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COMMISSION STAFF WORKING DOCUMENT

Follow-up by the Member States on the recommendations of the PIF Report 2019

Accompanying the document

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

**32nd Annual Report on the protection of the European Union's financial interests - Fight
against fraud - 2020**

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LIST OF ABBREVIATIONS

| | |
|--------------|--|
| AFCOS | Anti-fraud coordination service |
| AMIF | Asylum, Migration and Integration Fund |
| CA | Certifying authority |
| CRII | Coronavirus Response Investment Initiative |
| DG | Directorate-General |
| EAFRD | European Agricultural Fund for Rural Development |
| EAGF | European Agricultural Guarantee Fund |
| EC | European Commission |
| EMFF | European Maritime and Fisheries Fund |
| ERDF | European Regional Development Fund |
| ESF | European Social Fund |
| ESI | Emergency Support Instrument |
| IMS | Irregularity Management System |
| ISF | Internal Security Fund |
| MA | Managing authority |
| OP | Operational Programme |
| OTSC | On-the-spot checks |
| PIF | Protection of the EU's financial interests |
| PPE | Personal protective equipment |
| VAT | Value added tax |

EXECUTIVE SUMMARY

In the 2019 report on the protection of the European Union's financial interests, known as the 'PIF Report', the Commission made a set of recommendations to the Member States concerning emergency spending and the reporting of irregularities. This document collects and summarises the Member States' replies for the follow-up on the 2019 PIF report recommendations and provides updated information, initiatives and measures taken in 2019/2020 in the respective areas of expenditure.

Recommendations on emergency spending

The Commission recalls that verifications and monitoring measures should be kept at a high level.

Emergency procurement should be used on the basis of a case-by-case assessment.

The present situation is also the right opportunity to complete the transition to e-procurement processes for those Member States which have not already achieved this.

Member States should consider the possibility of further strengthening transparency in the use of EU funds, in particular in relation to emergency procurement.

Spending related to the COVID-19 crisis has and will put further pressure on EU bodies and national authorities disbursing EU funds. The Commission has stepped up its fraud prevention work to ensure that EU money continues to get the highest possible level of protection against fraudsters who may try to take advantage of the current situation.

Likewise, the Member States were asked not to lower their guards against the risks highlighted in the 2019 PIF report.

A total of 22 Member States¹ reported ensuring that verification and monitoring measures are kept at a high level; Malta and Slovakia reported partial implementation of this point. Most Member States stated that the current extraordinary situation due the COVID-19 outbreak does not affect the regime of mandatory verifications and monitoring measures and that these are being kept at a high level nevertheless.

Several Member States have taken specific measures to adjust to the current extraordinary situation. For example, Bulgaria reported carrying out verifications through telephone interviews; Greece and Croatia issued special instructions on alternative approaches for on-the-spot checks. Ireland, Spain and Finland reported use of IT tools for remote checks. Italy updated its first-level control manuals for remote on-the-spot checks. Latvia reported paying extra attention to cases involving *force majeure* where COVID-19 was cited as justification for extending deadlines.

¹ Belgium, Bulgaria, Czechia, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, the Netherlands, Poland, Portugal, Romania, Slovenia, Finland and Sweden.

Poland put special arrangements in place, making it easier to implement and account for projects co-financed out of EU funds. The arrangements include suspending application of the guidelines issued by the Polish Minister for Regional Development and the possibility to discontinue checks and audits in exceptional situations or, where feasible, perform them remotely or electronically. Slovenia reported that measures related to the COVID-19 pandemic were generally applied only based on data from official records managed by verified state institutions or legal entities founded by the State. This was one of the reasons why there was significantly less suspicion of fraud or artificially created conditions.

In all, 23 Member States² reported that they fully ensured the use of emergency procurement based on a case-by-case assessment. Slovakia reported partial implementation. Most Member States stated that any cases of emergency procurement were duly checked in advance and subject to strict rules, regardless of the COVID-19 crisis. Several Member States, like Greece, Spain, France, Croatia, Poland and Sweden, have also issued guidelines on emergency procurement in the context of COVID-19.

Some 18 Member States³ reported full implementation of the transition to e-procurement processes; 6⁴ reported partial implementation.

On measures to further strengthen transparency in the use of EU funds, in particular for emergency procurement, 17 Member States⁵ replied that they had done so, while 8⁶ reported that they had not.

Further measures taken by Member States include testing the use of the ARACHNE system⁷, setting up a platform to report fraud and corruption⁸, guidelines on emergency procurements emphasising the importance of transparency and efficient use of financial resources⁹, and other measures to enhance transparency.¹⁰

Most of the Member States that have not taken any further measures reported that they had not done so because the measures already in place were considered sufficient.

Recommendation on reporting of irregularities

For the 2014-2020 programming period, the reporting of irregularities, in particular non-fraudulent ones, needs to be closely monitored.

² Belgium, Bulgaria, Czechia, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Poland Portugal, Romania, Slovenia, Finland and Sweden.

³ Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Greece, Croatia, Italy, Latvia, Luxembourg, Hungary, Malta, Portugal, Romania, Slovenia, Finland and Sweden.

⁴ Spain, France, Lithuania, the Netherlands, Poland and Slovakia.

⁵ Bulgaria, Germany, Estonia, Ireland, Greece, Spain, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, Poland, Portugal, Romania, Slovenia and Sweden.

⁶ Belgium, Czechia, France, Malta, the Netherlands, Austria, Slovakia and Finland.

⁷ Estonia.

⁸ Greece and Lithuania.

⁹ Latvia.

¹⁰ Hungary and Romania.

The current programming period saw a significant decrease in the detection and reporting of non-fraudulent irregularities compared to the previous period, particularly in relation to cohesion policy. The Commission recommended careful monitoring to ensure that the decrease is the result of new preventative measures, and not of increased deficits in detection and reporting.

Some 22 Member States¹¹ reported full implementation of this recommendation. A further four Member States¹² replied that they had partly implemented it.

Most Member States ensured that their reporting of irregularities was carefully monitored.

Belgium reported carrying out an additional check at each annual closure, during which the managing, certifying and audit authorities compared their data so that any irregularity was duly reported. The Danish Fisheries Agency stated that every quarter of the year, the agency's control team coordinates with the agency's economics department over the detection of irregularities. Croatia and Slovakia also mentioned such quarterly irregularity reports.

The Bulgarian managing authorities replied that their reporting of irregularities was subject to strict controls. Lithuania reported that the information on irregularities and related data was constantly monitored in the 2014–2020 European Union Structural Funds Management and Monitoring System (SFMIS2014), which was the main source of information for reporting irregularities to the Commission. Poland reported that it duly complied with its obligations to report any irregularities found in respect of EU funds to the European Commission and to monitor them on a continuous basis.

Czechia replied that the reporting of irregularities for the 2014–2020 programming period was ensured in accordance with the methodological guide for the financial flows of programmes co-financed by the European Structural Funds, the Cohesion Fund and the European Maritime and Fisheries Fund for the programming period 2014–2020.

The Estonian authorities reported that all implementing bodies must report all detected or prevented irregularities via the electronic system. Ireland reported the continued use of the irregularity management system (IMS), but stated that further training for staff of managing authorities was required. Greece explained that not all managing authorities and intermediate bodies (IBs) had been registered in the IMS for the direct electronic transmission of irregularities, but that this process was ongoing.

Germany and the Netherlands reported that their respective advanced management/control systems had been in place for years, and included a major focus on the reporting of irregularities.

All the relevant Spanish authorities reported that the reporting of non-fraudulent irregularities had been monitored similarly to previous years and in particular similarly to the 2007–2013 programming period. Latvia reported that irregularities were monitored and that no significant reduction in the irregularities had been identified.

¹¹ Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Spain, France, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, Austria, Poland, Portugal, Romania, Slovakia, Sweden and Finland.

¹² Ireland, Greece, the Netherlands and Slovenia.

The Hungarian AFCOS operates a working group on irregularity reporting to ensure its irregularity reporting obligation under the EU sectoral regulations is met uniformly and in full; an additional aim is to make the content of irregularity reports more useful for preventing domestic fraud/irregularities. Finland reported that in their training sessions held in 2020, the certifying authority and managing authority had reminded the intermediate bodies about keeping information on irregularities updated.

1. FOLLOW-UP BY RECOMMENDATION

Methodology and thematic analysis

The following section provides a comprehensive overview on the implementation of each recommendation by the Member States and summarises the replies received for each recommendation. This section is divided into two sub-sections, one for the recommendations on emergency spending and one for the reporting of irregularities. Each recommendation is analysed first by providing results as to the number of Member States that addressed each of the recommendation questions and second, by summarising of the most important details they provided. The Member States' original replies are listed later in this document, under Section 2: 'Member States' Replies'.

1.1. Emergency spending

The Commission asked the following questions to the Member States with regard to addressing the first set of recommendations:

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

If you implemented partially the recommendation, could you explain why you think that it was a partial implementation and why a full implementation was not possible?

If you did not implement the recommendation, could you please explain why?

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

If you implemented partially the recommendation, could you explain why you think that it was a partial implementation and why a full implementation was not possible?

If you did not implement the recommendation, could you please explain why?

Q.3 Have you already completed the transition to e-procurement processes?

If partially or not, could you briefly explain at which point you are in the process?

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

If yes, could you specify which ones and how they strengthen the existing transparency framework?

If not, could you explain why and how your current system already ensures an adequate level of transparency?

The table below represents the overall results of the implementation of the Commission's recommendations on emergency spending, based on the Member States' replies to each of the questions above.

Table 1: Implementation of Commission's recommendations on emergency spending by MS

| | Q1 | Q2 | Q3 | Q4 |
|----|----|----|----|----|
| BE | | | | |
| BG | | | | |
| CZ | | | | |
| DK | | | | |
| DE | | | | |
| EE | | | | |
| IE | | | | |
| EL | | | | |
| ES | | | | |
| FR | | | | |
| HR | | | | |
| IT | | | | |
| CY | | | | |
| LV | | | | |
| LT | | | | |
| LU | | | | |
| HU | | | | |
| MT | | | | |
| NL | | | | |
| AT | | | | |
| PL | | | | |
| PT | | | | |
| RO | | | | |
| SI | | | | |
| SK | | | | |
| FI | | | | |
| SE | | | | |

| | |
|--|--------------------|
| | fully implemented |
| | partly implemented |
| | not implemented |
| | not applicable |
| | no answer |

1.1.1. Keeping verification and monitoring measures at a high level

The Member States were asked to provide information on whether they had ensured that verification and monitoring measures were kept at a high level.

A total of 22 Member States¹³ replied that they had fully implemented this point. Malta and Slovakia reported partial implementation, while Austria had not implemented it. Denmark stated that the question was not of relevance to it and Cyprus did not reply to the question.

Several Member States provided details for their replies (in summary)¹⁴:

Belgium reported that the body managing the ERDF in Flanders still applied the usual verification measures, with no exceptions. The Flemish Government's Department of Agriculture and Fisheries kept track of all deviations from the normal functioning of verifications and control systems and only lowered control rates for measures that had a record of low error rates. For other measures, the department applied either alternative checks or a small adaptation of the on-the-spot check where possible, or delayed the on-the-spot check until the situation improved. Overall, the department kept the same level of assurance during the COVID19-crisis.

Bulgaria reported on measures taken by several managing authorities, an executive agency and the National Fund Directorate within the Ministry of Finance to ensure full verification of expenditure during the COVID-19 pandemic. These measures include verifications through telephone interviews and updates to the manual for the management and implementation of the operational programme and the management and control systems of the operational programme in line with the needs arising from the coronavirus outbreak. Besides that, the usual layers of monitoring, verifications and controls remained in place so that overall, a high level and quality of monitoring and checks could be assured.

Czechia reported that its verification and monitoring measures were constantly run at a high level. The processes for awarding public contracts in procurement procedure are electronic by law and electronic tools must be used to receive bids. Buyers are also obliged to store their procurement procedure documentation, which enables effective verification and monitoring. Internal and external audits and other compulsory checks of recipients and managing authorities alike are carried out as planned despite some difficulties and challenges. The managing authority is closely cooperating with auditors and recommendations are addressed in time and subsequently also duly reviewed. Detections have remained stable.

Germany reported that it had advanced management/control systems in the agriculture and fisheries sector. These systems have been operating at a high level for years and are continuously adapted to new challenges and objectives. For the measures under the ERDF and the ESF, the existing high level has been maintained, in particular for the administrative checks to be carried out. Germany continues to carry out an annual self-assessment to combat fraud. The number of cases of fraud and suspected fraud remains low.

The **Estonian** authorities responsible for the ESI, agricultural-fisheries and internal policies Funds report that they will continue with the professional verification and monitoring measures. The implementing agency for agricultural and fisheries Funds started to test using ARACHNE.

¹³ Belgium, Bulgaria, Czechia, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, the Netherlands, Poland, Portugal, Romania, Slovenia, Finland and Sweden.

¹⁴ For more detailed information see Section 2 'Member States' replies'.

Throughout the COVID-19 pandemic, **Ireland's** Southern Regional Assembly (SRA) and Northern and Western Regional Assembly (NWRA) have continued Article 125 management verifications, albeit remotely. All relevant areas of the verification process are covered. The Department of Agriculture, Food and Marine implements robust administrative checks on all aid applications and procurement practices that are in line with EU and national legislation. It also performs on-the-spot checks, which satisfy the fund requirements. The accounting officer is provided with confirmation on an annual basis that these checks are in place, for administered funds charged to national and EU budgets from senior management. External auditors review the internal financial controls and any recommendations are acted upon.

The **Greek** Special Institutional Support Service reported that the provisions of the regulatory framework on administrative verifications continued to apply. Special instructions were issued for on-the-spot checks for the 2019–2020 accounting year, following the measures taken to contain the COVID-19 pandemic, including alternative approaches taking account of the restrictions in place. Finally, when the annual accounts are submitted, the authorities confirm that the instructions have been followed and that adequate administrative verifications have been carried out on the expenditure included in the accounts.

All the relevant **Spanish** authorities reported that the verification and monitoring measures had been kept at high level, similar to previous years. This was due to the implementation of measures such as making intensive use of IT tools to perform the checks and verifications remotely. In some cases, on-the-spot verifications were delayed due to the restrictions lockdown measures adopted during 2020. However, the verifications have been, or will be, carried out when the circumstances allowed (or allow) the corresponding authorities to do so properly, making use of the flexibility allowed by different Commission DGs in this sense. There is no evidence that the COVID-19 crisis has influenced the level of detections.

Following the outbreak of COVID-19 and its consequences, the **French** National Agency for Territorial Cohesion fully relayed to the ERDF managing authorities the instructions set out by the European Commission and the platform for replies to national authorities on Coronavirus Response Investment Initiative Plus (CRII+) measures.

In **Croatia**, the procedures in place remain fully applicable under the current exceptional circumstances triggered by the COVID-19 outbreak. The COVID-19 outbreak posed particular difficulties for healthcare facilities and residential homes for the elderly and seriously ill adults and adults with disabilities. To respond to this situation, the Ministry of Regional Development and EU Funds, the managing authority for the competitiveness and cohesion 2014-2020 operational programme, granted an exemption for on-the-spot checks of operations in these facilities. Under the exemption, the checks could be performed remotely in real time using IT tools.

The emergency caused by COVID-19 does not change or alter any **Italian** regulatory or statutory requirement. At national level, to ensure that verification and monitoring of operations could continue, the Agency for Territorial Cohesion, updated the first-level control manuals for both programmes so that on-the-spot checks could be carried out remotely.

The **Latvian** Rural Support Service (responsible for EMFF, EAFRD and EAGF) has not scaled back inspection and monitoring during the COVID-19 crisis. For area payments, a number of control tools were introduced and developed to make on-the-spot checks more efficient. These include the use of drones (enabling inspections to be carried out faster and more efficiently). For investment projects, the Rural Support Service performed remote

inspections. The Central Finance and Contracting Agency (responsible for ESF, ERDF and Cohesion Fund) paid extra attention to cases where force majeure due to COVID-19 was cited as justification for extending deadlines. Given the extensive control mechanisms available and applied, Latvia did not find any increase in breaches of procurement procedure that could be attributed to the COVID-19 emergency.

Lithuania reported having adjusted its public procurement inspection questionnaires to take account of changes to the Law on public procurement and accompanying secondary legislation in order to ensure implementation of EU rules.

To ensure the integrity-based, transparent and accountable use of public funds, the **Hungarian** Public Procurement Authority ensures that verification and monitoring measures are kept at a high level when reviewing the legality of public procurements. Methods in place to ensure high-quality verification and monitoring include checking the legality of notices, checking the legality of negotiated procedures without publication, and checking the performance and amendment of contracts. In terms of EU support, the managing authorities and the ministry responsible for public procurement carry out checks on the regularity of public procurement procedures conducted using support awarded under EU programmes. As the audit authority, the Directorate-General for Audit of European Funds (EUTAF) is responsible for carrying out system audits, carrying out sample audits on projects, monitoring the findings of audit reports, following up on recommendations and implementing action plans.

Irrespective of the COVID-19 crisis, the **Maltese** Department of Contracts has always endeavoured to ensure that public funds (both local and EU) are closely monitored in order to ensure a high level of protection. At present, any emergency spending above the local threshold (i.e. above EUR 139 000 excl. VAT) must be validated by presenting the applicable documentation to justify and substantiate requests to use less restrictive procurement methods. In addition, if the estimated procurement value is above EUR 1 million, the contracting authority concerned must attain budget clearance from the Ministry for Finance and Employment. Further to the above, as and where applicable, the managing and auditing bodies run checks to ascertain that public funds are properly managed.

Austria reported that it had not implemented the recommendation because there was no specific EU-related emergency procurement in place in the agriculture sector.

In the context of the COVID-19 pandemic, **Poland** has put in place a number of mechanisms to ensure appropriate monitoring of the spending of, accounting for and control of EU funds. Special arrangements were put in place, making it easier to implement and account for projects co-financed using EU funds. These include suspending the application of the guidelines issued by the Ministry for Regional Development and the possibility to discontinue checks and audits in exceptional situations or, where feasible, perform them remotely or electronically. As a result, the control work, including system audits and project expenditure checks, is being carried out efficiently despite the constraints arising from the epidemic. Furthermore, the Law on public procurement has been amended to strengthen control mechanisms and measures for monitoring public procurement. The verification mechanisms also function properly for the Agricultural Funds.

Portugal reported that procurement in response to the pandemic was being monitored at the highest level, with reports sent to the relevant supervisory authorities and the Ministry of Finance.

The **Romanian** Ministry of Investments and European Projects reported that ANAP, the national agency for public procurement, has performed standard *ex ante* checks to determine whether the conditions for running negotiated procedures without publication were being met, and whether such procedures were being carried out properly. There is a standard checklist for managing authorities, whose checks are *ex post* of the procedure itself, but *ex ante* of the reimbursement of expenses from European funds. This checklist indicates how to check how beneficiaries have met the specific requirements to use the exemptions provided for in procurement legislation.

Slovenia's Agency for Agricultural Markets and Rural Development (AAMRD) has a well-established system for detecting and preventing fraud and artificially created conditions, as well as for preventing conflicts of interest. Applications for measures related to the COVID-19 epidemic are generally decided only based on data from official records managed by verified state institutions or legal entities founded by the state, which is one of the reasons why there is significantly less suspicion of fraud or artificially created conditions in these measures. Each application received so far has been examined administratively using the four-eye principle; for each application, Slovenia checks whether there is a suspicion of fraud and artificially created conditions and whether there may be a conflict of interest. In the case of advance payments, it was consistently checked whether the required securities were lodged.

Based on the replies provided by the **Slovak** AFCOS partners, verification and monitoring measures have been maintained at a high level, even during the pandemic. Managing authorities regularly update their procedures and, if relevant, measures allowing for a more flexible approach in this particular situation are adopted. However, one of the current challenges is the planning and performance of on-the-spot checks, as personal contacts should be kept to a minimum during the pandemic.

Finland reported that during the COVID-19 pandemic, the managing authority had instructed the intermediate bodies to conduct checks and monitoring using the means and tools already in place (such as remote access and electronically), while maintaining high quality and not reducing the quantity.

In **Sweden**, 18 379 procurement procedures were initiated in accordance with procurement regulations in 2019. The simplified procedure is the most commonly used procurement procedure. Most public contracts run for 3–4 years (including any extension options). In 57% of all procedures, 1–3 tenders are submitted. The average number of tenders submitted in 2019 was 4.5. The average number of tenders submitted decreased for several years before 2018 and 2019. Of all procurement procedures, 6.6% underwent a review procedure in 2020. Directive-compliant procurement is subject to a review procedure more often than procurement not governed by the EU Public Procurement Directives. Procedures with many tenderers undergo a review procedure more often than procedures that have only a few tenderers.

1.1.2. Ensuring the use of emergency procurement based on a case-by-case assessment

The Member States were asked to provide information on whether they ensured that emergency procurement was based on a case-by-case assessment. Some 23 Member States¹⁵ replied that they fully implemented this point, and Slovakia reported partial implementation. Austria does not implement it. Denmark stated that the question was not of relevance to it, while Cyprus did not reply.

Several Member States provided details for their replies (summarised below)¹⁶.

Belgium reported that the body managing the ERDF in Flanders still applied the usual verification measures; every public procurement contract is checked for correct implementation (100% monitoring). Use of the emergency procedure is an exception that is always subject to thorough checks. The Flemish Government's Department of Agriculture and Fisheries reported that procurement procedures are seldom used and, if they are, are always based on a case-by-case assessment.

The **Bulgarian** Law on public procurement provides for various options that allow for quick procurement, including in cases of extreme urgency. These possibilities are in line with the relevant European directives. In cases where there is an urgent need to select a contractor, the contracting authority has the possibility to shorten the time limits for submission of applications and/or bids for competitive procedures. Under the Law on procurement, the contracting authority must justify the exceptional circumstances. In this vein, the award of emergency contracts in the country is subject to legally binding rules and a case-by-case assessment by the individual contracting authority.

The **Czech** Law on public procurement provides for emergency procurement procedures. The use of these procedures is in the sole responsibility of the contracting authority and in the case of control, the fulfilment of the conditions for their use will be assessed on a case-by-case basis. These procedures should be used by the contracting authority exclusively for urgent purchases related to managing the current threat. However, none of the Czech managing authorities providing input to this document used emergency procurement in 2020.

Germany replied that it fully applied the relevant rules on procurement, including on e-procurement.

The **Estonian** authorities responsible for the ESI and HOME Funds reported that all emergency procurements were checked before payment. The implementing agency for AGRI and FISH Funds reported that it did not foresee any COVID-19 related emergency procurement.

Ireland reported emergency procurement of personal protective equipment (PPE) due to the ongoing COVID-19 crisis. The managing authorities ensured that the process was fully in line with the Procurement Directives.

¹⁵ Belgium, Bulgaria, Czechia, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Finland and Sweden.

¹⁶ For more detailed information see Section 2 'Member States' Replies'.

Greece's Single Public Procurement Authority (HSPPA) issued a guideline on *Specific matters concerning the award and management of public contracts in the context of the response to the COVID-19 health crisis and the measures taken to prevent the spread of the virus*. The purpose of the guideline is to help contracting authorities/entities and economic operators make correct use of the possibilities offered by the EU Directives and of the special or exceptional time-limited provisions established by law. In addition, the HSPPA issued opinions on legislative proposals that provided for derogations from national legislation for emergency procurement.

The **Spanish** State Public Procurement Advisory Board adopted and published in April 2020 an information note addressed to the contracting authorities, which clearly states that the COVID-19 pandemic does not itself allow contracting authorities to use the emergency procedure for public procurement. The note states that contracting authorities can use this procedure only based on a case-by-case assessment. The purpose of the assessment is to check if each case's circumstances meet the specific requirements laid down by law for use of this exceptional procedure.

France replied that the European Commission's communiqué on the 'mon ANCT' information-sharing space of the national agency for territorial cohesion (ANCT) had been sent to the managing authorities. Meetings and working groups have been organised, and national CRII FAQs and a management note have been drawn up. These cover most of the relevant provisions and highlight the exceptional nature of emergency procurements as a case-by-case derogation.

The **Croatian** Law on public procurement allows contracting authorities to award under certain circumstances public procurement contracts based on a negotiated procedure without prior publication of a call for tenders. This is specifically the case if the deadlines for open or restricted procedures or competitive negotiated procedures cannot be met due to extreme urgency caused by events the contracting authority could not foresee. However, the circumstances invoked by the contracting authority to justify extreme urgency must not in any event be attributable to its own actions. The European Commission's communication on the method of procurement in the conditions of a pandemic has been published on the Public Procurement Portal, and the Croatian Ministry of Economy and Sustainable Development provides expert assistance by giving opinions to those entities that need it.

Italy's 'Cura Italia Decree' on measures to strengthen the National Health Service and provide economic support to families, workers and businesses in response to the COVID-19 epidemiological emergency does not provide for any derogation from ordinary open public procurement procedures. However, the 'Cura Italia Decree' lays down specific and limited derogations from the ordinary procedures provided for in the Public Procurement Code for the duration of the health emergency. In particular, provision has been made for exceptional procedures to purchase specific categories of goods and services.

According to the **Latvian** Law on public procurement, emergency procurement is based on a case-by-case assessment. In such cases, the contracting authorities are responsible for justifying the use of the negotiated procedure.

Lithuania reported that emergency purchases had separate requirements.

Hungary reported that in 2019, there had been just 273 instances where contracting authorities had informed the President of the Public Procurement Authority that they were

initiating a negotiated procedure without publication. By comparison, there were 329 negotiated procedures without publication in 2018, 482 in 2017 and 870 in 2016. The President of the authority's legal review powers include rigorous verification in all cases to check that the conditions are met for using the negotiated procedure without publication on an exceptional basis. If the Authority establishes during its review that not all the conditions are met for the legal basis chosen, or that the legal basis cannot be clearly established, it will request clarification to remedy the infringement. This paves the way in such cases for the organisation of a public procurement procedure with publication. Contracting authorities generally respond to requests for clarification immediately and in full.

Malta reported that all emergency spending was on a case-by-case basis. Contracting authorities must present duly justified cases to the competent authority, which in turn approves the request (or not), based on the explanations provided and documentation submitted.

The Netherlands and **Austria** replied that they had had no emergency procurements in place.

Under **Polish** public procurement law, contracting authorities in EU projects are required to use public procurement procedures in emergency situations on the basis of a case-by-case assessment in accordance with Directive 2014/24/EU. The President of the Public Procurement Office and both the audit authority and coordinating authority recommend the case-by-case approach as the standard method for contracting authorities to award contracts under all operational programmes. Managing authorities, intermediate bodies, implementing bodies and other authorised control bodies verify whether the procurement procedure has been carried out correctly in accordance with this principle. The Public Procurement Office has published instructions on how to apply the extraordinary arrangements, and the coordinating authority has further disseminated these instructions via the managing authorities in the context of the principle of competitive tendering, which applies below the thresholds laid down in the Law on public procurement.

Portugal reported that the procurement procedures had been conducted in line with the legal framework specifically established for the purpose.

In April 2020, the Public Procurement Coordination Unit of the **Romanian** Ministry of European Funds explained to all managing authorities that negotiations procedures without publication should be applied as exceptions under stricter conditions and asked them to inform all beneficiaries of this. At the beginning of this year, it was underlined to all managing authorities that: (i) for public procurement verifications, it is important to take into account and monitor additional risks arising during the award of contracts signed during the pandemic; and (ii) emergency procurement should be used only on case-by-case basis. The Romanian Government issued an emergency ordinance on emergency medical stocks, as well as some measures related to the establishment of quarantine. These measures authorised the National Office for Centralised Procurement (ONAC) to procure a list of medical emergency products of strict necessity, only via negotiated procedures without prior publication. The decisions on these procurement procedures were approved based on individual analysis. ONAC properly managed all emergency procurement procedures and implemented the Commission Communication on how to carry out such procurements.

Slovenia replied that it had not carried out emergency public procurement in the field of cohesion policy, but that it would use it on case-by-case basis whenever the timeframe would require this.

Under the **Slovak** Law on public procurement, the contracting authority can apply the direct negotiation procedure (without publication) only when the need for goods, services or works was caused by an emergency situation which could not be foreseen and was not caused by the contracting authority. In addition, the goods, services or works must be necessary to satisfy the need and the standard procedures cannot be used. If the direct negotiation procedure is used due to an emergency, the contracting authority is obliged to notify the Public Procurement Office before concluding the contract, stating the reasons for the use of this procedure. However, this is not necessary if the contracting authority has published the notification of its intention to conclude a contract. Based on the replies from the Slovak AFCOS partners acting as managing authorities/intermediate bodies, it seems that so far emergency procurement has not often been used in projects co-financed from their operational programmes.

Finland replied that the reporting of projects exceeding the thresholds was guided by the IT system for Structural Funds projects. In 2020, the managing authority organised training for intermediate bodies on the procedures for projects below the thresholds.

The **Swedish** National Agency for Public Procurement launched a guidance paper presenting its views on procurement and changes to contractual terms that the procurement rules would allow during the COVID-19 pandemic.

1.1.3. Transition to e-procurement processes

Member States were asked to provide information on whether they had already completed the transition to e-procurement processes. Some 18 Member States¹⁷ replied that they had fully implemented the recommendation, while 6¹⁸ reported partial implementation. Austria has not implemented the recommendation, and Ireland and Cyprus did not reply to this question.

Several Member States provided details for their replies (summarised below)¹⁹.

The **Belgian** body managing the ERDF in Flanders reported that since 1 January 2020, communication and exchange of information between the awarding authority and undertakings, including electronic submission and receipt of tenders, must be carried out using electronic means of communication at all stages of the award procedure. The Flemish Government was an early adaptor of e-procurement, working since 2013 with (mandatory) digital e-procurement for public procurement procedures involving publication.

The **Bulgarian** centralised automated information system for public procurement has been operating since 1 January 2020. Since that date, the following three groups of contracting entities are required to use the system: executive authorities, mayors of certain municipalities and representatives of certain sectoral contracting entities. Given the exceptional epidemic situation in the country, the obligation to use the new system came into effect for all other contracting entities from a later date, 14 June 2020.

Estonia reported that 98% of its public procurements were e-procurements.

¹⁷ Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Greece, Croatia, Italy, Latvia, Luxembourg, Hungary, Malta, Portugal, Romania, Slovenia, Finland and Sweden.

¹⁸ Spain, France, Lithuania, the Netherlands, Poland and Slovakia.

¹⁹ For more detailed information see Section 2 'Member States' Replies'.

Greece reported that the transition to e-procurement procedures for awarding public contracts with an estimated value of more than EUR 60 000.00 plus VAT was complete and covered the stages from publication of the notice, to the submission, opening and evaluation of tenders, and to the award of the contract.

Spain explained that implementation was only partial. This was because while some relevant authorities had reported having fully implemented the recommendation, others had reported that some parts of their procurement processes were not electronic yet. The authorities are actively working to fully complete the transition to e-procurement and acknowledge that the COVID-19 crisis has accelerated this process. This was also highlighted by the Independent Office for the Regulation and the Supervision of Public Contracts in its most recent annual supervisory report.

France reported that it had not yet moved to open data for public procurement. Nevertheless, verifying the basic and regulatory requirements for making public procurement fully digital is part of the managing authorities' monitoring of public procurement.

Lithuania explained that all published procurements should be carried out through the central procurement information system. So far, some of the unpublished low-value purchases are non-electronic.

The Netherlands reported that not every fund was completely digital yet, but efforts were being made to ensure digital processes were utilised to the fullest.

Austria explained that there was no public procurement in the Ministry of Agriculture, Regions and Tourism. All relevant actions take place in the Federal Procurement Office.

On 1 January 2021, the new **Polish** Law on public procurement entered into force. The Law introduces a number of amendments and new legal arrangements that affect the whole public procurement process, from the planning of the procedure itself, conducting the procedure and awarding the public contract, to the final stage of implementing and evaluating the contract). Under the new Law, the procurement process will be fully electronic.

Slovenia replied that procedures above the threshold for publication on the national public procurement platform, JN Portal, and the revision procedure were completely electronic.

In **Slovakia**, e-procurement is partly implemented. The current state of play is the following: the communication and exchange of information must be carried out electronically. Public procurement can be currently conducted electronically through the EVO (e-public procurement) system managed by the Public Procurement Office, through the EKS (electronic contracting system) system managed by the Ministry of Interior, as well as through the various private e-auction systems. The EKS system is integrated with the Register of Economic Operators, while the EVO system is integrated with the central public administration portal, offering additional features and connection to other national systems and public registers.

Finland stated that the procedure for projects exceeding the EU thresholds was completely electronic.

1.1.4. Measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement

Member States were asked to report whether they had taken any further measures to strengthen transparency in the use of EU funds, in particular in relation to emergency procurement. A total of 17 Member States²⁰ replied that they had done so, while 8 Member States²¹ had not. Denmark stated that the question was not of relevance to it, and Cyprus did not reply.

Several Member States provided details for their replies (summarised below)²².

In **Belgium**, the Flemish Government's Department of Agriculture and Fisheries explained that it had not taken any further measures because they had transparent procedures in place, especially due to the mandatory use of e-procurement. In the case of emergency procurement specifically, Flemish legislation states that for emergency procurements that reach the European threshold it is mandatory to publish an announcement of the awarded contract within 30 days of closure, including the results of the award procedure. During the COVID-19 crisis, internal communication from the Flemish Government drew attention to this rule and other tips via a webpage.

Bulgaria replied that the national electronic platform currently ensured a sufficiently high level of publicity and transparency of the procurement process in the country. The Public Procurement Register, which is part of the platform, contains an electronic file for any public contract above a certain value. The system currently allows the user to consult all public contracts and contracts financed under European programmes.

Czechia explained that it had not taken any further measures because a structural reform of the Law on public procurement was not necessary to strengthen transparency in the use of EU funds. Transparency is already ensured, e.g. by a well-functioning system of electronic tools (where the controlling entities may be granted access rights and the role of surveillance). Some managing authorities have been the subject of standard auditing procedures, which even recently did not call for further strengthening of existing transparency procedures. The main focus of managing authorities during the pandemic was on maintaining and sustaining operational functionality without compromising any of the required functions.

The **Estonian** Implementing Agency for AGRI and FISH Funds has started to test ARACHNE and will implement it in its daily procedures. The Estonian authorities responsible for the ESI and HOME Funds reported that all emergency procurements are checked before payment.

The **Irish** Southern Regional Assembly (SRA) and Northern and Western Regional Assembly (NWRA) (MA SEROP/BMWROP) reported the continued use of detailed Article 125 management verifications and improvements to the checklists used.

²⁰ Bulgaria, Germany, Ireland, Estonia, Greece, Spain, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, Poland, Portugal, Romania, Slovenia and Sweden.

²¹ Belgium, Czechia, France, Malta, the Netherlands, Austria, Slovakia and Finland.

²² For more detailed information see Section 2 'Member States' Replies'.

Greece's Single Public Procurement Authority (HSPPA) provided contracting authorities and entities with clarifications on compliance with publication formalities in the tender procedure if there is a change in the terms of the contract notice. In addition, the HSPPA has set up a platform for reporting fraud and corruption, and irregularities in general, in the field of public procurement, which meets the conditions for the implementation of Directive (EU) 2019/1937 on the protection of whistleblowers.

The **Spanish** Law on public procurement requires the award and formalisation of a contract to be published in all cases in the centralised electronic procurement portals. This includes emergency contracts, which are not exempt from this obligation. An information note was issued, clearly stating that the exemption from certain requirements in case of emergency procedures does not apply to obligations regarding publication of the award and formalisation of the contract.

Croatia reported that during the COVID-19 crisis, the Ministry of Economy and Sustainable Development issued recommendations on determining and submitting the tender guarantee in the new situation. These recommendations were in addition to the guidance from the European Commission on using the public procurement framework in the COVID-19 emergency. Recommendations on the public opening of tenders were also issued, proving that the public procurement system is adapting to the new circumstances.

Italy explained that the state of emergency did not affect the applicable compliance requirements in the use of EU funds. The first-level controls continue to ensure the transparency and regularity of the procurements procedures.

The **Latvian** Procurement Monitoring Bureau ensures sample-based *ex ante* checks of procurement procedures in EU-funded projects. The Bureau's Administrative Penalties Department carries out sample-based examinations to verify the justification of emergency procurements. Furthermore, guidelines have been prepared on transparency in public procurement, as well as several guidelines on emergency procurements emphasising the importance of transparency and efficient use of financial resources. The Corruption Prevention and Combating Bureau, in cooperation with the State Audit Office and Procurement Monitoring Bureau, developed and published anti-corruption suggestions for maintaining principles of good governance and the application of the lighter procurement procedure for emergency procurements directed at fighting the spread of COVID-19.

Lithuania reported that any person who suspected that EU funding had been spent wrongly could inform the relevant authorities using an online form. This message may be sent anonymously, if needed. In addition, lack of transparency in public procurement may be reported to the Public Procurement Office.

The **Hungarian** Public Procurement Authority's activities to strengthen transparency include: (i) the keeping of various records, such as a list of prohibited tenderers and a code of ethics; (ii) the receipt and thorough investigation of public-interest reports and complaints; and (iii) publishing the authority's key opinions in its journal, the *Közbeszerzési Értesítő Plusz* online public procurement bulletin. The Public Procurement Authority also ensures full transparency of public procurement procedures through its computerised publication systems. In addition, the Prime Minister's Office took several measures to strengthen competition and transparency in connection with public procurement procedures.

Malta explained that most procurements (works/services/supplies) using public funds (including EU funds) were conducted through standard procurement procedures; since open calls for tender tend to be the default procedure in Malta, it is evident that the process is transparent. With specific regard to emergency spending, the Department of Contracts, irrespective of the COVID-19 crisis, has in place a method to assess the validity of any such requests.

The Netherlands reported that it had maintained the same level of transparency in the use of the EAFRD, EAGF, AMIF and ISF Funds, but had had no emergency procurement in these specific Funds.

Austria explained that it had not taken any additional measures because a voluminous set of checks and controls was in place in the agriculture sector (control costs are up to 50% of the subsidy paid for some sectors, putting the cost-benefit ratio into question). Checks and controls are also in place in the cohesion policy (ERDF) sector.

The procurement procedures in force under **Polish** public procurement law, including the case-by-case approach, are fully in line with Directive 2014/24/EU. In the absence of any specific arrangements at EU level for emergency COVID-19-related procurement, Polish legislation does not impose additional requirements on contracting authorities over and above the procedures and methods set out in the Law and in Directive 2014/24/EU (thus avoiding 'gold-plating'). Contracting authorities are required to apply the arrangements laid down in public procurement law by taking a case-by-case approach. The paying agency's rules on the EU Agricultural Funds also ensure transparency in the use of these funds. All the costs incurred by beneficiaries are verified for compliance with public procurement rules. The agency is continuously taking steps to make the use of funds more transparent, including by putting into practice the guidance and recommendations of both the national and the EU audit and control services, and by self-monitoring. The above actions relate to the whole range of EU financial support, including public procurement.

Portugal replied that the existence of a specific legal framework made it possible to identify which procedures were covered, thus making the procurement process more transparent and ensuring compliance with the specific rules applicable.

Romania reported that the National Office for Centralised Procurement (ONAC) had drawn up a contracting strategy for most of the procurement procedures for the goods on the list of medical emergency stocks products of strict necessity. The office had also taken measures to strengthen transparency by publishing a prior notice on the national electronic public procurement platform (SEAP) and on the office's website. In general, the national public procurement legislation ensures an adequate level of transparency. The *ex post* verification of the managing authority is in accordance with the legal provisions of the public procurement.

The **Slovenian** Government Office for Development and European Cohesion Policy reported that it always requested two offers in general. The office also indicated that it had not carried out emergency procurement in the field of cohesion policy.

Under the amended **Slovak** Law on public procurement, the contracting authority must comply with the principles of equal treatment, non-discrimination, transparency, proportionality, effectiveness and economy.

Finland explained that it had not taken any additional measures because the Law on procurement, which entered into force in 2017, is considered to adequately ensure the principle of transparency.

The **Swedish** National Agency for Public Procurement offers guidance on anti-corruption measures at a strategic level and measures at different phases of the procurement process. It defines corruption as the abuse of one's position to achieve undue advantage for one's own or someone else's gain; this includes conflicts of interest.

1.2. Reporting of irregularities

The Commission provided the following question to the Member States on how they were addressing the recommendation on irregularities reporting:

Q.5 *Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?*

This section summarises the results, based on the Member States' replies.

Table 2: Implementation of Commission's recommendation on irregularity reporting by MS

| | Q5 |
|----|----|
| BE | |
| BG | |
| CZ | |
| DK | |
| DE | |
| EE | |
| IE | |
| EL | |
| ES | |
| FR | |
| HR | |
| IT | |
| CY | |
| LV | |
| LT | |
| LU | |
| HU | |
| MT | |
| NL | |
| AT | |
| PL | |
| PT | |
| RO | |
| SI | |
| SK | |
| FI | |
| SE | |

| | |
|--|--------------------|
| | fully implemented |
| | partly implemented |
| | not implemented |
| | not applicable |
| | no answer |

For the 2014-2020 programming period, the Commission recommended close monitoring of the reporting of irregularities, in particular of non-fraudulent irregularities.

A total of 22 Member States²³ reported full implementation of this recommendation, while 4²⁴ replied that they partly implemented it. Cyprus did not reply to the question.

The Member States' replies are summarised below²⁵.

The **Belgian** body managing the ERDF in Flanders reported that at each annual closure of accounts, the managing, certifying and audit authorities carried out an additional check consisting in the comparison of their data so that any irregularity could be duly reported. Staff at the Flemish Government's Integrity Office and members of the public can raise concerns about integrity and wrongdoing by contacting Audit Flanders, the Integrity Office or the

²³ Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Spain, France, Croatia, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, Austria, Poland, Portugal, Romania, Slovakia, Sweden and Finland.

²⁴ Ireland, Greece, the Netherlands and Slovenia.

²⁵ For more detailed information see Section 2 'Member States' Replies'.

Ombudsman. The Flemish Government's Department of Agriculture and Fisheries reports all irregularities above a threshold of EUR 10 000 via the IMS system.

The **Bulgarian** managing authorities replied that their reporting of irregularities was subject to strict controls. They have set up systems to enter and check the information recorded on any irregularity detected during the implementation of their projects. Irregularity officers report irregularities in strict compliance with the conditions, procedures, deadlines and templates provided for in the Regulation on the administration of irregularities under the European Structural and Investment Funds. The managing authorities report irregularities through IMS, working closely with the AFCOS Directorate; no difficulties or problems have been identified. Any irregularity detected under the programme is duly reported in both the UMIS 2020 and IMS systems in the cases provided for.

Czechia replied that irregularities for the 2014–2020 programming period were reported in accordance with the *Methodological guide for the financial flows of programmes co-financed by the European Structural Funds, the Cohesion Fund and the European Maritime and Fisheries Fund for the programming period 2014–2020*. The procedures are included in the managing authorities' internal documents. Recorded irregularities are regularly monitored in accordance with the methodologies of the Ministry of Finance and the Ministry of Regional Development. At the same time, cooperation is under way with the financial administration bodies, which are responsible for supervising compliance with the Law on budgetary rules, including the recovery of funds from grant beneficiaries.

The **Danish** Fisheries Agency stated that every quarter, the agency's control team coordinates with its economics department over the detection of irregularities. If there are irregularities, these are reported through IMS. These are then checked by the Danish agricultural agency. Corrections are sent back to the Danish Fisheries Agency to ensure that the reporting is useful. The Danish business authority stated that it had a procedure for reporting irregularities in IMS that was in line with the Commission's regulation and the OLAF handbook.

The **Estonian** authorities responsible for the ESI, AGRI, FISH and HOME Funds reported that all implementing bodies must carry out a risk assessment procedure and report all detected or prevented irregularities via the e-based system.

Germany reported that it had had advanced management/control systems for years. This includes a major focus on fraud prevention and the reporting of irregularities. The systems also ensure proper reporting of non-fraudulent irregularities. The Federal Ministry of Finance, as the coordinating body, regularly organises workshops in this area.

The **Irish** Southern Regional Assembly (SRA) and the Northern and Western Regional Assembly (NWRA) (MA SEROP/BMWROP) reported the continued use of the IMS system, but stated that further training was required for the staff of managing authorities.

Greece reported that the managing authorities of operational programmes and the audit authority followed a specific procedure ('Reporting irregularities to the European Commission'). However, the audit authority reported that the recommendation was partially implemented because not all managing authorities and intermediate bodies had been registered in the IMS for the direct electronic transmission of irregularities. The registration of these authorities and bodies is ongoing, with access due to be granted shortly. They will then be able to report any potential irregularities they have detected.

All the relevant **Spanish** authorities reported that the reporting of non-fraudulent irregularities had been monitored similarly to in previous years, in particular to the 2007–2013 programming period. This suggests that falls in the number of non-fraudulent irregularities reported in the 2014–2020 programming period compared with 2007–2013 (not the case in all the reporting authorities) could be for other reasons, as highlighted in the 2019 PIF report. There is no evidence that this decrease is due to a worse performance in non-fraudulent irregularity reporting.

France reported that for the period 2017–2019, the audit authority (CICC) entered all reports of non-fraudulent irregularities (and suspected fraud) in the IMS application. Since 2020, the managing authorities are responsible for reporting. These authorities request reports through the ‘SYNERGIE’ IT system. The audit authority checks, validates or rejects the reports and sends them to the Commission via the SYNERGIE application. To ensure that non-fraudulent EAGF and EAFRD agricultural irregularities for the 2014–2020 programming period are regularly reported, CICC EAGF sends regular reminders to the paying agencies responsible for submitting irregularities to the irregularity management system (IMS).

Under common national rules issued by the **Croatian** Ministry of Regional Development and EU Funds intermediate bodies are obliged to file quarterly irregularity reports, using the IMS, to the Ministry of Finance’s Service for Combating Irregularities and Fraud. The reports contain all relevant information on the course, type and scope of actions/activities taken by the competent authorities in the relevant quarter. Intermediate bodies keep a register of irregularities listing all established and pending irregularities from the beginning of the eligibility period. These procedures make the necessary data available and enable decision-makers to take one step further in assessing whether and how goals are being achieved over time to prevent, detect, report and act upon irregularities.

In **Italy**, the Agency for Territorial Cohesion monitors the use of Funds and supervises the implementation of programmes and projects co-financed by the EU.

The **Latvian** Ministry of Agriculture and Rural Support Service (responsible for EMFF, EAFRD and EAGF) reported that the recommendation had been fully implemented. The irregularities in the Funds administered by the RSS are being monitored and no significant reduction in the irregularities has been identified. The RSS regularly reviews and improves the process of reporting the irregularities, including the revision of COVID-19-related fraud risks. The Central Finance and Contracting Agency (responsible for ESF, ERDF and Cohesion Fund) reported that a detailed irregularity detection, correction and reporting system was in place and was complied with closely. The Latvian managing authority has established guidelines to ensure the management of irregularities. Every quarter, the authority exports open irregularity cases from IMS and checks whether it is necessary to update information and forward it to the EU Fund Cooperation Institution (the Central Financing and Contracting Agency).

Lithuania reported that the following monitoring measures had been put in place: risk analysis, on-the-spot-checks, cooperation with law enforcement authorities, and monitoring of risky projects. The information on irregularities and related data is constantly monitored in the 2014–2020 European Union Structural Funds management and monitoring system (SFMIS2014), which is the main source of information for reporting irregularities to the Commission. The preparation and submission of irregularity reports is described in detail in the manual of procedures. So far, however, monitoring has been done manually, reviewing all relevant information.

In **Hungary**, AFCOS is responsible for providing the staff of the relevant national authorities with appropriate training on IMS. AFCOS also provides day-to-day assistance to ensure problem-free use of the system. AFCOS operates a working group on irregularity reporting to meet the reporting obligation laid down in the EU sectoral regulations uniformly and in full, and to make the content of irregularity reports more useful in preventing domestic fraud/irregularities. This group is composed mainly of experts from the managing authorities dealing with irregularity management and representatives of the certifying authority.

The **Maltese** Planning and Priorities Coordination Division, as the managing authority of the Cohesion Funds, has a system in place in which administrative verifications cover 100% of the expenditure items included in applications for payment. Where the number of transactions included are voluminous, the managing authority undertakes a sample check of the transactions included in a payment claim, based on a pre-established and internally agreed methodology. On irregularity detection and reporting, when a public-sector beneficiary detects an irregularity, a report is sent to the director (Policy Development and Programme Implementation) of the relevant line ministry. The director counter-signs the report and forwards it immediately to the managing authority, copying in the audit authority and the certifying authority.

The Netherlands reported that the existing procedures for EAFRD and EAGF had been functioning for years and that these procedures have been maintained at the same level. The authorities' input concerning non-fiscal data has increased in recent years. The authorities are still improving their input on such non-fiscal data. Due to the amount of findings and the different national and EU IT systems, not all the findings are reported yet. The Dutch authorities have also found that interoperability can be very helpful to improve the input given by a Member State. The outcome of the new procedures is obvious, with more data are being shared but not yet all.

On agriculture and rural development, **Austria** reported the provision of area-based LPIS-GIS support for farmers and on-the-spot checks (OTSC) inspectors and IT support, including standardised invoice lists, documented standard processes and OTSC reports. Risky market schemes are slowly decreasing in value and number of beneficiaries. On cohesion policy (ERDF), Austria reported an improved set of checks and controls, including an additional separate sheet on the risk of fraud for project reviews and a mandatory fraud risk assessment for each programme unit since 2014–2020. In addition, the audit authority's checklist on public procurement law has been expanded this year, with significantly more questions added to the checklist.

Poland reported that it duly complied with its obligations to report to the European Commission any irregularities found in respect of EU funds and to monitor them on a continuous basis. The authorities for each operational programme draw up appropriate procedures concerning the obligation to notify the Commission, including implementing instructions, taking into account the provisions set out in the national procedure drawn up on the basis of the relevant sectoral regulations and issued by the Government Commissioner for Combating Fraud against Poland or the EU. Therefore, the system in Poland for reporting irregularities and fraud (including cases of suspected fraud) is uniform and robust. The monitoring of cases of reportable irregularities includes control and analytical tasks to ensure that the data in the irregularity reports are consistent, complete and reliable.

Portugal reported that the procedures put in place involved the managing authorities, certifying authorities and audit authorities, thereby ensuring that different aspects of the

spending process are covered. Moreover, in its annual audits, the audit authority checks that all the irregular amounts detected are indeed reported.

Romania reported that documentary checks of the managing authorities, audit missions and the anti-fraud department (DLAF) checks had led to the discovery of the irregularities reported in the IMS. All cases of irregularities are monitored for each managing authority, especially those that require reporting to the Commission under the sectoral regulations. The tool for monitoring these cases is the Register of irregularities/debts, so there is no possibility to overlook the reporting of such a case. Although managing authorities have intensified their checks, the number of identified irregularities has decreased since the previous programming period. This was due to the experience gained by the beneficiaries in project implementation, as well as the constant assistance provided by managing authorities in project implementation.

Slovenia reported that the reduction in fraud was mainly due to a better co-financing agreement, which was mandatory for all intermediary bodies. In the period 2021–2027, Slovenia will try to include additional provisions on whistleblowers and similar institutes.

The **Slovak** Ministry of Finance, acting as the certifying authority, stated that the recommendation had been fully implemented. As there are no new procedures regulating reporting of irregularities, no significant changes took place compared to 2019. However, the recommendation is fully implemented thanks to procedures already in place from the beginning of the 2014–2020 programming period. Cooperation between the managing authority, certifying authority and the National Office for OLAF in Slovakia is realised through an information monitoring system (ITMS2014+) in which all irregularities are recorded in detail. In addition, the monthly/quarterly reports are compiled in this system, meaning that each new irregularity, whether fraudulent or non-fraudulent, and any update on already reported irregularities, is automatically included in the report if it meets all the conditions. All irregularities in the 2014–2020 programming period are monitored using an IT system, so reporting was not affected by the pandemic.

Finland reported that in two training sessions held in 2020, the certifying authority and the managing authority reminded the intermediate bodies about the need to keep information on irregularities updated in the monitoring system and to monitor the status of the treatment of the findings.

The **Swedish** Council for the Protection of the European Union's Financial Interests (the SEFI Council) has studied the authorities' reports of suspected crime in order to check how well the Council's reporting policy is implemented. Another aim was to follow up on whether the SEFI Council's guidelines for handling suspected crime need to be revised.

2. MEMBER STATES' REPLIES

This section includes the Member States' original replies to the questions regarding the implementation of the recommendations related to emergency spending and reporting of irregularities respectively.

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| 1.3. Austria |
|---------------------|

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒NO

If you did not implement the recommendation, could you please explain why?

In the sector of agriculture, no specific EU related emergency procurement is in place.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒NO

If you did not implement the recommendation, could you please explain why?

No emergency procurement in place.

Q.3 Have you already completed the transition to e-procurement processes?

☒NO

If partially or not, could you briefly explain at which point you are in the process?

No public procurement in the ministry of Agriculture, Regions and Tourism. All relevant actions take place in the federal procurement office.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒NO

If not, could you explain why and how your current system already ensures an adequate level of transparency?

In the sector of agriculture, a voluminous set of checks and controls is in place (control costs are up to 50% of subsidy paid for some sectors, putting in question the cost-benefit ratio).

Also in the sector of cohesion policy (ERDF) there is a set of checks and control. The checks of the Audit Authority were enhanced in 2020, not especially for emergency procurement, but in general.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

In the sector of Agriculture:

Area based LPIS-GIS support for farmers and OTSC inspectors as well.

- *Rural development measures now with IT support, including standardised invoice lists, documented standard processes and OTSC reports.*
- *Risky market schemes are slowly decreasing in value and number of beneficiaries.*

Sector ERDF:

In the sector of cohesion policy (ERDF) there is an improved set of checks and controls:

- *A separate sheet on the risk of fraud for project reviews was added.*
- *Each programme unit had to carry out a Fraud Risk Assessment since 2014-2020 and update it every 2 years. This is checked by the audit authority in the course of system audits.*

The Audit authority checklists on public procurement law have been expanded this year, i.e. significantly more questions in the checklist.

| |
|---------------------|
| 1.4. Belgium |
|---------------------|

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation (*EFRO VL (ERDF Flanders), DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID (Department of Agriculture and Fisheries, Flemish Government)*)

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

EFRO VL: The usual verification measures still apply, with no exceptions.

DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID: All deviations from the normal functioning of our verification and control systems are kept track of in an Excel table. We only lowered control rates for measures that had a record of low error rates. For other measures we applied either alternative checks or small adaptation of the on-the-spot check where possible, or delayed the on-the-spot check until the situation improved. Overall we kept the same level of assurance during the COVID19-crisis.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation (*EFRO VL, DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID*)

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

EFRO VL: The usual verification measures apply, in particular every public procurement contract is checked for correct implementation (100% monitoring). Use of the emergency procedure is an exception that is always subject to thorough checks.

DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID: Emergency procurement procedures are seldom used and if used, they are always used on the basis of a case-by-case assessment.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation (*EFRO VL, DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID*)

EFRO VL: Since 1 January 2020, communication and exchange of information between the awarding authority and undertakings, including electronic submission and receipt of tenders, must be carried out using electronic means of communication at all stages of the award procedure.

DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID: The Flemish government was an early adaptor of e-procurement, working with an (mandatory) digital e-procurement for public procurement procedures involving publication since 2013.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ NO (*EFRO VL, DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID*)

If not, could you explain why and how your current system already ensures an adequate level of transparency?

EFRO VL: see Q2.

DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID: We have transparent procedures in place, especially due to the mandatory use of e-procurement. In the case of emergency procurement specifically, Flemish legislation states that it is mandatory for emergency procurements that reach the European threshold to publish an announcement of the awarded contract with inclusion of the results of the awarding procedure within 30 days after closure. During the COVID19-crisis, internal communication from the Flemish government drew attention to this rule and other tips via a webpage (link).

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation (*EFRO VL, VLAAMSE OVERHEID INTEGRITEIT, DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID*)

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

EFRO VL: At each annual closure an additional check is carried out during which the managing, certifying and audit authorities compare their data so that any irregularity is duly reported.

VLAAMSE OVERHEID INTEGRITEIT (Flemish Government, Integrity Office): At the Flemish government, both internal employees and citizens can raise concerns regarding integrity and wrong-doing by contacting Audit Flanders, the Integrity Office and the Ombudsman.

When the raised concerns point towards fraudulent irregularities, Audit Flanders will look into it and start an in-depth investigation if necessary. Audit Flanders conducts investigations at the Flemish govern but also at the Flemish cities and municipalities.

When the raised concerns deal with non-fraudulent irregularities, the Integrity Officer will address these issues and will register the concerns in a secured application and will also register the actions taken, and the expert services that were involved to tackle the issues. The Integrity Officer makes a yearly report on the number of raised concerns received and the policy measures that have been taken. This report is published online: <https://overheid.vlaanderen.be/bedrijfsinformatie/co%C3%B6rdinator-integriteitszorg>

Since 2019 all entities of the Flemish government have also extended this duty to register and report to their integrity contact person. Each entity has at least one integrity contact person. This way the Flemish government aims to gather more detailed information on the number of concerns raised and the actions and measures taken to address these issues.

DEPARTEMENT LANDBOUW EN VISSERIJ VLAAMSE OVERHEID All irregularities above a threshold of 10.000,00 euro are reported via the IMS system.

1.5. Bulgaria

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Managing Authority of Operational Programme 'Good Governance' 2014-2020:

the MA generally applies the following measures for the timely and correct implementation and reporting of the projects and the programme (Operational Programme 'Good Governance'):

- *Monitors the implementation of project activities on an on-going basis. Provides case-specific advice to beneficiaries, including on technical issues related to project reporting. Meets regularly with beneficiaries to discuss specific problems of the projects and how to resolve them, including as a mediator to coordinate the implementation of projects involving different institutions. Follows up public procurement cases concerning key projects in the Commission for Protection of Competition and the Supreme Administrative Court on an on-going basis;*
- *Carries out analyses at project and programme level on a monthly basis in order to address problems encountered in a timely manner;*
- *Requires that beneficiaries submit payment claims on time in order to ensure timely verification and certification and mitigate the risk of automatic decommitment of programme funds;*
- *The necessary organisation has been established by setting specific deadlines for beneficiaries' submission of the accounts to the UMIS, after which the MA carries out verification within a short period of time;*
- *Regularly provides guidance/information on the most common errors in implementation, public procurement; changes in the legal framework and others to prevent errors and irregularities. Maintains and updates the information on the website of Operational Programme 'Good Governance';*
- *Proactively coordinates to clarify horizontal issues related to the implementation of measures from roadmaps to e-government strategy papers;*
- *Works in close cooperation with administrations/administrative units in policy areas, the implementation of which is funded and implemented under the programme (the State e-Government Agency, the Modernisation of Administration Directorate in the Administration of the Council of Ministers, the Supreme Judicial Council, etc.);*
- *With regard to verification, in the event of infringements, in particular incorrect and incomplete payment claims in respect of the specific expenditure and the form required, the expenditure is not verified, as the beneficiary has not submitted before the deadline all the necessary documents requested by the MA in the verification process in accordance with Article 63(1) of the European Structural and Investment Funds Act (ZUSESIF). Under Article 64(1) ZUSESIF, if a beneficiary fails to submit a document or clarification within the time limit, the expenditure concerned is not verified and may be included in a subsequent payment request;*
- *The MA carries out an administrative check of each payment claim for each beneficiary. Staff handling the relevant payment claim also check for any whistleblowing reports received concerning fraudulent behaviour under Annex 2 Recommended mitigating controls to the Guidelines for Member States and Programme Authorities responsible for fraud risk assessment and effective and proportionate anti-fraud measures;*
- *The epidemic crisis that started in March 2020 made it difficult to carry out certain activities, most often related to events. In this context, numerous enquiries have been submitted to the Operational Programme 'Good Governance' in order to clarify the transition from an in-person to an online format, the spending of funds in the new*

circumstances, the type of reporting documents to be submitted. The MA publishes guidelines in its section on the single information portal, which contain a general recommendation to do one's best to implement projects in a timely and accurate manner, and, for public events to be carried out remotely, if possible and if it will not adversely affect their effectiveness, following the corresponding amendment of grant contracts where necessary. The two instructions of the MA are available at the following links: <https://www.eufunds.bg/bg/opgg/node/4229>; <https://www.eufunds.bg/bg/opgg/node/4742>

Managing Authority of Human Resources Development Operational Programme 2014-2020:

In response to the challenges of ensuring full verification of expenditure under the Human Resources Development Operational Programme 2014-2020 (OP HRD) in the context of the COVID-19 pandemic, the MA developed an additional means of verification of programme activities through a system of telephone interviews and other audio-visual communication with staff of beneficiaries and persons from the target groups of individual projects for which expenditure has been claimed. The official who carried out the inspection records the information from these interviews in checklists which, under case-law of the Supreme Administrative Court, are official documents within the meaning of Article 179(1) of the Code of Civil Procedure due to the fact that they were issued by officials in the exercise of their duties. This method was introduced as an alternative to in-person interviews normally carried out during on-the-spot checks, due to social distancing requirements. By using this technique, it is ensured that relevant information is obtained in the verification process. On the basis of information obtained from such interviews since March 2020, it was established that a total of 3 contracts have not been implemented. A financial correction was set for one of the contracts, verification of affected expenditure was refused for another and the third contract was terminated and the beneficiary was informed that it should recover any amounts unduly received. A referral has been made to the competent authorities.

Managing Authority of Operational Programme 'Science and Education for Smart Growth' 2014-2020:

Every year, the Audit Authority of the Audit of European Union Funds Executive Agency (AEUFEA) carries out an assurance audit on the effective functioning of the management and control systems of the Managing Authority of the Operational Programme 'Science and Education for Smart Growth' carried out by the Audit Authority (AA). In the final report of 13 July 2020, the AA categorised the assessment of the management and control systems under Key Requirement 4 'Appropriate management verifications' as Grade 2 'Functioning. Some improvement needed.' In the report, the AA states that adequate measures have been taken by the MA of Operational Programme 'Science and Education for Smart Growth' to ensure adequate administrative capacity to implement the procedures for the verification of public procurement expenditure.

Managing Authority Implementation of Operational Programme 'Transport and Transport Infrastructure' 2014-2020:

For Operational Programme Transport and Transport Infrastructure 2014-2020, a functioning management and control system has been set up for the part of the management verifications and monitoring of the funded projects, which includes:

- *administrative verifications in respect of each application for reimbursement by beneficiaries, which include:*
 - *check on the legality of the procedures carried out by the beneficiary for the selection of the contractor;*
 - *verification of eligibility of costs claimed by beneficiaries;*
 - *verification of the activities carried out and the implementation of the indicators under the project;*
 - *check of fraud indicators; and*
 - *check of whistleblowing ;*
- *On-the-spot checks on project implementation to verify physical and financial progress*
- *Periodic audits of the system by the AEUFEEA, and in particular the key requirement concerning the verification of expenditure under the programme, provide reasonable assurance as to its high level.*

Managing Authority of Operational Programme 'Regions in Growth' 2014-2020:

The Managing Authority of the Operational Programme 'Regions in Growth' 2014-2020 updated the Manual for the management and implementation of the operational programme and the Management and control systems of the operational programme in line with the needs arising from the coronavirus outbreak, and introduced structural and organisational changes. The administrative capacity in the monitoring and verification units was improved by transferring experts from other departments, thus improving the implementation of the relevant activities within the Managing Authority. The conclusion is that the MA of OPRG 2014-2020 maintains a high level and quality of monitoring and verification.

The management and control systems of the Managing Authority do not report negative impacts and trends, despite the pandemic conditions and the containment measures taken by the government, in particular the challenge for some staff of the MA to carry out their duties remotely. The Managing Authority has put in place all the conditions for providing for staff without taking the risk of compromising the quality of work and of deteriorating the organisation of monitoring and verification of resources from the European Structural and Investment Funds.

Managing Authority of Operational Programme 'Environment' 2014-2020:

The monitoring and verification process for OPE 2014-2020 has been maintained at the highest level, taking into account all findings and recommendations of both the national audit bodies and the EC and the European Court of Auditors. As the expenditure foreseen under the programme is in no way linked to addressing the consequences of the COVID-19 pandemic, no exceptional procurements and expenditure under the operational programme are planned. This was achieved by transferring to the programme of resources saved under Operational Programme 'Innovation and Competitiveness' which has more experience in managing funds linked to private legal entities. Thus, the responsibility for controlling exceptional expenditure was clearly defined and this allowed for a more thorough control of this type of expenditure.

With regard to increasing transparency in the use of European funds, it should be borne in mind that full e-procurement was introduced in 2020 ensuring equal access to information on

ongoing tenders and significantly reducing the scope for manipulation of tendering procedures.

Executive Agency 'Certification Audit of European Agriculture Funds'

In relation to the increased risk of fraud, the staff of the Agency 'Certification Audit of European Agricultural Funds' participated in a series of meetings with the Commission's audit authorities on the need to extend checks during audit engagements and to enhance awareness of the increased risk of double financing and direct award of public contracts.

As part of the checks to be carried out at the Agency, unjustified direct award is an indicator of fraud.

National Fund Directorate within the Ministry of Finance

The expenditure certification process is carried out by the National Fund Directorate within the Ministry of Finance (Certifying Authority) in accordance with the principle of separation of functions and responsibilities between the actors involved, while avoiding duplication of controls.

Documentary checks prior to the preparation and submission of payment claims to the Commission are based on the accounting and control procedures established by the CB and include:

- verification of Certification Report and Declaration of Eligible Expenditure;*
- review of the reports (preliminary and final) of control and audit authorities for the OP concerned and information on the implementation of the recommendations made therein;*
- review of registered whistleblowing and irregularities under the OP;*
- other checks related to the verified expenditure (CA verifications, on-the-spot checks of the MA, review of information on the progress of implementation and the results of the management checks carried out, etc.);*
- maintaining databases for the purpose of certification of expenditure, financial management and implementation of OPs;*
- keeping an audit trail.*

Checks on accounting records are carried out on a sample basis to confirm the eligibility of expenditure included in the Certification Report and Declaration of Eligible Expenditure and on public procurement procedures to confirm the legality of the expenditure included in the Certification Report and the Declaration of Eligible Expenditure and the results of these checks are taken into account in the certification of expenditure with the annual closure of accounts.

The certification of expenditure to the European Commission through the annual accounts for the closure of an accounting year for each programme includes the following activities:

- review of payment applications prepared and submitted to the European Commission during the accounting year;*

- *review of the results of the CB's verifications of compliance with the managing authority's procedures and control activities and their impact on the amount of eligible expenditure for the accounting year concerned;*
- *other checks related to expenditure submitted to the Commission for reimbursement (audits, irregularities, whistleblowing, financial corrections, debts, etc.)*
- *preparation and submission to the Commission of annual accounts for the closure of the accounting year;*
- *maintaining databases for the purpose of certification of expenditure, financial management and implementation of OPs;*
- *ensuring an adequate audit trail;*

In relation to the activities listed above, the organisational structure of the CA sets the following levels of responsibilities related to the certification process:

- Expert level — control and certification experts and other experts (accountants, lawyers, liquidity management experts);*
- Management level — Heads of Unit;*
- Certification level — Head of the CA.*

In order to improve the certification process in 2020, changes were made to the checklists used for the verification of public procurement and for the preparation of the annual accounts. The changes made are based on both experience and regulatory developments in the field concerned.

The certification of expenditure did not show any increase in the identified deviations and shortcomings in either the work of the Managing Authorities or the implementation of the projects.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Public Procurement Agency

The Public Procurement Act (ZOP) provides for various options that allow for a quick procurement, including in cases of extreme urgency. These possibilities are in line with the relevant European directives in the field. In cases where there is an urgent need to select a contractor, the contracting authority has the possibility to shorten the time limits for submission of applications and/or bids for competitive procedures (Article 74(4), Article 75(7), Article 76(6) and Article 133(4) of the Public Procurement Act, etc.). In this case (i.e. in the case of a fast-track procedure), the contracting authority should indicate in the contract notice the circumstances requiring the urgent procurement.

Where it is not possible to carry out a fast-track procedure, the contracting authority may meet its need by carrying out one of the negotiated procedures referred to in Article 18(1), subparagraphs (8), (9) and (13) of the Public Procurement Act, i.e. negotiation without prior publication pursuant to Article 79(1)(4) of the Public Procurement Act if it is a public contracting authority, or a negotiated procedure without prior invitation to participate in accordance with Article 138(1) of the Public Procurement Act if it is a sectoral contracting authority (or direct negotiation under Article 182(1)(1) of the Public Procurement Act for a contract with an estimated value below the European thresholds). The application of one of the abovementioned legal bases is permissible where an urgent award of the contract is necessary due to exceptional circumstances and it is not possible to comply with time limits, including shortened deadlines, for an open, restricted or competitive procedure with negotiation. Moreover, the circumstances justifying the existence of urgency should not be attributable to the contracting authority.

According to the legal definition of § 2(17) of the Additional Provisions of the Public Procurement Act, 'exceptional circumstances' are circumstances caused by events unforeseeable by the contracting authority, such as a natural disaster, an accident or a calamity, etc. that damage, directly endanger or may result in a subsequent occurrence of a danger to the life or health of persons, to the environment, to public order, to national security or to the defence of the country or are likely to significantly impede or impair the normal performance of the contracting authority's statutory activities.

The Public Procurement Act provides that the contracting authority must justify the exceptional circumstances when conducting a procedure under Article 79(1)(4), Article 138(1) or Article 182(1)(1) of the Public Procurement Act. In this vein, the award of emergency contracts in the country is subject to legal grounds and a case-by-case assessment by the individual contracting authority.

The Public Procurement Agency (PPA) carries out an external review of legality in the award of public contracts in the event of extreme urgency and in the conduct of negotiated procedures in exceptional circumstances. Controls by the PPA are carried out in accordance with the conditions laid down in the Public Procurement Act.

It should be noted that ex ante control of the PPA constitutes effective methodological support for the contracting authorities, which, under the Public Procurement Act, are responsible for the legality of their procedures. At the end of all PPA checks an opinion is issued in which findings are accompanied by recommendations and instructions to address identified inaccuracies and regulatory non-compliances.

Managing Authority of Operational Programme 'Good Governance' 2014-2020:

The MA of the Operational Programme 'Good Governance' carries out a strict ex-post control of procurement, including the grounds and procedures for emergency procurement and direct contracting. Where necessary, the MA of Operational Programme 'Good Governance' assists beneficiaries in checking the legality of the procurement conditions laid down so as to avoid cases of unlawful emergency procurement and, where such cases are discovered at the ex-post control stage, the MA establishes an appropriate financial correction to protect the financial interests of the European Union.

Article 13 of the Act on State of Emergency Measures, announced by Decision of the National Assembly of 13 March 2020, and Measures Addressing the Effects (title amended SG No

44/2020, in force as of 14 May 2020, published SG No 28 of 24 March 2020, in force as of 13 March 2020, last amended SG No 109 of 22 December 2020, in force since 22 December 2020), permits a derogation from (suspends the application of) the Public Procurement Act in its entirety for the duration of the state of emergency and the epidemic emergency and three months after it is lifted in the following cases:

1. contracting authorities purchasing hygienic materials, disinfectants, medical devices and personal protective equipment necessary to ensure containment measures and transport services in such cases;
2. purchase of medical devices, provision of testing and reporting services, purchase of medical and laboratory equipment necessary for the diagnosis and treatment of infected patients, their supplies, as well as their implementation and warranty maintenance and transport services in such cases;
3. contracting activities for the disposal of pesticides and hospital waste in accordance with Regulation No 1 on the requirements for the collection and treatment of waste in the hospitals and health care facilities.

As the beneficiaries of the OP are public and non-governmental bodies, institutions and organisations and the priority axes of the OP do not imply expenditure in these sectors, the MA of OP does not control the legality of such expenditure, as such expenditure is not carried out under OP projects.

Managing Authority of Human Resources Development Operational Programme 2014-2020:

In the process of verifying each payment claim, part of the checks carried out include checks on all expenditure relating to the assignment of supplies, services and works to persons outside the beneficiary. All concluded contracts are checked irrespective of their value and of whether they were awarded using the procedures provided for by law or directly. The check is carried out by completing appropriate checklists and assessing the compliance of each contract with the applicable procurement rules. Where a contract has been concluded applying an exception to the scope of the Public Procurement Act (and in particular Article 13(1)(21) of the Public Procurement Act and Article 13 of the Act on State of Emergency Measures, announced by Decision of the National Assembly of 13 March 2020, and Measures Addressing the Effects), it is verified whether the factual circumstances established at the time of the conclusion of the specific contract justify the application of the relevant exception.

Managing Authority of Operational Programme 'Science and Education for Smart Growth' 2014-2020:

The MA of OP does not recommend that beneficiaries carry out negotiated procedures without prior publication. Where the conduct of such procedures is necessary for reasons of urgency, the Public Procurement Agency, in the context of the checks it carries out under Article 233 of the Public Procurement Act gives an opinion on the choice of this procedure and the validity of the reasons. When carrying out ex-post controls, the MA of the OP analyses the opinion of the PPA, the procurement documents (including any changes to the outcome of the opinion of the PPA) and decides whether the conditions for urgent award have been met for the specific procedure.

Two negotiated procedures were carried out under the OP without prior publication due to the specificity of the project BG05M2OP001-2.012-0001 'Education for tomorrow' and in view of the pandemic situation following the opinion of the PPA on the legality of the choice of procedure:

- 1. Public procurement procedure for the 'Provision of equipment with the necessary internet access to set up a suitable organisation in the school education system for teaching remotely using information and communication technologies'. The contract is under Article 18(1)(8) of the Public Procurement Act and its estimated value falls within the scope of Article 20(1)(1)(b) of the Public Procurement Act.*

In its choice of procedure, the contracting authority referred to Article 79(1)(4) of the Public Procurement Act i.e. where an urgent award of the contract is necessary due to exceptional circumstances and it is not possible to comply with time limits, including shortened deadlines, for an open, restricted or competitive procedure with negotiation. The circumstances justifying the existence of urgency should not be attributable to the contracting authority.

Given the declared state of emergency and the need for a transition from teaching at schools to distance learning, it was necessary to deliver to schools, urgently, within 3 days, laptops equipped with internet access devices, with prepaid internet access included for a period of 3 months, allowing distance learning to take place. The need to perform the delivery as soon as possible (3 days) rendered it impossible to comply with the time limits, even shortened time limits, for an open, restricted or competitive procedure with negotiation.

The PPA has also confirmed the existence of all the conditions for applying the procedure under Article 79(1)(4) of the Public Procurement Act in an opinion of 23 March 2020 on controls carried out under Article 233 of the Public Procurement Act.

- 2. Public procurement procedure for the 'Provision of equipment necessary to set up a suitable organisation in the school education system for teaching remotely using information and communication technologies'. The contract is under Article 18(1)(8) of the Public Procurement Act and its estimated value falls within the scope of Article 20(1)(1)(b) of the Public Procurement Act.*

In its choice of procedure, the contracting authority referred to Article 79(1)(4) of the Public Procurement Act i.e. where an urgent award of the contract is necessary due to exceptional circumstances and it is not possible to comply with time limits, including shortened deadlines, for an open, restricted or competitive procedure with negotiation. The circumstances justifying the existence of urgency should not be attributable to the contracting authority.

Given the declared state of emergency and the need for a transition from teaching at schools to distance learning, it was necessary to deliver to schools urgently, within 3 days, laptops with minimum technical specifications allowing distance learning to take place. The need to perform the delivery as soon as possible (3 days) rendered it impossible to comply with the time limits, even shortened time limits, for an open, restricted or competitive procedure with negotiation.

The PPA has also confirmed the existence of all the conditions for applying the procedure under Article 79(1)(4) of the Public Procurement Act in an opinion of 23 March 2020 on controls carried out under Article 233 of the Public Procurement Act.

Managing Authority Implementation of Operational Programme 'Transport and Transport Infrastructure' 2014-2020

Emergency procurement is regulated at legislative level by Article 79(1)(4) of the Public Procurement Act, which reads as follows: 'where an urgent award of the contract is necessary due to exceptional circumstances and it is not possible to comply with time limits, including shortened deadlines, for an open, restricted or competitive procedure with negotiation. The circumstances justifying the existence of urgency should not be attributable to the contracting authority.' Under Article 233 of the Public Procurement Act, the Public Procurement Agency controls such procurement.

Managing Authority of Operational Programme 'Regions in Growth' 2014-2020:

In accordance with the Manual for the management and implementation of the Operational Programme 'Regions in Growth' 2014-2020 and the Management and Control Systems, all tendering procedures carried out undergo a legality check prior to the verification of funds, with particular attention being paid to procedures carried out in the context of the fight against the spread of the coronavirus infection, COVID-19. The nature of a limited number of eligible specific beneficiaries regulated under OPRG 2014-2020 creates stability in the implementation of the programme, thus achieving full implementation of the recommendation.

Audit of EU Funds Executive Agency

In its audit work in 2020, the AEUFEEA followed the Commission's guidance set out in the Communication from the Commission: Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis. In this respect, three aspects are subject to enhanced control:

- reasons for shortening time limits in open and restricted procedures,*
- are the conditions met for using a negotiated procedure without publication of a contract notice on grounds of exceptional urgency?*
- changes to contracts resulting from COVID crisis events.*

As contracting authority, the Audit Authority did not carry out urgent procurement procedures.

Executive Agency 'Certification Audit of European Agriculture Funds'

Within the existing Executive Agency 'Certification Audit of European Agricultural Funds' (IA SOSEZF) procedures, each award is subject to a separate detailed check irrespective of the procurement procedure used.

From an audit point of view, fraud indicators are:

- 1. bargaining in the bid*

2. unfounded award to one contractor

Where fraud indicators are established, immediate action is taken to prevent the payment of irregular expenditure and the competent authorities are informed of any follow-up action.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Public Procurement Agency

The Centralised Automated Information System for Public Procurement has been operating since 1 January 2020 and, from that date, the following three groups of contracting entities are required to use it: the executive authorities, mayors of certain municipalities and representatives of certain sectoral contracting entities. All other contracting entities have been required to use the system from a later date, 14 June 2020 in relation to the exceptional epidemic situation in the country.

The national electronic platform contains information on the whole procurement process, including e-tendering, electronic communication between contracting entities and economic operators, electronic submission of applications, tenders and e-invoices. It includes business processes for the award of contracts with values both above and below the European thresholds for all national procedures, including award through the solicitation of tenders or restricted invitations.

In addition, the platform offers users a range of other possibilities and functionalities. It is an electronic sender, contains an ESPD module and buyer profiles of all Bulgarian contracting entities. The following modules are to be introduced: e-shop, electronic complaint, electronic requests for the performance of contracts, modules assisting bodies in ex-ante and ex-post control of the application of the law.

Managing Authority of Operational Programme 'Good Governance' 2014-2020:

The Managing Authority of the OP, on the one hand, follows the procurement procedure through the electronic system as the contracting authority and, on the other hand, monitors the lawful award of public contracts by the beneficiaries of the OP in the framework of the ex-post control of legality.

Managing Authority Implementation of Operational Programme 'Transport and Transport Infrastructure' 2014-2020

Due to the introduction of electronic public procurement in Bulgaria, since 1 January 2020 both tenders and their evaluation by contracting entities, including projects funded by OP, are carried out entirely electronically.

Managing Authority of Operational Programme 'Regions in Growth' 2014-2020:

In the centralised electronic system maintained by the Public Procurement Agency, tenders are stored in encrypted form until the deadline for their opening and presentation of a

decryption key by the economic operator, minimising the risk of fraud and manipulation. The system stores data on the main actions of all actors involved in the process.

Managing Authority of Operational Programme 'Environment' 2014-2020:

The version of SG No 86/2018 in force since 1 November 2019 of the Public Procurement Act introduced a step-by-step award of electronic public contracts using a centralised electronic platform.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

Public Procurement Agency

The national electronic platform currently ensures a sufficiently high level of publicity and transparency of the procurement process in the country. The Public Procurement Register which is part of the platform contains an electronic file of any public contract above a certain value (including contracts awarded through negotiated procedures under Article 18(1), subparagraphs 8, 9 and 13 of the Public Procurement Act). The file contains all relevant documents relating to the procurement (decisions, notices, documentation, committees reports and minutes, information on appeals, etc.), contracts, framework agreements and annexes thereto, and subcontracts.

The amendments adopted at the end of 2020 (Article 26(1)(3) of the Public Procurement Act) have extended the cases in which contracting authorities are required to send information for publication in the register. They are also obliged to send information on contracts awarded in accordance with the rules laid down in an international agreement between Bulgaria and a third country in civil procurement and in contracts in the fields of defence and security (Article 13(1), subparagraph 1 and 13(b) of the Public Procurement Act). The amendment also concerns certain specific exceptions applied by sectoral contracting entities, including the contracts of an affiliated undertaking and of a joint venture (Article 15(1)(1), (2), (5) and (6) of the Public Procurement Act). The obligation is introduced in connection with the implementation of the commitment under the directives to send information on these contracts to the Commission.

The system currently allows the user to consult all public contracts and contracts financed under European programmes.

Managing Authority of Operational Programme 'Good Governance' 2014-2020:

Given the type of beneficiaries and projects under the OP, as indicated in the answer to question Q.2 above, the derogations of the Public Procurement Act under Article 13 of the State of Emergency Act are not applicable to the costs of projects under the programme. For the same reason, the emergency procurement financed under the programme by shortening deadlines is not practicable and therefore no additional transparency measures are needed beyond the general rules on ex-post control of the legality of the selection of external

contractors by the beneficiaries of projects under the OP, including through direct contracting.

Managing Authority of Operational Programme 'Science and Education for Smart Growth' 2014-2020:

At introductory training sessions and periodic meetings with beneficiaries, the Managing Authority recommends that, as a rule, beneficiaries use the most competitive procedures — an open procedure and a public competition for contracting authorities under the Public Procurement Act or a public call for beneficiaries which are not contracting authorities under the Act. In meetings and answers to questions related to the declared state of emergency, the beneficiaries are instructed, when they intend to use negotiated procedures, including in cases of urgency, to discuss in advance with the MA the applicability of the relevant procurement procedure in the specific public procurement. In addition, under the Public Procurement Act, the MA requires that all procurement procedures, including in the context of urgency, be published on the beneficiary's buyer profile. All checklists for ex-post control of procedures carried out under the Public Procurement Act provide for checks on whether the conditions for emergency procurement are fulfilled in cases where such a procurement is permitted by law.

The measures are carried out in accordance with the requirements of the Public Procurement Act for procedures under Article 79(1)(4). The conditions and procedures for carrying out of such a procedure are laid down in the Rules for the Implementation of this Act.

Managing Authority of Operational Programme 'Regions in Growth' 2014-2020:

In accordance with national and European legislation, the Managing Authority of the Operational Programme 'Regions in Growth' 2020-2014 has put in place whistleblowing arrangements. It also closely monitors information on possible irregularities in the press or other sources. In cases of sufficient information it may, on its own initiative, carry out the relevant checks laid down in ZUSEŠIF. The MA of the OPRG 2014-2020 is transparent with regard to the control on the use of European Structural and Investment Funds and regularly publishes information on frequent infringements of the legislation leading to the detection of irregularities and the imposition of financial corrections. Provides training to beneficiaries and submits information to public registers (UMIS 2020). In view of the above, the MA of OPRG 2014-2020 has reached the maximum level of transparency and publicity in its operations and the conditions of tendering required to combat the spread of the coronavirus infection (COVID-19) do not imply additional measures. The risk assessment carried out at institutional level did not identify any risk of compromising the transparency activities in the use of European Structural and Investment Funds.

Managing Authority of Operational Programme 'Environment' 2014-2020:

Measures to further enhance transparency in the use of European funds have been taken at national level by continuous upgrading of the single portal <https://eumis2020.government.bg/>. It publishes most of the information related to grant procedures, the types of expenditure approved, the value of administrative contract concluded for the awarding of a grant, as well as direct links to the website of each programme. Also, within the framework of the national standards in place, as an operational programme, OPE 2014-2020 publishes on a regular basis all information of interest to the programme's stakeholders, including on upcoming and past training, on most frequent errors identified in the process of monitoring and controlling

the implementation of the concluded grant contracts, and on the possibilities for whistleblowing.

Managing Authority of the Maritime Affairs and Fisheries Programme 2014-2020:

All beneficiaries of the Maritime and Fisheries Programme 2020-2014 are required to carry out procedures for the selection of contractors and the procedures are published in the electronic system UMIS 2020. All offers from potential contractors are submitted electronically and an audit trail is kept. In addition, the implementation of projects financed under the programme does not provide for exceptions for the selection of a contractor without procurement, except in the case of an award of up to BGN 30 000.

Executive Agency 'Certification Audit of European Agriculture Funds'

To date, emergency award procedure have not been audited by Executive Agency 'Certification Audit of European Agricultural Funds'.

If not, could you explain why and how your current system already ensures an adequate level of transparency?

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

Managing Authority of Operational Programme 'Good Governance' 2014-2020:

The reporting of irregularities to the MA of the OP for the 2020-2014 programming period is subject to strict controls. There are two interchangeable 'irregularity officers' with the corresponding job descriptions. The approved procedure for the administration and reporting of whistleblowing and irregularities/suspected fraud under the programme lays down the rules, the terms and the procedures for the administration of irregularities. It constitutes the Internal Rules for the Administration of Irregularities, drawn up on the basis of Article 13(2) of the Regulation on the administration of irregularities under the European Structural and Investment Funds, adopted by Decree No 173 of the Council of Ministers of 13 July 2016. The administration of whistleblowing is carried out in accordance with the legal requirements, which is a condition for an effective organisation for the management and implementation of the registration of whistleblowing reports and the administration of irregularities. In order to refine the follow-up of irregularities, the Implementation Manual and Management and Control Systems for the Operational Programme 'Good Governance' were amended on 22 January 2020 and 22 December 2020. In the procedure for the administration and reporting of irregularities/suspicions of fraud under the OPGG, the responsibility for reporting on the progress of the checks on whistleblowing has been attributed to the official entrusted with checking reported irregularities and reporting on progress concerning irregularity reports.. The Head of the Monitoring and Verification Unit carries out ongoing checks on the actions of the officials carrying out the checks in order to comply with the statutory deadlines for establishing whether or not there is an irregularity in relation to reports received.

Managing Authority of Human Resources Development Operational Programme 2014-2020:

A system has been set up at the MA to enter and control the information recorded on any irregularity detected during the implementation of projects under the HRD OP. Compliance with the procedures for the administration of irregularities under national law is also subject to external control by the AFCOS Directorate of the Ministry of the Interior on the basis of Article 30(1) of the Regulation on the administration of irregularities under the European Structural and Investment Funds and an audit by the AEUFEA and the Court of Auditors. The results of controls or audits are recommendations to correct detected errors or remedy other irregularities, with a set deadline for taking corrective action.

Managing Authority of Operational Programme 'Science and Education for Smart Growth' 2014-2020:

For the 2014-2020 programming period, the MA of the programme registered and reported a total of 253 irregularities, only 4 of which were 'suspected fraud'.

With regard to irregularities which are not qualified as 'suspected fraud', the MA applies, with the same care and responsibility, the measures to prevent, detect and counter irregularities and recover funds unduly paid. This is supported by the conclusion of the third system audit of the programme by the AEUFEA where the assessment of key requirement 7 'Effective implementation of proportionate anti-fraud measures' classified it in category 1 'Works well. No or only minor improvement(s) needed.' The check carried out by the AEUFEA under key requirement 7 did not identify any deviations.

All irregularities are registered in the Information System for the Management and Monitoring of EU Funds in Bulgaria 2020 (UMIS 2020), to which both irregularity officials from the MA and the AFCOS Directorate of the Ministry of the Interior, the Audit Authority and the Certifying Authority have access. Irregularities are reported by irregularity officers in strict compliance with the conditions, procedures, deadlines and templates provided for in the Regulation on the administration of irregularities under the European Structural and Investment Funds. In addition, internal rules and audit trails have been set up and are applied in the MA of the programme (Chapter 12 'Irregularities' of the Operational Programme Management Manual) ensuring the timely application of legal requirements for reporting irregularities, including those not qualified as 'suspected fraud'.

Managing Authority Implementation of Operational Programme 'Transport and Transport Infrastructure' 2014-2020

Recognising the importance of the irregularity reporting process, a separate functional unit, Risk Management, Prevention and Management of Irregularities, was set up at the MA in 2015 and one of its functions is to ensure the timely and accurate reporting of detected irregularities. To this end, experts from this unit carry out an independent check of decisions on financial correction to establish the existence/absence of the mandatory elements of the irregularity in accordance with Article 14 of the Regulation on the administration of irregularities in the ESIF and, if necessary, report the irregularity found in accordance with the applicable rules.

Periodic audits by the AEUF, in particular of the key requirement concerning risk management under the programme and the inspections of the AFCOS (Ministry of Interior), are an important element in the enhanced monitoring of this process.

Managing Authority of Operational Programme 'Regions in Growth' 2014-2020:

The managing authority of Operational Programme 'Regions in Growth' 2014-2020 considers that it has implemented the recommendation. Reporting of irregularities is carried out by experts on irregularities, with a decrease in the reported irregularities, as the 2014-2020 programming period is the second programming period that took place after the accession of the Republic of Bulgaria to the European Union and both the administrative capacity and the beneficiaries have gained sufficient knowledge and experience in the implementation of the European Structural and Investment Funds. The implementation of the 2007-2013 and 2014-2020 programming periods allowed for the accumulation of experience both by the MA and experience gained as a result of audit reports of the Audit Authority and case-law of the Supreme Administrative Court on infringements constituting irregularities within the meaning of the Regulation. The MA of the 2020-2014 programme considers that the reduced number of non-fraudulent irregularities reported is based on the accumulated practice and improved administrative capacity of beneficiaries in their capacity as contracting authorities. It is also owing to the MA's clarification and information campaigns.

The reporting of irregularities through IMS is carried out by the MA working closely with the AFCOS Directorate and no difficulties or problems have been identified.

Managing Authority of Operational Programme 'Environment' 2014-2020:

Any irregularity detected under the programme is duly reported both in UMIS 2020 and via the IMS system in the cases provided for. All cases are followed up until the circumstances provided for in the Regulation on the administration of irregularities under the European Structural and Investment Funds have arisen and warrant their closure.

Audit of EU Funds Executive Agency

According to the Manual for the audit of EU funds for the programming period 2014-2020, the procedures for detecting irregularities and suspected fraud provide for the following:

In the event of a deviation from the evaluation criteria in the relevant checklists, the auditor assesses the existence of an irregularity. The conclusion is based on the concept of irregularity in the applicable regulations, as well as the Regulation on the indication of irregularities constituting grounds for financial corrections and the percentage indicators for determining the amount of financial corrections under the ZUSESIF.

The auditor identifies the financial impact of each infringement found and documented and determines an appropriate financial correction. To this end, the nature and gravity of the offence/irregularity and the financial loss to the EU budget are taken into account and the financial correction should be proportionate to the seriousness of the irregularity (Article 143(2) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the ESIF).

The auditor makes this assessment to confirm the work of the Managing Authority and establish whether the expenditure to be recovered claimed by the European Commission is legal and eligible.

Article 70 of the ZUSESIF identifies 10 main types of irregularities affecting expenditure financed by the ESIF. The national act regulating the applicable percentage indicators for

financial corrections is the Regulation on the indication of irregularities constituting grounds for financial corrections and the percentage indicators for determining the amount of financial corrections under the ZUSESIF.

In the field of public procurement, specific guidelines are available for determining financial corrections to be made to expenditure financed by the EU for non-compliance with the procurement rules adopted by the European Commission Decision of 14 May 2019, respectively Annex 1 and Annex No 1a to Article 2(1) of the Regulation on the indication of irregularities constituting grounds for financial corrections and the percentage indicators for determining the amount of financial corrections pursuant to the ZUSESIF (Practical Guide XV.2 to this Chapter. Practical Guide VII.4.5.A. to Chapter VII Operations Audit of the Regulation for financial corrections under ZUSESIF).

Under Article 5 of the Regulation on the administration of irregularities under the European Structural and Investment Funds (adopted by Council of Ministers Decree No 173 of 13 July 2016), when the authorities under the ZUSESIF, including the Audit Authority, establish sufficient evidence of an irregularity in connection with the work carried out, they report this to the relevant head of the managing authorities of the operational programmes; the manager of European territorial cooperation programmes; the heads of intermediate bodies. In this respect, audit reports issued by the Audit Authority as a result of audit engagements on operational programmes co-financed by the ESIF constitute whistleblowing. They are made available to the heads of the managing authorities in accordance with Chapters VI and VII of this Manual.

Article 8(1) of the Regulation laying down the procedures for the administration of irregularities under funds, instruments and programmes co-financed by the European Union (adopted by Council of Ministers Decree No 285 of 30 November 2009) and applicable to programmes outside ESIF stipulates that final reports of the Audit of European Union Funds Executive Agency also constitute whistleblowing.

Fraud indicators

Guided by professional vigilance (scepticism), auditors are particularly attentive to the possibilities of fraud, paying substantial attention to weaknesses and deficiencies in the management and control systems. In this respect, during system audits in the MA and CA, as well as during audits of operations, audit authorities check whether the mechanisms in place to prevent irregularities and fraud are adequate and effective.

Annex IV of the Guidelines on fraud risk assessment and effective and proportionate anti-fraud measures (EGESIF_14-0021-0016/06/2014) provides practical guidance to the Audit Authorities to verify the activities undertaken by the Managing Authorities to mitigate fraud risks. The checklists included in Annex IV may be useful in carrying out system audits. They were taken into account when drawing up the checklist for verification of Key Requirement 7 applied by the Audit Authority.

The responsibilities of auditors in maintaining a system of effective anti-fraud measures and good practices from different countries are described in the Guide to the role of auditors in fraud prevention and detection, developed by the European Anti-Fraud Office (OLAF), in cooperation with the EC and with the participation of experts from Member States (Practical Guide XV.3). The guide contains specific references to the relevant audit standards that regulate the role of auditors in the fraud prevention and detection process.

During audit engagements auditors are particularly vigilant about fraud in particular with regard to grant award, contract award and public procurement fraud (when discussing, designing and performing the audit the auditor must consider the procurement area as highly exposed to the risks of fraud). To improve auditors' knowledge of and skills in identifying irregularities and suspected fraud, auditors use the following practical documents developed by the Commission:

- *Guidelines for identifying conflicts of interest in public procurement procedures (see Practical Guide VII.3.4.C) and*
- *Guidelines on detection of forged documents (see Practical Guide VII.3.4.D) as well as an Information Note on Fraud Indicators for ERDF, ESF and Cohesion Fund included in Practical Guide XV.3.1. to this Chapter.*

The auditors of the AEUFEA carry out an analysis of any irregularity they have identified during the audit engagements using the practical guidelines listed above. The analysis of irregularities takes into account the specific circumstances and environment in which the beneficiary organisation operates. The analysis focuses on the following aspects:

- *intentional manipulation of financial statements (e.g. inappropriately reported revenues and/or expenses);*
- *misappropriation of tangible or intangible assets (e.g. in deviations relating to unlawful payments, irregular documents relating to activities carried out and the physical implementation of projects);*
- *conflict of interest and corruption (e.g. misappropriation and identified misconduct in public procurement detailed in the checklist used to check the selection of a contractor).*

Article 28 of the regulations on the administration of irregularities referred to above lays down the obligation of the managing authorities to notify the competent authorities in cases of suspected fraud. Nevertheless, the Audit Authority, in the course of its activities, interprets independently the facts relating to the infringements found in order to establish whether there is suspected fraud.

The head of the audit team presents for discussion any cases where the auditor has identified a suspicion of fraud in the context of the audit assignments performed during the year following the final reports on the results of a project verification and before the relevant annual control report is drafted. The head of the audit team, the director of the relevant audit directorate, the director of Legal Certainty in Audit Activities Directorate and the Executive Director of the Agency participate in the discussion. The aim is to assess whether there is sufficient relevant and reliable evidence of the documented suspicion of fraud. All final reports containing detected irregularities where fraud is suspected and for which sufficient relevant and reliable evidence has been collected are sent to the Public Prosecutor's Office.

Executive Agency 'Certification Audit of European Agriculture Funds'

The agency is not a competent authority for reporting irregularities, but compliance with the procedures for the administration of irregularities is checked during the audit engagements.

Where audit engagements reveal irregular expenditure, it is withdrawn from the claim to the European Commission.

1.6. Croatia

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Under the current exceptional circumstances related to the COVID-19 outbreak, established procedures remain fully applicable. Taking into account specific situation in which the health care facilities and social service providers of accommodation for elderly and seriously ill adults and adults with disabilities are found during the COVID-19 outbreak (especially in the case of Croatia, and COVID-19 outbreak in those facilities), the Ministry of Regional Development and EU Funds, as the Managing Authority for the Operational Programme Competitiveness and Cohesion 2014-2020, introduced an exception concerning the procedure for on-the-spot verifications of operations conducted in mentioned facilities. In this regard, the conditions and procedures of conducting the checks have been determined exceptionally allowing the checks to be done remotely via information technology in a real time. This means that in a case it needs to be carried out in particularly sensitive premises (where required conditions could not be fulfilled) within health care facilities and upon previous formal consultation with the Ministry of Health, a special procedure was introduced.

This exception is based on information given on CRI II Platform that under the current circumstances of the pandemic, on-the-spot verifications may be impacted by the rules set up by the national authorities for protecting public health. Therefore, it is the responsibility of the managing authority to decide on the opportunity for having procedures with a temporary character, adapted to the existing crisis, considering all elements, the potential impact on beneficiaries and the risk involved by each project.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Article 131, paragraph 1, point 3 of the Law on Public Procurement stipulates that the contracting authority may use the negotiated procedure without prior publication of a call for tenders for the award of public procurement contracts to the extent necessary if, due to extreme urgency caused by events that contracting authority could not foresee, it is not possible to comply with the deadlines stipulated for open or restricted procedures or competitive negotiated procedures, provided that the circumstances invoked by the contracting authority to justify extreme urgency must not in any event be attributable by its actions.

The European Commission's communication on the method of procurement in the conditions of a pandemic has been published on the Public Procurement Portal, and the Ministry of Economy and Sustainable Development provides expert assistance by giving opinions to those entities which need it.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

Obligation to publish the Contract Award Notice is stipulated by Article 248 of the Law on Public Procurement, Article 249 stipulates the possibility of publishing the Notice for voluntary ex ante transparency and the right to appeal is stipulated by Article 408. In addition, urgent procurement system when it comes to EU funds is subject to potential ex post controls.

During the COVID-19 crisis, in addition to the Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis, the Ministry of Economy and Sustainable Development issued recommendations on stipulating and submitting the tender guarantee in the new situation. In addition, recommendations regarding public opening of tenders were issued, which is the proof that the public procurement system is adapting to the new circumstances.

Education also adapts to new circumstances. Training programmes are held online and cover appropriate topics: Public procurement in the COVID-19 crisis situation; Procurement documentation in the COVID-19 crisis conditions; Public procurement at the time of the pandemic; Negotiated procedure without prior publication of a call for tenders and the most common irregularities in the implementation of this procedure according to the decisions of the State Commission for Supervision of Public Procurement Procedures; Simple procurement: from planning to execution during a pandemic, etc. Anti-corruption as a topic is included in the introductory part of mandatory education prior to obtaining Certificate in the field of public procurement.

Contracting authorities in the areas affected by the earthquake were provided with direct professional assistance at the newly opened e-mail address and contact number, which also encourages transparency.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

Pursuant to Common National Rules issued by the Ministry of Regional Development and EU Funds as Managing Authority for the Operational Programme “Competitiveness and Cohesion”, Intermediate bodies level 2 are obliged to quarterly file Irregularity Reports using the IMS to the Service for Combating Irregularities and Fraud (SCIF) established at the Ministry of Finance. The Irregularity Reports have to be filed no later than 15 working days following the end of each quarter via IMS. The Irregularity Reports contain all relevant information on the course, type and scope of actions / activities taken by the competent authorities in the relevant quarter. SCIF checks the received Irregularity Reports and may additionally request clarification or request amendments to the Report. Amendments must be made without delay in order for the Irregularity Report to be sent to the Commission. SCIF approves the Irregularity Report and sends it to the Commission via IMS.

In addition, Intermediate bodies level 2 may also file without delay an Urgent Irregularity Report to SCIF via IMS in cases where an identified irregularity may very quickly cause consequences outside the territory of the Republic of Croatia and in cases where a new form of irregularity has been identified. SCIF sends the Urgent Irregularity Report to the Commission without delay via IMS.

In conclusion, Intermediate bodies level 2 keep a register of irregularities where all affirmed and pending irregularities from the beginning of the eligibility period are listed. Intermediate bodies level 2 submit the register to the Certifying Authority and to Managing Authority by the 10th of the following month and to SCIF no later than 15 working days following the end of each quarter.

The outcome of these procedures is to have available data on hand and to take decision makers one step further in assessing whether and how goals are being achieved over time when it comes to prevention, detection, reporting and acting upon the irregularities.

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| 1.7. Czechia |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

The measures of verification and monitoring are constantly kept at a high level in the Czechia. The processes set for awarding public contracts in procurement procedure are obligatorily electronic by law and electronic tools must be used for receiving of bids, buyers are also obliged to store their procurement procedure documentation. Thus, effective verification and monitoring are enabled.

Internal and external audits and other compulsory checks of recipients and managing authorities alike are carried out as planned despite encountered difficulties and challenges. The managing authority is closely cooperating with auditors and recommendations are addressed in time and subsequently also duly reviewed.

The detections have remained stable.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Provided that the statutory conditions are met, the contracting authorities may use the existing procedures permitted by the Act No. 134/2016 Coll., On Public Procurement (PPA), in particular negotiated procedure without prior publication, or may make use of an exception pursuant to § 29 letter c) PPA, which can be used in the case of awarding or fulfilling a public contract within the framework of special security measures provided for by other legal regulations, and at the same time no measure can be taken that would allow the procurement procedure to be carried out within the set time limits.

The use of these procedures is in the sole responsibility of the contracting authority and in the case of control, the fulfilment of the conditions for their use will be assessed on a case-by-case basis. These procedures should be used by the contracting authority exclusively for urgent purchases related to the management of the current threat.

Each procurement is assessed case-by-case (electronic approval workflow). All procurements are fully electronic through electronic approval tools. Contracts have to be published in the Contracts register of the Ministry of Interior.

Further, buyers are provided with thorough methodological, consulting and educational support in this regard. A number of guidelines and methodologies were issued and massive training campaign has been organised addressing, among others, the topic of awarding of contracts.

Nevertheless, none of the Managing Authorities providing input to this document has used emergency procurement in the year 2020.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ NO

If not, could you explain why and how your current system already ensures an adequate level of transparency?

Structural reform of the public procurement law is not necessary to strengthen transparency in the use of EU funds. Transparency is already ensured, e.g. by the well-functioning system of electronic tools (where the controlling entities may be granted access rights and the role of surveillance).

Some managing authorities have been subject to standard auditing procedures, which even recently did not result in requiring further strengthening of existing transparency procedures. The main focus of managing authorities during the pandemic was to maintain and sustain operational functionality without compromising any of the required functions.

Even though not related to EU funds, it is worth mentioning that the Supreme Audit Office carried out a check “Funds spent in connection with the epidemiological situation in the Czechia”. The aim of this check was to find out whether state authorities spent financial means in line with the legal provisions, especially for the procurement of personal protection and other medical materials and services realised for the purpose of anti-epidemic measures in connection with COVID-19. The results are not yet available.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

Irregularities reporting for the 2014–2020 programming period is ensured in accordance with the Methodological guide for the financial flows of programmes co-financed by the European Structural Funds, the Cohesion Fund and the European Maritime and Fisheries Fund for the programming period 2014-2020. The procedures are included in the internal documents of the managing authorities.

Knowledge sharing and educating not only beneficiaries but all involved parties including the implementation structure, has had the desired effect in reduction of non-fraudulent irregularities over the monitored period. Other factors have to be also taken into consideration: Changes in legal framework, Act on civil service, more stable economic environment as opposed to the financial crisis 2008, which partially affected the previous programming period.

Registered irregularities are regularly monitored in accordance with the valid methodologies of the Ministry of Finance and the Ministry of Regional Development. At the same time, cooperation is underway with the Financial Administration Bodies, which are responsible for supervising compliance with Act No. 218/2000 Coll. on budgetary rules, including the recovery of funds from grant beneficiaries.

Working group for monitoring of irregularities and evidence of fraud and irregularities in information systems of the managing authorities ensure regular monitoring of the status as well as continuous overview.

An important factor in some of the operational programmes was the continuity and experience from the previous programming periods of the managing authority’s team as well as of the project beneficiaries. The managing authority focuses on discovering the irregularities in the course of assessment of payment requests leading to immediate corrections. Ex-ante control of public procurements also contributes to early detection of errors and enables corrections of the payment requests.

1.8. Denmark

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

None of the participants in the survey found that question of emergency procurement related to EU-funding was of relevance to their administrative field.

The Danish Fishery Agency has implemented red flags to increase the focus on discovering cases of fraud in general, although the measure is unrelated to emergency procurement and to COVID-19 related expenditures.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

None of the participants in the survey found that question of emergency procurement related to EU-funding was of relevance to their administrative field.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

None of the participants in the survey found that question of emergency procurement related to EU-funding was of relevance to their administrative field.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

Danish Fishery Agency has stated that every quarter of the year, the agency's control team coordinates with the agency's economics department for detection of irregularities. If there are irregularities, these are reported through IMS. These are then checked by the Danish Agricultural Agency. Corrections are send back to the Danish Fishery Agency to ensure that the reporting is useful.

The Danish Business Authority has stated that they have a procedure for reporting irregularities in IMS according to the Commission's regulation and the OLAF handbook.

1.9. Estonia

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Estonian authorities responsible for the ESI, AGRI-FISH and HOME funds report that they will continue with the professional verification and monitoring measures.

The Implementing Agency for AGRI and FISH funds started to test using ARACHNE.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Estonian authorities responsible for the ESI and HOME funds report that all emergency procurements are checked before the payment.

The Implementing Agency for AGRI and FISH funds reports that they do not foresee any COVID-19 related emergency procurement.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

98% of the Estonian Public Procurements are e-procurements.

☒ YES, partly implementing the recommendation

Not all private procurements for different funds are made through the e-procurement systems. Some measures still apply the 3-offer rule.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☐ YES

The Implementing Agency for AGRI and FISH funds started to test ARACHNE and will implement it into their daily procedures.

☒ NO

Estonian authorities responsible for the ESI and HOME funds report that all emergency procurements are checked before the payment.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

Estonian authorities responsible for the ESI, AGRI, FISH and HOME funds report that all Implementing Bodies must carry out a risk assessment procedure and report all detected or prevented irregularities via the e-based system.

1.10. Finland

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

During the corona pandemic, the managing authority has instructed the intermediate bodies to conduct checks and monitoring using the means and tools already in place (such as remote access and electronically) while still maintaining high quality and not reducing the quantity.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

The reporting of projects exceeding the thresholds is guided by the IT system for Structural Funds projects. The managing authority organised training for the intermediate bodies on the procedures for projects below the thresholds in 2020.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

The procedure for projects exceeding the EU thresholds is completely electronic.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ NO

If not, could you explain why and how your current system already ensures an adequate level of transparency?

The Procurement Act, which entered into force in 2017, is considered to adequately ensure the principle of transparency.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

In their training sessions (two training sessions held in 2020) the certifying authority and the managing authority reminded the intermediate bodies about keeping information on irregularities updated in the monitoring system and monitoring the status of the treatment of the findings.

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| 1.11. France |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Following the outbreak of COVID-19 and its consequences, ANCT (Agence nationale de la cohésion des territoires, national agency for territorial cohesion) fully relayed to the ERDF managing authorities the provisions set out by the European Commission (Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (2020/C 108 I/01)) and the platform for replies to national authorities on CRII+ measures.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

The European Commission's communiqué on the information-sharing space of the ANCT ('mon-ANCT') has been sent to the managing authorities, meetings and working groups have been organised, and national CRII FAQs and a management note have been drawn up, which cover most of these provisions and highlight the exceptional nature of emergency procurements as a derogation to be decided on on a case by case basis.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, partly implementing the recommendation

If partially or not, could you briefly explain at which point you are in the process?

France has not yet moved to open data with regard to public procurement. Nevertheless, verifying the basic and regulatory requirements for transforming public procurement into a

fully digital process is part of the monitoring of public procurement carried out by the managing authorities.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ NO

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

For the period 2017-2019, the Audit Authority (CICC) entered all reports of non-fraudulent irregularities (and suspected fraud) in the IMS application.

Since 2020, the managing authorities are responsible for reporting. These authorities request reports through the IT system (SYNERGIE). The audit authority checks, validates or rejects them and transmits them to the Commission via the SYNERGIE application.

In order to ensure that non-fraudulent EAGF and EAFRD agricultural irregularities for the 2014-2020 programming period are regularly reported to the Commission, the procedures put in place by the CICC EAGF consist of sending regular reminders to the paying agencies responsible for submitting irregularities to the Commission's Irregularity Management System (IMS).

ANCT helps to ensure that non-fraudulent reports are identified, in particular by regularly bringing up the mandatory conditions for reporting irregularities and information through the dedicated tool in the FAQs published for the 2024-2020 programming period, which include a chapter dedicated to checks and irregularities, in working groups and in replies to questions from the national managing authorities.

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| 1.12. Germany |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Germany has advanced management/control systems in the agriculture and fisheries sector. These systems have been operating at a high level for years and are continuously adapted to new challenges and objectives.

For the measures under the European Regional Development Fund (ERDF) and the European Social Fund (ESF), the existing high level has been maintained, in particular with regard to the administrative checks to be carried out. We continue to carry out an annual self-assessment to combat fraud. The number of cases of fraud and suspected fraud remains low.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Germany fully applies the relevant rules on procurement, including on e-procurement.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Germany fully applies the relevant rules on procurement, including on e-procurement.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

Germany has had advanced management/control systems for years. This includes a major focus on fraud prevention and the reporting of irregularities. The systems ensure proper reporting of non-fraudulent irregularities, too. Moreover, the Federal Ministry of Finance, as the coordinating body, regularly organises workshops in this area.

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| 1.13. Greece |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Special Institutional Support Service: The provisions of the regulatory framework regarding the administrative verifications required under Article 125 of the Common Provisions Regulation (CPR) continue to apply. On that basis, and in accordance with the applicable management and control system (MCS), on-the-spot verifications of a sample of operations which are in progress and for which expenditure was included in an interim payment request during the accounting year are scheduled after the end of the first six months of each accounting year.

As regards sampling, instructions were issued for the 2019-2020 accounting year in document ref. 57023/EYΘY/04-06-2020 entitled 'Scheduling on the-spot verifications for the 2019-2020 accounting year (6th accounting year)', following the measures taken to contain the COVID 19 pandemic.

To carry out on-the-spot verifications, taking account of the restrictions in place, which affect the operation of both Managing Authorities and beneficiaries, the Special Institutional Support Service issued instructions on alternative approaches in document ref. 122073/EYΘY/17-11-20.

Similar instructions were issued for all managing bodies for the 7th accounting year in document ref. 9902/EYΘY/27-01-2021.

The above instructions include adjustments to the methodology and practices for the verification of expenditure and the physical scope of operations, in order to ensure a sufficient audit trail using all available means, despite the restrictions in place due to COVID-19.

Finally, when the annual accounts are submitted, it is confirmed that the instructions have been followed and that adequate administrative verifications have been carried out on the expenditure included in the accounts.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implemented the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

The Hellenic Single Public Procurement Authority (HSPPA), which is responsible for issuing guidelines, as laid down in Article 2(2)(d) of Law 4013/2011, issued Guideline 24 (HSPPA Decision 1/15.04.2020) on 'Specific matters concerning the award and management of public contracts in the context of the response to the COVID-19 health crisis and the measures taken to prevent the spread of the virus'. The purpose of this Guideline is to assist contracting authorities/entities and economic operators in the correct application of the possibilities offered by the EU Directives, as transposed into national law (Law 4412/2016), and of the special or exceptional provisions established by legislative acts for a limited period of validity. In addition, the HSPPA issued Opinions (for example: A10/2020, A14/2020, A16/2020, A20/2020, A21/2020, A31/2020 and A32/2020), in which it gave its opinion on legislative proposals that provided for derogations from national legislation for emergency procurement.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implemented the recommendation

The e-procurement procedure for awarding public contracts with an estimated value of more than €60 000.00 plus VAT is complete (see Article 36 of Law 4412/2016), and covers the stages from publication of the notice and the submission, opening and evaluation of tenders to submission of the contract. However, Article 32A of the same Law provides for an exception to the mandatory use of the National Electronic Public Procurement System (ESIDIS) in the event of a negotiated procedure without prior publication, as follows: 'The following cases referred to in Article 32 shall be exempt from the mandatory application of Articles 22(1), 36, 72(1)(a), 79(1) to (4) and 221(8) and (9):

(a) where the possibility to award the contract is limited to one predefined participant, in accordance with paragraphs 2(b), 3, 4(b) and 6;

(b) due to the urgent nature of the procurement, in accordance with paragraph 2(c); or

(c) due to the specific characteristics of the transaction in the case of supplies that are listed and purchased on a commodity exchange in accordance with paragraph 4(c) [...].'

As regards electronic invoicing, Directive 2014/55/EU has been transposed into Greek law by Articles 148-154 of Law 4601/2019 (Government Gazette, Series I, No 44/2019), and the associated implementing Joint Ministerial Decisions have also been issued (Government Gazette, Series II, No 2425/2020).

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

In its letter ref. 4121/30.07.2020, the HSPPA provided contracting authorities and entities with clarifications regarding compliance with publication formalities in the tender procedure in the event of a change in the terms of the contract notice.

In addition, the HSPPA took the initiative, in cooperation with the Ministry of Digital Governance, to ensure the necessary parameterisation of the e-register for public contracts (KIMDIS) to include the options 'Direct award – COVID-19' and 'Negotiation without prior publication – COVID-19' in the drop-down menu under 'Type of procedure', for both the 'New contract' form and the 'New award decision' form. It then issued letter ref. 6901/08-12-2020 informing all contracting authorities/entities of their obligation to use KIMDIS following its parameterisation. The above initiatives can be considered as individual steps of an action plan, the next step of which will be sampling from the two KIMDIS categories in question ('Direct award – COVID-19' and 'Negotiation without prior publication – COVID-19') to check whether there has been any circumvention of the exceptional provisions established for emergency procurement or of Guideline 24.

In addition to the above, the HSPPA has set up a platform for reporting fraud and corruption, and irregularities in general, in the field of public procurement, which meets the conditions for the implementation of Directive (EU) 2019/1937 on the protection of whistleblowers. Specifically, the HSPPA has adopted the reporting platform as part of the European programme entitled 'Widely expanding anonymous tipping technology deployment, operation, and trustworthiness to combat corruption in eastern and southern Europe (EAT)', with the support of Transparency International Greece and the Hermes Centre for Transparency and Human and Digital Rights. For the operation of the platform, criteria are laid down concerning the design, set-up and operation of user-friendly reporting channels. These criteria include the explicit obligation of confidentiality of information, access to information by authorised bodies only, the explicit protection of the whistleblower's identity, and the establishment of protection procedures both for the processing of reports and for personal data, in accordance with the applicable legislation.

In this regard, please note that the HSPPA ensures that a monitoring report on the public procurement system is drafted and submitted every three years, pursuant to the provisions on 'Governance' of Law 4412/2016 and as part of its responsibilities for monitoring and supervising the public procurement system (Law 4013/2011 founding the HSPPA, and Article 53 of Law 4605/2019 on its organisation and operating rules). The report includes public procurement data and information such as the most common reasons for poor implementation or legal uncertainty, including possible structural or recurrent problems in the application of the rules, the level of participation of SMEs in public procurement procedures, and the prevention, detection and due reporting of cases of fraud, corruption, conflict of interest and other such serious irregularities in the field of public procurement.

In line with the above, the first monitoring report was sent to the European Commission in June 2018 and can be found on DG GROW's website: https://ec.europa.eu/growth/single-market/public-procurement/country-reports_en.

Furthermore, a Joint Ministerial Decision laying down the detailed rules on the implementation of the above is in the process of being issued. To that end, the HSPPA participated in a working group set up in 2020 to prepare a draft Joint Ministerial Decision.

Finally, the HSPPA can assist the Court of Auditors in the exercise of its jurisdiction over pre-contractual audit disputes, in line with its duty under Article 2(2)(i) of Law 4013/2011. The HSPPA intervenes as amicus curiae in these disputes or acts as advisor on technical matters in particular, as requested by the President of the competent formation of the Court or by the Court itself (Article 333 of Law 4700/2020).

As regards the Audit Authority, no audits on emergency procurement expenditure and procedures were carried out in the previous year (2019), as no expenditure linked to the COVID-19 crisis had been declared under the 6th accounting year (ending 30 June 2020). With a view to improving transparency and sound financial management in the use of EU funds, the Audit Authority will adjust its methodology (questionnaires and related instructions) to take account of the specificities arising in relation to emergency procurement in particular as part of the audits for the 7th accounting year, which will include expenditure for actions related to COVID-19.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, partially implemented

If you implemented partially the recommendation, could you explain why you think that it was a partial implementation and why a full implementation was not possible? Which was the outcome of these new procedures?

The Managing Authorities of Operational Programmes and the Audit Authority follow a specific procedure ('Reporting irregularities to the European Commission') under the relevant MCS.

However, the Audit Authority has reported that the recommendation is partially implemented because not all Managing Authorities (MAs) and Intermediate Bodies (IBs) have been registered in the IMS for the direct electronic transmission of irregularities. The registration of these MAs and IBs is ongoing and they are expected to acquire access shortly. They will then be able to report any irregularities they may have detected.

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| 1.14. Hungary |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

To ensure the integrity-based, transparent and accountable use of public funds, the Public Procurement Authority ensures that verification and monitoring measures are kept at a high level when reviewing the legality of public procurements through the following activities (the information and figures below are not limited to EU-funded procurements):

- *Checking the legality of notices: There has been a steady rise in the number of notices received by the Public Procurement Authority over the past four years. In 2019, 25 117 notices were registered, processed and checked. During checks on notices over the past four years, there has also been a steady increase in the number of requests for further information or clarification sent to contracting authorities in connection with these notices, rising to 25 210 requests in 2019. In addition to checks on notices, the Public Procurement Authority also carried out checks on procurement documents upon request. The Public Procurement Authority's checks on notices and procurement documents contributed greatly towards ensuring the legality of procurement procedures, which helped in turn to reduce the number of reviews. The purpose of the checks on notices is to detect typical and one-off errors during mandatory and requested checks and to remedy those errors by requesting further information or clarification. As the contracting authorities usually resolve the problems reported in these requests, these ex-ante controls help prevent a number of infringements or the publication of unsuitable public procurement notices. In doing so, these checks on notices help greatly to increase transparency in the public procurement sector.*
- *Checking the legality of negotiated procedures without publication: For details, see the answer to question 2.*

- *Checks on the performance and amendment of contracts: In 2019, for the fourth year in a row, the Public Procurement Authority carried out checks on the performance and amendment of contracts and investigated breaches of contract reported by contracting authorities, in accordance with the enabling provisions of the Public Procurement Act. In 2019, 68 checks were ordered, and 34 contract breaches were investigated. Since 1 January 2019, the Public Procurement Authority has also carried out checks on contracts concluded under concession procurement procedures and on the results of design contests. In 2019, review procedures before the Public Procurement Arbitration Board were initiated in 21 cases as a result of infringements of public procurement law detected through the Authority's checks on contracts. As a result of these procedures, 20 arbitration board decisions establishing an infringement were issued. By comparison, in 2017 the Public Procurement Arbitration Board established an infringement in 41 out of 55 review procedures initiated ex officio on the basis of checks on contracts by the Public Procurement Authority, while in 2018 the Arbitration Board established an infringement in 37 out of 40 review procedures initiated ex officio on the basis of checks on contracts by the Public Procurement Authority.*

In terms of EU support, the managing authorities and the minister responsible for public procurement carry out checks on the regularity of public procurement procedures conducted using support awarded under EU programmes. For public procurement procedures with an estimated value greater than or equal to the EU thresholds, and for public procurement procedures with an estimated value of HUF 300 million or more in the case of works contracts and concessions, procurement law checks are carried out by the Department of Public Procurement Control (DPPC) headed by the minister responsible for public procurement. The DPPC produced and implemented a specific action plan aimed at improving its management verifications in 2018 2019, which the European Commission considered adequate and sufficient (final conclusions on audit mission No REGC214HU0068).

As audit authority, the Directorate-General for Audit of European Funds (EUTAF) is responsible for carrying out system audits, carrying out sample audits on projects, monitoring the findings of audit reports, following up recommendations, and implementing action plans. During the most recent system audit carried out by EUTAF in accordance with the European Commission's guidance note on system assessments No EGESIF_14-0010, the audit period was between 1 July 2019 and 30 June 2020.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

In 2019, there were just 273 instances where contracting authorities informed the president of the Public Procurement Authority that they were initiating a negotiated procedure without publication (the number of negotiated procedures initiated without publication was 329 in 2018, 482 in 2017, and 870 in 2016). Within his/her legality review powers, the president of the Public Procurement Authority verifies rigorously in all cases whether the conditions are

met for using the negotiated procedure without publication on an exceptional basis. If the Authority establishes during its review that not all the conditions are met for the legal basis chosen, or that the existence of the legal basis cannot be clearly established, it will issue a request for clarification so as to remedy the infringement and pave the way for the conduct of a public procurement procedure with publication. Contracting authorities generally respond to requests for clarification without delay and in full. In 2019 there were 27 cases where, after a request for clarification was issued following doubts about the existence of the legal basis chosen, contracting authorities lawfully withdrew their invitation to tender and abandoned their intention to carry out a negotiated procedure without publication. The president of the Public Procurement Authority initiated review proceedings in 10 cases where the legal basis was unfounded. The president of the Public Procurement Authority delivered a decision that the legal basis for a negotiated procedure without publication was valid in 236 instances. As those procedures were unsuccessful in 9 cases, contracts were concluded and public funds used in just 227 instances.

These activities of the Public Procurement Authority over the past five years succeeded in reducing the number of negotiated procedures without publication – which largely exclude competition – to one thirteenth [of all public procurement procedures] by 2019, while the proportion of negotiated procedures concluded without publication has remained below 4% for the past three years. Section 103(4) of the Public Procurement Act requires the Public Procurement Authority to issue a detailed reasoned decision in the case of negotiated procedures without publication, through which the validity of the legal basis for the use of the negotiated procedure without publication can be clearly established. The Public Procurement Authority publishes those decisions on the e-procurement system (EKR) and on its website. (The above figures are not limited to public procurements implemented using EU support.)

The DPPC also rigorously verifies the conditions for the use of emergency procurement procedures as part of its checks on public procurement procedures conducted using EU funds. In 2020, two requests to initiate emergency negotiated procedures without publication were submitted to the DPPC for ex-ante verification. Based on the findings of the verification body, the procurements were ultimately implemented under the open procedure in accordance with the directives.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

See the answer to question 2 for details regarding emergency procurements. The Public Procurement Authority's activities aimed at strengthening transparency include the keeping of various records, such as a list of prohibited tenderers, a code of ethics, the receipt and thorough investigation of public-interest reports and complaints, publishing the key opinions issued by the Authority in the journal edited by the Authority, the online public procurement bulletin 'Közbeszerzési Értesítő Plusz'.

The Public Procurement Authority also ensures full transparency regarding public procurement procedures through its computerised publication systems.

By the end of 2019, the details of some 119 000 procedures had been uploaded by contracting authorities to the public procurement database, representing over 328 000 documents. Also by the end of 2019, some 7 000 contracting authorities had registered in the e-procurement system (EKR), which was launched in January 2018. Operated by the Prime Minister's Office, the EKR has gradually taken over the role of data repository on public procurement procedures from the public procurement database (KBA). In preparation for the phasing out of the KBA, the Public Procurement Authority has developed a user-friendly archive on the basis of the KBA to ensure that all data remain accessible to interested parties. We will be able to discontinue the KBA and publish the KBA archive when the number of uploads relating to past procedures diminishes.

Since 2008, the notice-search module of the Public Procurement Authority's portal has provided interested parties with access to the notices saved to the portal, which now number over 352 000. With its 19 filtering criteria, the search engine is a sophisticated data retrieval tool.

The CoRe contract registration system was launched by the Public Procurement Authority in 2018. The new system contains descriptions of public procurement contracts concluded since 2018, and the contracts themselves in PDF format. Contracting authorities uploaded more than 14 000 contracts in 2018 and more than 18 000 in 2019. The CoRe's public search engine allows hits to be narrowed down using 12 filtering criteria. The new system has replaced the KBA's contract-upload module, providing a more modern, user-friendly search interface both for contracting authorities (new data entry forms and a new platform) and for other interested parties (a public search interface). Further developments to support the Authority's auditing activities continued in 2020.

The requirement under the Public Procurement Act for the Authority to compile statistics on public procurement procedures and publish them on its website at regular intervals also strengthens transparency.

Our efforts to achieve greater transparency regarding the use of EU funds by the Prime Minister's Office in connection with public procurement procedures include the following in particular:

The strengthening of competition and transparency was one of the key elements of the amendment of the Public Procurement Act in the last quarter of 2019 (the amendment was promulgated on 19 December 2019):

- The procedure under Section 113 of the Public Procurement Act requiring the publication of summary information before the procedure is launched has been repealed. (Under this procedure, only economic operators which were invited by the contracting authority to tender or which expressed an interest during the period of publication of the summary information (i.e. within five working days) could submit a tender.) Since the amendment, all economic operators are required to use public notices when launching procedures, helping to strengthen competition and transparency and simplifying the public procurement rules.*

Some of the provisions of the amendment of the Public Procurement Act and other related acts that was promulgated on 10 December 2020 also seek to improve transparency:

- in a significant change to the rules for works contracts, public procurement procedures without publication for contracts with a value of up to HUF 300 million are no longer authorised under Section 115 of the Public Procurement Act if EU funds are involved. Under the amendment, contracting authorities can no longer initiate a procedure for EU-funded works contracts by directly inviting tenderers, but only by means of a public notice, which increases transparency, strengthens fair competition, and helps prevent potential conflicts of interest;*
- in the future, anyone will be able to access information on the performance and amendment of contracts through the public contract-registry module available before the EKR goes live; the information will be accessible in a more transparent structure, with a variety of search options;*
- the Prime Minister's Office has issued a notice on the application of legal provisions amending public procurement contracts in connection with the coronavirus emergency.*

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

In Hungary, AFCOS is responsible for providing the staff of the relevant national authorities with appropriate training on the computerised irregularity reporting system developed by OLAF on behalf of the Commission (the IMS system) and with day-to-day assistance to ensure problem-free use of the system.

To ensure the irregularity reporting obligation imposed on Member States by the EU sectoral regulations is met uniformly and in full and to make the content of irregularity reports more useful for preventing domestic fraud/irregularities, AFCOS operates a working group on irregularity reporting, composed mainly of experts from the managing authorities dealing with irregularity management and representatives of the certifying authority.

In addition, in 2020 AFCOS issued some 50 information letters to participants in the domestic reporting structure in connection with the technical operation and practical use of the IMS system and the implementation of the reporting obligation laid down in the relevant sectoral regulations.

A measure has been introduced for monitoring reports of specific irregularity cases, in which AFCOS produces a separate IMS export file for all managing authorities at the end of each year containing the irregularities reported during the relevant year in connection with the 2014-2020 programming period, and asking them to review the file and check whether a report has been produced in the IMS in all cases where the irregularity decision in question was subject to the reporting obligation.

1.15. Ireland

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Southern Regional Assembly (SRA) & Northern, Western Regional Assembly (NWRA) (MA SEROP and BMW ROP): Throughout the COVID-19 pandemic, the SRA & NWRA have continued Art 125 Management Verifications, albeit on a remote basis. All relevant areas of the Verification process are covered.

Department of Agriculture, Food & Marine implements robust administrative controls on all aid applications, implements procurement practices, which are in line with EU and National legislation, and performs on the spot controls, which satisfy the fund requirements. The accounting officer is provided with confirmation that these checks are in place on an annual basis, for funds administered charged to National and EU budgets from senior management. External auditors review the internal financial controls and any recommendations are acted upon.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Southern Regional Assembly (SRA) & Northern, Western Regional Assembly (NWRA) (MA SEROP & BMWROP): Confirmation by the WHO of COVID-19 as a global pandemic in March 2020 caused worldwide demand for PPE to reach unprecedented levels, triggering severe disruption to global supply chains. This presented the HSE with an extraordinary challenge as their traditional sources of supply for these products were depleted at a time of unprecedented demand. The crisis highlighted the risks in this regard, huge logistical distance, long order cycles and reports of short/no shipping of promised orders etc.

Action 8 of the Irish Government's Action Plan in response to COVID-19 deals with maintaining access to essential health products, equipment and services. It has an action area – securing and sustaining continuity of access and supply to essential health products and to assess the short, medium and long-term requirement for and availability of PPE among other essential health products.

Approach :The WHO advised the following strategies for PPE supply chain management & coordination in response to COVID Pandemic;

- *Using PPE forecasts that are based on rational quantification models to ensure the rationalization of requested supplies;*

- *Promoting the use of a centralized request management approach to avoid duplication of stock and ensuring strict adherence to essential stock management rules to limit wastage, overstock and stock ruptures;*

Following the outbreak of COVID-19 in February 2020, HSE recognized the need to considerably expand its sourcing, logistics and distribution capacity for the supply of PPE. To reflect the strategic importance of PPE, HSE rapidly developed an integrated, end to end Sourcing and Distribution approach with a view to managing the volume of PPE required and ensuring that frontline services which need PPE, have it where and when they need it.

In September 2020, the Programme Monitoring Committees of the BMW Regional OP and SEROP approved the creation of a new Priority – Priority 7 Coronavirus Response for inclusion in both ERDF Programmes – and within this the introduction of a new Health Support Scheme to support the cost of supplying essential personal protective equipment for the Irish healthcare system for use in the fight against COVID-19 in the Southern and Eastern and Border Midland and Western regions.

At the same time, the Monitoring Committee approved the re-allocation of undeclared ERDF within the S & E Regional Operational Programme of EUR 121 942 585 from Priorities 1, 2, 3 and 4 to Priority 7 to the new Health Support Scheme. In the case of the BMWROP a total of EUR 103 030 629 of undeclared funds was reallocated to the new Priority 7 HSS scheme from Priorities 1, 2 & 3. This will facilitate the critical work of minimising the impact of the global pandemic in the regions in Ireland and safeguard the health and welfare of the population.

All of the procurement in the period March 2020 to December 2020 is based on direct negotiation, whereby the HSE rely on Article 32 of the CPR and/or the COVID Emergency Procurement Framework (2020/C108/01).

In November 2020, the SRA declared to the CA an amount of EUR 77 920 823.21 in respect of Priority 7. In the BMW region, €35,007,906 was declared under Priority 7. During the course of the Art 125 verifications carried out prior to declaration The HSE Memorandum "Report on Use of Negotiated Procedure without prior publication for urgent purchase of PPE", dated 06/04/2020 was referenced to clearly explain the circumstances that justify extreme urgency and the reliance on Article 32(2)(c) of the Procurement Directive 2014/24/EU.

The MAs checked to see if the requirements of Article 84 of the Procurement Directive 2014/24/EU were met...."for every contract or framework agreement covered by this Directive... contracting authorities shall draw up a written report... for negotiated procedures without prior publication, the circumstances referred to in Article 32 which justify the use of this procedure".

For each ERDF declaration, The HSE provided eighteen of these reports, one for each contract included in the declarations. The MAs checked that each report included the contents listed in Article 84(1)(a) to (i) and noted that the HSE made use of the provision within Article 84(1) that "to the extent that the contract award notice drawn up pursuant to Article 50 or Article 75(2) contains the information required in this paragraph, contracting authorities may refer to that notice." Each Article 84 Report completed has fulfilled the four cumulative criteria justifying the use of the negotiated procedure without publication. As per section 2.3 (Cases of Extreme Urgency -negotiated procedure without publication) these are:

- 2.3.1 *Events unforeseeable by the Contracting Authority in question*
- 2.3.2 *Extreme urgency making compliance with general deadlines impossible*
- 2.3.3 *Causal link between the unforeseen event and the extreme urgency*
- 2.3.4 *Only used in order to cover the gap until more stable solutions can be found*

The Managing Authorities checked that the requirements of Article 50 of the Procurement Directive 2014/24/EU to publish a Contract Award Notice were met. Each Article 84 report included a link to the relevant Contract Award Notice (CAN) on eTenders. The Contract Award Notices were published on 22/11/2020 (Reference 2020-280321) and are available to view on <https://irl.eu-supply.com/ctm/Supplier/PublicTenders/ViewNotice/238392>

Included in each CAN is a justification for the use of the Negotiated Procedure without prior publication for that contract. The MA is satisfied that the justification set out in the CAN fulfils the requirements of Article 32(2)(c).

Q.3 Have you already completed the transition to e-procurement processes?

No reply.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

Southern Regional Assembly (SRA) & Northern, Western Regional Assembly (NWRA) (MA SEROP/BMWROP): Continued use of detailed Art 125 Management Verifications & enhancement of Checklists used.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, partly implementing the recommendation

If you implemented partially the recommendation, could you explain why you think that it was a partial implementation and why a full implementation was not possible? Which was the outcome of these new procedures?

Southern Regional Assembly (SRA) & Northern, Western Regional Assembly (NWRA) (MA SEROP/BMWROP) – Continued use of the IMS system. Further training for MA staff is required.

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| 1.16. Italy |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

The emergency caused by COVID-19 does not change or alter any regulatory or statutory requirement.

In particular, at national level, to ensure the verification and monitoring of the operations, the Agency for Territorial Cohesion, has updated the first-level control Manuals of both programs providing for the telematic mode of carrying out on-the-spot checks or remotely with the examination of relevant documentary evidence suitable to ascertain the material progress of the operation.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Italy's "DECRETO CURA ITALIA" (Decree Law no. 18 of 17 March 2020) concerning measures to strengthen the National Health Service and the economic support of families, workers and businesses related to the COVID-19 epidemiological emergency (Decree Law no. 18/2020), does not provide for any derogation from the application of the ordinary open public procedures.

However, the "Cura Italia Decree" has identified, for the emergency period, specific and limited derogations from the ordinary procedures provided for by the Public Procurement Code.

In particular, provision has been made for the use of derogatory procedures for the purchase of specific categories of goods and services.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

The state of emergency doesn't affect the applicable compliance requirements in the use of EU funds. The first level controls continue to ensure transparency and regularity of the procurements procedures.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

In Italy, the Agency for Territorial Cohesion has, among others, monitoring functions on the use of funds and also supervisory tasks regarding the implementation of programmes and projects co-financed by the EU.

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| 1.17. Latvia |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation (Ministry of Agriculture and Rural Support Service, responsible for EMFF, EAFRD, EAGF; Central Finance and Contracting Agency, responsible for ESF, ERDF and Cohesion Fund)

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Ministry of Agriculture and Rural Support Service - responsible for EMFF, EAFRD, EAGF:

The recommendation has been fully implemented. The Rural Support Service (RSS) has not reduced the inspection and monitoring measures during the COVID-19 crisis. Those still are maintained at high level and a number of findings of non-compliance remains stable (in 2020, compared to 2019, the amount and number of debtors has increased within the European Maritime and Fisheries Fund (EMFF), the amount has increased, but the number of debtors has decreased within the European agricultural fund for rural development 2014-2020 (EAFRD), the amount and number of debtors has slightly decreased within the European agricultural guarantee fund 2014-2020(EAGF)).

With regard to area payments, a number of control tools were introduced and developed in order to make on-the-spot checks more efficient: the app for inspectors (allowing the inspector during inspections to draw up the results of inspection more accurately and quickly), the use of drones (allowing inspections to be carried out faster and more efficiently); the use of satellite Sentinel images (allowing to establish whether the conditions for receiving the public support are met and to carry out targeted checks in cases where there is a suspicion of non-compliance).

Regarding the investment projects, in order to gain confidence for the compliance of the investments, the RSS performed remote inspections, incl. the use of application developed by the RSS for information exchange - receiving investment photos with geolocation (with a specific location) from the client, as well as, if necessary, the RSS performed remote video checks using the Zoom platform.

Central Finance and Contracting Agency - responsible for ESF, ERDF and Cohesion Fund:

The procurements performed are assessed both regarding procedures and execution of procurement agreements – analysing the requirements and any other aspects that might highlight breach of procurement regulations or red flags indicating fraud, especially if negotiation procedures or urgency elements are involved. Additionally extra attention is paid to cases involving force majeure on basis of COVID-19 as justification for extension of deadlines – each justification has to be objectively substantiated to avoid misapplication. Taking into account the extensive control mechanisms available and applied, there has been no increase in procurement breach cases that could be attributed to the situation of COVID-19 emergency.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

According to the Public Procurement Law emergency procurement is used on the basis of a case-by-case assessment (contracting authorities are responsible for justification of the use of the negotiated procedure).

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

The Procurement Monitoring bureau ensures sample-based ex-ante checks of procurement procedures within EU funded projects. The Administrative Penalties department of the bureau carries out sample-based examinations to verify the justification of emergency procurements. Furthermore, guidelines on transparency in public procurement have been worked out, as well as several guidelines on emergency procurements emphasizing the importance of transparency and efficient use of financial resources.

Corruption Prevention and Combating Bureau, in cooperation with the State Audit Office and Procurement Monitoring Bureau:

Developed and published anti-corruption suggestions for maintaining principles of good governance and the application of the alleviated procurement procedure for emergency procurements directed at the fight against the spread of COVID-19. To enhance the transparency of procurements, a special online platform was developed where all the procurements carried out under the emergency procurements were published.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation (Ministry of Agriculture and Rural Support Service - responsible for EMFF, EAFRD, EAGF); (Ministry of Finance and Central Finance and Contracting Agency - responsible for ESF, ERDF and Cohesion Fund).

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

Ministry of Agriculture and Rural Support Service - responsible for EMFF, EAFRD, EAGF:

The recommendation has been fully implemented. The irregularities in the Funds administered by the RSS are being monitored and no significant reduction in the irregularities has been identified (in 2020, compared to 2019, the amount and number of debtors have increased within the EMFF, the amount has increased, but the number of debtors has decreased within the EAFRD, the amount and number of debtors has slightly decreased within the EAGF).

The RSS regularly reviews and improves the process of reporting the irregularities, incl. the revision of fraud risks related to COVID-19.

Central Finance and Contracting Agency - responsible for ESF, ERDF and Cohesion Fund:

A detailed irregularity detection, correction and reporting system is in place and is strongly adhered to. This includes both national legislation, guidelines and internal enactments of the cooperation institution in order to adequately evaluate each irregularity, adopt the respective decision as well as register and report the irregularities as stipulated by the relevant EU and national legislation.

Ministry of Finance as the Managing Authority for ESF, ERDF and Cohesion Fund:

According to the Managing Authority of Latvia (hereinafter – MA) “Guidelines for the application of financial corrections, reporting of irregularities detected in the implementation of European Union funds, recovery of ineligible expenditure in the 2014-2020 programming period” the MA responsible persons within 3 days after deadline mentioned in guidelines check data quality of irregularities reported by the Irregularity Management System (hereinafter – IMS). The MA responsible persons make sure that the data is complete, entered within the prescribed deadline and in accordance with the requirements.

MA has established internal procedure to ensure the management of irregularities. According to that, the MA every quarter checks data quality of all irregularities and monitor reporting of new cases and follow up reports. Every quarter the MA exports from IMS opened irregularities and checks whether is it necessary to update information and forward this information to the EU Fund Cooperation Institution (Central Finance and Contracting Agency). If there is no necessity to make any amendments into data, the MA inform the Cooperation Institution about data harmonization.

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| 1.18. Lithuania |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

The public procurement inspections questionnaires were adjusted taking into account changes made in the Public Procurement Law and the accompanying by-laws in order to ensure the implementation of the EU regulations.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

Emergency purchases have separate requirements.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, partly implementing the recommendation

All the published procurements shall be carried out through the Central Procurement Information System. So far, some of the unpublished low-value purchases are non-electronic.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

Procurements are announced publicly. The offers of the winning suppliers and contracts concluded are being announced publicly too. Therefore, the transparency is monitored regularly.

Any person who suspects that EU funding is spent wrongly may inform on-line the relevant authorities using esinvesticijos.lt section "Pranešk apie korupciją". This message may be sent anonymously, if needed. Also lack of transparency in public procurement may be reported to the Public Procurement Office.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

The following monitoring measures have been put in place: risk analysis, on-the-spot-checks, cooperation with law enforcement authorities, monitoring of risky projects.

Information on irregularities and related data is constantly monitored in the 2014-2020 European Union Structural Funds Management and Monitoring System (hereinafter - SFMIS2014), which is the main source of information for reporting irregularities to the Commission. The preparation and submission of irregularity reports is described in detail in

the Manual of Procedures. So far, however, monitoring has been done manually reviewing all relevant information.

SFMIS2014 has been updated in 2020, including the part of irregularities. SFMIS2014 new functions were analysed and tested in August-December 2020 and realized in January 2021:

- *if there are recoveries related to the irregularity, the information of them is automatically updated in the financial information of the irregularity;*
- *changes in the Payment Module of SFMIS2014 are automatically checked once a day and financial information of the irregularity is updated according to payment requests with the status "Paid" and from which the non-eligible costs related to the irregularity have been deducted (confirmed and paid amount);*
- *the possibility to see all versions of the irregularity in real time (new / updated irregularity decisions) and changes in information during the implementation of the irregularity decision that took place during the quarter;*
- *the possibility to indicate in the system which irregularities has been reported to the Commission; relevant search filters have been created.*

In 2021, an irregularity analysis tool will be developed and implemented in the SFMIS2014.

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| 1.19. Luxembourg |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

FEDER has fully implemented the recommendation. FSE, PGD, AMIF, FEAGA and FEAD did not make use of emergency procurement. FSE points out the emergency procurement was not used due to the high degree of implementation of the program.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

Please refer to the previous question regarding implementation of the recommendation. The majority of stakeholders did not use the emergency procedure at all.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

The stakeholders FEDER and PGD have fully implemented the recommendation. The stakeholders FSE, AMIF, FEAGA and FEAD did not make use of the emergency procurement.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

PGD projects are published on the Police website as well as on the common LU EU-funds website. FSE has not used the emergency procurement due to the high degree of implementation of the program. The rest of the stakeholders have not used the emergency procedure either. FEDER points out that the current regulations and procedures are sufficient, hence, no further action was necessary.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

FSE fully implemented the recommendation. The ongoing system ensuring a 100% ex-ante control is maintained. As for FEAGA/FEADER, there was only one reporting of irregularities during the 2014-2020 programming period (suspected fraud) that was closely monitored it.

PGD was not able to send the report of irregularities via www.afis.olaf.europa.eu, due to technical issues. These have been reported several times to the Commission, but remain unsolved. Notwithstanding the above, PGD did not have any irregularities to report for the period 2014-2020.

The FEAD Fund was summed up over the entire period in a single operation, which was reproduced annually according to the same patterns. Furthermore, AMIF and FEDER did not have any regularities to report during the 2014-2020 programming period.

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| 1.20. Malta |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, partly implementing the recommendation

If you implemented partially the recommendation, could you explain why you think that it was a partial implementation and why a full implementation was not possible?

The Department of Contracts, irrespective of the COVID-19 crisis, has always (and will continue to do so) endeavoured to ensure that public funds (both local and EU) are closely monitored in order to get a high level of protection. The current Modus Operandi in relation to any emergency spending which is above local threshold (i.e. above €139,000 excl. VAT) requires to be validated through the presentation of applicable documentation to justify and substantiate their claim for utilising procurement methods which have less restrictive parameters. In addition, if the Estimated Procurement Value is above €1 million, the concerned Contracting Authority shall attain budget clearance from the Ministry for Finance and Employment.

Further to the above, as and where applicable, the Managing and Auditing bodies conduct verification exercises to ascertain that public funds are properly managed.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

All emergency spending is used on a case-by-case basis. In fact, in line with the reply to question 1 above, a Contracting Authority must present its duly justified case to the competent authority who in turn shall concede (or not) to the request, based on the explanations provided and documentation submitted.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ NO

If not, could you explain why and how your current system already ensures an adequate level of transparency?

The majority of procurement (works/services/supplies) utilising public funds (including EU funds) is conducted through standard procurement procedures, wherein an open call tends to be the default procedure utilised in Malta; thus, is evident that the process is transparent.

With specific regard to Emergency Spending, as already highlighted in question 1 above, the Department of Contracts, irrespective of the COVID-19 crisis, adopts a justification method to assess the validity of any such requests.

In May 2017, the Department of Contracts issued a document titled 'Addressing Fraud and Corruption in Public Procurement'. The scope of this report was to highlight the various measures being adopted by the Department of Contracts to combat fraudulent activities in public procurement in order to further enhance good governance, transparency and public accountability. Additionally, as part of the training modules delivered by this department to all Contracting Authorities, a specific session on fraud and corruption is delivered.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

The Planning and Priorities Co-ordination Division (PPCD), as the Managing Authority (MA) of the Cohesion Funds, has a system in place whereby the administrative verifications cover 100% of the expenditure items included in applications for payment by the beneficiaries

to the MA and subsequently accepted by the MA and forwarded to the Certifying Authority (CA) for subsequent inclusion in a reimbursement request to the Commission.

Where the number of transactions included in a payment claim by a beneficiary are voluminous, the MA undertakes a sample check of the transactions included in a payment claim based on a pre-established and internally agreed methodology.

Furthermore, in order to ensure compliance with the principle of separation of functions, the Financial Control Unit (FCU) within the MA undertakes internal controls on the verifications carried out by the staff responsible for the implementation, before the payment application is submitted to the CA. Subsequently, FCU also ensures that the implementing staff undertakes to provide clarifications and to follow-up any recommended corrective measures as agreed during the management verifications.

With regard to the detection and reporting of Irregularity Reports (IRs), it should also be noted that when an irregularity is detected by a public sector beneficiary, the report is sent to the Director (Policy Development and Programme Implementation) of the relevant Line Ministry, who counter-signs the report and forwards it immediately to the MA, copying the Audit Authority (AA) and the CA.

It should be noted that during this programming period the MA is using Simplified Cost Options (SCOs) in the area, which was prone to administrative error. This in itself has reduced the number of reported irregularities.

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| 1.21. Netherlands |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

The verification and monitoring measures in the policies are kept on a high level.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

We had no emergency procurements.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, partly implementing the recommendation

If partially or not, could you briefly explain at which point you are in the process?

Not every fund is yet completely digital, but efforts are made to ensure digital processes are utilized to the fullest.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ NO

If not, could you explain why and how your current system already ensures an adequate level of transparency?

We have maintained the same level of transparency in the use of the funds EÀFRD, EAGF, AMIF, ISF. But we have had no emergency procurement in these specific funds.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, partly implementing the recommendation

If you implemented partially the recommendation, could you explain why you think that it was a partial implementation and why a full implementation was not possible? Which was the outcome of these new procedures?

The existing procedures for EÀFRD and EAGF have been functioning for years and we have maintained these procedures on the same level.

Our input concerning the non-fiscal data has increased in the last years. We are still improving our input concerning these non-fiscal data. Due to the amount of findings and the different national and EU IT systems not all the findings are reported yet. We also notice that interoperability can be very helpful to improve the input given by a memberstate. The outcome of the new procedures are obvious, more data are being shared but not yet all.

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| 1.22. Poland |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

In the context of the COVID-19 pandemic, Poland has put in place a number of mechanisms to ensure that the spending of, accounting for and control of EU funds continue to be properly monitored. The basis for this was the Act of 3 April 2020 on special arrangements to support the implementation of operational programmes following the COVID-19 outbreak (the 'Special Fund Act'). As the pandemic progressed, the Act was amended to extend its validity until the end of 2023.

The Act contains a basic package of arrangements making it easier to implement and account for projects co-financed out of EU funds. The options available include: extending the deadlines for submitting applications for funding in individual competitions; conducting extraordinary calls for projects; extending time limits in administrative procedures or suspending them and ceasing to carry out administrative decisions relating to the implementation of projects; suspending application of the guidelines issued by the Minister for Regional Development; the possibility of discontinuing checks and audits in exceptional situations or, where feasible, performing them remotely or electronically.

Application of some of the Guidelines for the control of the implementation of operational programmes for 2014-2020 has been suspended. As a result, the control work, including system audits and project expenditure checks, is being carried out efficiently despite the constraints arising from the epidemic.

By availing themselves of the arrangements now permitted, the Managing Authorities usually carry out on-the-spot checks remotely, on the basis of the documentation provided/available, and then they plan (once the health risk is over) to carry out monitoring visits at project sites to corroborate the verifications carried out earlier.

Furthermore, the Public Procurement Law Act of 11 September 2019, which entered into Polish law on 1 January 2021, strengthens the control mechanisms and measures for monitoring public procurement; one of the ways it does this is by requiring the control bodies (including all the Managing Authorities and Audit Authorities) to publish their audit questionnaires and the final audit findings on their websites. Under the principle of cooperation by which the control bodies are bound, they are required in particular to take account of the results of checks previously performed by other bodies and to share information on the checks carried out on contracts and the results thereof.

The verification mechanisms also function properly in the area of the agricultural funds; by way of example, an ‘unqualified’ opinion was issued in February 2020 on the basis of the independent Certifying Body’s examination of the Paying Agency’s annual accounts relating to the EAGF and EAFRD for the financial year 2019. The Certifying Body concluded in this opinion that:

- the accounts transmitted to the Commission for the 2019 EAGF and EAFRD financial year ended 15 October 2019 are true, complete and accurate in all material respects as regards the total net expenditure charged to the EAGF and the EAFRD;*
- the internal control procedures applied by the Paying Agency have operated satisfactorily as regards both the EAGF and the EAFRD;*
- the expenditure for which reimbursement has been requested from the Commission is legal and regular in all material respects for both the EAGF and the EAFRD.*

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Under Polish public procurement law, i.e. the Public Procurement Law Act of 11 September 2019, and the principle of competitive tendering laid down in the Guidelines on the eligibility of expenditure under the ERDF, ESF and Cohesion Fund for 2014-2020 for contracts below the thresholds laid down in the above-mentioned Act and contracting authorities not bound to apply the Act, contracting authorities in EU projects are required to use public procurement procedures in emergency situations on the basis of a case-by-case assessment in accordance with Directive 2014/24/EU. The President of the Public Procurement Office (PPO) and both the Audit Authority and the Coordinating Authority recommend the case-by-case approach as the standard manner for contracting authorities to award contracts under all operational programmes. Managing Authorities, Intermediate Bodies, Implementing Bodies and other authorised control bodies verify whether the procurement procedure has been carried out correctly in accordance with this principle. The PPO has published instructions on how to apply the extraordinary arrangements, and the Coordinating Authority has further disseminated these instructions via the Managing Authorities, also in the context of the principle of competitive tendering that applies below the thresholds laid down in the Public Procurement Law Act.

Under the various aid mechanisms in the agricultural sector implemented by the Paying Agency in respect of the beneficiaries who are required to apply the public procurement rules, the costs incurred by the beneficiaries are also verified on the basis of the above-mentioned Public Procurement Law Act in cases where those rules are applicable. In every case, an assessment is made of the value, type and size of the contract, and correct application of the relevant rules is verified.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, partly implementing the recommendation

If partially or not, could you briefly explain at which point you are in the process?

On 1 January 2021, the new Public Procurement Law Act of 11 September 2019 entered into force. This Act introduces a number of amendments and new legal arrangements that affect the whole public procurement process (from the planning of the procedure itself, conducting the procedure and awarding the public contract to the final stage of implementing and evaluating the contract). Under the Act, the procurement process will be fully electronic.

E-procurement is a key driver for improving the efficiency and transparency of public procurement and for allowing small and medium-sized businesses greater access to public procurement. As a result of this move to a fully electronic public procurement process, Polish law now requires contracting authorities to make the procurement documents available in electronic form and to communicate with contractors electronically. By making it mandatory for the contracting authorities to accept documents submitted electronically, the cost to contractors of participating in a procedure is reduced. Moreover, electronisation reduces the costs of procedures for the contracting authorities as they do not need to store large numbers of paper documents.

The competent national institutions, i.e. the Public Procurement Office in partnership with the Ministry of Digitisation, are carrying out an e-Procurement Project which includes building an e-Procurement Platform. The e-services put in place under the e-Project will make it easier and less time-consuming to carry out activities under the public procurement procedure in accordance with the above-mentioned Act. Electronic communication and

information-sharing services will be made available by the parties to the procedure on the e-Procurement Platform at all stages of the public procurement procedure.

The construction of the e-Procurement Platform will proceed according to the agreed timetable and the contract concluded with the successful contractor. The work has been divided into six phases during which the different modules and components will be made available. Under Stage I, the following were received: the preliminary technical design (architectural design paper) and the preliminary design of the e-Procurement Platform Access Portal. Under Stage II, the Platform Access Portal was implemented, and the Identity Module and the Application Processing System were introduced. As part of this phase, a module allowing the registration of users was put into production. At the same time, an educational component was put at the users' disposal containing interactive instructions describing the available functionalities of the system as well as the application processing system (SOZ). The platform is available at: <https://ezamowienia.gov.pl/pl/>.

The following Stage III.1 elements of the Platform have gradually been implemented since 1 January 2021: the 'Notices' Module, together with the Public Procurement Bulletin and the Procedural Plan, which includes forms for national notices and a procedural plan form, and the 'Procedures' Module with the registration form for the preliminary data procedure and the form to be sent to the President of the PPO with information on applications and tenders submitted in procedures conducted by contracting authorities. Implementation of the next Platform module, i.e. the 'Handling of Electronic Communications' Module, including the submission of tenders and applications, is scheduled for the first quarter of 2021. According to the project implementation timetable, the 'Handling of EU Procedures' Module (i.e. e-Sender, the Developer's Portal and the API (application programming interfaces) Manager) is due to become available in the fourth quarter of 2021, and the 'Monitoring and Analysis' Module including the Annual Report is to become available in the first quarter of 2022. Final acceptance of the e-Procurement Platform is planned for the third quarter of 2022.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

The procurement procedures in force under Polish public procurement law, including the case-by-case approach, are fully in line with Directive 2014/24/EU. In the absence of any specific arrangements at EU level for emergency COVID-19-related procurement, Polish legislation does not impose additional requirements on contracting authorities over and above the procedures and methods set out in the Act and in Directive 2014/24/EU (thus avoiding 'gold-plating'). Contracting authorities are required to apply the arrangements laid down in public procurement law by taking a case-by-case approach. The same approach is applied under the principle of competitive tendering laid down in the Guidelines on the eligibility of expenditure under the ERDF, ESF and Cohesion Fund for 2014-2020 for contracts below the thresholds laid down in the above-mentioned Act and for contracting authorities not obliged to apply the Act.

The rules in force in the Paying Agency with regard to the agricultural funds also ensure transparency in the use of EU funds. All the costs incurred by beneficiaries are verified for

compliance with public procurement rules. The Agency is continuously taking steps to make the use of funds more transparent, amongst other things by putting into practice the guidance and recommendations of both the national and the EU audit and control services, and by self-monitoring. The above actions relate to the whole range of EU financial support, including public procurement.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

Poland duly complies with its obligations to report any irregularities found in respect of EU funds to the European Commission and to monitor them on a continuous basis. The rules for this process are governed by the national procedure drawn up on the basis of the relevant sectoral regulations and issued by the Government Commissioner for Combating Fraud against Poland or the EU (responsible in Poland for organising the process of reporting irregularities to the Commission). The procedure is the main document setting out the rules for carrying out the obligation to report irregularities to the Commission for all EU funds implemented under shared management by the competent national authorities.

The authorities at the level of each operational programme draw up appropriate procedures concerning the obligation to notify the Commission, including implementing instructions, taking into account the provisions set out in the above-mentioned document. Therefore, the system in Poland for reporting irregularities and fraud (including cases of suspected fraud) is uniform and robust. In addition, the reporting mechanism in the Irregularity Management System (IMS) is supplemented by the SL2014 ICT system's 'Register of Charges on the Project' module, where authorities record and monitor both reportable and non-reportable irregularities. The register contains information on both the irregularities themselves and the related corrections of expenditure.

In the agricultural sector too, the Paying Agency has dedicated databases making it possible to record information on irregularities detected, update them and monitor cases of irregularities in the context of complying with the obligation to report irregularities to the Commission. The tasks relating to the monitoring of cases of reportable irregularities include control and analytical tasks aimed at ensuring that the data sent in the irregularity reports are consistent, complete and reliable. Under the organisational arrangements put in place by the Agency, there is a unit which carries out the process of reporting irregularities to the European Commission and also coordinates and supervises the process of examining information on irregularities. These procedural and organisational arrangements have been in place at the Agency since 2009 and have been updated on the basis of the above-mentioned document of the Government Commissioner.

The procedural and organisational arrangements put in place by the Agency ensure that the reporting of irregularities (including non-fraud cases) is closely monitored and also relates to the 2014-2020 programming period.

Compliance with the obligation to report to the Commission any irregularities found in the use of EU funds under shared management was also the subject of a system audit performed

by the Audit Authority in 2020. As part of scrutinising the transmission of information on irregularities to the Commission, two aspects of the management and control system at the competent authorities were checked and assessed:

1. *the timeliness of the reporting of irregularities to the Commission:*

- *whether the audited body's procedures contain provisions governing compliance with the obligation to report irregularities, are in line with the Government Commissioner's procedure and ensure that the obligation to report irregularities is properly fulfilled;*
- *whether the procedures specify the category or type of documents that may serve as a primary administrative or judicial finding (PACA) necessary to establish an irregularity;*
- *whether the procedure specifies the periods/time limits within which the irregularity found should be reported to the Commission;*
- *whether the reporting of irregularities to the Commission is carried out within the time limits laid down in the rules;*

2. *eligibility of irregularities found not to be notifiable to the Commission:*

- *whether the procedures of the audited body set out detailed rules on the basis of which it is verified that the irregularity found does not actually qualify for notification to the Commission;*
- *whether the procedures prevent artificial splitting of irregularities in order to avoid the obligation to send a notification to the Commission;*
- *whether there are rules ensuring the monitoring of irregularities classified as not subject to notification to the Commission in cases where new conditions have arisen in the course of their investigation that would make them subject to notification;*
- *whether irregularities that were found and were not reported to the Commission were not in fact subject to this obligation.*

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| 1.23. Portugal |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Procurement in response to the pandemic is being monitored at the highest level, with reports sent to the relevant supervisory authorities and the Ministry of Finance.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

The procurement procedures were conducted in line with the legal framework specifically established for the purpose.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

The existence of a specific legal framework makes it possible to identify which procedures are covered, making the procurement process more transparent and ensuring compliance with the specific rules applicable.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

The procedures put in place involve the managing authorities, certifying authorities and audit authorities, thereby ensuring that different aspects of the spending process are covered.

Moreover, in its annual audits, the audit authority checks that all the irregular amounts detected are indeed reported.

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| 1.24. Romania |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Romanian Ministry of investments and European projects

At the national level, there is ex-ante verification of the fulfilment of the conditions for the application of the negotiation procedure without publication carried out uniformly by ANAP, respectively for the verification of the way this procedure is conducted - Order no. 1894 of 08.07.2019 on the approval of the checklists related to quality control exercise and regularity of the awarding process of contracts/framework agreements of public/sectoral procurement and works and services concessions contracts.

At the level of the managing authorities, which perform ex-post verification from the perspective of the procedure, but ex-ante from the perspective of reimbursing the expenses from European funds, there is a unitary checklist approved by Order OMFE no. 879/2019 on the approval of the checklist for the e for awarding public procurement contracts procedure, sectoral contracts, framework agreements, provided by Law no. 98/2016 on public procurement and Law no. 99/2016 on sectoral procurement. This checklist contains at "point 3.1 Choice of procedure "the verification of the way in which the beneficiaries complied with the specific requirements for applying the exceptions expressly provided by the procurement legislation.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Romanian Ministry of investments and European projects

In April 2020, Public Procurement Coordination Unit within Ministry of European Funds outlined to all Managing Authorities that negotiations procedures without publication should be applied as exceptions under stricter conditions and ask them to inform all beneficiaries. Also, at the beginning of this year, it was underlined to all Managing Authorities that from the perspective of public procurement verifications it is important to take into account and follow the additional risks arrived in the context of awarding procedure with contracts signed during the pandemic crises and emergency procurement should be used only on case by case basis.

At the level of MA for Large Infrastructure Operational Programme were registered emergency procurements (especially regarding Axis 9 - COVID) and analysed from case by case, the procurement verifications being performed 100%.

National Office for Centralized Procurement (ONAC)

ONAC was in charge for the procurement of electronic devices (tablet computers) with internet connection for facilitating the distance teaching activity for students at schools across all country and always chose the procurement procedure and elaborated the

contracting strategy on a case-by-case assessment. First, ONAC initiated an open tender, organized in nine lots by geographical reasons.

After the annulment of six lots, for procuring the needed products, ONAC and the Ministry of Education analysed the situation and decided to select the negotiation procedure without prior publication (art. 32 of Directive 2014/24/EU) in order to achieve the procurement's objectives.

The Romanian Government issued an emergency ordinance on emergency medical stocks, as well as some measures related to the establishment of quarantine, mandating ONAC to procure a list of medical emergency stocks products, of strict necessity, only by organizing negotiated procedures without prior publication. The decisions (qualification criteria, number of days for elaborating the bids, modality for submitting the bids and communication with the bidders etc.) regarding these procurement procedures were approved after an individual analysis.

ONAC properly managed all emergency procurement procedures and implemented the Communication from the Commission - Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (2020/C 108 I/01) and ANAP's Press release - Clarifications regarding the realization of the acquisitions provided in the Decree of the President of Romania regarding the establishment of the state of emergency on the Romanian territory.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

National Office for Centralized Procurement (ONAC)

Although the tender procedure stipulated on article 32 of Directive 2014/24/EU is the negotiated procedure without prior publication, for most of the procurement procedures for the goods stipulated in the list of medical emergency stocks products, of strict necessity, ONAC elaborated the contracting strategy and took measures to strengthen transparency by publishing a prior notice on the national electronic public procurement platform (SEAP) and on the ONAC's website.

Regarding the procurement of electronic devices (tablet computers) with internet connection for facilitating the distance teaching activity, after conducting an open tender, ONAC resumed the procurement for the six lots annulled by organizing a negotiated procedure without prior publication by publishing a notice on the national electronic public procurement platform (SEAP) and on the ONAC's website.

After conducting this procedure, ONAC resumed the procurement for the two lots annulled by organizing a new negotiated procedure without prior publication also by taking a measure to increase transparency and publishing a notice on the national electronic public procurement platform (SEAP) and on the ONAC's website.

Moreover, before the initiation of the open tender, ONAC and the Ministry of Education conducted a market consultation with the main operators on the national level.

Romanian Ministry of investments and European projects

The national public procurement legislation ensures an adequate level of transparency. The ex-post verification of the Managing Authority is in accordance with the legal provisions of the public procurement.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

DLAF- RO AFCOS

Documentary checks of the MA's, audit missions and DLAF controls led to the discovery of the irregularities, which were reported in the IMS.

Maintaining a close relationship with the reporting authorities and monitoring the fulfilment of the obligation to report irregularities on a quarterly basis.

Romanian Ministry of investments and European projects

At the level of MAs the reporting and monitoring of irregularities is proceed according to:

- the operational procedure – reporting of all suspected irregularities to the Certifying and Payment Authority (CPA) and to the DLAF for suspected irregularities with a value of more than 10,000 euro in contribution from the Funds*
- the agreement on financial management signed between MAs and CPA – quarterly reconciliation of cases of irregularity*
- GEO 66/2011 – AM`s obligation to monitor all cases of irregularities on a quarterly basis and to take the necessary measures to improve the management and financial control systems in order to prevent their recurrence in the future.*

As a preventive measure, GEO 66/2011 also provide that at an early stage of the investigation of irregularities (suspicion of irregularity) the expenditure is not included in the request for payment sent to the European Commission.

Ministry of Development, Public Works and Administration

All cases of irregularity / fraud are managed in accordance with the national and European legislation in force, as well as with the irregularity management procedure.

All cases of irregularities are monitored at the level of each MA, especially those that require IMS reporting (ineligible expenditure of more than EUR 10 000 - source of EU funding and

fraud cases). The tool for monitoring these cases is the Register of irregularities / debts, so there is no possibility to overlook the reporting of such a case.

Although MAs have intensified their controls, the number of identified irregularities has decreased compared to the previous programming period, due to the experience gained by the beneficiaries in project implementation, as well as the constant assistance provided by MA in project implementation.

Agency for Payments and Intervention for Agriculture (APIA)

The reporting of identified irregularities is done through and by internal control structures.

Paying Agency for Rural Investments (AFIR)

AFIR implemented the recommendations, the irregularities are communicated and monitored through the function of the existing AFIR Irregularity Officer.

1.25. Slovakia

The Government Office of the Slovak Republic, which is responsible for ensuring and coordinating the protection of the EU's financial interests in the Slovak Republic via its organisational unit National Office for OLAF (which also acts as Slovak AFCOS) contacted AFCOS network partners (national authorities, including Managing Authorities, certifying authority, control bodies and judicial authorities) in order to provide relevant information with respect to the implementation of the Commission's recommendations. AFCOS network partners considered the content of the recommendations and replies were provided mainly by partners acting as Managing Authorities or as intermediate bodies for individual operational programmes. Certifying Authority (CA) provided information related to recommendation concerning reporting of irregularities.

Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, partly implementing the recommendation

If you implemented partially the recommendation, could you explain why you think that it was a partial implementation and why a full implementation was not possible?

Based on the replies provided by the AFCOS partners it can be summarised that verification and monitoring measures are still kept at a high level, even during the pandemic situation. Managing authorities regularly update their procedures and, if relevant, measures allowing for a more flexible approach in this particular situation are adopted as well. However, one of the current challenges is the planning and performance of the on the spot checks, as these days the personal contact should be kept at minimum.

Below please find the detailed information from the individual managing authorities:

- 1. The Ministry of Economy of the Slovak Republic (MEc SR) as the intermediate body for the Operational Programme Integrated Infrastructure in the programming period (PP) 2014 – 2020 fully implemented the recommendation.*

MEc SR carries out verification and monitoring in accordance with the methodology set out in the Procedure Manual or relevant internal methodical guidelines and regulations (which are in accordance with the methodical guidelines and regulations set out on the national level by the Central Coordinating Body (CCB) and CA). MEc SR focuses on constant improvement of the management and control system of the projects co-financed from the operational programme Integrated Infrastructure in accordance with the principle of sound financial management in order to minimize shortcomings and the risks of possible fraudulent behaviour. Some of the examples of measures adopted and carried out by MEc SR are: (1) verification system in the selection process includes, among other things, also verification that the beneficiary is not listed in EDES database which provides a list of economic subjects excluded from contracts financed by the EU budget or sanctioned for grave professional misconduct, criminal activities, or significant deficiencies in meeting their obligations; (2) verification system in the process of public procurement control includes comprehensive cost-effectiveness verification, apart from the verification that the public procurement has been carried out in compliance with the national legislation (act. No 343/2015 Coll. on Public Procurement and on amendments to certain other acts, as amended); (3) elaboration and publication of comprehensive guidelines on public procurement process, including standardized model forms and documents, among others is declaration of exclusion of the conflict of interests in the public procurement process and the list of the most common errors in the public procurement with aim to minimize possible breach of EU and national public procurement rules; (4) establishing an internal control body in order to ensure correct and effective verification of the size of undertaking (SME status) and de minimis aid cumulation. IT systems such as ARACHNE (developed and provided by the European Commission) and SEMP (provided by the Antimonopoly Office of the Slovak Republic) are used as verification tools; (5) using IT monitoring system (ITMS2014+) interlinked with other national public registers as a verification tool in order to verify that the applicants or beneficiaries meet general and specific criteria and conditions set out in the calls or contracts. ITMS2014+ is also used for registering control and audit findings including irregularities; (6) Managing fraud risks in compliance with the European Commission (EC) EGESIF guidance 14-0021-00 from 16/06/2014 "Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures". On the national level the working group has been established by the Central Coordinating Authority in order to coordinate and unify the fraud risk management systems of the Managing Authorities (or intermediate bodies where relevant).

2. *The Ministry of Labour, Social Affairs and Family of the Slovak Republic, acting as Managing Authority for the Operational Programme Human Resources fully implemented the recommendation.*

Expenditures and monitoring verification is challenging due to vast number of participating entities. Nevertheless the Managing Authority and the beneficiary are taking all necessary actions to fulfil eligibility conditions.

3. *The Ministry of Education, Science, Research and Sport of the Slovak Republic, acting as intermediate body for the Operational Programme Integrated Infrastructure and Operational Programme Human Resources fully implemented the recommendation.*

The verification and monitoring measures are still kept at a high level. This is still ensured by data provided in the requests for payment (additional monitoring data as part of the request for payment) and monitoring reports from beneficiaries. The only method which was not used in the pandemic period from March 2020 was the on-the-spot check at the beneficiaries as it could not take place. In the technical assistance projects it was replaced by administrative control where the additional data was provided upon our specific requests.

4. *The Ministry of Environment of the Slovak Republic*, acting as the Managing Authority for the Operational Programme Quality of Environment (OP QE) partly implemented the recommendation.

The monitoring of the OP QE in 2019 and 2020 took place in accordance with the set processes, either at the project or program level. In the case of monitoring at project level, there was no change in the reporting of progress data in terms of physical and financial implementation. All monitoring data at project level are recorded through the beneficiaries in ITMS2014 + system and subsequently verified by the intermediate bodies. From the point of view of monitoring at programme level, certain changes have taken place with the entry into force of REGULATION (EU) 2020/558 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2020 amending Regulations (EU) No 182/2011, 1301/2013 and (EU) no. 1303/2013 as regards specific measures to ensure exceptional flexibility in the use of the European Structural and Investment Funds in response to the outbreak of COVID-19 (Regulation). Among the most fundamental measures taken to use the ESI Funds following this regulation were: (1) by way of derogation from Article 60 (2), 1 and Article 120 paragraph 3 of the first and fourth subparagraphs, at the request of a Member State, expenditure declared in payment applications during a financial year beginning on 1 July 2020 and ending on 30 June 2021 may be allocated to one or more priority axes or the Cohesion Fund to apply a co-financing rate of 100%; (2) in response to the occurrence of COVID-19, the resources available for programming for 2020 for the Investment for growth and jobs goal may be transferred between the ERDF, the ESF and the Cohesion Fund at the request of a Member State, regardless of the percentages set out in Article 92 par. 1 letter a) to d); (3) by way of derogation from the deadlines laid down in the regulations for each Fund, the annual report on the implementation of the program referred to in Article 50 (2) 1 for 2019 for all ESI Funds by 30 September 2020. Transmission of summary report to be prepared by the Commission in 2020 in accordance with Article 53 (1) may be postponed accordingly.

Also at the program level, with regard to the activities of the OP QE carried out to combat COVID-19, new program indicators were added under Priority Axis 3 - Support for risk management, emergency management and resilience to emergencies affected by climate change. With regard to the generation of data at the program level through the ITMS2014 + system, the MA does not record any major problems within the monitoring of the OP QE in connection with the COVID-19 disease.

5. *The Ministry of Agriculture and Rural Development of the Slovak Republic and the Agricultural Paying Agency (APA)*, responsible for Rural Development Programme and direct payments partly implemented the recommendation.

APA is accredited as the paying agency in accordance with the valid EU legislation and its activity is verified annually by a Certifying Authority (CA). Based on the CA

recommendations APA has implemented more effective measures: (1) APA has set up procedures for the systematic recording of all suspicions of frauds for the purposes of better monitoring the status of individual findings on a regular basis, and the information is then provided to the relevant departments. Data and information from previous years on entities are also gradually added to this database, as these have an impact on the handling of irregularities and suspected fraud.

In 2020, the APA implemented an effective tool in the fight against fraud - monitoring the risks of fraud and corruption and monitoring the measures defined in the Action Plan for fraud risk management.

APA also organized e-learning in the fight against fraud for all employees and all employees passed the test from the given training. We are still aware of the need to implement further measures. CA identified certain risks and therefore the APA started to implement other horizontal measures in order to protect the financial EU interests: (1) monitoring of fraud indicators - in order to detect suspected fraud; (2) defining sensitive positions in APA - identifying sensitive positions in order to protect the EU's financial interests, protect against fraud and misuse of funds and raise the awareness of APA staff in the performance of their tasks; (3) adoption of measures on conflicts of interest - Pursuant to Commission Delegated Regulation (EU) no. 907/2014, Annex I (Accreditation Criteria), (v) the Agency shall avoid a conflict of interests where a person occupying a position of responsibility or a sensitive position with regard to the verification, authorization, payment and accounting of claims or payment request also fulfils other functions outside the paying agency the conflict of interest, if the person in a position of high responsibility or sensibility, who from the view of, paying and also performs other functions outside the paying agency.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, partly implementing the recommendation

If you implemented partially the recommendation, could you explain why you think that it was a partial implementation and why a full implementation was not possible?

Pursuant Act No. 343/2015 Coll. on Public Procurement as amended, the contracting authority can apply direct negotiation procedure (without publication) only when the need of goods, services or works was caused by an emergency situation which cannot be foreseen and was not caused by the contracting authority and the goods, services or works are necessary to satisfy such need and the standard procedures cannot be used. Based on Article 82 paragraph 4, if the direct negotiation procedure is used due to the emergency situation, the contracting authority is obliged to submit to the Public Procurement Office, before concluding the contract, a notification stating the reasons for the use of this procedure. However, this is not necessary, if the contracting authority published the notification of intention to conclude a contract.

Based on the replies from the AFCOS partners acting as Managing Authorities/Intermediate Bodies, it seems that, until now, emergency procurement is not often used within the projects co-financed from their operational programmes. Their specific replies are provided below.

1. The Ministry of Environment of the Slovak Republic (MEn SR)

MEn SR transferred to the management documentation some measures and options beneficiaries can use in the procurement of goods and services that are directly related to the emergency situation (conclusion of amendments, procurement of exceptions). However, the beneficiary must, in addition to the management documentation, also proceed in accordance with the Act on Public Procurement, the ESI Funds Management System and other relevant documents when procuring contracts during an extraordinary situation. If the MA of the OP Quality of Environment (OP QE) wants to proceed within the framework of emergency procurement in some cases (eg low value contracts) it cannot use simplified rules, as it is not allowed by the internal public procurement directive and also the MA of the OP QE does not have a Central Coordinating Body (CCB) exception from the rules regulated in the ESI Funds Management System 2014 - 2020 in the case of the purchase of commodities needed in connection with an emergency situation. The mentioned exception would mean that the beneficiaries within the OP EQ will proceed with low-value contracts only in the sense of Act on public procurement and according to their internal rules. None of the Intermediate Bodies of OP QE, which acts as the beneficiary in PA 5, did not address us a request to incorporate these changes, resp. request for a CCB exemption.

2. *The Ministry of Agriculture and Rural Development of the Slovak Republic and the Agricultural Paying Agency (APA)*

If the applicant/beneficiary submits the procurement request, he shall submit for assessment a justification of the emergency procurement, supported by relevant evidence (description of the facts, market research, and communication with suppliers on the availability / unavailability of the subject of the contract, etc.).

3. *The Ministry of Economy of the Slovak Republic (MEc SR)*

Emergency procurement procedures are not relevant for the projects co-financed from the operational program Integrated Infrastructure. This type of procurement has not yet been applied.

4. *The Ministry of Labour, Social Affairs and Family of the Slovak Republic*

Regarding the methodology of public procurement control, the rules and obligations of the Managing Authority for the Operational Program Human Resources are listed in Guideline No. 1/2015 on public procurement ("Guideline"). The rules and obligations in the time of emergency caused by spreading of COVID-19 disease, are declared in accordance with generally binding legislation of the Slovak Republic, EU legislation, guidelines of Central Coordination Body and Office for Public Procurement and are regulated in Annex No. 19 of the Guideline (Annex 19 "Guideline of Managing Authority in relation to an emergency situation declared due to the spreading disease COVID-19 (coronavirus)"). For example, we quote: "In not regulated cases, the MA will make an effort to assess each case individually, but at the same time will apply a maximally client-oriented approach, while respecting the principle of equal treatment".

5. *The Ministry of Education, Science, Research and Sport of the Slovak Republic* mentioned that for example, recipients should not impose sanctions towards suppliers

who do not deliver the goods or services within the delivery time agreed in the contract / order in relation to the situation and coronavirus measures.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, partly implementing the recommendation

If partially or not, could you briefly explain at which point you are in the process?

In the Slovak Republic the e-procurement is partly implemented. The Ministry of Economy of the Slovak Republic described the current state-of-play in the Slovak Republic as follows:

Act. No 343/2015 Coll. on Public Procurement and on amendments to certain other acts, as amended regulates in the Article 20 (1) that the communication and exchange of information shall be carried out through the electronic means, with exemptions specified in the Article 20 (7). Public procurement can be currently conducted electronically through the national procurement information systems EVO (e-public procurement), managed by the Public Procurement Office, or EKS (electronic contracting system), managed by the Ministry of Interior of the Slovak Republic, as well as through the various private e-auction systems. EKS system is integrated to the Register of the Economic Operators and EVO is integrated to the Central Portal of Public Administration, offering additional functionality and connection to other national systems and public registers.

Below please find further details provided by other Managing Authorities:

1. The Ministry of Environment of the Slovak Republic (MEn SR)

From 19/10/2018, electronization in public procurement is mandatory for above-limit and below-limit orders. This obligation is controlled by the MA of the OP KŽP during the process of control of public procurement and also participates in the provision and preparation, resp. evaluation of the electronic public procurement process.

2. The Ministry of Labour, Social Affairs and Family of the Slovak Republic

At present, based on the rules and obligations of the Managing Authority for the Operational Programme Human Resources, the control of public procurement is performed from electronically submitted documentation by the beneficiary (for example from the ITMS2014 + system).

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ NO

If not, could you explain why and how your current system already ensures an adequate level of transparency?

Pursuant to Act No. 343/2015 Coll. on Public Procurement, as amended, the contracting authority must comply with the principles of equal treatment, non-discrimination, transparency, proportionality, effectiveness and economy.

Below please find further details provided by Managing Authorities:

1. The Ministry of Labour, Social Affairs and Family of the Slovak Republic

Regarding public procurement control methodology, the Managing Authority for the Operational Program Human Resources has not taken any additional measures to further enhance transparency in the use of EU funds, in relation to emergency procurement, other than the Annex no. 19 indicated in Q.2. Managing Authority currently considers the setting of the rules and obligations in the control of public procurement to be sufficient (laws, guidelines, ARACHNE system).

2. The Ministry of Education, Science, Research and Sport of the Slovak Republic, ensures an adequate level of transparency by publication of documents in the profile of the contracting authority/Beneficiary or on the website of the contracting authority/Beneficiary, depending on the procurement procedure; information system through which public procurement is carried out; ensuring that everyone has access to documents.

3. The Ministry of Economy of the Slovak Republic (MEc SR): Emergency procurement procedures are not relevant for the projects co-financed from the operational program Integrated Infrastructure. This type of procurement has not been applied yet.

4. The Ministry of Environment of the Slovak Republic (ME SR) MŽP SR: When awarding contracts financed from the ESI Funds, the MA is governed by Act no. 343/2015 Coll. on Public Procurement and on Amendments to Certain Acts, Methodological Instructions of the CCB, resp. ESIF management system. Documents issued by the CCB, as well as their updates, are implemented by the MA within the set deadline into the internal management documentation, as well as into practice. Measures in relation to transparency in the use of EU funds are sufficiently used within the OP EQ.

5. The Ministry of Agriculture and Rural Development of the Slovak Republic and the Agricultural Paying Agency (APA): The PPA does not use EU funds in connection with emergency procurement, but also in the case of emergency procurement the same control procedures are applied as in the case of standard procurement in the sense of the Handbook on the Public Procurement Process of the Managing Authority.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

The Ministry of Finance of the Slovak Republic, acting as Certifying Authority (CA) stated that the recommendation is fully implemented. Taking into account that there have not been adopted any new procedures regulating reporting of irregularities, no significant changes compared to 2019 took place. However, the recommendation is fully implemented thanks to procedures that have been already in process from the beginning of the 2014-2020 programming period. Cooperation between Managing Authority, Certifying Authority and the National Office for OLAF in Slovak Republic is realized through an information monitoring system (ITMS2014+) where all irregularities are recorded in detail. Also the monthly /

quarterly reports are compiled in this system, therefore each new irregularity, fraudulent and non-fraudulent, or its actualization is automatically included in the report if meets all of the condition. As we mentioned, all irregularities in the 2014-2020 programming period are monitored through information system, therefore even pandemic situation have not had negative affect on reporting.

Below please find further details provided by other Managing Authorities:

1. The Ministry of Labour, Social Affairs and Family of the Slovak Republic fully implemented the recommendation. Every irregularity is monitored the IT monitoring system (ITMS2014+). This system allows detailed monitoring and storage of all information and documents related to irregularities. It also allows filtering of data entered into the system to create the necessary overviews.
2. The Ministry of Education, Science, Research and Sport of the Slovak Republic reports irregularities to relevant entities in accordance with the "Guidelines on Irregularities and Financial Corrections in the Financial Management of Structural Funds, Cohesion Fund and European Maritime and Fisheries Fund for the programming period 2014-2020" and in accordance with the "Manual for reporting irregularities", the procedures of which are taken into account/incorporated into the IB Procedures Manual
3. The Ministry of Economy of the Slovak Republic (ME SR) fully implemented the recommendation. Regarding non-fraudulent irregularities ME SR carries out detection, reporting and monitoring in compliance with the Methodical guidelines of the Certifying Authority, Central Coordinating Authority and National Office for OLAF for dealing with suspected financial irregularities and their impact on the contracts. The irregularity cases are reported into the IT monitoring system (ITMS2014+). Each suspected irregularity is recorded and classified in the system according to the Commission typology of irregularities as correct classification is the basis for distinguishing between "fraudulent irregularities" and "non-fraudulent irregularities".
4. The Ministry of Environment of the Slovak Republic fully implemented the recommendation. Within the OP EQ, monitoring of the potential occurrence of irregularities is sufficiently ensured, namely by unambiguous determination of competencies and responsibilities within the performance of activities performed at the MA, implementation of the whistleblowing system, increasing the ability of MA staff in control and monitoring functions to identify fraud indicators, using the ARACHNE tool, monitoring fraud indicators and the like. The MA is also involved in the prevention, detection, detection, resolution and reporting of irregularities, as well as the adoption of corrective measures. The MA will assess the identified deficiency according to the conditions of the definition of irregularity and Guideline 2/2015-U on irregularities and financial corrections within the financial management of the Structural Funds, Cohesion Fund and European Maritime and Fisheries Fund for the programming period 2014-2020 as amended. In the event of an irregularity, the MA registers the irregularity in the ITMS2014 + system and documents it in the document the Report on the detected irregularity. The MA proceeds in accordance with applicable laws and regulations, e.g. Act no. 292/2014 Coll. on the contribution provided from the European Structural and Investment Funds and on the amendment of certain laws as amended.

5. *The Ministry of Agriculture and Rural Development of the Slovak Republic and the Agricultural Paying Agency (APA) fully implemented the recommendation. The responsible coordinating body for reporting irregularities to the Commission on behalf of the Slovak Republic is the Office of the Government of the Slovak Republic, the Control Section, National Office for OLAF, which administers the access rights for IMS. APA submits reports in accordance with the currently valid manual for reporting irregularities to the National Office for OLAF on a quarterly basis.*

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| 1.26. Slovenia |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

Answer of the Government Office for Development and European Cohesion Policy:

Public procurement is completely electronic, in 2021 eRevizija, an electronic complaint system in public procurement procedures, started operating. At present, the effects cannot be reported. However, the procedures themselves are more transparent. Example: bids are opened electronically, in a system, which reduces human impact. There is still room for improvements.

Management Authority followed guide notes of Coronavirus Response Investment Initiative what resulted in issuing MA guidelines on eligibility to the intermediate bodies and consequently to the beneficiaries.

Answer of the (AAMRD):

The Agency of the Republic of Slovenia for Agricultural Markets and Rural Development (AAMRD) has a well-established system for detecting and preventing fraud and artificially created conditions, as well as preventing conflicts of interest. The internal documents governing this matter are the accreditation documentation, which forms the basis for payments from EU funds of an accredited paying agency and must be taken into account by officials in their work. In addition, each official signs an annual declaration of non-conflict of interest.

A risk analysis is prepared for each measure implemented by the paying agency (AAMRD), and according to the identified risks, the controls provided for in the accreditation documentation are performed (four-eyes principle controls within administrative control, on-the-spot controls). All this is already regulated at the level of the paying agency (AAMRD) for each individual measure.

Applications for measures related to the SARS-CoV-2 epidemic (COVID-19) are generally decided only on the basis of data from official records (Agency for Public Records and Services - AJPES, Register of Grape and Wine Producers, Register of Agricultural Holdings, Financial Administration of the Republic of Slovenia, Public Payments Administration, etc.),

managed by verified state institutions or legal entities founded by the state, which is one of the reasons why there is significantly less suspicion of fraud or artificially created conditions in these measures. Exceptionally, applicants are required to provide evidence of the existence of relevant facts, such as in the case of the "crisis distillation of wine" measure and the "crisis storage of wine" measure, where the paying agency - within the process of detecting and preventing fraud and artificial conditions, - verified the proof of distillation and proof of the intended use of the alcohol by obtaining the former either from the distillery or from the winemaker himself and the latter from the national customs authority, which made it possible to "cross-check" the quantities. In the case of distillation in another Member State, the quantity of wine subject to distillation was checked on the basis of CMRs (international transport list) and, in parallel, an on-the-spot check was carried out through the institute for legal aid.

The amounts granted are allocated on a flat-rate basis, so applicants were generally not required to provide proof of the eligibility of the amount paid, and the data obtained from official records often referred to the period before the COVID-19 epidemic, when the measure could not have been known to potential applicants. Each application received so far has been examined administratively on a four-eye principle basis, for each application we have checked whether there is a suspicion of fraud and artificially created conditions and whether there may be a conflict of interest. In the case of advance payments, it was consistently checked whether the required securities were lodged.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

Answer of Government Office for Development and European Cohesion Policy:

We have not carried out such public procurement in the field of cohesion policy, however we would use it on the case-by-case basic when the time period for normal procedure would not give use good results.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Answer of Government Office for Development and European Cohesion Policy:

Procedures above the threshold for publication on the JN Portal are completely electronic, as is the revision procedure itself.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

Answer of Government Office for Development and European Cohesion Policy:

We have always requested at least two offers (in general). We have not carried out such public procurement (emergency procurement) in the field of cohesion policy.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, partly implementing the recommendation

If you implemented partially the recommendation, could you explain why you think that it was a partial implementation and why a full implementation was not possible? Which was the outcome of these new procedures?

Answer of Government Office for Development and European Cohesion Policy:

The reduction in fraud is mainly attributed to a better co-financing agreement, which is mandatory for all intermediary bodies. In the period 2021-2027, we will try to include additional provisions regarding whistleblowers and similar institutes.

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| 1.27. Spain |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

All the relevant authorities reported that the verification and monitoring measures have been kept at high level, similarly to previous years. This has been due to the implementation of certain measures such as making an intensive use of IT tools in order to do the checks and verifications remotely, carrying out video-conferences with systems to record the interviews, thus making proof of the date in which the interview was carried out in order to keep the corresponding audit trail, and, where a physical check was necessary, ensuring the strict compliance with the preventive measures regarding social distance, use of masks, etc., among others.

In some cases, on-the-spot verifications were delayed due to the restrictions and measures of confinement adopted during 2020, but have been or will be carried out when the circumstances allowed (or allow) the corresponding authorities to carry them out properly, making also use of the possibilities for flexibility laid down by different Commission DG's in this sense.

There is no evidence that the situation stemming from the COVID-19 crisis has influenced on the level of detections.

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

The State Public Procurement Advisory Board (“Junta Consultiva de Contratación Pública del Estado”) adopted and published in April 2020 an Information Note addressed to the contracting authorities, which clearly states that the COVID-19 pandemic does not itself allow contracting authorities to use the emergency procedure in the framework of public procurement. Consequently, it lays down that contracting authorities can only use this procedure on the basis of a case-by-case assessment in order to verify if the particular circumstances which are present in each case are enough to meet with the specific legal requirements laid down by Law in order to be allowed to use this exceptional procedure.

In addition to this, that note expressly establishes that contracting authorities must include in the procurement documentation a solid, case-related and motivated justification about the fulfilment of those legal requirements in each specific contract, not being enough for this purposes to include a generic declaration regarding the situation stemming from the COVID-19 pandemic.

Furthermore, article 120 of the Spanish Public Procurement Law (Law 9/2017) lays down that the Council of Ministers must be notified about any public contract that has been awarded under the emergency procedure at a state level (similar provisions apply at regional level), no later than one month after the decision has been adopted. The above-mentioned Information Note of the State Public Procurement Advisory Board lays down that, in the framework of this notification, the corresponding contracting authority must inform the Council of Ministers about the following issues, among others:

- Justification of the fulfilment of the legal requirements that allow the use of the emergency procedure, avoiding generic declarations, describing in detail the complete facts of the case, and explaining how those facts lead to the conclusion that those legal requirements are met.*
- Motivated explanation about the reasons why it is not possible to solve the situation or to acquire the goods or services through more competitive procurement processes.*
- Motivated justification that the subject matter of the contract is limited to those elements that are strictly indispensable to prevent or remedy the damages stemming from the emergency situation and that the duration of the contract will not go beyond the end of such situation. An express reference is done to the need, where appropriate, to differentiate the elements of the activity that are necessary in order to overcome the emergency situation from those others which are necessary to complete such activity, but not to overcome the emergency situation and thus can be procured through the ordinary procurement procedures.*

In addition to the above, and according to national law, Public Administrations at state level must notify to the delegated controller of the corresponding Administration (ministry or public body) the initiation of any emergency procedure. This notification must be done on the

same date in which the emergency procedure was initiated, so that the delegated controller is able to carry out its control function appropriately.

The Managing Authority of the ERDF, which is the fund with a higher amount of emergency procurement, has elaborated a specific checklist for emergency contracts so that each emergency contract is analysed in detail focusing on the principal risks associated to such type of procurement, before the expenditure related to the corresponding contract is declared to the Commission. A similar measure has been adopted by the Managing Authority of the ESF.

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, partly implementing the recommendation

If partially or not, could you briefly explain at which point you are in the process?

The implementation is only partial because while part of the relevant authorities reported to have fully implemented the recommendation, others reported that there are certain parts of their procurement processes that are not electronic yet, although they are actively working to fully complete the transition to e-procurement and acknowledge that the COVID-19 crisis has accelerated this process, which is something that the Independent Office for the Regulation and the Supervision of Public Contracts has also highlighted in its last annual supervisory report.

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

Articles 151 and 154 of the Spanish Public Procurement Law (Law 9/2017) lay down that the award and formalization of the contract must be published in any case in the centralized procurement electronic portals foreseen in such Law, thus including emergency contracts, which are not exempted from this obligation.

In order for the contracting authorities to be aware of this obligation with regard to emergency procurement during COVID-19 pandemic, the State Public Procurement Advisory Board (“Junta Consultiva de Contratación Pública del Estado”) adopted in April 2020 an Information Note which clearly states that the exemption of certain requirements in case of emergency procedures does not apply to the obligations regarding the publication of the award and formalization of the contract.

Regarding the information that must be published about each contract, the note of the State Public Procurement Advisory Board establishes that it should include those aspects which are relevant based on the particularities of the emergency procurement, making reference expressly to the need to include the justification of the procedure chosen, among other issues, so that control and supervisory bodies and also potential competitors are allowed to check if the requirements for using this special procedure were met in the corresponding contract.

This note also reminds the contracting authorities that the award and formalization of the emergency contracts must be published also in the corresponding official journals, not being exempted either from this obligation.

In addition to the above, the Independent Office for the Regulation and the Supervision of Public Contracts issued several special reports on the transparency and publicity of emergency procurement during COVID-19 pandemic, as a result of which the publications of emergency contracts significantly increased.

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

All the relevant authorities reported that the reporting of non-fraudulent irregularities has been monitored similarly to previous years and in particular similarly to programming period 2007-2013, thus suggesting that, in those cases where the number of non-fraudulent irregularities reported in programming period 2014-2020 has decreased in comparison to those reported in programming period 2007-2013 -this is not the case in all the reporting authorities-, this could be due to other reasons as highlighted in the PIF Report, as there is no evidence that this decrease is due to a worse performance in non-fraudulent irregularity reporting.

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| 1.28. Sweden |
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Q.1. Have you ensured that verification and monitoring measures are kept at a high level?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate how this was achieved? Can you share any specific finding in relation to such measures? Have detections increased, decreased or remained stable overall?

The Swedish Competition Authority (SCA) is the supervisory authority for the public procurement regulations. The authority's task is to work for efficient competition and effective public procurement for the benefit of the public and economic operators on the market. This is mainly done by exercising supervision over public procurement. The supervisory activities include reviewing, investigating, and adopting decisions in regard to whether contracting authorities or entities (authorities) have followed the procurement regulations.

A total of 18,379 procurement procedures were initiated in accordance with procurement regulations in Sweden 2019. The simplified procedure is the most commonly used procurement procedure. Most public contracts run for 3–4 years (including any extension options). In 57 per cent of all procedures, 1–3 tenders are submitted. The average number of tenders submitted in 2019 was 4.5. The average number of tenders submitted has decreased for several years prior to 2018 and 2019.

Of all procurement procedures, 6.6 per cent were subject to a review procedure in 2020. Directive-compliant procurement is subject to a review procedure more often than procurement not governed by the EU public procurement directives. Procedures with many tenderers are subject to a review procedure more often than procedures that have only a few tenderers. (Statistik om offentlig upphandling 2020 (konkurrensverket.se))

Q.2 Have you ensured that emergency procurement is used on the basis of a case-by-case assessment?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place to achieve that?

The National Agency for Public Procurement launched a guidance paper presenting its views on procurement and changes to the contract terms that the procurement rules allow during the COVID-19 pandemic (only available in Swedish: <https://www.upphandlingsmyndigheten.se/nyheter/nyheter-2020/upphandling-i-akuta-situationer>)

For information on public procurement in the event of extreme urgency, see LOU (2016:1145) Chapter 6, Section 15. [swedish-public-procurement-act.pdf](#) (konkurrensverket.se)

Q.3 Have you already completed the transition to e-procurement processes?

☒ YES, fully implementing the recommendation

Q.4 Have you taken any measures to further strengthen transparency in the use of EU funds, in particular in relation to emergency procurement?

☒ YES

If yes, could you specify which ones and how they strengthen the existing transparency framework?

The National Agency for Public Procurement offers guidance on anti-corruption measures at a strategic level and measures at different phases of the procurement process. It defines corruption as the abuse of one's position to achieve undue advantage for one's own or someone else's gain; this includes conflicts of interest. More information can be found on their web: [Förebygg korruption vid offentlig upphandling | Upphandlingsmyndigheten](#)

Q.5 Have you ensured that the reporting of irregularities, in particular non-fraudulent, for the 2014-2020 programming period is closely monitored?

☒ YES, fully implementing the recommendation

If you implemented fully the recommendation, could you indicate which procedures you have put in place? Which was the outcome of these new procedures?

The Swedish Council for the Protection of the Europeans Union's Financial Interests (the SEFI Council) has studied the authorities' reports of suspected crime to follow up how well the Council's reporting policy (zero tolerance) is implemented. Another aim was to follow up on whether the SEFI Council's guidelines for handling suspected crime (administrative support) need to be revised.