



# REPLIES OF THE EUROPEAN COMMISSION

TO THE EUROPEAN COURT OF  
AUDITORS' SPECIAL REPORT

**Fraud in the Common Agricultural Policy -**  
Time to dig deeper

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This document presents the replies of the European Commission to observations of a Special Report of the European Court of Auditors, in line with Article 259 of the [Financial Regulation](#) and to be published together with the Special Report.

# EXECUTIVE SUMMARY (Paragraphs I-XI)

## Commission replies:

### Common Commission reply to the executive summary

The Common Agricultural Policy (CAP) is a genuinely European policy as Member States pool resources to operate a single common policy with a single European budget.

With 6.6 million beneficiaries of the CAP, the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) expenditure is implemented under shared management through a comprehensive management and control system, which is designed to ensure the legality and regularity of the CAP expenditure.

Where the Commission implements the budget under shared management, implementation tasks are shared with the Member States. The latter are required to take all the necessary measures to ensure that actions financed from the EU budget are implemented correctly and effectively and in accordance with EU rules. They are obliged to have systems in place which prevent, detect and correct irregularities and fraud. The CAP legislation provides that they shall accredit paying agencies which are dedicated bodies responsible for the management and control of Union funds, notably payments to beneficiaries and financial reporting to the Commission.

At the same time, certification bodies designated by Member States shall provide every year an opinion covering the completeness, accuracy and veracity of the annual accounts of the paying agency concerned, the proper functioning of its internal control system and the legality and regularity of the expenditure declared to the Commission.

The Commission's position is that land grabbing does not represent a problem inherent to the abuse of specific weaknesses of CAP legislation. These phenomena are rather linked to possible deficiencies of legal systems, supervision and protection of individual rights in Member States and must therefore be addressed by them under a general rule-of-law approach as appropriate.

The accreditation audits carried out by the Directorate-General of Agriculture and Rural Development (DG AGRI) consider the anti-fraud measures implemented by the paying agencies in the context of the accreditation criteria components, in particular as regards Internal Environment, Authorization of claims and Monitoring (risk assessment is performed at the planning stage to identify the areas to focus during the audit – fraud risk always considered at the planning stage). Where relevant, DG AGRI's findings and recommendations led to the implementation of corrective or improvement plans by the paying agencies.

The level of the reporting details is based on the certification bodies' professional judgement. If the certification bodies' work did not lead to any findings, the certification bodies are not required to provide further details on the work carried out.

The Commission has been encouraging the uptake of the Checks by Monitoring approach already from 2018 onwards. Apart from providing free access to the Copernicus Data and Information Access Services (DIAS) for CAP monitoring purposes, the Commission has developed guidance documents, organised various meetings and webinars with stakeholders, and launched a 2021 Checks by Monitoring outreach effort to tackle perceived or actual technical hurdles in the use of Sentinel satellite data for CAP monitoring. As a result, in 2021 the uptake of the Checks by Monitoring approach in Member States doubled with respect to that of 2020 thereby exceeding the Commission's interim Milestone of covering 10% of the utilized agricultural area by 2022.

The Commission accepts ECA recommendations.

## INTRODUCTION (Paragraphs 1-23)

### Commission replies:

**09.** “Fraud” affecting the Union’s financial interests is defined under Article 3 of the Directive (EU) 2017/1371 (PIF Directive) on the fight against fraud to the Union’s financial interests by means of criminal law, both in respect of any act or omission relating to: (i) non-procurement-related expenditure and (ii) procurement-related expenditure. “Other criminal offences (money laundering, passive and active corruption, misappropriation) affecting the Union’s financial interests” as described under Article 4 of the PIF Directive should be considered together.

**11.** The concepts of ‘internal’ and ‘external fraud’ used by the ECA do not coincide with the concepts of ‘internal’ and ‘external investigations’ by OLAF as defined in Article 4 of Regulation (EU, Euratom) 883/2013.

**FIRST INDENT -** While breaches of professional confidentiality, or passive corruption can in many cases also be linked to fraudulent conduct, this is not always the case with undeclared conflicts of interest.

**SECOND INDENT -** The PIF Directive distinguishes fraud in respect of any act or omission relating to: (i) non-procurement-related expenditure and (ii) procurement-related expenditure. “Other criminal offences affecting the Union’s financial interests” e.g. active corruption, should be considered that fall under this definition.

**13. FIRST INDENT -** While the Commission, in particular the Directorate-General for Agriculture and Rural Development (DG AGRI), is ultimately responsible for the CAP, it shares its management with paying agencies in the Member States. Since 2015, independent certification bodies in the Member States provide annual opinions on the regularity of the paying agencies’ spending.

**SECOND INDENT -** The European Anti-fraud Office (OLAF) carries out administrative investigations into fraud, corruption and any other illegal activity affecting the financial interests of the EU budget, and serious misconduct within the EU institutions.

**23.** In relation to the finding of the ECA about non-completeness of figures published in the PIF Reports, in the reply to the ECA special report 01/2019 the Commission has explained that non-reporting of given cases in year x does not imply that this case will not be reported at all. This is why, when preparing the PIF Report, the analysis covers at least five years, to minimise the impact of such non-reporting and this is why the effects of this non-(timely-)reporting are regarded as impacting on detection estimates only to a limited extent, which does not affect significantly the Commission’s conclusions.

The Commission considers that the PIF report is the most precise tool available to estimate the impact of fraud in the EU funds.

## AUDIT SCOPE AND APPROACH (Paragraphs 24-27)

No Commission replies.

## OBSERVATIONS (Paragraphs 28-105)

### Commission replies:

**30.** The Commission would like to point out that errors are not the same as fraud.

The Commission refers to its reply in the ECA's 2019 annual report, paragraph 6.36 and notes the ECA assessment that the risk of fraud is greater for the areas which are generally subject to reimbursement-based co-financing, and not in the area of Direct Payments and area-based rural development expenditure which represent the large majority of CAP expenditure.

Under the current CAP legislative framework it should be recalled that, when it comes to reimbursement-based payments, complex conditions and eligibility rules apply where, in order to achieve ambitious policy objectives, targeting of aid is necessary. It is thus needed to balance legality and regularity with the achievement of policy objectives while bearing in mind the delivery costs. For the 2023-2027 period, the Commission is addressing this by promoting the use of Simplified Cost Options and by simplifying the CAP.

### FIGURE 6 – FACTORS IMPACTING IRREGULARITIES AND FRAUD

The Commission recalls the significant role of the Integrated Administration and Control System (IACS), including the Land Parcel Identification System (LPIS), in keeping the risk of error low in the area-based CAP payments (Direct Payments and some of the Rural Development measures) as recognised by the ECA.

Please see the Commission reply to paragraph 30.

**31.** The Commission points out that artificially creating the conditions to meet eligibility criteria is an irregularity and not necessarily a fraud. At the same time, providing false information so to unduly benefit from CAP aid constitutes indeed a specific case of fraudulent behaviour.

### Box 3 – Examples of simulating activities and falsifying documents to obtain EU funds

The Commission points out that the Slovak case described in Box 3 is an example of an effectively working management and control system in the Member State, which has duly prevented the damage to the EU financial interests and properly reported the case according to the procedures in place.

**40.** With a view to ensuring a safe implementation of the wine promotion measure, in 2016 DG AGRI issued guidelines<sup>1</sup> on national support programmes in the wine sector, in particular on the promotion measure. In addition, in 2021, DG AGRI issued a note to the Member States' delegates on 'technical issues detected in wine – promotion in third countries'. This should contribute to mitigate the risks in terms of implementation of the promotion measure in the wine sector.

**FIRST INDENT –** Expenditure linked to personnel costs are legally limited to 50 % of the overall cost of the implemented promotion measure.

<sup>1</sup> Available at [https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/wine-guidelines-national-support-programmes-2016-16-12\\_en.pdf](https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/wine-guidelines-national-support-programmes-2016-16-12_en.pdf)

**SECOND INDENT-** On-the-spot checks in non-EU countries are regulated in Commission Implementing Regulation (EU) 2016/1150. There is no specific obligation/target of the minimum checks sampling targeting operations developed in third countries. In addition, the Regulation does not require on-the-spot checks in the place where the actions are implemented, but just at the premises of the beneficiary or the organising body. On-the-spot checks in wine promotion in third countries do not focus on verifying in-situ the operation.

**THIRD INDENT** - Article 41 of Implementing Regulation (EU) 2016/1150 includes particular requirements when the promotional activities are carried out by an organising body.

**42.** The Commission confirms that having the eligible hectares at the farmer's disposal is a requirement for the allocation of payment entitlements (PEs) and for the activation of PEs for the purpose of receiving the corresponding payment under the Basic Payment Scheme (BPS) or for receiving the payment under the Single Area Payment Scheme (SAPS).

### Box 5 - What is 'land grabbing'?

The phenomenon of land grabbing is wider than the concentration of agricultural land and support in few beneficiaries, of which the Commission is aware (20% of CAP beneficiaries concentrate around 80% of direct payments, mirroring the distribution of land ownership). The CAP 2014-2022 led to a significant redistribution of direct payments towards smaller farmers and to areas facing natural constraints, compared to the period 2011-2013. The new CAP 2023 – 2027 is further going in the direction of improving the fairness of the distribution of direct payments via instruments such as capping, reduction of payments and, in particular through application of the complementary redistributive income support for sustainability.

Concerning "land grabbing" and fraudulent practices, the Commission would like to point out that there is a difference between, on the one hand, illicitly obtaining land (which implies the obtainment of a legal act of ownership of the land through criminal actions, such as acts of violence or intimidation) and subsequently actually fulfilling eligibility conditions, and on the other hand only pretending to fulfil the eligibility conditions by submitting forged and/or falsified documents. The latter could be an issue that the Paying Agency's anti-fraud measures might detect.

**47.** The Commission welcomes the ECA's positive assessment of the role of Integrated Administration and Control System (IACS) and Land Parcel Identification System (LPIS) in preventing and reducing levels of error. Please also see Commission reply to figure 6.

**49.** The Commission shares the ECA's view that these ways of trying to profit illicitly from EU funds (e.g. fraudsters seeking to acquire agricultural land illicitly and then claim support) are indeed likely to be the result of an efficient management and control system, such as IACS-LPIS, that has forced "fraudsters" to find different ways of obtaining the aid. Very often these different ways expose the fraudsters to a higher risk of being found out and to heavier sanctions (including long prison sentences). Overall, this proves the robustness of the system in place.

### **COMMON COMMISSION REPLY TO FIGURE 7 AND PARAGRAPHS 50-51:**

Concerning "land grabbing" and fraudulent practices, the Commission would like to point out that there is a difference between, on the one hand, illicitly obtaining land (which implies the

obtainment of a legal act of ownership of the land through criminal actions, such as acts of violence or intimidation) and subsequently actually fulfilling eligibility conditions, and, on the other hand, only pretending to fulfil the eligibility conditions by submitting forged and/or falsified documents. The latter could be an issue that the Paying Agency's anti-fraud measures might detect.

### Box 6 - Example of land claimed illicitly in Italy

The situation in Italy presented in Box 6 was followed up by DG AGRI in two audits, one resulting in a financial correction of EUR 158 million and one resulting in a financial correction of EUR 21 million. The EU budget was therefore appropriately protected through the combined and coordinated work of OLAF and DG AGRI. It is another example of how the Commission gives the highest priority to the fight against fraud and the protection of the EU financial interest.

**52.** Issues described in Box 7 are not necessarily related to weaknesses in checks performed by the paying agencies but rather to the shortcomings of the way in which land ownership and land leases are managed in the specific Member State. The focus should be the urgent need for those systems to be improved rather than looking at the side of Paying Agency controls as such.

**53.** Neither Regulation No (EU) 1307/2013 nor the legal framework for the new CAP 2023-2027 (Regulation (EU) 2021/2115 on support for strategic plans) define the nature of the legal relationship that would determine that the eligible hectares are at the farmer's disposal, as it is not possible to find a common rule that is compatible with all the national legislations. Exhaustive requirements would also contradict the concept of the New Delivery Model. However, in line with the principle of contractual freedom, all legally available forms of agricultural land "disposal" in national law qualify in this regard. These may include, but are not limited to, ownership, a land concession, a written lease contract, an oral lease or other form of oral agreement, unchallenged possession if allowed by national legislation or other national legal forms, legal tradition and/or legal custom.

**54.** The Commission reiterates the importance of an adequate management control systems to be put in place by Member States to prevent and detect irregularities and protect the Union financial interests. For this reason, checks should not be limited to cases of double claims. Nevertheless, the form of checks of aid applications and to verify the fulfilment of the requirement of having the eligible hectares at the farmer's disposal is a discretionary choice for the Member States.

**55.** Under shared management the Member States are granted flexibility to organise their control systems. Therefore, discrepancies in the methods are mirrored in the different national systems. As concerns the moment of the checks, the Commission encourages Member States to target irregularities and not to limit them to cases of double claims. In fact, Member States are urged to comply with their general obligation to carry out effective and systematic administrative controls, including of the fulfilment of lawful land disposal, despite their margin of discretion and a right to presume that the eligible hectares are at the disposal of the applicant.

**56.** In the case of double claims, Member States must first determine who has the eligible hectares at their lawful disposal. If one of the applicants does not have any legal right, he/she cannot claim to lawfully dispose of the land in question. Secondly, if two parties can demonstrate a legal relationship with regard to the land, national authorities have to determine who holds the decision-making power for the agricultural activities carried out on those hectares and bears the

profits and financial risks associated with those activities, in accordance with the principles established in case C- 61/09 Landkreis Bad Dürkheim.

**58.** The performance of agricultural activities on farmland is to be checked by the paying agencies as part of the required controls to be performed on the eligibility conditions. These control systems are then regularly audited by the certification bodies and, if necessary, subject to Commission audits. Financial corrections are then applied if these controls are found to be deficient.

### Box 8 -The attractiveness of pastureland and mountain areas for fraudsters

Apart from OLAF investigations, also Commission audits address this type of issues (e.g. the attractiveness of pastureland and mountain areas for fraudsters) and financial corrections are applied until the situation is remedied and the EU budget is fully protected. Very often this is done in the context of action plans to be implemented by the Member States under the supervision of the Commission so to ensure a complete and swift remedy of the shortcomings detected.

### COMMON COMMISSION REPLY TO PARAGRAPHS 59 - 61

The Commission would like to emphasize that a clear distinction must be made between established fraud and suspected fraudulent irregularities. Fraud can only be investigated by bodies competent to investigate such cases e.g. OLAF, EPPO or Member States anti-fraud bodies and law enforcement. It can be established by a definitive administrative or criminal court decision only.

Out of the 12 cases sent to OLAF, two investigations have been concluded by OLAF so far with financial recommendations to DG AGRI for organizing the recovery of the unduly paid amount. In these two specific cases, OLAF confirmed the existence of irregularities but did not find evidence of fraud. The remaining 10 cases are still under investigation, therefore, the Commission cannot comment further.

Furthermore, the Commission positively notes that for the last two years, the error rate reported by the ECA for the Natural resources chapter was close to the materiality threshold (1.9% in 2019 and 2% in 2020) and in line with the error rate reported by DG AGRI in its Annual Activity Report.

The Commission notes that the ECA does not consider itself entitled to investigate fraud. The same is true for Commission auditors.

**62.** Regarding the actions taken by the Commission on fraud on CAP, the Commission considers it has an overview of fraud and fraud risks and continues to be proactive and monitor the fraud risk for CAP expenditure.

### COMMON COMMISSION REPLY TO PARAGRAPHS 65 TO 69:

The Commission notes that “land grabbing” does not represent a problem inherent to the abuse of specific weaknesses of CAP legislation. These phenomena are rather linked to possible deficiencies of legal systems, supervision and protection of individual rights in Member States and must therefore be addressed by them under a general rule-of-law approach, as appropriate.

With reference to the “land grabbing” issue in general, in the 2020 DG AGRI annual report on the antifraud strategy, DG AGRI put forward the very different concept that ‘land grabbing’ “does not represent a problem inherent to the abuse of specific weaknesses of CAP legislation”.

The Commission has taken steps as acknowledged by the ECA in paragraph 56 to provide Member States with guidance on how to deal with issues on land grabbing when linked to the issue of “land at disposal”.

Concerning “land grabbing” and fraudulent practices, the Commission would like to point out that there is a difference between, on the one hand, illicitly obtaining land (which implies the obtainment of a legal act of ownership of the land through criminal actions, such as acts of violence or intimidation) and subsequently actually fulfilling eligibility conditions, and, on the other hand, only pretending to fulfil the eligibility conditions by submitting forged and/or falsified documents. The latter could be an issue that the Paying Agency’s anti-fraud measures might detect.

## **FIGURE 9 – TIMELINE OF DG AGRI GUIDANCE TO MEMBER STATES**

The Commission points out that it is aware of the importance of the support to be provided to Member States and it is in close contact with the Member States’ paying agencies to provide the needed support in line with the requests received.

**74.** The Commission considers that it has facilitated the exchange of best practices as regards anti-fraud measures also from 2019 in the paying agencies’ conferences, when it was possible to have these in view of the COVID 19 restrictions, such as in the October 2020 conference where the Croatian Paying Agency gave a presentation. Exchanges have also taken place in the Learning Network meetings. Furthermore, antifraud seminars have restarted in 2021 and DG AGRI has always responded to requests in this sense received from the Member States. Other seminars are indeed being organized in 2022 in line with the requests received.

### **COMMON COMMISSION REPLY TO PARAGRAPHS 75 TO 78:**

*The Commission monitors the anti-fraud measures implemented by the Member States through the work of the certification Bodies.*

The national anti-fraud measures are kept under constant supervision through the work of the certification bodies and their annual reports to the Commission.

Said supervision is performed in line with the approach described here below and in accordance with current legal provisions:

Paying agencies have a legal obligation to have anti-fraud measures in place. In order to support the paying agencies to have proper measures in place, DG AGRI provided Member States with guidance on the implementation of the accreditation criteria as regards anti-fraud measures.

The Commission highlights that, when it comes to antifraud measures, the Member States under shared management are in the driving seat. Guideline 1 on the accreditation criteria is a document which provided the minimum requirements expected by the certification bodies as regards the review of all the accreditation criteria including fraud prevention and detection. More specific guidance to Member States as regards anti-fraud measures, with best practices, has been provided e.g., during the Expert Group Meeting in November 2021.

The level of the reporting details is based on the certification bodies’ professional judgement; however, the Commission clarifies that in cases of weaknesses found related to fraud prevention and /or detection, those were adequately described in the certification bodies’ reports. If the certification bodies’ work did not lead to any findings, the certification bodies are not required to provide further details on the work carried out.

The Commission (DG AGRI) performs annually several audit missions to Member States where the implementation of the certification bodies’ audit strategy and the quality of its work on the assessment of the paying agency’s internal control system including the review of the accreditation criteria is tested.

**80.** The Commission carries out audits as is clearly stated by the ECA and these are not and should not be fraud investigations. However, the Commission does carry out checks of the anti-fraud measures put in place by Member States.

The accreditation audits carried out by DG AGRI consider the anti-fraud measures implemented by the paying agencies in the context of the accreditation criteria components, in particular as regards *Internal Environment, Authorization of claims* and *Monitoring* (risk assessment is performed at the planning stage to identify the areas to focus during the audit – fraud risk always considered at the planning stage). Where relevant, DG AGRI's findings and recommendations led to the implementation of corrective or improvement plans by the paying agencies.

### Box 10 - The Commission's response to allegations of misuse of CAP funds in Slovakia

The Commission notes that a number of remedial actions were taken by the Slovak authorities for the paying agency before the full accreditation was reinstalled. In the first months of 2022 the Slovak authorities are still implementing a transformation plan to improve further the internal control systems in the paying agency, in particular as regards Non IACS Rural Development expenditure. Although the full accreditation was reinstalled by the Slovak authorities, they did not resume payments as regards Non IACS Rural Development investment measures before implementing further improvements. The Commission applied suspensions to the reimbursement claims made by the Slovak authorities until the payments were stopped by the Slovak authorities.

**82.** Checks by Monitoring is a control approach defined in EU legal framework that relies on field visits (for non-monitorable eligibility criteria, commitments and obligations) and the use of new technologies (for monitorable eligibility criteria, commitments and obligations) as an alternative to traditional control approaches for area-related aid schemes and measures.

**83.** Where the eligibility conditions of area-related aid can be considered 'monitorable' with Sentinel satellite data (or other data with at least equivalent value), the Checks by Monitoring approach uses automated processes to check for compliance. Non-conclusive outcomes are followed up with semi-automated procedures. Where eligibility conditions of area-related aid are *a priori* not 'monitorable' with Sentinel satellite data, then field visits have to be carried out on a sample of beneficiaries. The advantage of the Checks by Monitoring approach over traditional control methods is, thus, highest when all eligibility conditions can be monitored. However, rural development measures in particular are prone to contain eligibility conditions that are not monitorable with Sentinel satellite data. To address this hurdle, the Commission's proposal for a future Area Monitoring System in Member States foresees the use of Non-Sentinel data such as geotagged photos.

**84.** The Commission points out that satellites can only monitor the presence or absence of physical phenomena on areas claimed for CAP support. Conclusive satellite-based findings, thus, can indicate compliance or non-compliance with eligibility criteria linked to specific agricultural activities or conditions but not with respect to administrative conditions concerning for example the beneficiary or the land at his/her disposal.

**85.** The automated processing of regular streams of satellite imagery, allows both to warn farmers of upcoming deadlines requiring specific actions (such as to mow a field by a certain deadline) and to notify farmers of observed non-compliances with eligibility criteria for the aid

claimed (such as the non-respect of a ploughing ban). The legal framework foresees the amendment or retraction of aid claims by beneficiaries within specified deadlines.

**86.** The Checks by Monitoring approach is implemented by competent authorities in the Member States. Checks by Monitoring can identify compliance or non-compliance with eligibility conditions of area-related aid provided these relate to agricultural activities and conditions that can be monitored by Sentinel satellites. By detecting non-compliances across the population of concerned parcels, the Checks by Monitoring approach reduces the risk to the funds.

**90.** The Commission has been encouraging the uptake of the Checks by Monitoring approach already from 2018 onwards. Apart from providing free access to the Copernicus Data and Information Access Services (DIAS) for CAP monitoring purposes, the Commission has developed guidance documents, and is facilitating mutual learning and the exchange of best practices among Member States, for example, by organising dedicated meetings where Member States who already use Checks by Monitoring provide insights and share experiences based on their actual implementation. In addition, the Commission supports Member States with trainings, documentation and IT solutions in the context of its Checks by Monitoring outreach effort which aims to tackle perceived or actual technical hurdles in the use of Sentinel satellite data for CAP monitoring.

**91.** In 2021 the uptake of the Checks by Monitoring approach in Member States doubled with respect to that of 2020 thus exceeding the Commission's interim milestone of 10% of the utilized agricultural area by 2022.

**96.** The Commission welcomed the European Parliament (EP) study of 2021, which highlighted the same issues faced by the Commission and the Member States when gathering information, the availability of information being defined by transparency requirements and limitations brought by the EU General Data Protection Regulation (EU) 2016/679 (GDPR). The results found by the study on the 50 biggest beneficiaries are in line with the results provided on the same topic by DG AGRI to the EP Committee on Budgetary Control (CONT). A substantial part of the CAP (and Cohesion Policy) supports public investment. On several occasions, DG AGRI has stated that it is ready to work with the EP to further improve transparency, where necessary. In the new CAP 2023-2027 (Article 98 of Regulation (EU) 2021/2116), there will be an obligation for the Member States to collect information necessary for the beneficiaries' identification, including, where applicable, the identification of the groups in which they participate, as defined in Article 2 of Directive 2013/34/EU.

**97.** Under shared management, it is the responsibility of Member States to publish the information on beneficiaries. Member States should ensure annual ex-post publication of the beneficiaries of the CAP funds, including information on groups of undertakings (under the new CAP), on a single website per Member State. All the websites are available through links on europa.eu: [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/financing-cap/beneficiaries\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/financing-cap/beneficiaries_en). The Commission is reflecting on how to further enhance transparency on recipients of EU funding in the context of the upcoming revision of the 2018 Financial Regulation.

**98.** In order to address some of the issues highlighted in the study, the Commission makes available an integrated and interoperable monitoring system, including a single data-mining and risk-scoring tool (currently called Arachne), with a view to a generalised application by the Member States. The tool enriches the data collected for the purposes of implementing the shared management Funds and the RRF and allows, based on a set of risks indicators, to identify the beneficiaries, contracts and contractors susceptible to risks of irregularities, fraud and conflict of

interests. In addition, the Commission is currently analysing the possibility of enhancing the transparency rules in the upcoming revision of the 2018 Financial Regulation.

### **COMMON COMMISSION REPLY TO PARAGRAPHS 99 AND 100:**

A distinction has to be made between the publicly accessible information for transparency purposes and information available to the national and EU bodies for audit and control purposes. The publicly available information is accessible for two years while the information for audit and control purposes for five years. The around 25% anonymized CAP beneficiaries in publicly available data are those who receive less than EUR 1250 and account for around 1-2% of CAP support. This is the result of negotiation with the co-legislators and it takes account of the ECJ ruling on this matter, where balance had to be struck between proportionality and transparency rules requirements.

For the MFF 2021-2027 and NGEU, the Commission put forward proposals to improve the collection of data by Member States on recipients of EU funding implemented under shared management and under the Recovery and Resilience Facility (“RRF”). These proposals included the recording and storing of data on recipients of EU funding including their beneficial owners (in case the recipients are not natural persons) in standardised (electronic) format. The Commission also proposed the compulsory use of a single data-mining and risk-scoring tool to access, analyse such data, and allow identifying, based on a set of risk indicators, measures, contracts and recipients that might be susceptible to risks of irregularities, fraud and conflicts of interest. Such tool would enhance the quality and comparability of data on the recipients of EU funding for control and audit purposes and would allow Member States to better target their audit and control activities and the Commission to better target its supervisory role. Regulation (EU) 2021/2116 does not make obligatory the use of the single data-mining and risk-scoring tool to be provided by the Commission. For the CAP, there is however a review clause requiring the Commission to present, by 2025, a report which assesses the use of the single data-mining tool and its interoperability with a view to its generalised use by Member States, accompanied, if necessary, by appropriate proposals.

**101.** The Commission points out that the paying agencies have a legal obligation to design and implement antifraud measures (Regulation (EU) 907/2014).

### **COMMON COMMISSION REPLY TO PARAGRAPHS 103 AND 104:**

The Commission encourages all initiatives by Member States to use machine learning techniques in the management and control of CAP expenditure, including to identify and prevent possible irregularities and fraud. The Commission has also encouraged exchange of such experiences and best practices between Member States who under shared management are doing the actual check of expenditure.

Satellite based monitoring of eligibility conditions and requirements – such as the mowing example provided in paragraph 103 – is already now an essential part of Checks by Monitoring in several Member States and will be even more so in the future with the mandatory Area Monitoring System. Due to the preventative approach embedded in the Checks by Monitoring approach, farmers are alerted of potential non-compliances and can amend or retract their application or provide evidence as to the contrary. Whether the non-compliance detected by Checks by Monitoring was an irregularity or fraud however cannot be determined only on the basis of the satellite data.

**105. FIRST INDENT** - Data protection (as stipulated by the GDPR) can indeed hinder the exchange of information between different actors. However, the Commission is bound by the law in force.

The Member States also invoked these legal constraints regarding data protection when requested by the Commission to establish lists of 50 biggest beneficial owners.

For this reason, under the new CAP the Member States must ask beneficiaries to declare which group they are a member of to the paying agency when applying for aid/support.

**THIRD INDENT** - In view of the relatively low error rate of the CAP and the very low rate of established fraud, Member States have repeatedly raised the issue of the administrative burden for management and control of the CAP and the cost benefit of trying to bring the error rate down even further.

## CONCLUSIONS AND RECOMMENDATIONS (Paragraphs 106-112)

### Commission replies:

**107.** Land grabbing is a complex and multifaceted issue not inherent to the abuse of specific weaknesses of the CAP legislation. The Commission considers that it has been proactive as regards the CAP in responding to the rising issue on land grabbing including by providing guidance to the Member States after the recent case-law C-216/19 Land Berlin.

When it comes to the monitoring of Member States' antifraud strategies, the Commission points out that the CAP is managed in shared management where the Member States are at the forefront in the fight against fraud and the fact that national antifraud measures are kept under constant supervision through the activities of the certification bodies.

**108.** Concerning the fraud risks affecting the CAP, the Commission shares the ECA's view that the ways of trying to profit illicitly from EU funds (e.g. fraudsters seeking to acquire agricultural land illicitly and then claim support) are likely to be the result of an efficient management and control system, such as IACS-LPIS, that has forced "fraudsters" to find different ways of obtaining the aid.

Please also see the Commission reply to paragraph 49.

Regarding the reference to "land grabbing", please see the common Commission reply to Figure 7 and paragraphs 50-51. The Commission would like to point out that there is a difference between, on the one hand, illicitly obtaining land (which implies the obtainment of a legal act of ownership of the land through criminal actions, such as acts of violence or intimidation) and subsequently actually fulfilling eligibility conditions, and, on the other hand, only pretending to fulfil the eligibility conditions by submitting forged and/or falsified documents. The latter could be an issue that the Paying Agency's anti-fraud measures might detect.

**111.** The Commission recalls that national anti-fraud measures are kept under constant supervision through the work of the certification bodies and their annual reports to the Commission.

The Commission highlights that, when it comes to antifraud measures, the Member States under shared management are in the driving seat:

The Commission (DG AGRI) annually carries out several audit missions to Member States where it verifies the implementation of the certification bodies' audit strategy and the quality of their work on the assessment of the paying agencies' internal control system, including the review of the accreditation criteria.

Furthermore, the Commission carries out audits, as it is clearly stated by the ECA too, which are not, and should not be, fraud investigations. However, the Commission does carry out checks of the antifraud measures put in place by Member States.

The accreditation audits carried out by DG AGRI consider the antifraud measures implemented by the paying agencies in the context of the accreditation criteria components, in particular on the *Internal Environment*, *Authorization of claims* and *Monitoring* criteria (risk assessment is performed at the planning stage to identify the areas to focus during the audit – fraud risk always considered at the planning stage). Where relevant, DG AGRI's findings and recommendations have led to the implementation of corrective or improvement plans by the paying agencies.

Please see the common Commission reply to paragraphs 75 to 78 and the reply to paragraph 80.

**112.** Concerning the promotion of new technologies and artificial intelligence, the Commission has actively encouraged Member States to use them. There has been significant uptake by Member States for Checks by Monitoring. In addition, more and more Member States are expressing interest in testing Arachne. This is also a result of the Commission's efforts in promoting and explaining these new technologies.

Please see also the Commission reply to paragraph 91.

## **Recommendation 1 – Gain and share a deeper insight of fraud risks and measures in CAP spending**

**1.A.** The Commission accepts the recommendation and considers that guidance has been provided. The Commission highlights that the design and implementation of an anti-fraud strategy remains the responsibility of the Member States. In addition to Guideline 1 regarding the work of the certification bodies on all accreditation criteria, DG AGRI has provided to the certification bodies specific guidance with best practices on their role in assessing the paying agencies' anti-fraud measures during the Expert Group meeting of November 2021. In the context of the application of the new CAP legislation, all the guidelines for the Paying Agencies and the Certification Bodies will be reviewed, and specific guidance on the anti-fraud measures will be included in these guidelines.

DG AGRI continuously monitors the work of the certification bodies as regards the assessment of the accreditation criteria including the implementation of the anti-fraud measures at paying agency level through the annual clearance of accounts exercise where all reports received by the certification bodies are reviewed and through the dedicated missions where the implementation of the certification bodies' audit strategy is reviewed.

**1.B.** The Commission accepts the recommendation and will monitor how paying agencies are implementing "land at disposal" requirements taking into consideration the guidance note while respecting the New Delivery Model and the focus at Member States' systems.

Moreover, the Commission already disseminates best practices among Member States in all appropriate fora for elements of the CAP.

**1.C.** The Commission accepts the recommendation and will carry out a new horizontal fraud risk assessment for the CAP in time for the new legal framework to be implemented on 1 January 2023.

## **Recommendation 2 – Promote the use of new technologies in preventing and detecting fraud in CAP spending**

The Commission accepts the recommendation and considers it has started implementing the actions proposed and will continue to support the Member States in their use of new technologies, artificial intelligence and machine learning also for the use of preventing and detecting fraud, as far as these systems can serve such purpose.

**2.A.** The Commission accepts the recommendation.

The Commission would like to draw attention to the fact that as of 2023 Member States have full subsidiarity on designing their control and penalty systems. From 2023 onwards the mandatory Area Monitoring System will cover area-related interventions across all Member States for the purpose of measuring policy performance. This mandatory use of Copernicus Sentinel satellites data in the next CAP is introduced to ensure the reliability of the annual performance reporting of Member States. The underlying information the Area Monitoring System will provide can be also used by Member States to prevent irregularities and to reduce risks to the fund.

**2.B.** The Commission accepts the recommendation. It has already started implementing the actions proposed and will continue to support the Member States in their use of fraud-detection tools.

The Commission will keep encouraging Member States to use the integrated IT system for data-mining and risk-scoring Arachne and will continue to provide training and to offer support and technical assistance, with a view to promote its application and increase the number of Member States using it. In parallel, the Commission will continue to improve the features of the IT system, its user-friendliness and interoperability with other sources of data.

**2.C.** The Commission accepts the recommendation. It considers it is already sharing best practices in identifying patterns of fraud. However, as regards artificial intelligence and machine-learning, for the moment the Commission is considering to share best practices on the use of AI in general (CAP monitoring and evaluation, analysis, generation of statistics, etc.) and depending on the results to assess the extent to which it may be applied to fraud detection.