

ANTI-FRAUD STRATEGY

2014-2020

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Introduction and general context

Articles 310 and 325 of the Treaty on the Functioning of the European Union (TFEU) require the EU and the Member States to counter fraud and any illegal activities affecting the financial interests of the Union. The Member States shall take the same measures to counter fraud affecting the financial interests of the EU as they take to counter fraud affecting their own financial interests. Without prejudice to other provisions of this Treaty, Member States must coordinate any actions they take with the aim of protecting the financial interests of the EU against fraud. To this end, they shall organise, with the support of the Commission, close and regular cooperation between the competent departments of their administrations.

Article 317 of TFEU states that the principle of sound management is to be applied in the use of the EU budget by Member States in cooperation with the Commission. Articles 30 to 33 of the Financial Regulation applicable to the general budget of the EU clarify the principle of sound financial management. It entails adherence to the principles of economy, efficiency and effectiveness and implementation of effective and efficient internal control.

Article 59.2(b) of the Financial Regulation gives Member States the primary responsibility, in the framework of shared management, for preventing, detecting and correcting irregularities and fraud. In this respect the Member States have to build strong management and control systems, in order to ensure sound financial management, transparency and non-discrimination. They must also impose effective, dissuasive and proportionate penalties on recipients, where provided for by EU or national law. Regulation (EC, Euratom) No 2988/1995 of 18 December 1995 provides for the definition of irregularity and makes common provisions for the administrative measures and penalties that should apply.

Regulation (EC, Euratom) No 2185/1996 of 11 November 1996 relates to on-the-spot checks and inspections carried out by the Commission in Member States. It provides for cooperation and coordination between the Commission and Member States.

The Convention on the protection of the European Communities' financial interests of 26 July 1995 (the PIF Convention) provides a definition of fraud. Regulation (EU) No 1303/2013 of 17 December 2013 lays down common provisions for ESIF for the programming period 2014-20. Article 125(4)(c) clarifies the obligation on managing authorities to put in place effective and proportionate anti-fraud measures taking into account the risks identified.

On a national level, in 2008, Malta adopted a National Anti-Fraud and Corruption Strategy, aiming to set up a normative, institutional and operational framework, reflecting local requirements and international obligations. The strategy was drafted by the Ministry of Finance's Financial Management Monitoring Unit and the Internal Audit Investigations Department, designated as the implementing body for the strategy. The document had four

main objectives: capacity building, communication, national cooperation and international cooperation.

The Maltese Criminal Code provides for corruption such as international bribery offences, private sector bribery and trading in influence are in line with the OECD Criminal Law Convention on Corruption. The definition of public officials is sufficiently broad, including public servants with delegated powers. The Public Administration Act contains a code of ethics applicable to public employees whereas the Freedom of Information Act aims to promote transparency and accountability in government.

Malta also got its very own whistle-blowing legislation with the enactment of the Protection of the Whistleblower Act 2013. This Act may be described as revolutionary in the protections it affords to whistleblowers under Maltese law as it protects an employee who makes a protected disclosure about an improper practice committed by his employer from detrimental action. The employee/employer relationship implies duties of loyalty and confidentiality – hence need for protection of the employee who breaches this duty by disclosing information about his employer. Hence, whistle-blowing is a very effective internal tool for detecting and rectifying wrongdoing being done within the organisation.

The aim of the strategy, the scope and guiding principles

This strategy sets out the Managing Authority's commitment to preventing, detecting and deterring fraud and corruption and to taking action where this is suspected or detected. The strategy is based around four key themes: Prevention, Detection, Investigation and Prosecution, and Reparation.

It aims to:

- Ensure that all funds and programmes are protected against fraud and loss;
- Embed an 'anti-fraud' culture which mainstreams our commitment to zero tolerance to fraud and sets out roles and responsibilities of all staff in ensuring the achievement of this objective;
- Actively encourage detection by putting in place checks and controls at different stages to act as a deterrent to fraudulent and corrupt acts;
- Providing clear guidance for identifying, declaring and recording conflicts of interest;
- Seek out and share best practice 'anti-fraud' examples.

Scope

The Managing Authority will not tolerate fraud or corruption by anyone. Hence, this anti-fraud strategy applies to all staff and stakeholders involved in the 2014-2020 programme and those who come into contact with the Funds & Programmes Division, for example:

- All FPD staff
- Applicants and final beneficiaries
- Other stakeholders

Guiding Principles of the Anti-Fraud Strategy

Fraud can manifest itself in many different ways. The Maltese Managing Authority has a zero tolerance policy to fraud and corruption, and has in place a robust control system that is designed to prevent and detect, as far as is practicable, acts of fraud and correct their impact, should they occur.

The potential for fraud cannot be ignored and should be seen as a set of risks to be adequately managed alongside other business risks or potentially negative events. Assessment of fraud risks is therefore carried out using existing risk management principles and tools.

Effectively implemented robust control systems can reduce the risk that fraud occurs or remains undetected but cannot eliminate the likelihood of fraud occurring. The overall objective is to address the main fraud risks in a targeted manner, keeping in mind that – apart from baseline requirements – the overall benefit of any additional anti-fraud

measures should exceed their overall costs (the principle of proportionality), taking also into account the high reputational cost linked to fraud and corruption.

In line with the requirements of the Commission, the main guiding principles of the Funds and Programmes Division Anti-Fraud Strategy in all EU funding are as follows:

Ethics The FPD is committed to observe the highest standards of ethical behaviour and integrity. The staff must comply with these standards and is adequately trained both on the risks of fraud and the need to fight it. The staff is also committed to work in line with the FPD Value Set – hence the values of integrity and accountability, service, efficiency and effectiveness. The staff values professional performance and believes in achieving goals with due integrity, transparent honesty, diligent probity and personal accountability; the staff proudly commits to work together as a collaborative team in order to provide a service of excellence to customers who are equally treated with courtesy, fairness and equity; moreover, it is aspired by the staff to continuously improve on efficient and effective delivery in a spirit of respect, harmony and humility.

Enhanced transparency This is an important tool in the fight against fraud. The relevant information on the use of EU funds should so far as possible be available in a format which can be audited, compared and analysed for anti-fraud purposes, subject to the relevant data protection rules.

Fraud prevention The design of spending programmes is the first stage of effective fraud prevention. Therefore, an analysis of the potential for exposure to fraud will be included in feasibility studies and impact assessments, wherever relevant. At the implementation stage of the programmes, cost-effective and risk-based monitoring and control mechanisms should ensure proper mitigation of the risk of fraud.

Effective investigation capacity Adequate tools and incentives are important for the effective detection and investigation of fraud. When fraud is suspected, whistle-blowers, witnesses and informants have easy, secure and fast procedures for reporting fraud in compliance with the regulations.

Sanctions Justice must be achieved with due process and in reasonable time. The established procedures provide for enhanced standards of due process using mechanisms that enable swift and independent action.

Good cooperation between internal and external actors In particular, good cooperation between the EU and national authorities responsible, and between the Services of all the institutions concerned, is a prerequisite for efficiently combating fraud. The Commission takes into account the important role of its implementation partners, notably within shared management systems.

The anti-fraud cycle

This objectives of this Strategy shall be achieved through the following objectives:

Prevention  **Detection**  **Investigation and Prosecution**  **Reparation**

Prevention The MA recognises that fraud and corruption are costly, in terms of investigative costs, financial losses and reputational risk. The prevention of fraud is therefore an essential component of the MA's administration of the programmes.

The MA encourages all staff / beneficiaries to place an effective internal control system with the aim of deterring potential fraudsters and also of maximising the commitment of staff to combat fraud.

For this purpose, staff / beneficiaries should:

- raise awareness through formal training of all staff complement involved in the management of EU funds about preventative and detective control measures as well as the specific roles and responsibilities of all stakeholders and reporting mechanisms;

Every employee within the Division is mandated to participate in any fraud awareness training program. No individuals — regardless of their position within the organization — should be provided an exemption from receiving an initial orientation and ongoing anti-fraud education. Like any educational efforts, frequent exposure to anti-fraud topics is the key to ensuring employees absorb — and apply — the information provided. Formal fraud awareness training should be an ongoing process that begins from early stages of employment. Employees should also participate in refresher training to help keep the program alive and engrained in their minds. Additionally, all employees should sign a statement acknowledging their understanding of and commitment to the program.

- put in place effective separation of duties, particularly with respect to financial and control units and rotate staff (when possible);

- promote an ethical culture among staff to act honestly and with integrity to safeguard all national and Community resources;

- ensure that staff involved in the management and implementation of EU funds is aware of possible conflict of interest or fraudulent behaviour at every stage of implementation; attention must be given to any red flags that are indicators of possible fraud or corruption;

- encourage staff to report any case of suspected fraud concerning EU funds to the responsible authority, either through their respective hierarchy or directly if necessary;

– Conduct regular verifications ensuring that staff in charge is aware of European Commission and national guidance on fraud indicators.

Detection and reporting Effectively implemented, robust control systems can considerably reduce the risk of fraud but cannot completely eliminate it occurring or remaining undetected. The Funds & Programmes Division is committed to use appropriate IT tools to detect risky operations (such as ARACHNE).

It is important that any system implemented has to ensure that procedures are in place to detect fraud and to take appropriate measures once a suspected case of fraud is detected.

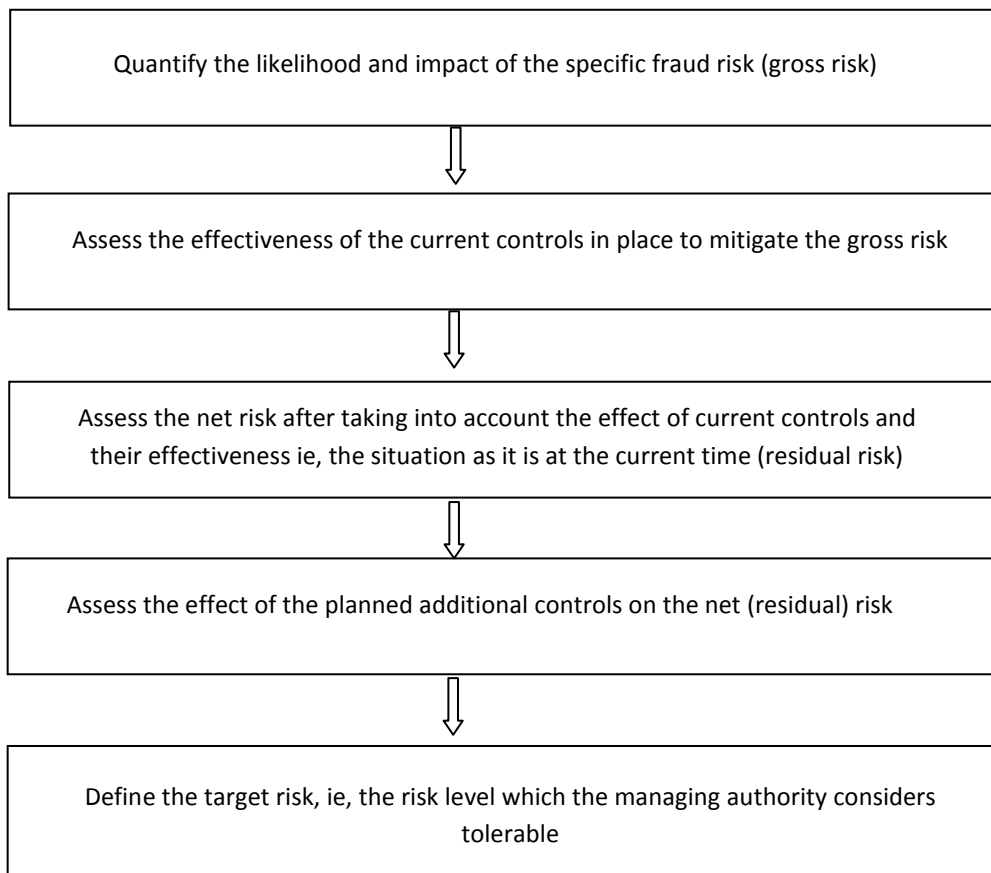
Measures should include both detective and preventative controls to ensure they are designed and operating effectively. Given that in line with Article 125(4)(c) of the Common Provisions Regulation, the MA shall put in place proportionate anti-fraud measures based on a thorough fraud risk assessment, the MA shall utilise a fraud risk assessment tool provided by the European Commission which covers the likelihood and impact of specific and commonly recognised fraud risks, focusing on these three key processes:

- selection of beneficiaries;
- implementation of projects by beneficiaries, focusing on public procurement and staff costs; and
- certification of expenditure by the MA and payments.

The fraud risk assessment exercise is to be undertaken periodically or whenever a significant alteration to the management and control system is made and/or when fraud is suspected. This exercise enables the MA to provide risk responses which are proportionate to the risks identified to its specific situations.

However, although a well-targeted assessment of fraud risks is a requirement it cannot completely eliminate the risk of fraud occurring or remaining undetected. Additional mitigating controls are therefore called for and these are discussed further in this section.

The methodology to be used is illustrated below:



For each of the specific risks, the overall objective is to assess the ‘gross’ risk of particular fraud scenarios occurring, and then to identify and assess the effectiveness of controls already in place to mitigate against these fraud risks either from occurring or ensuring that they do not remain undetected. The result will be a ‘net’ current risk which should lead an internal action plan to be put in place when the residual risk is significant or critical in order to improve controls and further reduce the exposure of the Member State to negative consequences (i e putting in place any additional effective and proportionate anti-fraud measures, as necessary).

Once a risk is identified, the MA / RA desk officers together with the Project Leader will formulate a process listing all the mitigating controls in place to address the risk. Once the risk is reduced to an acceptable level, the MA / RA / FCU shall communicate the action taken with current / potential beneficiaries and update the risk mitigation plan.

However, if the risk is still considered high and fraud is hence suspected, the procedure below highlights the authority levels, responsibilities for action and reporting lines established:

- When any relevant authority or beneficiary, or their members of staff, suspects that fraud has occurred, they must notify their immediate superior. If it is inappropriate to raise the matter with the immediate superior, the concern should be raised with the head of the beneficiary organisation / ministry / responsible authority. The official with whom the report was filed must immediately relay the message to the head of the responsible authority.
- Timeliness plays a crucial role when addressing suspected cases of fraud. Consequently, when identifying cases of potential fraud, an officer's immediate action is to alert his / her direct superior verbally. The case, which is treated with confidentiality (subject to legal obligations), is followed up by a written report so that the relevant authorities can be informed and requested to investigate further.
- The body reporting the suspected fraud must act with caution in dubious situations which might lead to fraudulent transactions. In case of detection of possible forged documents, the Treasury is advised to temporarily stop all payments addressed to the supplier / contractor in question.
- The body identifying / reporting the irregularity / suspected fraud should inform in writing the Permanent Secretary and / or head of the beneficiary organisation, and the Internal Audit and Investigations Department in terms of Article 16 of the Internal Audit and Financial Investigations Act (chapter 461 of the Laws of Malta), which states that 'If an entity has reason to suspect any irregularity and, or a suspected case of fraud of public funds, it shall refer the matter forthwith to the Director (of IAID), and shall supply to the Director all information in his possession relating thereto'.

Correction and Prosecution

- In terms of Article 18 of the Internal Audit and Financial Investigations Act, 'whenever, and as soon as the Director firmly establishes the existence of suspected cases of irregularities and, or suspected cases of fraud concerning the responsibilities of the auditee under review, the Director shall, if he is of the opinion that the irregularity, if proved, would constitute a criminal offence immediately inform the Attorney General'.
- The Attorney General will evaluate the case in question and determine whether:
 - to forward the case to the Malta Police for criminal investigation; or
 - terminate proceedings of the case at that juncture.

- The Commissioner of Police forwards to the body reporting the case a copy of the report of the investigation including any court action to be taken by the Police.

– Where the investigation report concludes that no criminal proceedings are required (i.e. it is prima facie confirmed that the suspicion of fraud is not correct) the managing authority advises Treasury to proceed with payment of pending invoices.

Reparation

Where the investigation report concludes that criminal proceedings are required (i.e. it is confirmed that the suspicion of fraud is factual) the managing authority recommends the withdrawal of any suspicious payments from certification already carried out. This is to be considered as a proportionate and dissuasive sanction to tackling fraud in an appropriate manner.

Learning Lessons, Knowledge Sharing and Improvement

The MA / RA / FCU, where appropriate, will share case studies of lessons learnt and best practice with staff and present / future potential beneficiaries. In addition, regular best practice will be discussed / reviewed at meetings of the Data Intelligence Network, which is a forum within FPD where audit knowledge is shared.

If fraud has been suspected during the year, the Audit Authority will include a reference thereto in its Annual Control Report.

Conclusion

The Anti-Fraud Strategy fits into a comprehensive approach to tackle fraud and corruption, and complements recent initiatives launched by the Commission to include appropriate anti-fraud measures across the different EU funding programmes. The Funds & Programmes Division is committed to lead by example in ensuring that EU money reaches the right beneficiaries and is spent on purposes for which it is intended. The Anti-Fraud Strategy is a key element to further improve budget efficiency, from the very beginning of the chain till beneficiaries of EU funds.