

**Working arrangement for the reporting of suspicions of criminal conducts
falling within the competence of the European Public Prosecutor's Office
as part of the implementation of the National Recovery and Resilience Plan
(NRRP)**

The Directorate-General of the Treasury – NRRP division, located at the Ministry of Economy, Finance and Industrial and Digital Sovereignty, 139 rue de Bercy, 75572 Paris Cedex 12, represented by its deputy Director-General, Mrs Muriel LACQUE-LABARTHE;

And

The Interministerial Anti-Fraud Coordination Mission (MICAF), located at 23 avenue d'Italie 75013 PARIS, represented by its head, Mr Eric BELFAYOL, on the one hand;

And the European Public Prosecutor's Office, located 11, Avenue John F. Kennedy, L-1855, LUXEMBOURG, represented by Frédéric BAAB, European Public Prosecutor, by delegation of the European Chief Prosecutor, Laura Codruta KÖVESI, of the other part;

Collectively referred to as "the Parties";

Agreed as follows:

PREAMBULE

BACKGROUND AND OBJECTIVES OF THE WORKING ARRANGEMENT

1. In accordance with the provisions of Article 325 of the Treaty on the Functioning of the European Union (TFEU), Member states and the institutions of the European Union (EU) share the responsibility of combating fraud and any illegal activities affecting the financial interests of the European Union. This shared responsibility requires a continuous adaptation and the strengthening of their actions and methods in the fight against fraud.
2. As part of a comprehensive response, the Recovery and Resilience Facility (RRF) aims to mitigate the economic and social consequences of the COVID-19 pandemic and to make European economies and societies more sustainable, resilient and better prepared for the challenges and opportunities posed by the green and digital transitions.

3. It allows the EU to raise funds to help Member States implement reforms and investments in line with EU priorities. To this end, it makes available EUR 723.8 billion (in current prices) in the form of loans (EUR 385.8 billion) and grants (EUR 338 billion).
4. In France, the National Recovery and Resilience Plan (NRRP) adopted by the Council of the European Union on 13 July 2021 and updated by the Council Implementing Decision of 17 July 2023 presents the investments for which France is requesting European funding of around EUR 40 billion. The implementation of the investments included in the NRRP, which is reflected in the implementation of pre-defined commitments, makes it possible to obtain the reimbursement of the national expenditure incurred for this purpose. RRF funds will be disbursed until 2026 depending on the implementation of the measures included in the NRRP.
5. The NRRP division of the Directorate-General of the Treasury of the Ministry of Economy, Finance and Industrial and Digital Sovereignty is designated as the national coordinating authority of the NRRP by the Prime Minister's circular N° 6369-SG of 5 August 2022. It shall pay particular attention to the existence of provisions guaranteeing the traceability of European funding and to the retention by the delegated management authorities responsible for the implementation of the NRRP measures of information relating to operations retained under the RRF, in particular for the purpose of criminal investigation in the event of suspected fraud.
6. The National Anti-Fraud Strategy for the Financial Interests of the European Union adopted under the coordination of the MICAF (Inter Ministerial Anti-Fraud Coordination Mission) on 4 February 2022, following a consultation involving the European Public Prosecutor's Office (EPPO), provides for monitoring of emerging frauds involving all actors in charge of the management of new funds mobilised by the European Union under the Recovery and Resilience Facility.
7. The EPPO shall exercise its competence over offences committed in connection with the commitment of the Recovery and Resilience Facility funds, in accordance with Articles 22(1) and 25 of Council Regulation (EU) 2017/1939 of 12 October 2017.
8. The purpose of this working arrangement is to facilitate the reporting of all criminal conduct detected during administrative control procedures to EPPO and to coordinate the action of the concerned administrations with that of the EPPO. It also lays down the modalities for feedback by the EPPO on follow-up to crime reports, in accordance with the provisions of the Code of Criminal Procedure and Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the EPPO.
9. The working arrangement provides for the establishment of regular exchanges on the typology of criminal behaviors and the mapping of risks identified in the context of the implementation of the NRRP in a working group coordinated by MICAF.
10. Finally, it aims to support the efforts of national administrations to detect fraud against the financial interests of the European Union through an appropriate training offer.

FIRST PART

THE NATIONAL RECOVERY AND RESILIENCE PLAN AND ITS IMPLEMENTATION IN FRANCE

Article 1 – The National Recovery and Resilience Plan (NRRP)

Pursuant to Article 17(2) of Regulation 2021/241 on the Recovery and Resilience Facility (RRF), only NRRP measures that have started from 1 February 2020 are eligible for funding from the RRF. The National Recovery and Resilience Plan presents the investments for which France will be able to receive around EUR 40 billion in grants under the Recovery and Resilience Facility. All investments in the National Recovery and Resilience Plan are pre-financed at national level. The grants received under the Recovery and Resilience Facility thus constitute repayments.

Article 2 – Role of the NRRP division of the Directorate-General for the Treasury

The NRRP division of the Directorate-General of the Treasury of the Ministry of Economy, Finance and Industrial and Digital Sovereignty is the national coordinating authority of the National Recovery and Resilience Plan (see circular of 5 August 2022 on the implementation and monitoring of the measures of the National Recovery and Resilience Plan). It shall ensure that the Ministries responsible for implementing the NRRP measures set up procedures for the collection and storage of monitoring data as part of the review of the Management and Control System Descriptions (MCSD) for the measures attached to each annual payment request.

MCSD shall be standardised documents containing all the information necessary for the assessment of the capacity of the authorities implementing those measures to fulfil the requirements set out in Articles 22 and 34 of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

The NRRP division shall ensure that the MCSD communicated to the Interdepartmental Commission for the Coordination of Controls (ICCC) - the national audit authority of the RRF, fulfil these conditions. The ICCC shall be in charge of carrying out the tests and analyses required to give reasonable assurance that the applicable regulatory norms are complied with.

In this context, the NRRP division shall pay particular attention to the establishment by the delegated management authorities, of provisions guaranteeing the traceability of European funding and the availability of information relating to operations selected under the RRF for control or investigation, in the event of proven fraud.

Article 3 – Internal management and control systems

Each delegated managing authority shall draw up its internal management and control system description (MCSD).

This document shall specify in particular the internal control procedures intended for prevention and correction of risks of fraud, corruption and conflicts of interest and notification of fraud suspicions.

The MCSD are audited by the NRRP division and then forwarded to the ICCC, which prepares an annual summary of the audits for the Commission.

Article 4 – Contact points of the European Public Prosecutor’s Office on the RRF

The NRRP division is at the disposal of the European Public Prosecutor’s Office in order to answer possible questions about the financing of measures through the Recovery and Resilience Facility. In addition, contact points shall be designated for each sector of intervention of the NRRP measures within the concerned Ministries. The ministerial contact points, in liaison with the delegated managing authorities, are the interlocutors of the European Delegated Prosecutors on any matter relating to the legal and technical framework applicable to the implementation of the NRRP measures and their refinancing by the RRF.

Article 5 – Mapping of NRRP measures refinanced by the RRF

The mapping of the NRRP measures financed by the RRF is included in the public documents of the NRRP, which specify the administrations in charge of the implementation of the measures.

PART TWO

REPORTING OF FRAUD SUSPICION TO THE EPPO IN FRANCE

Article 6 – Obligation to report

Article 24 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the EPPO requires national authorities to inform the EPPO ‘without undue delay of any criminal conduct in respect of which the EPPO may exercise its competence’.

EPPO’s competence shall extend to any criminal conduct committed within the framework of the NRRP measures refinanced by the Facility for Recovery and Resilience.

In accordance with the clarifications in recital 51 of the preamble to that Regulation, the obligation to inform EPPO applies in the event of suspicions of offences falling within its competence.

For the purposes of implementing those provisions in French law, Articles 696-111 and D. 47-1-35 of the Code of Criminal Procedure specify the procedures for reporting to the European Public Prosecutor’s Office on the basis of the second paragraph of Article 40 of that Code. The latter obliges any authority or public official to report to the public prosecutor ‘without delay’ the crimes or offences of which he acquires knowledge in the performance of his duties.

These provisions therefore require national authorities to send reports on suspicions of offences affecting the EU’s financial interests directly to the European Delegated Prosecutors based in France without undue delay.

Article 7 – Transmission of reports without undue delay

Paragraph 1 of Article 24 of Regulation (EU) 2017/1939 provides that national authorities shall report without undue delay criminal conduct likely to fall within the competence of the EPPO. The second paragraph of Article 40 of the Code of Criminal Procedure, to which Article 696-111 of the Code of Criminal Procedure refers, imposes an obligation to report to the public prosecutor “without delay” crimes or offences.

Disclosure must take place as soon as the competent national authority is sufficiently satisfied that there are plausible grounds for suspecting a criminal conduct, within the limits of the investigations it may carry out at its level.

When appropriate, the transmission of the report may be preceded by informal exchanges with the European Delegated Prosecutors, which can be reached at the e-mail address: permanence.dpef@justice.fr.

Taking into account the statute of limitations in criminal matters, it is necessary to transmit the report as soon as the facts are discovered, without waiting for the end of the administrative investigation, management, control or audit procedure, in order to allow for the prompt initiation of any judicial proceedings. It shall then be conducted, where appropriate, in parallel with the administrative control or recovery procedures.

By way of illustration, the following may be classified as criminal offences:

- property (e.g. fraud, breach of trust, misappropriation of public funds, etc.);
- public procurement (favoritism);
- public trust (including corruption, unlawful taking of interests, false documents in private writing, false administrative documents, etc.);
- economic public policy (money laundering, non-justification of resources, illegal practice of regulated profession, presentation of unfaithful annual accounts, etc.).

Article 8 – Direct transmission of reports

Any public service or public servant carrying out its duties in the implementation of the measures of the NRRP as well as any private person under contract with a public service, who acquires the conviction that there is a suspicion of criminal conduct likely to harm the financial interests of the EU, shall be invited to send a report directly to the European Public Prosecutor's Office in France.

Pursuant to Article D. 47-1-35 of the Code of Criminal Procedure, a copy for information may be sent to the territorially competent prosecutor and, where the offences fall within their sphere of competence, to the Prosecutor of the Financial Republic and to the Public Prosecutor at the interregional jurisdiction specialised in economic and financial matters.

The supervisory authorities and the ministerial contact points for the management of the NRRP shall also be informed.

The ministerial contact points shall bring this information to the national coordinating authority of the NRRP (NRRP division of the Directorate-General for the Treasury) and the Secretariat-General for European Affairs (SGEA).

The transmission of a report to the EPPO shall not prevent the reporting of irregularities to the European Anti-Fraud Office (OLAF), provided that both entities are duly informed of these parallel steps. In any event, when the EPPO conducts a criminal investigation in accordance with this Regulation, OLAF shall not initiate a parallel administrative investigation into the same facts¹.

Article 9 – Form of the reports

A reporting template is attached to this working arrangement.

A report shall take the form of a letter, sent by email and by postal mail to the European Delegated Prosecutors in France:

By e-mail: permanence.dpef@justice.fr

By post: Parquet européen en France / Cour d'appel de Paris
34 Quai des Orfèvres
75055 PARIS CEDEX 01
FRANCE

The report may be enriched by any information available in order to clarify the facts.

The form and content of the report should facilitate the assessment of the facts by the EPPO. In accordance with the requirements of Article D. 47-1-37 of the Code of Criminal Procedure, the report shall provide:

- the identification of the person(s) concerned or likely to be involved, whether natural persons (with date and place of birth, address, reference to identity documents and possible SIRET number) or legal entities (with exact company name, address of the registered office and registration number in the commercial and company register);
- the objective and detailed summary of the facts: date or period of the facts, alleged locations of their commission, factual description of the evidence discovered, findings made and their context, identification of potential victims;
- the nature of the European funds likely to be impacted and the estimated amount of financial damage, even approximate and not final;
- the identification of the reporting person and his or her contact details (e-mail, telephone, service);
- a list of any attachments (copy of quotations, invoices, declarations, supporting documents, etc.);
- the possible existence of elements which may constitute a related offence (under the conditions laid down in Article D. 47-1-34 of the Code of Criminal Procedure).

The applicable legal framework does not entail the obligation for competent authorities reporting suspicions of criminal conduct to the EPPO to specify the criminal offence(s) applicable to the facts.

¹ Article 101(2) of Regulation 2017-1939

Article 10 – Practical support

Article 5 of Regulation (EU) 2017/1939 provides that the competent national authorities shall provide the EPPO with active assistance and support, adding that any act, policy or procedure carried out under the Regulation shall be guided by the principle of sincere cooperation².

In accordance with paragraph 14 of the preamble to that Regulation, taking into account the principle of sincere cooperation, the EPPO and the competent national authorities shall exchange information and cooperate in order to effectively combat offences falling within the competence of the EPPO.

The European Delegated Prosecutors in France shall be available for any practical questions related to the content, form or transmission of reports the managing authorities and ministerial contact points may have.

A practical handbook on reporting fraud, drafted by the European Delegated Prosecutors, is attached to this working arrangement.

Article 11 – Information on actions taken by the EPPO following a report

The EPPO shall inform the competent national authorities of the action taken following the reception of their crime reports.

European Regulation (EU) 2017/1939 establishing the European Public Prosecutor's Office, the Code of Criminal Procedure and the internal directives of the EPPO College impose certain obligations on the European Delegated Prosecutor vis-à-vis the national authorities who have informed him/her:

- the duty to inform about the immediate follow-up to the report after its verification: initiation of investigations (Article 26(7) of the Regulation); decision not to initiate an investigation (Article 24(7) of the Regulation);
- where the EPPO is competent for the facts reported in accordance with Article 22(3), or where the EPPO exercises competence in respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371 and the damage caused or likely to be caused to the financial interests of the Union does not exceed the damage caused or likely to be caused to the national financial interests, the obligation to consult national authorities before a case is closed and to provide information after closure (Article 39 of the Regulation);
- if the EPPO becomes aware that a criminal offence outside of the scope of its competence may have been committed, the obligation to transmit the information received to the competent national authorities (Article 24(8) of the Regulation);

² Article 4(3) of the Treaty on European Union (TEU): "Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties."

- the sending of a notice to the victim, in progress or at the end of the procedure in accordance with the applicable procedural framework (Articles 10-2 and 80-3 of the Code of Criminal Procedure);
- communication of the notice of hearing in the event of judicial proceedings before the criminal court or possible alternative measures to prosecution (Article 40-2 of the Code of Criminal Procedure).

In accordance with Article D. 47-1-41 of the Code of Criminal Procedure, all reports, opinions and information sent or transmitted by the European Delegated Prosecutors may be drawn up or converted into digital format and communicated electronically. For electronic communication, the use of structural or functional messaging will be preferred by the competent national authorities.

PART THREE

FOLLOW-UP AND TRAINING ACTIVITIES

Article 12 – Establishment of a dedicated working group

A working group on emerging frauds under the NRRP, facilitated by MICAF, is set up to allow for regular exchanges between managing, control and audit authorities of NRRP measures and the EPPO, including on identified fraud risks and possible action strategies.

This group shall meet at least three times a year.

These exchanges are intended in particular to carry out a mapping of the risks of fraud, which can be used by the competent national authorities responsible for the proper management of the delegated European funds and the fight against fraud.

The working group should also facilitate inter-institutional exchanges and best practices between actors involved in the fight against fraud detrimental to the financial interests of the European Union.

Article 13 – Monitoring of the implementation of the working arrangement

Within the framework of the dedicated working group, and without prejudice to the confidentiality obligations laid down in Regulation (EU) 2017/1939 or special laws, the parties shall monitor actions undertaken, in particular:

- transmissions of reports to the EPPO;
- feedback from the EPPO following a report;
- identification of risks;
- adapting the training offer on fraud to the EU's financial interests.

Article 14 – Training and awareness-raising activities

The agents responsible for combating fraud against the funds of the NRRP have access to the training courses listed in the catalogue consolidated by the MICAF in the field of the fight against public finance fraud.

In particular, they have access to two training activities directly dedicated to fraud in the EU budget:

- “Fighting fraud against European financial interests” offered by MICAF;
- “Fraud to the financial interests of the European Union: working with the European Public Prosecutor’s Office (EPPO)” provided by the EPPO.

The training offer may evolve and adapt to the needs of officials and administrations combatting fraud against the financial interests of the European Union.

‘FOURTH PART FINAL PROVISIONS

Article 15 – Protection of personal data

1. Concerning personal data protection, the Parties shall apply their respective legal frameworks.
2. The Parties shall cooperate and inform each other in an appropriate manner in the performance of their respective obligations. This specifically includes:
 - Informing each other in case of any personal data breach occurring in relation to personal data exchanged under this arrangement.
 - Consulting each other in case of data subject requests related to personal data exchanged under this arrangement, and specifically not to grant access prior to having consulted the other party.
 - Informing each other in case there are reasons to believe that personal data received or provided under this arrangement were or are inaccurate or incomplete, or should not have been transmitted, in which case the receiving party shall take the appropriate action.
3. Personal data shall be transmitted with a purpose and shall not be processed in a manner incompatible with, or stored longer than necessary for, the purpose for which it was transmitted.
4. Other than where provision of personal data was mandatory based on existing legislative reporting obligations, any restriction on the use of information exchanged, or instructions relating to deletion or destruction, including possible access restrictions in general or specific terms, shall be respected by the Parties.

Article 16 – Entry into force and duration

This Working Arrangement shall take effect from the date of signature by the Parties for a period of three years. It shall be renewable by tacit agreement for the same period of time if necessary.

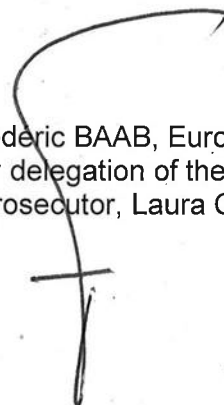
Done at Luxembourg and Paris, on the dates mentioned in the electronic signatures, in three original copies, in French and English, each of the versions being equally authentic.

For the Directorate-General of the Treasury



Muriel LACQUE-LABARTHE, Deputy
Director-General

For the European Public Prosecutor's Office



Frédéric BAAB, European Prosecutor,
by delegation of the European Chief
Prosecutor, Laura Codruta KÖVESI

For the Interministerial Anti-Fraud
Coordination Mission



Eric BELFAYOL, Head of Mission