



# Guidance on the avoidance and management of conflicts of interest under the Financial Regulation (Article 61)

Recovery and Resilience Facility

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# Why avoid conflicts of interest?

- Ensure **sound financial management** of EU funds
- Ensure **impartiality** of persons involved in the implementation of EU funds
- Preserve public **trust** in EU and national administrations

# Key novelties Financial Regulation 2018

## Financial Regulation 2018

- Main differences in relation to the FR 2012:
  - Reference to **national authorities at any level**, involved in budget implementation.
  - Reference to any “**other direct/indirect personal interest**”.
  - Obligation to address situations “which may **objectively be perceived** as conflicts of interest”.
- Supplemented by EU **sector specific rules** and by **national rules**.
  - **RRF Regulation:** *to take appropriate measures to prevent, detect and correct fraud, corruption, and conflicts of interests as defined in Article 61(2) and (3) of the Financial Regulation affecting the financial interests of the Union (...)*

# The purpose of the guidance

- Promote a uniform interpretation and application of **Article 61 FR 2018 “Conflict of interests”** rules in all management modes .
- Provide practical examples, suggestions and recommendations for measures that could be put in place to avoid and manage conflict of interest situations.

\*The guidance was adopted by the Commission on 7 April 2021 and published in the Official Journal of the European Union on 9 April 2021: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2021.121.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2021.121.01.0001.01.ENG)

# Who is concerned

**“Financial actors and other persons, including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control”**

- Involvement in budget implementation: importance of the functions and the proximity with decision making process.
- RRF context:
  - It is the responsibility of national authorities to establish internal control systems with responsibilities/tasks being clearly assigned as this is relevant to determining a person’s ‘involvement in budget implementation’ in each particular case.
  - Includes coordinator, implementing entities, audit bodies carrying out activities relating to management, monitoring, control and auditing RRF funds.

# Definition of conflict of interest

“where the impartial and objective exercise of the functions ... is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any **other direct or indirect personal interest.**”

# Obligations in Article 61 FR (1)

- To **refrain** from action which may bring a person's interests into conflict with those of the Union;
- To **prevent** conflicts of interest from arising in the functions under a person's responsibility;
- To **address** situations which may objectively be perceived as a conflict of interest.
  - **“Perception”**: notion re-used from Public Procurement Directives.
  - **“Objectively”** (added in Financial Regulation): verifiable (auditable) link between the functions and the interest at stake.

# Obligations in Article 61 FR (2)

## Procedure if staff of national authority (or EU) is involved:

To **report** to the hierarchical superior (or to the relevant authorising officer by delegation) who must **confirm** in writing whether a conflict of interest exists. If this is the case, the national authority (or the appointing authority) must ensure that:

- ✓ the staff member ceases all activity in the matter;
- ✓ any further appropriate action is taken in accordance with the applicable law.



# General measures to prevent and avoid conflicts of interest (1)

Guidance includes practical examples and measures to be put in place.

Importance of **preventive measures to ensure compliance**, for example:

- Awareness raising, tone at the top;
- Establishment of rules and procedures, code of ethics and/or conduct;
- Identify sensitive functions or activities at risk;
- Declarations of interest, asset disclosure (make information public, regular updates);
- Separation of functions;

# General measures to prevent and avoid conflicts of interest (2)

- Security and control of access to internal information;
- Declaration of gifts, including restrictions and control of gifts and other forms of benefits such as hospitality;
- Regular rotation of staff in sensitive positions. Removal and routine withdrawal of staff members from public duty when making a decision that would place them in a position of conflict;
- Exclusive functions; restrictions (and/or transparency, registration, supervision requirements) on secondary employment or concurrent appointments.

# Specific measures for concrete prevention/early detection of conflicts of interest

- Effective verifications against other sources of information to identify, for instance, links between those involved in the selection of projects and potential beneficiaries/recipients;
- Checking information provided by company register databases, databases of EU and national bodies, other public registers;
- Establishing specific risk indicators may help alert to the risk of conflicts of interest (non-exhaustive list provided in the guidance);

# Use of data-mining tool such as ARACHNE to prevent against conflicts of interest situations

Data-mining tool 'ARACHNE' can help to prevent and safeguard against conflict of interest situations. It displays legal links between companies and persons, and is capable of identifying risks of conflict of interest.

- When and how should Member States use the data-mining to prevent conflicts of interest and what actions to take?

Carrying out systematic checks in the data-mining tool on the selected applicant/tenderer before the award for the most risky agreements/contracts.

Referring to the use of the relevant risk indicators and red flags as described in the guidance on Arachne.

Taking appropriate mitigating measures in case the risk identified materialises in an undisclosed and/or inadequately mitigated perceived conflict of interest.

# Conclusion

- EU rules on conflicts of interest under the Financial Regulation and RRF apply directly and in addition to specific provisions under national law.
- Compliance with EU and national rules on conflicts of interest when Member States implement RRF is the primary responsibility of national authorities.

# Thank you