The investment is implemented by **multiple bodies that must apply public procurement procedures** for (possibly a combination of) works, supplies or services. The investment aims at the realisation of **many smaller projects**. This may happen because the investment supports projects that are located throughout the Member State and implemented by different (local) administrations. These projects may be selected through calls for proposals.

### **Examples of investments D**

*In case the final recipients do not have to resort to public procurement procedures, these examples may fit better under type B (see above).*

Implementation of new waste management plants and modernisation of existing plants. The competent local authorities are called to propose projects that are then selected, based on set criteria.

Interventions for the rehabilitation of water networks (drinking water and sanitary), including upgrading wastewater collection and treatment plans.

Interventions to help local authorities (i) modernise waste sorting centres; (ii) deploy sorting installations in public areas; (iii) purchase equipment to facilitate sorting at source, collection and valorisation of bio-waste and household waste; (iv) improve treatment of infectious waste in hospitals.

Development of rapid mass transport systems in metropolitan areas, including rail infrastructure for daily mobility, metros, trolleybus lines, funicular, etc.

Renewals of local public transport bus or railway fleets, with vehicles with a lower impact on the environment. Interventions to improve urban mobility may also include the digitalisation of public transport, including real time information systems and information analysis to increase efficiency.

Building cycling lanes in urban/metropolitan areas or parking lots outside urban/metropolitan areas.

Construction of new schools, rehabilitation of existing schools, improvement of the sports facilities in schools, through projects managed by local administrations.

Transformation of classrooms into innovative learning environments and creation of laboratories for the new digital professions, through projects managed by local public bodies. This may include mobile digital equipment in the classrooms, video projectors, network for on-site and remote teaching via the loan of equipment to students and teachers, etc.

Interventions for the digital upgrade of various central or local administrations. This may include improving digital public services to citizens and business, improving the management of public administration services, cybersecurity, etc. This type of interventions may cover, for example, the health system, the justice system, employment services (active labour market services).

Selected projects proposed by local authorities, to improve the (climate) resilience of territories, enhance the energy efficiency, etc.

Renovation and improvement of the energy efficiency of public buildings, social housing, etc.

Urban regeneration, under selected projects proposed by local authorities. Interventions may also aim at increasing housing density to limit urban sprawl and preserve agricultural land, through support to projects for buildings that increase the square meters of floor areas per square meters of land area.

Development of local health coordination centres linking territorial, social-health and hospital health services and the emergency network. This includes the scale-up of telemedicine solutions within local healthcare systems.

Creation of healthcare facilities of proximity for patients requiring low-intensity and short-term clinical interventions.

Interventions to increase the number of beds in intensive and sub-intensive care units, improve emergency capacities, purchase new 'large' medical equipment, modernisation, including through digitalisation, telemedicine, robotics, etc.

### **General risks**

General risks are similar to investments A (because projects must be implemented through public procurement procedures) and B (in case projects are selected through calls for proposals).

An additional level of complexity is due to the fact that the public procurement procedures are management by **many contracting authorities**, which may have **different levels of administrative capacity/expertise**, may be **nearer to the potential contractors** (which may strengthen enabling



factors, such as conflict of interests, collusion or complacency) and may operate in **different contexts**, for example in terms of infiltration by organised crime.

For example, the lack of expertise of government bodies and public entities in the implementation/control of the digital transition investments can be a problem. Red flags could be for example, the involvement of the producer in the definition of the subject of procurement or its technical specifications or controls that are limited to formal aspects and do not include the content of the projects. A shift from the national to the local level might emphasise these problems related to the lack of expertise.

#### ***Example of risks related to investments D***

The investment may support the purchase of digital devices by schools (final recipients who select their own contractors). There may be a suspicion of conflict of interests. Based on publicly available information, it may be noted that a family member of the school headmaster is working for the contractor. In addition, the headmaster could have previously held a supervisory position within the contractor.

### Investment E: Funding through financial instruments

#### *Situation*

The plan allocates financial resources to a fund/financial instrument, which provides grants, loans, equity, quasi-equity or guarantees. The investment policies of the fund/financial instrument set the types of projects/operations and/or categories of final recipients that may be admitted to financing.

#### ***Examples of investments E***

The investment envisages the financing of a fund, managed by a public agency. The fund provides financial support to SMEs, to help their internationalisation, for example through programs to access foreign markets and develop e-commerce.

The investment aims at increasing the competitiveness of tourism enterprises. A fund supports innovative investments for their digital transition and to increase services to tourism. Projects are selected through an open call, based on the investment policy of the fund. The intervention finances also a SME Guarantee Fund, for specific final recipients and specific types of investments (innovation of the supply chain).

The Intervention finances a financial instrument managed by a leading financial institution, controlled by the State. The measure supports innovative SMEs (start-ups). The investment policy of the financial instrument includes: (i) investment targets; (ii) scope and eligible final recipients; (iii) eligible financial intermediaries and selection process; (iv) type of support provided (such as guarantees, loans, equity and quasi-equity); (v) diversification and concentration limits; (vi) lending policy for debt investment, including required guarantees and collateral; (vii) sustainability proofing policy and exclusion list.

This intervention creates a Fund-of-Funds, for the funding of private urban regeneration initiatives, also supporting climate and digital transition. The investment policy of the Fund includes (i) the nature and scope of the investments; (ii) the targeted final recipients, which are private promoters of financially self-sustainable projects for which public support is justified by a market failure or the risk profile; (iii) eligibility criteria; (iv) requirements related to decent housing solutions.

The intervention envisages the investment in a Fund-of-Funds, established by an investment bank indirectly owned by the State. The Fund contributes to regional investment funds, which have the objective of attracting private investment and invest in the equity of SMEs. The investment decisions of the regional funds are made by private management companies, specific to each region. The equity intervention finances investment funds designed to support, among others, industrial companies in their transition to low-carbon production systems.

#### *General risks*

General risks are similar to investment B. In the case of investments E, the eligibility criteria are translated in the investment policy of the financial instrument.

Investments E may feature an additional layer that has a key role in the implementation of the project: **private financial institutions** (or private management companies). They have the expertise to evaluate project proposals and they may be selected by the main implementation body through competitive procedures, which may be exposed to **similar risks as investments A**. In addition, private financial institutions are profit-making organisation with a broader portfolio of activities and this may **influence their decisions concerning project proposals**. The potential recipients may be **private customers** of the financial institution in other contexts, which may lead to possible conflict of interests. During a severe economic downturn (as during the COVID crisis), certain private financial institution might be more willing to take unnecessary risks to **maintain margins and fees levels**.

Investments E may require the evaluation of the **'market failure' condition**. The fund should focus on projects that otherwise would not be funded by the market, for example because of their risk profile. This is not an easy evaluation and it may be an additional source of risk.

## Investment F: Granular funding without selection

### *Situation*

The plan envisages support to all situations satisfying certain requirements (about the activities and/or the final recipient). There is no previous selection of projects.

#### **Examples of investments F**

Intervention to support the digital transformation of businesses with incentives to private investment in specific assets and activities supporting digitalisation (covering capital goods, research, development and innovation activities, training activities). Support is provided through tax credits.

Intervention that envisages tax credits to enterprises for investment in the re-development of tourist accommodations.

Interventions to improve energy efficiency and safety of private buildings. The support may be provided in the form of a tax deduction over a number of years. It may be provided that final recipients, as an alternative to the instrument of tax deduction, may choose a financial instrument (credit transfer or invoice discount), to address the problem of the high initial investment costs.

Interventions to support companies, in particular SMEs, to recruit apprentices, reskill employees, recruit people with certain characteristics, etc. In case support is automatic, for example through tax credits, this type of interventions belong to this type F. In case there is a preliminary selection of actions, the intervention is more fitting into type B (see above).

### *General risks*

Investments F may take many forms and actual risks heavily depend on their peculiarities. However, examples of common risks may be the following:

- The implementation of these investments is **extremely granular**, with hundreds, if not thousands of funded operations. Control is extremely difficult and this is known to potential final recipients;
- **Applicants may not be covered by the intervention**. For example, the intervention may cover only SME, while undeclared links with other companies make the applicant a non-SME.
- **Applicants may artificially create the conditions to benefit from the action**. For example, an intervention might compensate companies for reduced turnover during the crisis. Some final recipients could not declare part of the turnover, because of tax evasion. This would result also in benefitting from the public intervention. In addition, the turnover of the year before the crisis may be inflated, for example through fake invoices, with the same result.

- Final recipients may ask for the benefit in relation to **activities that are (partially) not covered by the intervention**. For example, the benefit may cover only works to improve the energy efficiency of buildings, while the submitted costs include costs for wider, undeclared renovation works. Another example may refer to works that had already been executed before the intervention started (in case this is not allowed by the intervention). Another example may refer to actions that should result in recruitment of unemployed people with specific characteristics: final recipients could try to include people already working for them or for another employer or persons that do not have the characteristics covered by the action.
- Final recipients may ask for the benefit on the basis of **inflated costs or even inexistent operations**. For example, see the box below about inexistent renovation works. Concerning the example of actions that should result in recruitment of people, fraudulent final recipients could try to include fictitious or unaware persons or other colluded persons that in reality do not work for them. In general, inexistent operations might also be the result of fraudsters using the identity of other (unaware) entities who could be eligible for financial support but never asked for it. This risk may be higher for operations where agents usually take care of contacts with the implementing bodies on behalf of their clients.
- If the investment is based on reimbursement of certain costs, **the higher is the percentage of reimbursement, the higher is the risk of fraud**, as the incentives for collusive agreements between final recipient and supplier increase. Mechanisms through which the final recipient does not even have to pay the initial costs to the supplier before reimbursement may be even more risky. In any case, a percentage of reimbursement approximating 100% removes any incentive to the final recipient for negotiating with the supplier, which may facilitate costs inflation by the supplier. However, it can be argued that a lower percentage of reimbursement can create an incentive for the final recipient to participate in the inflation of costs, to increase the percentage of effective reimbursement, pushing it towards 100%.

***Reflecting of the interaction between risks and threat – renovation works***

In the section devoted to the threat, later in this paper, there are consideration on a number of horizontal factors enabling fraudsters to attack public budgets. This includes networks of controlled companies. Organised crime can take advantage of this factor. In addition, following re-investment of illicit profits in the legal economy, organised crime owns assets, including real estate.

This puts organised crime in the position to take advantage, for example, of interventions supporting renovation of real estate for energy efficiency, safety, etc. Criminal groups may get this funding in relation to their buildings, including for inexistent, inflated or ineligible renovations implemented by their network of construction companies. The cost of this illegal operation would be related to taxes the construction companies should pay on their inflated turnover, but this would be an acceptable cost and, in any case, it can be avoided by inflating the costs of the construction companies (to cut profits and taxes) or even letting these companies go bankrupt.

***Example of risks related to investments F***

The investment may consist in granting a bonus to all persons that buy an asset with certain characteristics. The companies selling these assets may be required to introduce the requests in a dedicated system (managed by the implementing body) and keep the original documents (contract, invoice, etc.). The companies may be supposed to deduct the bonus from the invoice to the buyer and receive the same amount from the State. Apparently, this is a simple measure. However, these may be examples of potential risks: the companies may misreport the price of the purchase (different from the price in the original invoice), may include requests for assets that are not eligible (e.g. the actual price is too high or the asset does not have the required characteristics), may avoid mentioning and deducting the bonus in the original invoice/contract (so that there is no actual deduction/payment of the bonus to the benefit of the person buying the car), may misreport rents

as purchases. More than one dossier could be introduced for the same asset. The bonus could also be linked to the obligation not to resell the asset before a certain period or use. This might not be respected by the buyer.

Support to renovation works may take the form of a tax credit granted to the final recipient. This tax credit may be calculated as a percentage of the renovations costs. To address the problem of high initial costs, the final recipient may be allowed to transfer the tax credit to other entities. Fraudsters may create fictitious tax credits. Risks are increased by the absence of limits on the number of further transfers, by the possibility of splitting a tax credit between different entities, by the absence of a tax credit identification number and of a transaction identification code.

## Expected output and related indicators

This section outlines different types of targets that may be included in the NRRP. For each situation, it provides concrete examples and lists potential risks related to the assessment of the achievement of these targets.

### Target type 1: One large, centralised achievement

#### *Situation*

The target consists in completing **one or few large, identifiable deliverables**, related to **one project managed by one implementing body**.

#### **Examples of Target type 1**

*Hereafter, examples of Target type 1 are reported. The numbers reported between brackets refer to a single intervention mentioned in one of the National Recovery and Resilience Plans. They are reported to give an idea of the size of the challenge.*

Targets related to renewal of the fleets of national bodies may include the purchase of thousands of (zero emission) vehicles in a short period of time. In one case, the target includes 3,500 vehicles and 600 special vehicles of three different types. In another case, the target covers 4,200 electric and plug-in vehicles.

Targets related to building or renovating railway connections may be expressed in kilometres. In one case, the target aims at building nearly 300 kilometres of high-speed railway connections. In another case, it is the renovation of about 1,200 kilometres of lines.

Targets related to the development of high-speed broadband networks may be expressed in terms of additional premises connected (8,500,000) or eligible for connection (4,200,000), possibly in specific zones where it is more difficult to attract private investment. The target may be expressed also in square kilometres of market failure areas (15,000) or kilometres of roads and corridors (12,600) provided with high-speed coverage.

#### *General risks*

Target type 1 is exposed to two main risks:

- The first risk is that **the target may not have been actually achieved. The (chain) of recipient(s) may have provided incomplete/inaccurate/false information that is relevant to assess the achievement of a milestone or target.** This may also be due to the fact that the recipient(s) themselves have been provided incomplete/inaccurate/false information by the contractors or sub-contractors. The Member State should have proper mechanisms in place to **mitigate these risks** and to **ensure actual revision of the achievement of the target**, whenever such incomplete/inaccurate/false information is detected, before and after the related payment. Indeed, if significant, such irregularities could impact the fulfilment of the target, possibly with financial consequences (such as the suspension of funds if discovered during the assessment of

the payment request and prior to the payment or possible recovery, on a case-by-case basis, if discovered after the payment has been made).

- **The delivery may be in line with the planned target, but the process that led to the delivery may be affected by fraud, corruption, conflict of interest or other irregularities.** For example, the road has been correctly built, but the works contract was awarded to company A because of corruption in the public procurement procedure. Or the public procurement procedure was not adequately publicised. The scenario may be even more complex because the deliverable could require more than one public procurement procedure for works, services and goods.

Article 22 of Regulation 2021/241, establishing the RRF, requires the Member States to ensure that **the use of RRF funds complies with the applicable Union and national law**, in particular regarding the prevention, detection and correction of **fraud, corruption and conflicts of interests**. The Member States must correct the irregularity by for instance recovering the amounts wrongly paid or incorrectly used. Where the irregularities have not been corrected by the Member State, the Commission can recover or reduce proportionately its support under the RRF.

With reference to these cases (of targets achieved but affected by, for example, corruption, fraud or conflict of interests), it is important that national authorities set up proper mechanisms to monitor detection of these irregularities and related corrections and their impact on the target if relevant.

## Target type 2: Aggregation of many decentralised achievements

### *Situation*

These targets consist in completing **deliveries related to multiple projects and final recipients** under the management of **one or multiple implementing bodies**.

### **Examples of Target type 2**

*Hereafter, examples of Target type 2 are reported. The numbers reported between brackets refer a single intervention mentioned in one of the National Recovery and Resilience Plans. They are reported to give an idea of the size of the challenge.*

Targets related to renewal of the fleets of several local bodies may include the purchase of a significant number of vehicles in a short period of time (40,000 e-vehicles, 3,000 buses, 280 locomotives, 150 trains).

Targets related to strengthening proximity health services may be quite 'spread' over the Member States. For example, there are targets envisaging support to rural pharmacies in small municipalities (2,000 pharmacies), entry into service of community hospitals (380), community health houses (1,350), territorial coordination services (600), increase in the number of persons covered by home care (800,000) or telemedicine tools (200,000).

Targets related to the health services may cover the increase in the provision of services – such as more beds in intensive (3,500) and semi-intensive areas (4,200) – or availability of new equipment – such as large equipment for diagnostic (3,100) - or number of hospitals receiving allocations for new equipment (1,000).

Targets related to 'construction' may cover new buildings or renovations, including for safety, energy efficiency, for removing barriers and a wide range of public or private buildings across the Member State. The target may be expressed in number of interventions/buildings or square meters. For example, there are targets covering **(i)** hospitals (190 anti-seismic interventions); **(ii)** museums (352 interventions to remove barriers); **(iii)** cinemas, theatres, museums (420 interventions for energy efficiency); **(iv)** schools (195 new buildings covering 410,000 square meters, safety and rehabilitation of 2,100 schools covering 2,784,000 square meters, building and renovation of 230,400 square meters of sport facilities in schools, 681 schools, for energy efficiency); **(v)** public housing (building or improving 10,000 units, renovating 40,000 dwellings); **(vi)** public buildings (about 5,000 buildings of the State – covering 28,75 million square meters - and local authorities, for energy efficiency, 1,000,000 square metres).

Targets may also be expressed in terms of additional posts created across the Member State, for example new posts in nurseries and preschools (265,000, 90,000).

Targets may be related to improvements on the territory. In one case, the target covers small historic towns, including interventions for the enhancement of cultural or tourist sites (1,300) and support to relevant SMEs projects (1,800). In another case, the investment includes about 4,000 interventions for the protection and enhancement of rural architecture and landscape. In another case, the investment aims to improve the resilience, the enhancement of the territory and the energy efficiency of the municipalities and includes 30,000 small and 5,000 medium works. Targets related to urban regeneration may be expressed in terms of covered municipalities (300, 1,200) or square meters (1,000,000, 800,000 of public spaces).

Targets related to the improvement of education may be expressed in number of 'digitalised' classrooms (100,000, 45,000), number of students, possibly in specific situations, which are provided with special support (44,000, 185,000).

Targets related to support to SMEs may refer to the operation of hubs for technology transfer (42, to reach 4,500 SMEs).

Targets related to support to greening investments and to saving natural resources may be expressed in terms of reduction of tonnes of CO2 emissions (5 million, 1 million), tonnes of hydrogen produced (100,000), tonnes of plastic material avoided through recycling and reuse (275,000), percentage of separately collected waste (30%), hectares of forest (30,000), hectares of rehabilitated land (2,000), hectares covered by biodiversity conservations actions (50,000), kilometres of drinking water or sanitary networks (450) or number of inhabitants covered by these networks (175,000), kilometres of restored riverbanks or coastlines (200, 100) or inhabitants protected by these works (40,000), recharging points for e-vehicles (400,000, 20,000), MW of renewable generation (3,800) or MW of storage capacity (600).

The targets in the research field might be expressed in terms of success rate of relevant calls for projects. This must not push to lower the quality of projects accepted for funding. In one case, the target was expressed in terms of number of projects, total disbursement, number of publications, number of doctorates, number of collaborations with other research institutions, industrial companies, start-ups, public administrations, number of prototypes of mature technologies, number of patent applications, number of start-up projects.

### *General risks*

The nature of the risks related to Target type 2 is similar to the risks related to Target type 1. However, they are **amplified by the number of different projects/ recipients involved and the number of different bodies implementing these projects**. For example, the Member States are responsible for assuring that data reported by all final recipients about the indicators that are relevant to assess the achievement of the target at national level are true and accurate. In case the final recipients are supposed to communicate the increase of the value of an indicator with respect to their baseline situation (the situation without the specific project funded under the RRF) the Member States are responsible for ensuring that the declared improvement is true and accurate (see also considerations in the section on Investments type B). This might apply also to Targets type 1, but for Targets type 2 it may be amplified by the number of projects and final recipients.

**The aggregation process of the information provided by the final recipients may produce inaccurate results.** The risk is even higher when the aggregation process takes several steps, because several implementing bodies are involved in the implementation of the intervention.

## Target type 3: Aggregation without previous selection

### *Situation*

The target consists in **taking stock of activities declared by private persons or economic operators**, without an implementing body managing and controlling the intervention, by selecting eligible projects and supervising their implementation.

### **Examples of Target type 3**

*Hereafter, examples of Target type 3 are reported. The numbers reported between brackets refer a single intervention mentioned in one of the National Recovery and Resilience Plans. They are reported to give an idea of the size of the challenge.*

The target may consist in the number (111,700, 3,500, 5,000) or amount of tax credits granted to companies for specific types of investments (for example, for digitalisation, for energy efficiency, for the competitiveness of tourism enterprise).

The target may aim at improving energy efficiency and safety of private buildings. This type of target may be expressed in terms square meters (32 million, for energy savings, 3.8 million for anti-seismic purposes) or households receiving the grant (700,000, 40,000).

The target may consist in the number of employees benefiting of reskilling (90,000), number of apprentices hired (330,000, 70,000), number of recruits with certain characteristics (100,000, with certain qualifications, 340,000, in a specific sector, 65,000 with a certain age).

### *General risks*

Target type 3 is exposed to risks that are similar to Target type 2.

Because of the **potentially huge number of operations** concerned and the fact that **they have not been previously selected**, it may be **even more difficult to:**

- Detect **incomplete/inaccurate/false information about outputs**.
- Correctly **aggregate the outputs**.
- Detect **fraud, conflict of interests**, etc., and **keep track of detections and related corrections**;
- **Ensure fulfilment of the target** (for example, following ex-ante checks carried out before payment is done, audits or other types of checks or investigations).

### **Examples of risks related to Target type 3**

The target is based on the number of supported renovations with certain characteristics and that started after a specific date. The reporting system may wrongly include also renovations for which the relevant characteristics are not certified or renovations that started before that date. The reporting system may still include also renovations for which financial support has been denied/withdrawn by the competent authority (possibly because of irregularities or fraudulent activities).

The target is based on the number of financial bonuses granted to the public for the purchases of assets with certain characteristics (see above the example of risks related to investments F). The reporting systems may rely on data introduced by the companies selling the assets, which keep the original documents. In the reporting system, the companies may include documents that are different from the originals or that are different from the ones that are supposed to be uploaded. In the reporting system, more than one dossier could be introduced for the same asset, which would result in double counting. This could be the result of a mistake or even fraud, if the financial support is actually granted for inexistent purchases. In addition, the reporting system could be unable to take into account cases when assets are resold before a certain period or use. In these cases, the bonus could be withdrawn and this could be relevant in terms of achievement of the target.

## The threat (enabling factors)

**Several enabling factors may increase the capability of potential wrongdoers** to exploit vulnerabilities and cause damage to public funds.

In the following sections, several enabling factors are discussed. These sections are complemented with **short descriptions of past cases**, mainly investigated by OLAF. Due to the competences, tasks and investigative powers of OLAF, these descriptions are not based on criminal investigations or sentences by a judicial authority that could reach conclusions about the perpetration of crimes, such as fraud or corruption. When closing an investigation, OLAF can only make recommendations based on its findings. Recommendations following the investigations may be for a financial follow-up or also for a judicial follow-up, in case the findings suggest possible perpetration of a crime, such as fraud, to be further investigated by the competent authorities. Therefore, in some of the cases reported below, there might have been just a recommendation for financial follow-up, implying insufficient elements for a judicial follow-up. In any case, references to fraud, fraudsters, corruption, etc. in the descriptions must not be interpreted as necessarily based on conclusive evidence, for example about intentionality or about the existence and meaning of certain transactions or agreements. It is up to the ensuing (or parallel) criminal investigation, prosecution and trial to ascertain it. However, OLAF's findings at the time of the case closure still help showcase how certain enabling factors can contribute to wrongdoings to the detriment of the public budget.

Sometimes, the reported example may not fit perfectly with the heading in the boxes, because of the lack of an explicit finding about certain elements of the irregular behaviour. However, these descriptions are still deemed to be useful, as they showcase scenarios where certain entities may have the potential to leverage certain enabling factors.<sup>15</sup>

The following sections must be read while bearing these caveats in mind.

### Corruption, conflict of interests and collusion

**Corruption may be a strong tool in the hands of potential wrongdoers.** Corruption may be used to influence public procurement procedures (to get access to privileged information, tailored qualification requirements or technical specifications, preferential treatment, etc.), but also to influence the selection of projects or supervision over their implementation. Criminal groups use bribes to elicit information or directly influence the evaluation of bids in order to win public tenders.

#### ***Possible scenarios related to the use of corruption***

Case A1: A public company X in Member State A launched a public procurement procedure for works for road infrastructure. Public company X awarded the contract to a joint venture composed of three companies (established in Member States A, B and C). Three months before the award of the contract, two of these three companies (the ones established in Member States A and B) had signed service contracts with two other companies (established in Member States A and D), both owned and controlled by person Y, which had very close links to a number of senior people in the national administration of Member State A. According to the investigators, these service contracts were used to make payments for fictitious services, which masked illegal payments to person Y for using his close contacts with the national authorities of Member State A to influence the award of the contract. This allowed transferring money from bank accounts in Member States A and B to bank accounts in Member State D, and then again to accounts owned by person Y in Member States A, C and D. (OLAF Report 2020)

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<sup>15</sup> For example, Case A1 is reported under 'Possible scenario related to the use of corruption', while corruption is not even mentioned in the description. Depending on the national legal system and available evidence, the ensuing criminal investigation may have focused on corruption or other crimes. However, the information reported under Case A1 is still useful to show how corruption could work. Even if OLAF may have not found evidence about advantages gained or intentionality related to the senior people in the national administration in Member State A, the case shows a situation where person Y (acting to the benefit of the winning joint venture) may have the potential to resort to corruption.



Case A2: The investigation concerned a project for the supply of medical instruments and equipment in a third country. Company X established in Member State A had access to confidential documentation and information prior to the publication of the tender and had paid bribes to a key person working in the organisational structures of the project in the third country. Company X had also relied on the services of its subcontractor and of a local businessman to communicate with the corrupt official and to hide the payment of bribes. (OLAF Report 2018)

Case A3: Company X established in a Member State had set up a network of partners in third countries, which unlawfully supported company X in winning contracts. Through its partners, the company gained access to confidential information related to the procurement procedures. Furthermore, company X bribed high level public administration officials to influence the outcome of the work of the evaluation committee. (OLAF Report 2018)

Case A4: The investigation concerned support to free food programmes for the poorest European citizens. A criminal gang in Member State A used a complex scheme of fictitious purchases, companies and off-shore accounts to hide the proceeds they received in exchange for corrupting senior officials in an agency in Member State B. These officials made false declarations and illegal advance payments for products that were never delivered. The criminal network carried out illegal activities in at least eight different countries, six of which were Member States. (OLAF Report 2016)

Case A5: A building company presented documents about the execution of works that had not been carried out or had been carried out with lower quality materials. These works were approved by the site supervisor in exchange of a bribe. (Fraud in Public Procurement: a collection of red flags and best practices)

**Conflict of interest may be conducive to fraud.** Conflict of interests provides the reason (mutual interest) and the ‘infrastructure’ of interlinked officials and economic operators that may be easily exploited for fraudulent purposes. Conflict of interests may concern a wide range of:

- players, including for example (i) staff of or experts working for the body in charge of the implementation of the measures (e.g. staff/experts dealing with the evaluation/selection or control of projects); (ii) staff of or experts working for the contracting authority for procurement procedures; (iii) the final recipients (including partners of a *consortium*); (iv) the contractors; (v) the sub-contractors. To assess conflict of interests, beneficial ownership must be taken into consideration, for example with reference to final recipients and contractors. Conflict of interests may also follow prior involvement in the preparation of the procurement procedure or selection;
- and activities, such as preparation and launch of the procedure (e.g. drafting tender documents), evaluation of tenders/proposals, final decision about award, implementation, supervision and control, changes to the awarded contracts, etc.

The body in charge of the implementation of an RRF measure might also be entrusted (under another support scheme) with participating in certain projects developed by private companies (e.g. through direct financing, acquisition of assets, acquisition of shares in companies). It is possible that these private companies apply for financial support under the RRF measure, for example participating in a procedure for the selection of projects launched by the implementation body. This leads to a situation of conflict of interests that must be adequately prevented and addressed.

In this paper, conflict of interests is treated as an enabling factor that may be conducive to fraud and other irregularities. However, conflict of interests must always be prevented and addressed in itself, in line with article 61 of the EU’s financial Regulation and other relevant EU and national rules.<sup>16</sup>

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<sup>16</sup> The Commission Notice on Guidance on the avoidance and management of conflicts of interest under the Financial Regulation, C(2021) 2119 final, 7.4.2021, provides with examples on how to interpret and apply the EU rules in order to facilitate implementation, to encourage good practice(s) and avoid situation of conflicts of interest.

### ***Possible scenarios related to conflict of interests***

Case B1: The beneficiary company X awarded works to firm Y, which had no employees. Firm Y subcontracted to company Z, which was owned and managed by a close family member of the owner and manager of the beneficiary company X. *(OLAF Report 2020)*

Case B2: Close personal and operational links between the companies involved led to a conflict of interests. A beneficiary X in the Member State A received funding to set up an innovative production line. The production line was delivered to the beneficiary company X by its mother company Y established in Member State B. Company Y was selected through a manipulated tender procedure. The main components of the line, produced by different European companies, were provided by a subcontractor located in a third country, belonging to the same group of the mother company Y. The purchases of some components of the production line had already started before the official launch of the project and before the tender procedure for the selection of the supplier of the production line. The supply chain of the major components of the production line was complex and this facilitated the inflation of the price of some components by about 70%. *(OLAF Report 2018)*

Case B3: Before the launch of a tender procedure, a member of the evaluation committee (person A) had been in regular contact with the director of company X. Person A and the director of company X had long been friends, but the conflict of interests was not declared. Furthermore, company X had been involved in drawing up the technical specifications for the tender, which clearly gave an unfair advantage. *(OLAF Report 2020)*

Case B4: Several projects aimed at updating certain infrastructure in various municipalities. The initial cost estimations calculated by the applicants were irregular, with artificial supporting documents used to justify the cost-benefit analysis. Moreover, a consulting company linked with the main contractor had signed a contract with several beneficiaries to draft the technical annex to their project application, and could thus influence the content of the technical specifications used by the beneficiary during the tender procedure. The investigators also uncovered numerous serious irregularities that had occurred during the public procurement procedures: lack of publication of tender procedure, selection criteria not related and proportionate to the subject contract, discriminatory technical specifications. *(OLAF Report 2017)*

Case B5: An economic operator successfully applied to deliver vocational training projects. However, the operator did not possess the expertise and qualifications required by the call for proposals. Therefore, the operator (final beneficiary) delegated the implementation of the project to a contractor, without informing the managing authority and in breach of the terms of the call for proposals. A member of the evaluation board of the managing authority had an economic interest in this contractor. *(OLAF Compendium of anonymised cases – structural actions)*

Case B6: The final beneficiary (a public body) was awarded a project for the implementation of a new information system. The project was then contracted to a private company (the contractor) whose activities had to be monitored by a Committee appointed by the final beneficiary. However, the Chairman of the Committee was the scientific advisor of another company involved in the project and paid by the contractor. The Committee, following pressure from its Chairman, certified the conformity of the project deliverable, even though it was not functioning properly. *(OLAF Compendium of anonymised cases – structural actions)*

Case B7: Subsidies were awarded to final beneficiaries for actions to improve the efficiency of local administrations. The shareholders of the final beneficiaries were politicians and local government representatives. The managing authority was part of a national administration led by people belonging to the same political party as the shareholders of the final beneficiaries. The contractors of the final beneficiaries were relatives of the shareholders of the final beneficiaries or their employees. *(OLAF Compendium of anonymised cases – structural actions)*

Case B8: A contract for design services was awarded through a public procurement procedure. The winning tenderer undertook not to subcontract any part of the contract, but then he subcontracted parts of it to company A. Two public officers who served as members of the evaluation committee for the procurement procedure were employed by company A. *(Identifying conflicts of interests in public procurement procedures for structural actions – A practical guide for managers)*

Case B9: OLAF identified conflict of interest issues affecting several projects co-financed under different programmes in the same Member State and linked to energy efficiency and interregional cooperation. In each of the projects, an association established in that Member State was a partner or a lead partner in a

consortium of entities. This association outsourced most managerial, communication and administrative tasks to a company, using a simplified tendering procedure. The OLAF investigation revealed that the chair of the association and the CEO of the company that had been the beneficiary of the outsourcing were in fact the same person. *(OLAF Report 2021)*

**If it is not corruption or conflict of interests, collusion between final recipients and contractors may fuel illegal schemes.** Collusion may be instrumental to inflate prices, mask shortcomings in implementation, simulate competition (e.g. through artificial bids in procurement procedures), etc.

***Possible scenarios related to collusion between beneficiary/final recipient and contractor (or between main contractor and sub-contractors)***

Case C1: One person in Member State A was managing four economic operators, beneficiaries of projects funded by the EU. This individual colluded with two contractors established in Member State B to receive incorrect or false documents that the beneficiaries submitted to the managing authority in Member State A. For example, one contractor issued 'courtesy' invoices with artificially increased values. The service agreements concluded with the main beneficiary in Member State A were fictitious. The invoices used to justify the financial transactions were issued for goods that were not delivered or service that were not provided. *(OLAF Report 2018)*

Case C2: Two closely related companies had received funds to implement two projects aimed at developing circular broadband networks. Both beneficiaries subcontracted 100% of the works to the same general construction company. This contractor further subcontracted both works through a complex chain involving several layers. This complex chain was used to disguise the transfer of funds back to one of the original beneficiaries through a third party in another Member State. In this way, the two beneficiaries artificially increased the project value and received undue funding. *(OLAF Report 2018)*

Case C3: Beneficiaries of the EU funds and suppliers colluded with regard to knitting machines funded at more than double their price. The entire procurement process was undermined through false offers, fraudulent agreements and kickbacks. Various methods were used for 'returning' the inflated amounts. In one case, for example, the supplier agreed to buy from the beneficiary worthless second-hand machines at inflated prices. *(OLAF Report 2019)*

Case C4: The project concerned building of a medical centre in Member State A and the purchase of the necessary medical equipment. The centre bought the medical equipment from company X for 100. In reality, company X had bought the medical equipment from company Y established in Member State B for 15. Company X then paid 75 to company Z in a third country, which provided an interest free loan of 72 to the medical centre. Much of the equipment was not used at all and other equipment was located in sites outside the disadvantageous region for which it had been funded. *(OLAF Report 2014)*

Case C5: The project concerned the building of a bridge. The beneficiary, constructor and designer conspired to use inferior materials in the construction works, in breach of the contract for implementing the project. As a result, the bridge was sub-standard and already showed signs of damage. The construction company breached several law provisions aimed at ensuring quality and safety of the bridge, which was therefore unsafe *(OLAF Report 2007)*

Case C.6: This case concerned alleged irregularities and fraud regarding the implementation of a project to restructure and convert vineyards. OLAF found that some of the local workers on the project did not have an employment contract. OLAF further uncovered that the main contractor had artificially inflated the costs of the works, part of which had actually been implemented by local workers employed by sub-contractors at lower costs. OLAF subsequently discovered that an economic operator from another Member State had reverted part of the amounts invoiced to the main contractor, which possibly constituted money laundering. *(OLAF Report 2021)* For the purpose of this risk framework, this can be considered an example of collusion (in case another independent company was invoiced the inflated costs for an inexistent role in the works) or an example of network of companies (in case such a company belonged to the same group of companies). Also the role and position of the sub-contractors is relevant for such a classification.

## Networks of companies

**Potential wrongdoers may use networks of companies, including fake and shell companies to:**

- **file multiple (similar, if not identical) applications for funding** in the framework of the RRF, ESI Funds, etc. Specific risks include double funding, potential conflict of interests, replication of fraudulent schemes, etc. The same or very similar services or supplies can be delivered in different projects, pretending they have been developed *ex-novo* to justify fictitious, overlapping, inflated costs (risk of double-funding, or of fraudulent delivery of ‘off-the-shelf’ products, publicly available products, etc.);
- **control the supply chain of the project.** Applicant and suppliers of the applicant may belong to the same network, with obvious consequences in terms of reliability of their transactions and potential for costs inflation. Long chains of supply can be set up to facilitate price inflation. Companies of the network may be also used to submit artificial tenders in (private or public) procurement procedures to simulate competition (cover bids);
- **hide beneficial ownership.** This may cause public funding to end up in the pockets of entities who should not participate in the implementation of these actions (for example because of criminal records) or it could be used to simulate competition in certain procedures, while several entities are controlled by the same beneficial owner;
- **build artificially long supply chains,** blurring the identification of the producer of fake or substandard products (besides hiding actual costs – see above). These products may be covered by certificates (attesting the required quality) that are fake, misleading, issued by entities that are not authorised for that. In the case of emergency, the risk of entering into a contractual relationship with unreliable/not sufficiently vetted counterparts is higher, especially when balance between demand and offer is altered and the supply chains are disrupted.

***Possible scenarios related to the use of networks of companies***

Case D1: In a project to purchase medical equipment for diagnostics, the fraudulent scheme was based on a network of companies that the beneficiary of the contract (a company established in Member State A) had set up outside the EU. These companies established fake transactions among themselves for the sole purpose of increasing prices, before finally selling the medical equipment to the beneficiary company in Member State A. The price was so massively inflated that it covered the share of the project costs the beneficiary company was obliged to fund with its own resources – and even allowed the company to make a profit. The medical equipment concerned was never used by the beneficiary. (*OLAF Report 2020*)

Case D2: Over several years, three companies involved in several projects used fake and inflated invoices, manipulated tendering procedures and falsified project documentation to obtain funding. The owners of these three companies, or their relatives, owned several other companies that were directly or indirectly involved in the implementation of the projects. In most of the projects, the tender procedures were highly irregular; in many cases, only one offer was provided. If the beneficiary received several offers, one was usually from a company owned by a relative or, if three offers were required, they stemmed from the same group of companies. Sometimes, the companies of the people concerned acted as suppliers to the companies that won the calls for tender. Sometimes, the allegedly independent companies provided their offers from the same email address, or shared a postal address or office. As a result, prices accepted by the beneficiaries were inflated. For example, if a company bought an item for EUR 40, it would then lease that item to an intermediary company for EUR 45 per month. This intermediary company would then win the call for tender to hire out such items, for EUR 48 per month. (*OLAF Report 2019*)

Case D3: The investigation concerned research projects. Opaque networks of interrelated companies operating in the research sector and in several Member States were presenting misleading proposals and claiming reimbursement for non-existent or highly inflated expenses, using mainly fictitious companies as consortium partners or subcontractors. The fraudulent scheme included: (i) inflating costs (charging costs which did not correspond to the services provided) based on fake invoices; (ii) claiming fictitious costs based on fake invoices; (iii) charging costs incurred for researchers in several projects (the same individuals were apparently working at two office addresses at the same time); (iv) claiming time for ‘researchers’ who did not exist; (v) claiming time for existing researchers who never worked on the project and were not even aware that their names were being used; (vi) submitting deliverables which were almost entirely copied from the web

(plagiarism); (vii) charging cost items such as the beneficiaries' overheads. *(OLAF - Prevention of fraud networks in EU-funded research projects – Lessons drawn from the 'Cocoon' case)*

Case D4: Several agricultural operators in Member State A had reached the limit for the total eligible cost for EU financial support for their holdings or groups of holdings. They aimed at expanding their operations and holdings. They created seemingly independent operators, which were actually under their control, to apply for EU funds. The new 'independent' operators had either been set up especially for this purpose, or they already existed through a creative legal restructuring that made them appear like they were not under any formal control. In reality, they were managed by the same operators: they usually shared the same equity provider, guarantor, creditor or landlord, and they had an identical or complementing core business. Often the physical location of the holding, the address for correspondence and the choice of suppliers and outlets were the same as those of the 'old' operator. *(OLAF Report 2018)*

Case D5: The investigation concerned many research and development projects and took place in two Member States and one third Country. A subcontracting scheme was used to artificially increase project costs and hide the fact that the final suppliers were linked companies. Two research centres had artificially set up regional offices to be eligible for regional EU-funded projects. Declarations related to work contracts were false. *(OLAF Report 2017)*

Case D6: A beneficiary applied for funding to purchase certain production equipment and submitted three bids received from the potential suppliers of the equipment. Experts detected signs indicating that bid 2 and bid 3 had been composed by the same person. Moreover, according to the web homepages of bidders 1 and 2, the same person (with the same phone number) represented both of them. Bidder 3 was registered in another Member State and little information was available about it; however bidders 3 and 1 shared the same board member. As a result, the suspicion was that at least one person had links with all three bidders and consequently the bids were not independent. *(Fraud in Public Procurement: a collection of red flags and best practices)*

Case D7: The project concerned the modernisation of a refrigeration plant for fruit and vegetables in Member State A. This included a procurement procedure for machinery. The beneficiary plant in Member State A was owned by company Z established in Member State B, managed by person X. Person X was also the beneficial owner and manager of company Y, which won the procurement procedure for the machinery. Company Y was just a shell company, acting as a mere intermediary, which simply sold on the machinery to the beneficiary plant for a substantially inflated price. *(OLAF Report 2015)*

Case D8: An economic operator had implemented several projects. Most of the funds supported IT work, including projects for the creation or the acquisition of software. At the beginning of the inquiry, the investigators realised that the economic operator provided consulting services on obtaining EU funding, which meant that dozens of additional EU co-funded projects could be affected by fraud. A network of companies systematically rigged tenders, provided the managing authorities with false statements of facts, misrepresented the activities carried out and led external stakeholders into committing irregularities or fraud. The network consisted of companies which were just formally independent. Additional companies owned by employees of the economic operator and collaborating third party economic operators completed the picture. The existing connections between the companies were concealed through shell companies established in a third country. The apparent suppliers employed the same staff as the person concerned or provided paper services to the person concerned, to circulate the money. *(OLAF Report 2018)*

Case D9: The context is rural development. The objective of the fraudsters is to get funds for the purchase of specialised equipment (e.g. for packaging or processing) at highly inflated prices. As this equipment is specialised, there is no clear market price of reference.

Company A in country X (the beneficiary) applies for funding to buy agricultural machinery. Company A is a real company, owned and managed by the main fraudsters. Other companies are paper companies and are established in other Countries. The administrators of these paper companies are fraudsters belonging to the same criminal group or they are straw men. These companies can be used as part of the supply chain (to inflate the price or to keep a distance from the real manufacturer) or for money laundering purposes.

To buy to equipment, company A must launch a procurement procedure, based on at least three offers. The winning offer is from one of the paper companies (company B in country Y) belonging to the criminal network. The other offers may be from other companies belonging to the same network or they may be false offers presented in the name of real but unaware companies. The same companies may be involved in several

procurement procedures for different machineries.

Company B pretends being the manufacturer of the specialised machinery. In reality, it sells to company A (the beneficiary) machinery produced by company Z (the real manufacturer, which is not part of the criminal network).

Company B does not buy the machinery directly from company Z. The machinery is finally sold to company B, after intermediary transactions through other paper companies belonging to the criminal network, which may be established in different countries. These intermediary transactions may be used to inflate the price and to cut the trail leading to the real manufacturer (and the real price). The criminal scheme may work also in the case of second-hand equipment that is bought from other companies (not directly from the manufacturer) that are not part of the network or without previous price inflation in the intermediary steps. In fact, the price might be increase directly at the last step, when company B (which pretends being the manufacturer) sells the equipment to the beneficiary, company A. However, price inflation in the previous intermediary steps may serve other purposes of the criminal network, such as distributing the illicit gains in different companies and countries. To hide the fact that the machinery is second-hand and manufactured by company Z, the labels and marks on the machinery are substituted. This may require cutting parts of the machinery.

The price paid by company A (the beneficiary) to the paper companies of the criminal network may be further inflated, based on fictitious costs for installation, maintenance, etc.

As the paper companies are established abroad, the fraudsters put in place fictitious sales from company A to other companies belonging to the same criminal network to move the money back in Country X. These sales may concern second-hand equipment or goods that are supposedly produced with the funded machinery. These sales may be completely fictitious (and this may require false transport documents) or at inflated prices.

*(possible modus operandi, based on OLAF investigative experience)*

Case D10: OLAF concluded an investigation in a Member State relating to a potentially fraudulent structure involving three private companies and an association. The three companies had established the association and were managing it directly. The association had no own material or human or financial resources, and the employees concerned worked for the association and at the same time for the companies. The service providers for the association were the very same companies that had set it up. In addition, OLAF discovered a series of further irregularities, such as cross-invoicing and inflated costs. *(OLAF Report 2021)*

## Entities providing 'expertise'

Schemes to the detriment of public budgets can be facilitated by **fraudulent companies providing assistance** to applicants to get public funding or to final recipients to implement their projects. When they are legal, these services can be of great assistance to implementing bodies or contracting authorities, but they can also be a facilitating factor for fraud, for example for abusing procurement or selection procedures (with or without the involvement of staff of the contracting or implementing authority). Fraudulent companies may form hidden networks and be involved in many projects. The risk is higher when companies or corporate groups offer simultaneously assistance on getting public funding and other products that can be acquired with this public funding.

### ***Possible scenarios related to assistance to applicants or beneficiaries/final recipients***

*'One of the main common features of the OLAF cases concluded in 2017 was the collusion between the winner of a tender and either a consultant or the beneficiary of the funding.'* *(OLAF report 2017)*

Case E1: Two investigations concerned projects for road construction in Member State A. The representatives of a municipality (the beneficiary) colluded with representatives of the company who designed the technical specifications for the road, to establish restrictive criteria in the tender documentation that would benefit company X. Company X won the contract, while the rest of the tenderers were disqualified during the initial evaluation phase. A large number of documents were falsified, which were not only used by the municipality in the tender procedure related to the works, but were also later submitted to support a claim for reimbursement. *(OLAF Report 2017)*

Case E2: The investigation concerned a fraud scheme involving consultants who acquired inside information by illegitimate means and then sold this to clients who then bid for contracts. The consultants themselves had no

contractual relationship with the contracting authority. The 'hidden consultant' had influenced the preparation of the projects and the terms of reference, had identified experts of interest to their clients' companies, prepared the clients' bids, and influenced the awarding of contracts, in return for a "success fee". The scheme relied on the complicity of staff involved in the preparation and implementation of projects in the contracting authority. *(OLAF Report 2010)*

Case E3: The company that won the tender had benefited from confidential information ahead of the procedure, giving it a competitive advantage. The information was leaked by a contractor that had assisted the implementing body in preparing the tender documentation. *(OLAF Report 2019)*

Case E4: Some consulting companies approached potential grant applicants offering to help write grant proposals. Once the grant was obtained, the beneficiary subcontracted a large part or even the entire implementation of the project to the consultancy in return for a mutually agreed management fee. However, business consultants can also turn out to be shell companies, created with the sole purpose of redirecting the money for the personal enrichment of representatives of the contractor/beneficiary. In such a scheme, the consultant receives a success fee for assisting the contractor/beneficiary in the preparation of its application and later reappears as an important subcontractor in the project. The success fee is channelled in the form of bribes to individuals holding key positions in the contractor/beneficiary's structure. *(Casebook of OLAF investigations in the field of external aid)*

Case E5: A public authority signed a contract with a company for consultation services to prepare the technical specification for an IT public procurement. Many potential tenderers consulted the tender documentation; however, only one of them participated, most probably due to the discriminatory requirements in the tender documentation. The winner was a company where the chairman of the consultation company had gained income in previous years. *(Fraud in Public Procurement: a collection of red flags and best practices)*

Case E6: The government bodies of a third country have been approached by a consultant who convinced them that he would arrange things so they could request and obtain a grant that his consulting firm would manage and implement on their behalf. The grant applications were indeed successful and the first payments were made to the authorities who, in turn, transferred the funds to the consultant. In breach of their contractual obligations, according to which they had to implement the projects primarily by their own means, the authorities conferred responsibility for managing the funds and implementing the project on the consultant. The same pattern also appeared in other grant contracts involving the same consultant. *(OLAF Report 2009)*

Case E7: The scheme concerns projects for promoting agricultural products in EU and non-EU countries. The perpetrators approach trade associations in the Member States offering help to secure EU funding – 'turn-key' solutions for the approval of their proposals and practical support for their implementation. This may include lending to the potential applicants the financial resources for the percentage of co-funding they are supposed to contribute on their own and the financial resources for the performance guarantee. In this manner, the applicants obtain EU funding to organise and implement the promotion activities. The contracts for the implementation of the projects are then awarded to the economic operators linked to the perpetrators, which could be based in different Member States. These awards follow procurement procedures for the selection of the implementing bodies that deviate substantially from the requirements of a competitive procedure. The perpetrators create a circle of shell companies under their control, to fulfil the roles of tenderers, suppliers and implementing body for the beneficiaries. The shell companies have neither operating premises nor employees. This network is used to inflate prices for services that are only partly or just never delivered. The amounts lent by the perpetrators to the beneficiaries in order to finance their own contributions to the project are not paid back by the beneficiaries. *(possible modus operandi, based on OLAF investigative experience)*

Case E8: OLAF received several allegations of irregularities and fraud concerning the implementation of numerous software projects in a Member State. OLAF established that a group of companies had artificially created conditions for obtaining public funding and made false declarations to the national authorities to conceal its behaviour. In some of the projects, members of the group of companies had acted as beneficiaries, consultants, suppliers and service providers, thereby creating a situation of conflict of interests. In other projects, the group had drafted applications for funding for its clients, after agreeing with them that the group's members would later become project suppliers. One of the eligibility conditions for participation in the tender being the involvement of an accredited consulting company and qualified suppliers (scientific institutions), the group also persuaded eligible companies to participate in some projects and then transferred to the group members (acting as suppliers) most of the funding received. The case covered many projects.

**A limited number of the experts may be involved in the assessment of projects, especially for calls on very specific subjects related to research and innovation.** In addition, the funding scheme based on a **coordinator** (in charge of the management of the project) and partners (carrying out the research activity) can be abused by the coordinator that, after receiving the EU funds, may not turn them to the research partners.

**Examples of abuse of coordinator position**

Case F1: The investigation concerned research projects. The coordinator was supposed to pass on a share of this funding to the other members of the consortium involved in the projects. The organisation had failed to meet its obligations as coordinator of the projects, notably by failing to pass on any of the EU funding it had received. Instead, the amounts were transferred through a complex web of bank transfers to another organisation based in a different country with close ties to the management of the coordinating organisation; the money was used for private purposes entirely unrelated to the research projects. (OLAF Report 2020)

### Colluding competitors

**A limited number of players in the relevant market may increase opportunities for coordination of price quotations in procurement procedures.** The NRRPs are pushing for accelerated investment in specific sectors. This may contribute to increase demand with respect to a (more) rigid offer, which could translate in a stronger position for companies participating in tender procedures, especially in markets featuring few players. This could increase the capacity of these companies to enter into collusive agreements and market sharing. For example, this may translate in (i) artificial tenders to simulate competition in procurement procedures (cover bids, with no intention to win, because of the quality of the proposal or the high price); or (ii) coordinated participation in the procedures (including in lots within the same procedure). The companies that are not awarded the main contract may become sub-contractors, suppliers or just receive a payoff. In case of agreements over a longer time span, the illegal benefits from collusion can be shared by rotating in the award of the main contracts in several procedures during time or across regions.

**Possible scenarios related to collusion among bidders**

Case G1: An administrative investigation by OLAF concerned a cartel of health equipment manufacturers and distributors in a Member State. Based on national findings, the OLAF investigation established that the companies engaged in an illegal collusion by sharing the public procurements and agreeing on the prices. Besides, in certain cases the manufacturers and the distributors signed pre-contract agreements facilitating the market split. In several public procurements, the distributors refused to provide offers to companies planning to bid, thus restraining the competition. The existence of the cartel was established by the National Competition Authority and recognised by some of the companies in a settlement agreement. (OLAF investigation)

Case G2: A cartel among producers of paper envelopes in Member State A was detected. Those companies secretly agreed to split the market of paper envelopes used in elections. The colluding companies held regular meetings to decide on the winner of each contract or lot and the price of the winning bid. The other colluding companies committed themselves to submit cover bids. Subsequently, the designated winner secretly subcontracted a part of the contract to the rest of the members of the cartel at a pre-determined price, so that each of the involved companies could benefit. (Fraud in Public Procurement: a collection of red flags and best practices)

Case G3: An IT public procurement was divided into lots. The tenders were not evaluated against the tender documentation. The winner did not even have the necessary certificates. Probably both competitors had decided beforehand who will win and in which part of the procurement. It was highly suspicious that for one part they prepared a detailed offer for IT solutions and for the other part they submitted just a formal offer. (Fraud in Public Procurement: a collection of red flags and best practices)



Case G4: A local authority organised a tender to build a new road and awarded the works contract to one of the construction companies. Later, it turned out that the winner had subcontracted about half of the works to another local company who had also participated in the tender and had made the second-best bid. As a result, there was a reason to suspect that the two bidders had agreed not to compete against each other, but were working together in the bidding process. (*Fraud in Public Procurement: a collection of red flags and best practices*)

## False documents and statements

**False, incorrect, inaccurate documents or statements are common tools in illegal schemes.** For example, they may be used to evidence compliance with the eligibility/selection/evaluation criteria set by the call (including operational and financial capacity), overstate costs, hide shortcomings in implementation, simulate competition in procurement procedures, etc. The types of relevant false documents depend on the type of project and on the phase of the projects where they are used. These may include, for example, invoices, transport documents, contracts, guarantees, financial statements, statements about operational capacity, previous experience, offers, bids, progress reports, final reports, acceptance reports, testing reports, technical reports, energy saving certificates, quality certificates, etc. False documents may be spotted focusing on the format or content of the documents or on other circumstances (such as company not registered in the business activity register) and inconsistencies between documents/information available (such as in numbers and dates of invoices issued by the same entity).

### ***Possible scenarios related to the use of false/incorrect/inaccurate documents***

Case H1: The shareholders of the final beneficiary (limited company) created another limited company which had no other aim than to issue false invoices to be passed on to the final beneficiary to inflate its costs. This non-operational limited company was based at the same premises and allegedly had the same staff as the final beneficiary. (*OLAF Compendium of anonymised cases – structural actions*)

Case H2: A final beneficiary implemented several vocational training projects, receiving subsidies from different managing authorities within the same Member State. The final beneficiary claimed staff costs of more than twice the actual costs. The final beneficiary used two different methods to inflate its staff costs: a) it declared a false (and inflated) hourly rate of staff costs. In fact, the real costs of the salary plus tax plus the social contribution and administrative expenditure for each employee turned out to be half of the costs claimed; b) the number of working hours declared was inflated. To conceal the fraud, in the declaration of expenditure, the final beneficiary included a false certification related to its costs, issued by a certified auditor. (*OLAF Compendium of anonymised cases – structural actions*)

Case H3: The final beneficiary overstated its costs by presenting false documentation and false invoices related to training courses that had not or had only partially been carried out. The final beneficiary falsified some supporting documents: accounting books, presence lists, purchase invoices. The person in charge of checking these documents had been bribed by the final beneficiary. (*OLAF Compendium of anonymised cases – structural actions*)

Case H4: A municipality was the final beneficiary for a project for renovating and preserving an old historic building. However, the application was supported by false declarations and false documents about the fulfilment of the eligibility criteria laid down by the call for proposals. The false declarations referred to the ownership of the land and of the building to be renovated, as well as to the real aim of the project (to convert an old historic building into a hotel rather than preserve the local heritage). Due to the political pressure exerted on the managing authority by representatives of the municipality and to the false documentation submitted, the project was accepted for funding. The final beneficiary awarded the works to a company in which the mayor and other representatives of the municipality had an economic interest. Finally, during the implementation stage of the project, the final beneficiary submitted false invoices produced by its contractor to inflate its costs. (*OLAF Compendium of anonymised cases – structural actions*)

Case H5: The final beneficiary was awarded a project for the construction of sport infrastructure. The project was contracted to a temporary association of enterprises. The contractor invoiced for identical works more than once. These invoices described the works using slightly different terms to conceal the fact that they

referred to identical works. Moreover, to build the sport infrastructure, the contractor used materials which were less expensive and of lower quality than those stated in the contract with the final beneficiary. Staff of the final beneficiary monitored and certified the correct execution of the works. *(OLAF Compendium of anonymised cases – structural actions)*

Case H6: The investigation concerned funding for a research and innovation project, which had been granted to a consortium, bringing together partners from several Member States. To obtain the funds, the partners in Member State X had falsely attested the existence of the required structural and economic conditions to carry out the project. The partner in Member State Y only existed on paper and it was owned by the same partners in Member State X. To simulate the actual development of the project and to divert funds, fictitious costs had also been recorded. The partners in Member State X used accounting artifices to syphon off money, forging documents attesting false expenses. *(OLAF Report 2017)*

Case H7: Some of the bids in a procurement procedure were falsified: they were submitted on behalf of existing companies without their knowledge. The fraud was discovered because of striking grammatical mistakes in the documents. A variation of this type of fraud occurred when the bids were real, but outdated. The beneficiary of the funding altered the dates of the bids to make them eligible. In another case the bids were real, but the beneficiary of funding altered the amounts in some of them, to award the contract to a favoured bidder. *(Fraud in Public Procurement: a collection of red flags and best practices)*

Case H8: Company X established in Member State A provided several guarantees in the context of the performance of several contracts outside the EU. The investigation found that the guarantees were false, not issued by the banks as claimed by company X. *(OLAF Report 2006)*

Case H9: Fraudsters set up five shell companies, at the same address in Member State A and with bank accounts at the same bank. Using falsified documents such as fake lease contracts with the same landowner or fake invoices for the purchase of seeds, the fraudsters managed to obtain significant EU funding for growing certain agricultural products. As soon as the paying agency paid the subsidies into the bank accounts of the five companies, the money was transferred to bank accounts in Member State B, where it was swiftly withdrawn from cash machines or over-the-counter in banks and used for other criminal activities. *(OLAF Report 2020)*

Case H10: In 2021, OLAF investigated irregularities relating to several projects in a Member State. The projects mainly concerned new innovative and environmentally friendly solutions in agriculture. OLAF established that some beneficiaries of this funding had inflated their sub-contracting costs in order to submit fraudulent receipts, reporting much higher costs than those they had actually incurred. They managed to claim for consultancy services even though funding rules forbade them from doing this. The beneficiaries pulled off this deception by labelling the consultancy fees 'dissemination costs' and keeping their consultancy agreements confidential. *(OLAF Report 2021)*

## Organised crime

**Organised crime has the capability and intention to defraud public budgets.**

**Organised crime groups regularly attempt to defraud public funds** by submitting applications for grants or bids in tender procedures. Criminal groups use **bribes** to elicit information or directly influence the evaluation of bids. This type of manipulation is particularly notable in the **energy, construction, information technology and waste management sectors**.<sup>17</sup>

**The COVID-19 crisis may facilitate the growth of serious and organised crime in the EU.** Criminal networks are fast in adapting to and capitalising on changes in the environment. A volatile economic situation with growing poverty and social inequality may serve as a breeding ground for organised and serious crime.<sup>18</sup>

**The investment of billions of euros in illegal profits generated by organised crime** in the EU in the licit economy distorts competition and hinders economic development. **More than 80% of the**

<sup>17</sup> Based on Europol (2017), European Union serious and organised crime threat assessment, Crime in the age of technology

<sup>18</sup> Based on Europol (2021), European Union serious and organised crime threat assessment, A corrupting influence: the infiltration and undermining of Europe's economy and society by organised crime, Publications Office of the European Union, Luxembourg.

**criminal networks active in the EU use legal business structures** for their criminal activities. Criminals directly control or infiltrate them to facilitate their criminal activities. **In general, the weak capitalisation of some EU-based companies may make them vulnerable to takeovers by criminals** based inside and outside the EU. Some businesses operating in sectors suffering particularly negative economic pressures, such as the hospitality, catering and tourism sectors, have been made more vulnerable by the COVID-19 crisis. It is likely that **criminals will exploit these vulnerabilities to infiltrate legal businesses in financial difficulties**, including making them dependent through loans or directly buying them up. **This will increase their capacity to use companies to facilitate their criminal activities.**<sup>19</sup>

**Almost 60% of the criminal groups<sup>20</sup> engage in corruption.** A smaller proportion of them engages in frequent and proactive corruption targeting public servants or specific sectors as an intrinsic part of their business strategy. Criminals use corruption to influence some sectors of critical importance, such as **healthcare and pharmaceuticals, transportation, construction, tourism, education and research, waste management, aerospace and defence, agriculture, and labour and social protection.**<sup>21</sup>

It is expected that some criminals **will specialise in abusing the support and recovery funds the EU and Member States have established** to mitigate the impact of the COVID-19 crisis. These criminal are expected to orchestrate complex networks of companies in order to defraud public funds.<sup>22</sup>

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<sup>19</sup> Ibid (Europol (2021))

<sup>20</sup> Of the criminal groups reported for the SOCTA 2021.

<sup>21</sup> Ibid (Europol (2021))

<sup>22</sup> Ibid (Europol (2021))