

## MEMO

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**To** Raphael Scerri, Director General, Funds & Programmes Division

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**Date** 9<sup>th</sup> February 2016

**Subject** Summary of European Commission Working Document on the Detection of Forged Documents in the field of Structural Actions – A Practical Guide for Managing Authorities

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### Background

Detection of forged documents was identified as a subject of interest to Member States and a workshop was organized bringing together five experts from five different Member States who together with OLAF and Commission DGs collated tips and tricks to the managers and officers of managing authorities in charge of structural actions. The guide focuses on a. the legal aspects including notions and consequences, b. a list of red flags that may indicate fraud or corruption together with c. elements that help detection of forged documents.

### Legal Basis

Under Article 59.2 (b) of the Financial Regulation, the Member States have the primary responsibility for preventing, detecting and correcting irregularities and fraud. In this regard, Member States have to build procedures and processes into their management and control systems as early detection would allow a quick reaction and launching of preventive measures to ensure efficient protection of the EU's financial interest.

The Council Regulation governing structural and cohesion funds obliges the Member States to apply financial corrections in the event of irregularities. Hence, the presentation of a forged document may have consequences, including financial, on the whole project or on part of it.

### Legal Aspects

A forged document is a document in respect of which the truth has been altered and hence does not accord with reality. The alteration may be **physical** by for example crossing out of items and references or **intellectual** whereby the content of the document does not accord with reality, for example, the false content of a report. All types of documents being contracts, reports, timesheets, attendance lists, websites, may be affected by forgery. Yet, qualification of an event as forgery or falsification is the sole responsibility of a judge/court. An alteration of a document may not in all cases lead the judge/court to such a conclusion. Forgery confirmed by a final court's judgment shall obviously be treated as a fraud by the desk officers.

The managing authorities have to find the right way of meeting their obligations related to sound financial management of EU funds and the reduction of administrative burden for the beneficiaries and, as appropriate, costs of control versus the value of alleged forgery. In case of suspicions, due diligence should be exercised in making the relevant checks, and if needed, contact should be made with the judicial authorities.

Four forms of documents come into consideration – original document, a certified copy of the document, simple copy of the document and an electronic version of the document. Though national practices regarding requirements to provide originals or copies may vary and specific measures should be dedicated to the checking of documents in case of suspicion, the efficiency of on-the-spot checks should be stressed.

The managing authority is to assess the extent of the anomaly and without prejudice to the national legislation in force, it may consider cancelling the whole funding. From an **administrative perspective**, a forged document should at least lead to the cancellation of the effects of the forged document. By way of example, if the attendance list of a meeting contains false signatures, the managing authority should cancel the costs related to this meeting.

Yet, forgery of documents and the use of forged documents also constitute a criminal offence in all Member States and are punishable by imprisonment. When faced with a document that may have been forged, staff should inform the judicial authorities, without prejudice to the internal and national rules in force.

## **Red Flags**

A red flag is an indicator of possible fraud or corruption and hence a signal that something is out of the ordinary and may need to be investigated further. Though the existence of red flags does not mean that fraud has arisen or may occur, their presence should make staff and managers more vigilant and should make them take the necessary measures to confirm or deny that there is a risk of fraud.

The following table illustrates four sets of elements that are unusual in nature or vary from the normal activity and hence constitute red flags in their own sake:

<u>Red flags in the <b>format</b> of documents:</u>	<u>Red flags in the <b>content</b> of documents:</u>
Invoices, letters with no logo of the company; invoices printed on paper other than prepared forms; visible differences in type, size, colour of font in the document; erased or crossed out figures, write offs without signatures; lack or surplus of letters; lack of continuity in the text lines; abnormal sharp edges of official stamps or unusual colour indicating the use of a computer printer; fully identical signatures of persons (in format and size) on various documents suggesting the possibility of forgery in form of computer print;	Unusual dates, amounts, notes, phone numbers and calculations; missing records from sequential checks; miscalculation in invoices or payslips produced by a computer; missing obligatory elements in an invoice; same mutual position of a stamp and a signature of person on a set of documents suggesting the use of an image and not a genuine signature; lack of contact details of companies or persons; absence of serial numbers on invoices and delivery notes for goods; description of goods / services in a vague manner; discrepancies and deviation from standard concerning bank account numbers;

<p style="text-align: center;"><b><u>Circumstances:</u></b></p> <p>Contractor’s address same as employee address; address of the supplier or beneficiary in a domiciling institution; unusual number of payments to one payee or address; invoices and bills issued by entities not registered in business activity register; unusual delays in providing information; beneficiary not being able to provide originals upon request; data contained in the document differs visually from a similar document; invoices issued by a newly established company; email addresses of the company issuing an invoice on foreign internet server;</p>	<p><b><u>Inconsistency</u></b> between documents / information available:</p> <p>Inconsistency between the dates of invoices produced by the same entity and their number; invoices not recorded in the bookkeeping; invoices not matching the quotations in terms of price, quantity and quality, type of product and/or description of product or service provided; letter/contract/document signed by an individual acting as a representative of the company where he / she is not designated as such in the national company register; inconsistencies between information provided on the website of an entity and the invoice issued;</p>
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**Method of detection**

The best detection method is by connecting a forgery to reality, which is the quickest and handiest way to achieve the best results in the time critical activity of detection. Based on experience gained in the past, and within the specific sphere of activities and the geographical area of intervention, the managing authority may have detected risky sectors. Hence, through risk based analysis, attention should be drawn at various stages of project implementation such as certification of compliance with the criteria for co-financing; legal title of property; certification of execution of works/services and their acceptance; invoices and supporting documents confirming payments; attendance sheets, etc.

Risky documents as certificates of tax and social contributions, bank statements and balance sheets are to be paid maximum attention as bidders may be tempted to produce a forged document if they cannot fulfil the requirements;

There are also risky sectors such as delivery of goods, construction, training, conferences, seminars and missions wherein typical fraud patterns exist and where such patterns are supported by forged invoices and possibly other documents. Examples include non delivery of goods or part delivery; supply of goods of lower quality; non performance of the work or completion of only part of the work; overcharging of costs; false attendance list to over ineligibility of event;

As a first level check, managing authorities may cross check information on a sample basis. Without prejudice to national legislation, the managing authority may request access to databases of information from any institution holding independent and separate relevant information.

On-the-spot checks are a key tool for detecting false documents as they are a means of verifying the existence of the beneficiary and to some extent the consistency between the elements referred to in the documentation provided within the framework of the bid and the reality in terms of implementation of the project. The intensity of the on the spot checks should be decided by the managing authority in line with identified risks, the types of projects, their scope and the types of beneficiaries.

When faced with a document that may have been forged, the managing authority has to carry out a check to eliminate the doubt or confirm the risk. If the risk is confirmed, the managing authority should consider carrying out an on the spot check while taking quick and appropriate reactions such as suspending payments to the operation, safeguarding documents and evidence and forwarding information to the judicial authorities, directly or through hierarchy, without prejudice to internal and national rules.

Early contact with the police/judicial authorities may be relevant to determine which authorities should take the lead and what actions are appropriate to safeguard the financial interests of the EU and the Member State concerned with the aim of ensuring efficiency of the judicial investigation and prosecution of the case.

## **Conclusion**

The principles and good practices dealt with in the guide should allow managing authorities dealing with EU funds to raise awareness and vigilance of staff with regard to forgery, falsification and all other forms of alteration of documents for fraudulent purposes.

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