



EUROPEAN COMMISSION  
EUROPEAN ANTI-FRAUD OFFICE (OLAF)

Directorate D Policy  
Unit D.2 Fraud Prevention

# **Guidelines for national anti-fraud strategies for European Structural and Investment Funds (ESIF)**

Developed by a working group of Member States' experts, directed and coordinated by – the Fraud Prevention, Reporting and Analysis unit in the European Anti-Fraud Office (OLAF)

## **DISCLAIMER:**

*This is a working document drafted by a group of Member States' experts with support from the European Anti-Fraud Office (OLAF). It is intended to facilitate the implementation of operational programmes and to encourage good practice. **It is not legally binding on Member States** but provides general guidelines and recommendations reflecting best practice.*

*These general guidelines are without prejudice to national legislation, should be read in the context of national legislation and may be adapted to take into account the national legal framework.*

*This guidance is without prejudice to the interpretation of the Court of Justice and the General Court and decisions of the Commission.*

**NOTA**

**This document is not binding on the Member States, nor does it create any new rules or obligations for national authorities. It reflects good practices, it is purely indicative, and must not be used as a legal or normative basis for audit or investigative purposes.**

## Executive summary

These guidelines were drafted through a joint working procedure involving experts from the Member States, the European Anti-Fraud Office (OLAF) and the Commission authorising services responsible for European Structural and Investment Funds (ESIF). The objective of this working procedure is to develop the cooperation and collaboration between national authorities and Commission services within the framework of the COCOLAF<sup>1</sup> Fraud Prevention Group by drafting practical guide that the Member States and the Commission can use as benchmark, administrative tool, guidance and support to strengthen their anti-fraud measures/strategies.

The legal framework for 2014-20 requires Member States to develop anti-fraud measures relating to the management of EU funds. Member States are recommended to incorporate these anti-fraud measures into a national anti-fraud strategy for ESIF, in order to ensure homogenous and effective practices, especially where their organisational structures are decentralised.

Member States may, of course, choose to elaborate an overall national anti-fraud strategy related to revenue and expenditure from EU and national budgets. For the time being, within the framework of the COCOLAF Fraud Prevention Group, the choice was made to deal in the first instance with expenditure in the field of ESIF as a pilot project. This is why this guide is limited to this domain.

A workshop involving experts from eight different Member States pointed to the need for guidelines presenting the main steps to work through when drafting a national anti-fraud strategy for ESIF. This document is the result of their collective work.

It provides recommendations to the national entities that would be appointed to elaborate such a strategy in the domain of ESIF. It is not binding on Member States but aims to provide the national authorities and decision-makers with the support they may need for such a task. The main steps to follow, identified during the workshop are:

1. Legal framework

The legal framework at both national and EU level is well developed and is being continuously improved.

2. Preparatory phase

This is a crucial phase in the process. It encompasses two main stages: a diagnosis of the situation and a fraud risk assessment. The result will allow the need and areas for improvement to be identified.

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<sup>1</sup> Advisory Committee for the Coordination of Fraud Prevention

### 3. Elaboration phase: setting the objectives and the indicators

The objectives will show the roadmap and the vision of the Member States in their fight against fraud. The related indicators will contribute to assessing the progresses made.

### 4. Drafting the action plan

The action plan defines the actions to be carried out in respect of each objective, the service responsible for them, the deadline and the related indicators. It will be the monitoring tool of the implementation of the strategy. Its achievement will be a key to assess the effectiveness of the strategy.

### 5. Evaluation of and updating the strategy

The strategy is an evolving document which should be applied without any time limit. This requires evaluation and correlative update of the document.

These guidelines include, in annex, a template for a national anti-fraud strategy on ESIF. This template is descriptive rather than prescriptive in nature, so as to leave the Member States as much scope as possible for expanding upon the document, in line with their legal framework, administrative organisation and general environment.

A chart is also included as an annex providing a quick overview of the overall process.

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## Introduction

In 2012, the European Anti-Fraud Office (OLAF) set up a collaborative procedure with Member States aimed at developing exchange of experience and good practices between the Member States and with the Commission. This procedure is organised within the framework of the COCOLAF Fraud Prevention Group and is carried out by a working group of Member States' experts and representatives from OLAF, the Directorate-General for Regional Policy, the Directorate-General for Employment, Social Affairs and Inclusion and the Directorate-General for Maritime Affairs and Fisheries, who work for a one-year period on a specific topic selected by the Member States. The chosen topic for 2014 was 'National anti-fraud strategies for European Structural and Investment Funds (ESIF)'.

This guide was drafted on the basis of this procedure. The objective is to exchange good practice and provide practical documentation that Member States can use to draft their national anti-fraud strategies for ESIF. It is not a requirement for Member States to draft such a strategy, but they may wish to do so.

The Common Provisions Regulation for the 2014-20 programming period<sup>2</sup> requires Member States to put in place effective and proportionate anti-fraud measures, taking into account the risks identified, to take the necessary steps to prevent, detect and sanction fraud and irregularities effectively and to reimburse irregular amounts to the EU budget. Going beyond the immediate regulatory requirements and embedding these anti-fraud measures in a national anti-fraud strategy seems appropriate to ensure better monitoring of the fight against fraud detrimental to the financial interests of the EU and Member States.

In 2011, the European Commission developed an overall anti-fraud strategy designed to protect the EU's financial interests in its own departments and in the executive and decentralised agencies. The European Commission encourages Member States to adopt anti-fraud strategies at national level.

Member States' experts have volunteered to share their knowledge and experience in order to produce, with OLAF's support, this practical guide, with a view to providing Member States guidelines for drafting their own anti-fraud strategy in the area of ESIF.

Member States may, of course, choose to elaborate an overall national anti-fraud strategy related to national revenue and expenditure of the EU and national budgets. In the meantime, within the framework of the COCOLAF Fraud Prevention Group, the choice was made to deal in the first instance with expenditure in the field of ESIF as a pilot project. This is why this guide is limited to this domain.

A national anti-fraud strategy will allow structuring the fight against fraud affecting EU and national budgets at the Member States' level. It will help in:

- identifying vulnerabilities to fraud within the systems ;
- assessing the main fraud risks;

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<sup>2</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 (Articles 125(4)(c) and 122(2)).

planning and implementing responses;  
evaluating the progress made;  
adapting the response to changing trends in fraud and to the resources available;  
and  
ensuring the involvement of all relevant stakeholders, in particular by means of enhanced collaborative and coordinated actions.

It will also ensure harmonisation of the response to fraud risks throughout the country, especially in the case of a decentralised management structure.

The strategy should consider each stage of the anti-fraud cycle.

Prevention should be treated as a priority by managing, certifying and audit authorities, in order to mitigate the fraud risks. It shall be made more effective through closer cooperation between all stakeholders and an overall enhanced co-ordination of actions.

Detection is a critical stage that should be handled with due diligence and proactively by all stakeholders, management and control authorities, including audit authorities as well as law enforcement services.

Investigations and prosecution are closely interlinked. Their efficiency requires appropriately qualified staff, full cooperation of the management and control authorities and smooth collaboration among the authorities. Cooperation with other relevant actors at EU and national level is also of high importance.

Recovery and sanctions should be effective and rigorously followed up by the relevant administrative and law enforcement authorities.

This practical guide aims at providing:

- a step-by-step method for elaborating a national anti-fraud strategy in the area of ESIF;
- basic components of content for the elaboration of the national anti-fraud strategy; and
- concrete components based on Member States' accumulated experience.

OLAF would like to thank the following experts for their contribution:

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# 1. Legal environment

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<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>3</sup> Regulation (EU, Euratom) No 966/2012 of the Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union

<sup>4</sup> The PIF Convention is currently being revised in order to reflect changes to the legal framework. The Commission has issued a proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law (COM(2012) 363 final of 11.7.2012).

National legislation governs the application of administrative sanctions and also sets out the possible criminal proceedings and the penalties that can be imposed. In some countries, it establishes or mandates specialised services for the investigations into and/or prosecution of potential fraud cases detrimental to the EU financial interests (e.g. the Department for the Fight against Fraud in Romania (DLAF)).

## 2. Preparatory phase

The preparatory phase in the establishment of a national anti-fraud strategy is crucial and should not be neglected. Sufficient time and resources should be devoted to this important part of the process. The aim of the preparation phase is to get a complete overview of the way fraud is dealt with by all stakeholders involved in ESIF. This will provide a basis for the decisions to be made when setting the objectives, specifying indicators and drafting the related action plan.

### 2.1 Methodology

The preparatory phase encompasses the two following stages:

a state of play of the current situation to take stock of the strengths and areas for improvement of the national systems and the anti-fraud measures in place; and a fraud risk assessment.

This phase will be implemented by: (1) screening the organisational structure, actors, measures and procedures already in place; and (2) by conducting a fraud risk assessment.

#### ***Who should elaborate the national anti-fraud strategy?***

The designated national service should elaborate the national anti-fraud strategy related to ESIF.

This service should have:

- a broad overview at EU and national level of both the whole system of ESIF and the anti-fraud measures currently in place; and
- the power to mobilise the relevant expertise from the different ministries, authorities and services involved in implementing the EU funds and from the ministries, authorities and services responsible for financial investigations and prosecution.

This is crucial especially for Member States where the administrative system is decentralised.

The Anti-Fraud Coordination Service (AFCOS) could play a key role in elaborating and monitoring the implementation of a national anti-fraud strategy.

The service responsible for the national anti-fraud strategy should establish a team of experts with the ability to provide the appropriate expertise. This team should be able to cover the various different stages of the anti-fraud cycle with its knowledge and its experience.

The preparation phase will build on continuous dialogue with partners and stakeholders, in particular, through the establishment of ad hoc working groups along with the needs identified.

***Which authorities need to be involved?***

All authorities responsible for management and implementation, certification, audit, investigation, prosecution and imposing sanctions should be involved.

Expertise of these stakeholders should cover the management, control and judicial system. Wherever possible, they should come from:

Managing Authorities  
Intermediate Bodies  
Certifying Authorities  
Audit Authorities  
AFCOS  
Control authorities of the Government or the Parliament  
Authorities inspecting public administrations  
Investigative Authorities  
Public Prosecutor's Offices  
Courts.

As well as the entities listed above, it is advisable to involve organisations which have monitoring, supervisory or management responsibilities directly or indirectly related to projects financed by EU funding, such as:

Competition Control Authorities  
Procurement Arbitration Committees  
Tax authorities  
Customs Authorities.

The team responsible for the procedure should draw up a work programme for the elaboration of the strategy within a given timeframe. It should aim to secure full political support.

***What political support is needed?***

Given the wide range and number of bodies involved, the service(s) responsible for elaborating the national anti-fraud strategy may need the full political support of the government.

## 2.2 State of play of the current situation in respect of anti-fraud measures

The assessment of the situation requires a screening of the following areas:

- legislation;
- organisation (e.g. national (centralised or decentralised) or local, through a coordinator or not, the role of the AFCOS, etc.);
- management and actors;
- procedures (including controls in place);
- means and resources (human resources and appropriate tools, e.g. IT, documents, guidelines, training and communication, etc.);
- cooperation and collaboration at national level between the competent authorities (sharing of experience and cooperation on specific cases); and
- cooperation at EU level (with the Commission and with other Member States).

Their strengths and weaknesses need to be identified, and their contribution to and impact on each of the four stages of the anti-fraud cycle (prevention, detection, investigation and prosecution, and reparations) needs to be considered.

During this phase it is important to identify and reflect on the reasons behind the strengths and areas for improvement identified. This will help in finding solutions. These reasons are to be sought in:

- legal environment
- institutional environment
- economic and social environment
- political environment.

### **Example: extract from Malta's national anti-fraud strategy**

*'Irregularities, fraud and corruption are caused by defects in the formal rules regulating public sector activities (mainly legislation) and shortcomings in informal rules (value systems, ethics and morals). The main underlying causes are:*

- *Market failures;*
- *Inappropriate regulatory functions by public administration;*
- *Inappropriate legislation;*
- *Ineffective and inefficient implementation of formal rules;*
- *Lack of enforcement and external oversight;*
- *Lack of control and monitoring especially internal control;*
- *Low standards of culture, ethics, morals and value systems of society.'*

### **2.2.1 How?**

A number of different methods may be used to assess the current situation:

- ✓ collecting and analysing documents, reports and data (e.g. legislation, staff working documents, procedures, methodologies and guidelines); and
- ✓ carrying out online questionnaires and surveys, making direct contact with stakeholders, conducting interviews (face-to-face, telephone, Skype or equivalent) and holding discussions with experts (e.g. working groups).

Using several different sources of information will help to substantiate the findings.

### **2.2.2 What to screen and why?**

The purpose of this phase is to identify existing gaps — these will become apparent when identifying the strengths and areas for improvement. Therefore it is important to evaluate the situation against what would be good practices in each stage of the anti-fraud cycle.

#### ***A) Prevention***

Prevention is critical to the fight against fraud. It is easier and more cost-effective to prevent fraud than to make repairs. Member States should therefore be fully committed to developing and implementing fraud prevention.

A robust and effectively implemented management and control system is essential in fighting fraud. It can dramatically reduce the risk of fraud occurrence even though it cannot eliminate it completely.

The screening of preventive measures and techniques should include:

- ✓ assessment of the efficiency of the preventive measures and techniques already in place;
- ✓ proposals for correcting, adapting or repealing the existing measures or creating new ones;
- ✓ better knowledge of the degree of public awareness of fraud in the field of ESIF; and
- ✓ better knowledge of the level of ethical culture among Member States' employees on fraud in relation to the ESIF.

The effectiveness of preventive measures depends on there being robust systems in place for their implementation. This includes:

- ✓ a fraud proofed legislation;<sup>5</sup>
- ✓ a policy of transparency supported by an extensive communication which will improve public awareness;
- ✓ a strong internal control system;
- ✓ a high level of ethical standards among employees involved in the protection of the EU's financial interests (is there a clear expression, visible to observers that employees are striving to achieve high ethical standards; is there an established and unambiguous document such as a code of conduct which covers the issue of conflict of interests);
- ✓ a strong human resources policy (finding a right balance between staff turnover (to keep the experienced staff), and compulsory mobility (to mitigate risks of conflict of interests etc.))
- ✓ structured, practical and targeted management of fraud risk;
- ✓ a strategy for anti-fraud training; and
- ✓ a close cooperation between bodies at both national and EU level.

**Example: cooperation between authorities in Croatia**

According to the Administrative Procedure Act<sup>6</sup>, all institutions shall exchange information and help each other in carrying out their tasks; furthermore, two or more institutions may conclude an agreement relating to administrative cooperation. Such an agreement would set out the details of how and when information is to be exchanged, specifying e.g. deadlines for delivering information, the type of information that can be exchanged, possible sanctions if the institution refuses to deliver information and the means by which the information is to be delivered, e.g. hard copy or email.

**B) Detection**

Member States should make all efforts to detect irregularities (including suspected fraud) and should take the appropriate action to rectify the situation and impose sanctions. In view of this, it is essential that national authorities make full use of the tools and human resources available to them for detecting irregularities.

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<sup>5</sup> See Com(2000)358 final of 28 June 2000 on the fight against fraud, in particular, paragraph 1.1: *To be permanently effective, a policy of defence of public interests and funds must rely on clear legislation, easily applicable and including provisions likely to strengthen sound financial management and effective control of Community policies. These provisions must be sufficiently dissuasive to deter irregular action as far as can be done.*

<sup>6</sup> The provision relating to the sharing of information among institutions is set out in Article 26 of the Administrative Procedure Act (OG 47/09).

The screening of the detection measures and techniques being used should involve:

- ✓ drawing up an inventory of existing internal and external control systems;
- ✓ checking whether there is a whistleblowing procedure in place and assessing its effectiveness;
- ✓ checking whether information is being passed on along the correct channels and in an effective way following the detection of suspected fraud cases;
- ✓ clarifying what the system for reporting irregularities and fraud at national and EU level involves and checking whether staff are aware of these procedures; and
- ✓ specifying who is responsible for controlling the quality of the reports (AFCOS or another national entity).

The effectiveness of detection measures depends on there being strong administrative systems in place, such as:

- ✓ sound and clear procedures for handling cases where fraud is suspected and for ensuring that the appropriate information is passed quickly to the relevant authorities;
- ✓ a clear and protective whistleblowing policy;
- ✓ use by staff of tools for detecting fraud;
- ✓ training; and
- ✓ sound and efficient reporting mechanism.

#### ***Reporting and analysing irregularities: a useful tool***

In accordance with the EU reporting obligations,<sup>7</sup> Member States must report irregularities and suspected fraud cases to the Commission (OLAF) via the Irregularity Management System (IMS) on a regular basis.

This is of huge importance for both Commission (OLAF) and the Member States because it allows them to get a better knowledge of the type of irregularities and frauds, fraud patterns, the scale on which fraud is occurring and the methods being used for detection, etc.

This system of reporting is useful in identifying the most vulnerable areas so that appropriate measures can be adopted in order to mitigate the risks. It may also make staff more vigilant with regard to fraud.

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<sup>7</sup> e.g. Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund.

### **C) Investigation and prosecution**

The screening of the measures and techniques relating to investigation and prosecution should focus on fraud, corruption and any other illegal activity detrimental to the financial interests of the EU in the area of ESIF. It will involve:

- ✓ assessing the legal, organisational and procedural rules relating to administrative and/or criminal investigations and prosecution; and
- ✓ assessing the fluidity and quality of the flow/exchange of information between the relevant authorities concerned.

The effectiveness of measures relating to investigation and prosecution depends on there being strong administrative structures and systems in place, in particular:

- ✓ clear and effective rules on the exchange of information between the relevant administrative and judicial authorities;
- ✓ strong and sound cooperation between the relevant administrative and judicial authorities;
- ✓ specialisation of investigators and prosecutors in the area of ESIF; and
- ✓ continuous training in the field.

### **D) Reparation**

Member States should be committed to securing convictions in cases of fraud, corruption or any other illegal activity detrimental to the financial interests of the EU, and should make the same efforts to do so as they would were it their national interests at stake. A key deterrent to potential fraudsters is the implementation of sanctions and their visibility.

The screening of measures and techniques relating to reparation should involve:

- ✓ assessing the legal, organisational and procedural rules concerning the administrative and criminal sanctions;
- ✓ evaluating the deterrent effect of the penalties imposed.

The effectiveness of measures relating to reparation will depend on there being strong administrative structures and systems in place, in particular:

- ✓ a system of effective, dissuasive and proportionate administrative and/or judicial penalties that go beyond the financial correction that apply in the case of an irregularity;
- ✓ clear designation of authorities responsible for ensuring that penalties are correctly implemented and that defined obligations are met;
- ✓ efficient and effective systems for recovering funds;

- ✓ statistical monitoring; and
- ✓ training, seminars, practical tools and manuals.

## 2.3 Fraud risk assessment

When performing the assessment of the risk of fraud for the purpose of elaborating an anti-fraud strategy in the field of ESIF, the national specificities of the strategy should be taken into account. An appropriate balance needs to be found between a very detailed fraud risk assessment of all processes and procedures at operational level and a more global approach. The former would be appropriate for devising a strategy at a regional or sectorial level, whilst the latter should be used for defining national objectives.

Common sense should be applied and the details of the fraud risk assessment process adjusted where necessary in order to achieve a reasonable balance.

### **Performance of the fraud risk assessment**

It may differ from one Member State to another, depending on:

- the size of the country;
- the degree of decentralisation;
- the type of organisations mandated to manage the ESIF; and
- the administrative and/or judicial structure.

### 2.3.1. General elements for performing a fraud risk assessment

The following points should be borne in mind when identifying potential fraud risks:

1. An individual liable to commit fraud acts in the following circumstances:<sup>8</sup>
  - S/he has an opportunity: e.g. s/he is in the right place and in the right circumstances to act, the procedures in the sector are not clear or are easy to circumvent, etc;
  - S/he has the motivation: s/he encounters problems at work with her/his hierarchy or in her/his family life or is in financial difficulties;
  - S/he can rationalise her/his actions: s/he might feel justified in being resentful towards her/his employer (e.g. if s/he has been overlooked for promotion, s/he knows that colleagues are involved in fraud and senior staff are not leading by example);
  - S/he has reason to believe that the likelihood of being caught and/or punished is very low.

<sup>8</sup> Based on Fraud triangle theory developed by Donald R. Cressey in *Other People's Money* (Montclair: Patterson Smith, 1973) p. 30.

## 2. Fraud risk assessment

The assessment of fraud risk is specifically orientated towards the detection of conditions which may indicate the existence of incentives, pressures or opportunities for individuals to be drawn into fraud and other irregularities, and towards the detection of situations which may lead to incidences of irregularities and fraud. When assessing the likelihood of fraud occurring, a very conservative approach should be taken, and the 'zero tolerance' principle kept in mind.

### **2.3.2. Which methodology for the fraud risk assessment?**

Managing authorities are required to perform a fraud risk assessment under Regulation (EU) No 1303/2013, which applies to the programming period 2014-20, as mentioned above. They may use the guidance note on fraud risk assessment and effective and proportionate anti-fraud measures produced by the Commission for the 2014-20 programming period,<sup>9</sup> or they may use another methodology. Irrespective of the method chosen, the fraud risk assessment should be carried out with due care to ensure that all business areas, sectorial funds and financial instruments (e.g. procedures for public procurement, allocating grants and tendering for/awarding technical assistance) are covered.

The results of the fraud risk assessment should be used as a starting point for the service responsible for elaborating the national anti-fraud strategy to build upon. Ad-hoc workshops with the management and control authorities may be organised to evaluate and adjust the consolidated work. Prioritisation of certain fraud risks over others should be discussed with these authorities.

Outsourcing of the fraud risk assessment is not recommended as this task requires a good knowledge of the management and control system currently in place and of the types of beneficiaries receiving funding from the programmes.

### **2.3.3 Minimum requirements for a good methodology**

Irrespective of the specific methodology chosen, it should include at least the three following stages:

a) Identification of the fraud risks.

b) Evaluation of the fraud risks, taking into account the measures already in place to mitigate these risks.

This evaluation is based on the two following indicators:  
likelihood of fraud occurring; and  
impact of this fraud should it occur.

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<sup>9</sup> EGESIF 14-0021-00 of 16 June 2014

The grid provided in Annex 1 to the guidance note on fraud risk assessment referred to above may be used. Another example of such a grid is presented below.

The likelihood of fraud occurring can be assessed as follows:

<b>Evaluation</b>	<b>Probability</b>	<b>Meaning</b>
1	Low	The probability of fraud occurring is almost zero or very low, and there are only a very small number of past cases where such a fraud has been committed.
2	Medium	There is some risk of fraud occurring. This conclusion is substantiated by the fact that there have been similar cases in the past. There is some awareness of these situations.
3	High	There is a high risk of fraud occurring. This conclusion is substantiated by the fact that there have been repeated and frequent such cases in the past. These situations are well known.

The impact of the fraud, were it to occur, can be assessed as follows:

<b>Evaluation</b>	<b>Effect</b>	<b>Meaning</b>
1	Low	Should the fraud occur, the tasks and activities planned or currently under way would not be affected or would only be affected minimally, and there would be no need for additional resources.
2	Medium	Should the fraud occur, there would be a significant detrimental effect on current activities and it may prove necessary to allocate additional resources in order to ensure that the objectives of these activities are met.
3	High	Should the fraud occur, there would be a significant detrimental effect on current activities and it would be necessary to allocate significant additional resources in order to ensure that the objectives of the activities are met. This category is also used for cases where, even with additional resources, it would no longer be possible to meet the objectives set.

c) Fraud risk ranking.

This involves prioritising the fraud risks based on the total risk exposure and the type of risks. The most significant fraud risks should be addressed as a matter of priority.

### **2.3.4 Tools for fraud risk assessment**

Fraud risks can be identified and assessed thanks to the knowledge gathered in previous fraud cases encountered in structural and cohesion funds, as well as on the basis of commonly recognised and recurring fraud schemes. The potential frauds could be classified by the type of programme or contract, the contract value, the duration of the project, the stage of the project to which they relate, the type of activity funded by the project, the geographical region or type of beneficiary, or the fraud pattern. This work will allow the most high-risk areas to be identified.

#### ***Documentation***

Member States have at their disposal a wide range of documents that are elaborated at the national and international level each year. OECD, the International Monetary Fund, the World Bank, the European Commission and the European Parliament issue numerous reports that may be helpful to Member States.

Some recent documents that may be of interest could be cited are:

- annual reports from the Commission on the protection of the EU's financial interests;
- specific documents such as lists of red flags<sup>10</sup>, guidelines on conflicts of interests and forged documents;
- OLAF Compendium of anonymised cases relating to structural actions (2011);
- audit reports from the Commission's auditors;
- audit reports from the European Court of Auditors;
- audit reports from the national audit authorities;
- EU reports such as the EU anti-corruption report; and
- Price Waterhouse Coopers study on the cost of corruption in public procurement.

#### ***IT tools***

IT tools are today precious instrument in helping to analyse the main fraud patterns and the sectors at highest risk. Database, data-mining and risk-scoring tools should be used intensively where available.

The Irregularities Management System (IMS) is the largest fraud database in Europe and can be used for fraud analysis.

The Commission has developed a specific risk-scoring tool, Arachne, which helps to identify areas (operations, projects, beneficiaries and contracts or contractors) where there is a higher risk that might warrant additional attention from Member State authorities. Arachne is made available to all Member States which have chosen to use it. Member States may also have developed similar tools.

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<sup>10</sup> A red flag is an indicator of possible fraud, corruption, etc. It is a signal that something is out of the ordinary and may need to be investigated further.

### ***Other sources of information***

It is worth mentioning the following main sources:

questionnaires, workshops and meetings with management staff and other employees; and seminars, conferences and events designed to promote the exchange of good practice at national or international level.

### **3-Elaboration phase: setting the objectives of the national anti-fraud strategy and determining indicators for measuring the results of its implementation**

The objectives of the NAFS constitute the roadmap of the Member State in the fight against fraud in the field of ESIF for the coming years. They must be accompanied by appropriate related indicators to allow the implementation of the strategy to be monitored thoroughly and efficiently and to allow its effectiveness to be assessed.

#### **3.1 Setting the objectives**

The objectives should be directly and logically linked to the results of the state of play and the results of the fraud risk assessment carried out in the preparatory phase. They should also take into account the Member State's overall national priorities with regard to ESIF and the fight against fraud. This means that the objectives should be based on, or at least be linked to, the national anti-fraud or anti-corruption strategy, if one is already in place. Last but not least, they should also be aligned with EU recommendations.

##### **3.1.1 Characteristics of the objectives**

The objectives should be **S**pecific, **M**easurable, **A**chievable, **R**ealistic and **R**elevant and **T**ime-bound (SMART).

They should not be so numerous as to prevent effective implementation and monitoring of the national anti-fraud strategy. They should clearly state and show the priorities set by the Member State in the fight against fraud related to the ESIF. The objectives should be realistic given the resources available.

The wording of each objective should be dynamic and should clearly show the direction to be taken. For example, an objective 'capacity building' is not meaningful. The wording 'Enhancement of the administrative capacity to better tackle fraud detrimental to the EU and national budget' is more expressive.

The objectives should encompass all stages of the anti-fraud cycle. It is important to consider each stage, namely prevention, detection, investigation and prosecution, and recovery of funds and sanctions.

The various stages of the anti-fraud cycle are not independent from each other. They are closely interlinked. Ensuring the right flow of information and cooperation between the entities responsible for each stage is as important as addressing each stage itself. Swift transmission of key information and full cooperation between law enforcement bodies and the managing, certifying or audit authorities before, during and after investigations will ensure the efficiency of the investigations. It will also allow the managing authorities to make the right decisions about the monitoring of specific cases, in particular as relates

to precautionary measures, such as blocking or suspending payments. Finally, as well as recovery, a proactive approach, and relevance of the action taken, acts as a strong deterrent.

### **3.1.2. Period addressed by the strategy**

Concerning the period addressed by the strategy, there are two options.

A first option consists of linking the strategy directly with the operational programmes. The next multiannual financial framework covers the 2014-20 period. It could make sense to link the duration of the strategy to the period covered by the operational programmes. This would mean that the strategy should be valid till the closure of the 2014-20 operational programmes. If this option is chosen, consideration would also need to be given to the operational programmes relating to the period 2007-13, and the objectives would also need to apply to these programmes.

The second option is to consider the national anti-fraud strategy related to ESIF as a general strategy that should apply to ESIF independently of the multi-annual financial framework. This means that the period addressed by the national strategy should be set independently of the period of the multi-annual financial framework. Nonetheless, a strategy aiming to set the middle- to long-term vision in an area would need to cover a minimum of four to five years.

### ***Example of objectives***

1. Ensuring fraud-proofed environment for ESIF (Establishment of adequate legal environment)
2. Promoting fraud prevention among the public and among staff involved in the implementation of the ESIF.
3. Maximising the efficiency of controls

## **3.2 Setting the indicators**

Indicators are essential elements in the anti-fraud strategy by measuring the progress made towards its objectives. They will be used to report on the strategy and will help to assess the effects of its implementation.

The indicators may be quantitative or qualitative.

A quantitative indicator may be:

- a number: e.g. the number of cooperation agreements signed between competent authorities (e.g. audit authorities and judicial authorities);
- a percentage reflecting the situation at a particular point in time: e.g. the number of training sessions / the number of participants, by programme, in a particular year; or

a percentage showing the progress made: e.g.  $((FC \text{ (Year N)} - FC \text{ (Year N-1)}) / FC \text{ (Year N-1)}) * 100$  (where FC = the number of suspected fraud cases referred to the judicial authorities by the managing, certifying or audit authorities).

A qualitative indicator may be:

a statement with a yes or no answer: e.g. is there a code of ethics in place? — yes; or

an assessment of the level of compliance in a particular area based on a scale (high, medium, low).

A qualitative indicator may be considered to be more subjective than a quantitative indicator. But it may be also more relevant and meaningful than a quantitative objective. Moreover it should be borne in mind that the indicators should be analysed and commented on not as stand-alone pieces of information but taking into account the context and the other indicators.

The indicators should be easy to determine and/or calculate. This means that their evaluation should not require burdensome work but should be based on existing and reliable sources (such as existing databases used for recording attendance at training sessions or fraud cases reported, e.g. the Irregularity Management System (IMS) etc.) from which the main information could be easily and quickly extracted. They should also be easy to verify so as to ensure full transparency and thus maintain the confidence of the public.

Well-selected indicators will be critical for assessing the impact of the implementation of the strategy, and therefore update and revise it as necessary.

### ***Examples of indicators***

<b>Objectives</b>	<b>Indicators</b>
Ensuring fraud-proofed environment for ESIF	Number of amendments to regulations per year
Maximising the efficiency of the controls	Average amount of funds recovered per control carried out
Improving the effectiveness of prosecution of ESIF cases	Number of prosecutors trained in the area of the fight against fraud in ESIF

## 4. Setting the action plan

The anti-fraud strategy should be accompanied by a detailed action plan, translating the objectives into actions. The action plan should be elaborated by the service responsible for the national anti-fraud strategy, with the support of the team of experts it has set up (see 2.1, page 7). Cost-benefit considerations and the availability of human resources become a critical issue at this stage. The main efforts should be concentrated mainly on those measures identified as priorities. The results of the state of play and the fraud risk assessment should have provided a clear overview of the priorities.

Member States have a wide range of tools at their disposal to develop effective and efficient actions. They should consider taking action in the following areas:

drafting of legislation

organisation

management

procedures

means and resources

cooperation and collaboration at national level between the competent authorities

cooperation at EU level (with the Commission and with other Member States).

The action plan is based on the **priorities** identified and the correlating objectives. It assigns to the appropriate authorities a responsibility for the implementation of the priority actions and for the related monitoring exercises. These priorities should reflect the main areas where the strategy can contribute to the improvement of anti-fraud action. It should also assign responsibilities to individual actors or AFCOS partners within the Member State, with support, where appropriate, from other partners, e.g. the EU and/or national institutions.

The action plan should comprise specific **tasks**, stating to which bodies they are assigned, and should also give the target dates by which the objectives are to be met. The tasks should be divided into areas corresponding to those implied by the national anti-fraud strategy for ESIF.

Each task must be considered with a view to achieving synergy and encouraging an integrated approach. The action plan should, for example, take into account the fact that the ESIFs are used to improve the living conditions of the EU population, to ensure growth and create jobs. This objective is undermined if the funds from the budget are misused.

Individual actions may be carried out in the form of projects to achieve the objectives set out in the anti-fraud strategy in the field of ESIF.

A structured network of authorities should be set up in each Member State to implement the anti-fraud strategy for ESIF and the related action plan. The task of such networks

would be to ensure that the strategy and the action plan are implemented, evaluated and monitored in a systematic way, and that they are updated and revised, when necessary.

### ***Possible role of AFCOS***

Depending on the organisation existing in each Member State, the implementation of the action plan could be monitored by the national anti-fraud coordinating service (AFCOS).

AFCOS could present a report on the implementation of the action plan on an annual basis (to cover the period from 1 January to 31 December). They could also produce a review of the action plan after two years, in a similar format to that used for the plan itself.

Possible measures to take could include:

setting up a whistleblowing policy;

strengthening coordination and cooperation between the competent national authorities, in particular as regards exchange of knowledge about fraud patterns ;

strengthening legislation and methodological guidelines;

raising public awareness;

setting up a procedure to handle detected irregularities and suspected fraud in ESIF;

developing the power of data-mining and risk-scoring tools which will help to identify risk factors at the level of individual projects;

enhancing cooperation between the bodies of state administration involved in public procurement and control of competition;

strengthening the integrity of and tackling conflicts of interests in public procurement;

producing a handbook for civil servants involved in public procurement, giving them guidance on their role in tackling irregularities, fraud and corruption in the area of ESIF; and

strengthening the exchange of experience between the national authorities and European partners (OLAF, relevant Commission DGs, other Member States).

## 5. Evaluating and updating the strategy

The national anti-fraud strategy should be a living document that is adapted and updated on an ongoing basis to take into account both the main structural and/or organisational changes that may have occurred and the trends seen in fraud patterns.

Therefore it is necessary to carry out regular evaluation to ensure that the actions undertaken are on the right tracks and that the objectives will be achieved in due time. The evaluation will help determine to what extent the objectives have been achieved, if the approach adopted to date has proved to be suitable and if it is necessary **to update the strategy**.

Evaluations are conducted periodically, according to the deadlines- set mid-term evaluation- which can be set midway, annual evaluation, etc, or final implementation.

The evaluation should be carried out by the authority that coordinates the implementation of the strategy. An annual report should be established to take stock of the progress made.

At a mid-term evaluation, it would be useful to consider whether it is necessary to update the strategy in order to ensure the achievement of the objectives set. An interim evaluation report could be issued at this point.

A final evaluation should be carried out at the end of the period addressed by the strategy. It will quantify the results of implementation and provide the foundation of the following strategy. The evaluation should target the means used for the implementation as well as the results themselves. At this stage it will measure the efficiency (the results, or outputs, in relation to the resources invested, or inputs) and effectiveness of the strategy (the ratio between the objective of the results achieved and the objective to be achieved). A final evaluation report will present the results of the strategy.

The evaluation criteria should be designed so as to determine:

- a) to what extent the results of implementing the strategy correspond to the planned outcomes set out in the strategy at the formulating stage;
- b) the ratio of the costs actually incurred to obtain the expected results to the costs estimated at the time of formulating the strategy; and
- c) to what extent the activities and deadlines set out in the action plan have been adhered to.

Updating and adjustment of the strategy may lead to:

updating or revising the objectives;

adjusting the indicators;

updating the deadlines; and

introducing new measures or adjusting the existing measures.



## **Annexes**



## **Annex 1: template for and content of a national anti-fraud strategy**

This document gives some recommendations on the main points to elaborate upon in the strategy. The recommendations and suggestions are given in italics. The direct proposals are given in normal font.

### **1. Introduction and the general context**

*This chapter should include:*

*a reference to the EU and national legal frameworks;*

*a reference to the main national priorities that may have an impact on the fight against fraud, corruption or any other illegal activity;*

*a reference to the national strategy or policy on fighting fraud, corruption and all types of financial crime, if existing;*

*a statement reflecting a general commitment to the policy and the willingness of the authorities to put efforts in the fight against fraud, specifically as relates to EU funds; and*

*a mention of any potential links with other national policies or political priorities.*

*The following information relating specifically to the European Structural and Investment Funds (ESIF) should also be included:*

*a list of the authorities and services involved in monitoring the ESIF and in fighting fraud, corruption and other illegal activity detrimental to the ESIF;*

*details of how the monitoring of the EU funds is structured, i.e. whether monitoring is centralised, decentralised or structured in some other way; and*

*Existence of specific measures or strategy related to the fight against fraud in this sector.*

*Indicate which national entity is responsible for the strategy, in particular for elaborating the strategy and monitoring its implementation.*

*Indicate the period covered by the strategy.*

## **2. State of play and fraud risk assessment**

*Set out the reasons why a strategy is needed (i.e. the background to the strategy).*

*Specify the main areas where strengths and rooms for improvement were identified when assessing the current situation and outline the cause of the latter. It is not necessary to detail each domain (legislation, organisational structure, management and actors, procedures, means and resources, cooperation and collaboration at national level between the competent authorities and cooperation at EU level) but only to focus on the main domains where there is room for improvement and which will be addressed by an objective.*

*Summarise the main findings of the fraud risk assessment, and focus on those that will require specific input within the strategy.*

*Conclude with the areas for which the strategy should serve to close 'gaps' in the current system and thus improve the effectiveness of anti-fraud measures.*

*Refer to the principles and values that accompany the strategy.*

## **3. Means and resources**

*This chapter should describe briefly the main means and resources that will play a role in the implementation of the strategy (specialised anti-fraud services, coordination committees, interservice networks, interservice agreements, IT systems, procedures and guidelines). In particular, it should:*

*give an overview of the services responsible for the management, certification and audit of the ESIF;*

*give an overview of the services responsible for fighting fraud, corruption and other illegal activity detrimental to the ESIF;*

*provide information on the role of IT systems in fighting fraud, where relevant; and*

*provide information on training policy and training resources.*

## **4. The aim of the strategy, the objectives and related indicators and their place in the anti-fraud cycle**

*Describe the aim of the strategy.*

*Give a brief description of each objective. Reference should be made to the needs identified in chapter 2, as the objective should follow logically from these.*

*The objectives as a whole should cover all the stages of the anti-fraud cycle (prevention, detection, investigation and prosecution, and reparation). One objective can cover one or several stages of the cycle.*

**Objective (1):**

Background (*why this objective is a priority*)

Description (*the desired result*)

Indicator

**Objective (2):**

Background (*why this objective is a priority*)

Description (*the desired result*)

Indicator

...

## 5. Action plan

The action plan is the implementing instrument of the national anti-fraud strategy. It is an integral part of the strategy. It proposes a series of measures and assigns responsibilities to the relevant actors, with target dates by which the objective should be achieved. The target dates are set according to the level of priority.

The implementation of the action plan will be monitored by [*name of the competent authority*] and will be assessed on a yearly or two-yearly basis. A report will then be drafted and submitted to the [*government, Ministry of..., ...*].

The action plan covers all stages of the anti-fraud cycle: prevention, detection, investigation and corrective measures.

The columns 'objective', 'measure or action', 'service responsible', 'deadline' and 'indicator' are mandatory, whilst the final two, 'risks' and 'financial and human resources' are optional. Member States could consider adding other columns in accordance with their particular needs.

Objective 1	Measure or action	Service responsible	Deadline	Indicator	<i>Risk (of non-achievement of the objectives)</i>	<i>Financial and human resources</i>
Objective 2	Measure or action	Service responsible	Deadline	Indicator		

Objective 3	Measure or action	Service responsible	Deadline	Indicator		

## **6. Evaluation and update of the strategy**

The implementation of the strategy will be evaluated according to the following deadlines: *[give the timeline for the interim evaluation and final evaluation of the strategy]*. Each evaluation will be detailed in a report which:

- describes the methodology of the evaluation;
- assesses the level of achievement of the objectives;
- gives a conclusion as to the subsequent steps to be taken.

Following the interim evaluation(s) it will be decided whether to update the anti-fraud strategy and the related action plan. The strategy will be updated in response to changes that occurred during its implementation, in order to ensure accountability and that the service responsible for implementation is able to make changes to the strategy itself.

Updating and adjusting the strategy may involve, where relevant:

- reconsidering the objectives;
- adjusting the planning and management of resources;
- updating the measures and/or the deadlines; and
- reviewing the services responsible.

A final evaluation of the strategy's implementation will be carried out by *[indicate a date]* and the strategy will be renewed.

## **Annex 2: glossary**

### **for national anti-fraud strategies for European Structural and Investment Funds (ESIF)**

**Action plan for the national strategy:** a roadmap setting out the steps for implementing the national anti-fraud strategy for ESIF and for monitoring progress towards its objectives.

**Administrative arrangements:** arrangements of a technical and/or operational nature signed by OLAF with the aim of facilitating cooperation and exchange of information between parties, and which do not create any additional legal obligations.

**Administrative investigations:** any inspection, check or other measure undertaken by OLAF in accordance with Articles 3 and 4 of Regulation (EU, Euratom) No 883/2013, with a view to achieving the objectives set out in Article 1 of that Regulation and to establishing, where necessary, the irregular nature of the activities under investigation; such investigations do not affect the powers of the competent authorities of the Member States to initiate criminal proceedings.

**AFCOS (Anti-fraud coordination service):** a coordinating body for anti-fraud activities whose role it is to facilitate effective cooperation and exchange of information with OLAF, including as relates to information of an operational nature.

**Arachne:** a risk-scoring tool that helps to identify, prevent and detect high-risk operations, projects, beneficiaries and contracts or contractors. It aims to provide Member States' authorities involved in management of ESIF with a tool for identifying their highest risk projects.

**Audit:** the review of a body's activities and operations to ensure that it is carrying out the tasks assigned to it and that it is functioning in accordance with the objectives, budgets, rules and standards set in the strategy. This type of review should be carried out at regular intervals, and will serve to identify deviations that might require corrective action.

**Audit authority:** a national, regional or local government authority or body that is functionally independent of the managing authority and the certifying authority, is designated by the Member State for each operational programme, and is responsible for checking that the management and control system is working as intended.

**Beneficiary:** a public or private body and, for the purposes of the EAFRD Regulation and of the EMFF Regulation only, a natural person, responsible for initiating or both initiating and implementing operations; and, in the context of state aid schemes, as defined in point 13 of Article 2 of Regulation (EU) No 1303/2013, the body which receives the aid; and, in the context of financial instruments, as referred to under Title IV of Part Two of the same Regulation, the body that implements the financial instrument or the fund of funds, as appropriate.

**Bid rigging:** a particular form of collusion between firms that can adversely affect the outcome of any sale or purchasing process in which bids are submitted.

**Bribery:** promising, offering or giving, by any person, directly or indirectly, of any undue advantage to any person in a position of power (e.g. a public official; a member of a public assembly exercising legislative or administrative powers, or a person who directs a public or private-sector entity or works for such an entity in any capacity), or requesting or receiving by such a person of such undue advantage, for himself or herself or for

anyone else, in exchange for that person acting or refraining from acting in the exercise of his or her functions or in breach of his or her duties.<sup>11</sup>

**Central exclusion database:** the European Commission's database holding information on bodies that, for various reasons including financial irregularities, are excluded from applying for EU funds and are subject to the conditions set out in Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the Central exclusion database.<sup>12</sup>

**Certifying authority:** the authority responsible for guaranteeing the accuracy and probity of statements of expenditure and requests for payments before they are sent to the European Commission. The European Regional Development Fund, European Social Fund and Cohesion Fund are managed jointly by their member countries, regions and other intermediary bodies. One or more of these groups nominates a certifying authority for each operational programme co-financed by these funds.

**Check:** as defined in the Financial Regulation, the verification of a specific aspect of a revenue or expenditure operation.

**Cluster:** a grouping of independent bodies — including start-ups, small, medium and large businesses, advisory bodies and/or research organisations — designed to stimulate economic and innovative activity by promoting intensive interaction between organisations, sharing of facilities and exchange of knowledge and expertise, and by stimulating knowledge transfer, networking and information dissemination among the businesses and organisations in the cluster.

**Community-led local development strategy:** a coherent set of operations the purpose of which is to meet local objectives and needs. It contributes to achieving the EU strategy for smart, sustainable and inclusive growth and is designed and implemented by a local action group.

**Completed operation:** an operation that has been physically completed or fully implemented and in respect of which all related payments have been made by beneficiaries and the corresponding public contribution paid to the beneficiaries.

**Conflict of interest:** a situation in which a public official has a private interest such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.<sup>13</sup> Private interest is understood to mean any advantage to himself or herself, to his or her family, close relatives, friends and individuals or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto. Under Council Regulation (EC, Euratom) No 966/2012, a conflict of interest exists where the impartial and objective exercise of their role by a person involved in the implementation of the budget or by an internal auditor is compromised for reasons relating to family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.

**Contracting authorities:** the national, regional or local authorities, bodies governed by public law and associations formed by one or more such authorities or one or more such bodies governed by public law.

**Control:** as defined in the Financial Regulation, any measure taken to provide reasonable assurance regarding the effectiveness, efficiency and economy of operations, the reliability of reporting, the safeguarding of assets and information, the prevention,

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<sup>11</sup> Criminal Law Convention on Corruption, Strasbourg, 27.1.1999.

<sup>12</sup> OJ L 344, 20.12.2008.

<sup>13</sup> Council of Europe. Recommendation No R (2000) 10 of the Committee of Ministers to Member States on codes of conduct for public officials, Article 13.

detection and correction of fraud and irregularities and their follow-up, and the adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes and the nature of the payments concerned. Controls may involve carrying out various checks or implementing any policies and procedures to achieve the objectives described in the first sentence.

**Economic operator:** any natural or legal person or other entity involved in implementing the funding granted from ESIF, with the exception of a Member State exercising its prerogative as a public authority. For the purposes of this document, the terms 'economic entity' and 'economic operator' are considered substantially identical.

**Embezzlement** (diversion of assets): the misappropriation of property or funds legally entrusted to someone in their formal position as an agent or guardian. The UN Convention against Corruption has identified 'embezzlement, misappropriation or other diversion of property by a public official' as a corruption offence. However, embezzlement is not necessarily corruption- it can also be fraud (by a single actor)<sup>14</sup>.

**ESIF:** European Structural and Investment Funds.

**European Anti-Fraud Office (OLAF):** the body within the European Commission responsible for combating fraud detrimental to the European Union budget.

**European Investment Bank (EIB):** the EU's financial institution, set up by the Treaty of Rome. Its role is to contribute to economic, social and territorial cohesion by promoting the balanced development of the EU internal market.

**European Investment Fund (EIF):** provides venture capital for small and medium-sized enterprises (SMEs), particularly new firms and technology-orientated businesses. It also provides guarantees to financial institutions (such as banks) to cover their loans to SMEs. The EIF is not a lending institution: it does not grant loans or subsidies to businesses, nor does it invest directly in any firms. Instead, it works through banks and other financial intermediaries. It uses either its own funds or those entrusted to it by the EIB or the EU.

**Fight against fraud and corruption:** part of the wider effort to tackle financial and organised crime, specifically, the issue of countering all illegal activities that may adversely affect the financial interests of the EU. The concept is based primarily on Article 325 of the Treaty on the Functioning of the European Union (TFEU), which relates to activities affecting the EU's financial interests and requires the Council and the European Parliament to adopt measures under the ordinary legislative procedure after consulting the Court of Auditors. Since June 1999, the body tasked with combating fraud has been the European Anti-Fraud Office (OLAF). On the basis of Chapters 4 and 5 of the TFEU, which relate to police and judicial cooperation in criminal matters, Eurojust and Europol also have competence to support Member States in the fight against fraud and corruption.

**Final recipient:** a legal or natural person receiving financial support from a financial instrument.

**Financial instruments:** financial support from the EU budget in order to address one or more of the EU's specific policy objectives. Such instruments may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and may, where appropriate, be combined with grants.

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<sup>14</sup> Study on corruption in the healthcare sector, HOME/2011/ISEC/PR/047-A2, October 2012.

**Financial interests of the EU:** in accordance with Regulation (EU, EURATOM) No 8383/2013, include revenues, expenditures and assets covered by the EU budget, and those covered by the budgets of the EU's institutions, bodies, offices and agencies, and the budgets managed and monitored by them.

**Fraud:** as defined under Article 1(1) of the Convention on the protection of the European Communities' financial interests drawn up on the basis of Article K.3 of the Treaty on European Union<sup>15,16</sup>:

**(a) Fraud in the EU budget expenditures:** any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities<sup>17</sup> or budgets managed by, or on behalf of, the European Communities;
- non-disclosure of information in violation of a specific obligation, with the same effect;
- the misapplication of such funds for purposes other than those for which they were originally granted.

**(b) Fraud in revenue:** any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect, the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities;
- non-disclosure of information in violation of a specific obligation with the same effect;
- misapplication of a legally obtained benefit, with the same effect.

**Guarantee:** a written commitment to assume responsibility for all or part of a third party's debt or obligation or for the successful performance by that third party of its obligations if an event occurs that triggers such a guarantee, such as a loan default.

**Impact assessment:** a tool to analyse the potential benefits and costs of different possible policies that could be adopted to tackle a particular problem.

**Intentional conduct:**<sup>18</sup> an act committed by a person who in doing so intended to infringe or prejudice an interest protected by law, or was aware that his or her conduct was likely to cause such an infringement or prejudice, and was prepared to accept that consequence, should it occur.

**Intermediate body:** any public or private body which acts under the responsibility of a managing or certifying authority, or which carries out duties on behalf of such an authority, in relation to beneficiaries implementing operations.

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<sup>15</sup> OJ C 316, 27.11.1995, p. 49.

<sup>16</sup> The European Parliament in its resolution of 10 May 2012 on the protection of the financial interests of the European Union draws attention to the fact that Article 325 TFEU concerns fraud and not irregularities. It further notes that fraud is wilful misconduct, which is a criminal offence, and that an irregularity is a failure to comply with a certain rule. It also calls for differentiation between fraud and irregularities and for corruption to be tackled together with fraud (see European Parliament resolution of 10 May 2012 on the protection of the EU's financial interests — Fight against Fraud — Annual Report 2010).

<sup>17</sup> For the purposes of this document, in line with the Lisbon Treaty, which entered into force on 1 December 2009, the term 'European Community' or 'European Communities' is understood to mean the 'European Union'. This is without prejudice to the previous relevant legislation.

<sup>18</sup> By analogy, see Section 15 of Act No 300/2005 (Slovak Criminal Code).

**Irregularity:** in accordance with Regulation (EU) No 1303/2013, any breach of Union law or of national law relating to the application of EU law, resulting from an act or omission by an economic operator involved in the implementation of ESIF, which has, or would have, the effect of prejudicing the EU budget by charging to it an unjustified item of expenditure.

**Irregularity Management System (IMS)** an information system for electronic reporting of irregularities. It is an important source of information on the extent to which Member States have drawn on funds. The system covers the expenditure side of the budget managed jointly by the Commission and Member States.

**Information technological monitoring system:** a system where data on all operational programmes, projects, checks, tests and audits is entered, in order to ensure effective and transparent monitoring of all processes related to the implementation of the Structural Funds, the Cohesion Fund and the European Fisheries Fund. It provides links to the fund accounting information system.

**Kickback:** a form of negotiated bribery in which a commission is paid to the bribe-taker as an exchange for services rendered. Generally speaking, the remuneration (money, goods or services handed over) is negotiated ahead of time. The kickback varies from other kinds of bribes in that there is implied collusion between the two parties (rather than one party extorting the bribe from the other). The purpose of a kickback is usually to encourage the other party to cooperate in an illegal scheme.<sup>19</sup> The most common form of kickback involves a vendor submitting a fraudulent or inflated invoice (often for goods or services which were not needed, of inferior quality, or both), with an employee of the victim company assisting in securing payment. For his or her assistance in securing payment, the individual receives some sort of recompense (cash, goods or services) or favour (e.g. a job being offered to themselves or a relative). Kickbacks often occur in relation to corruption in the context of procurement.

**Legal base (or legal basis):** in general, a law based on an article in the Treaty that gives the EU competence to act in a specific policy area and sets out the conditions attached to that competence, including as relates to the budget. Certain Treaty articles authorise the Commission to undertake certain actions, which imply spending, without there being a further legal act.

**Macroregional strategy:** an integrated framework endorsed by the European Council, the aim of which is to address common challenges faced by a defined geographical area. It relates to both Member States and non-EU countries located in the same geographical area. By strengthening cooperation between EU and non-EU countries, the strategy can help to achieve greater economic, social and territorial cohesion;

**Managing authority:** a body designated by an EU Member State at national, regional or another level to manage programmes which receive support from the Structural Funds. It is responsible for informing potential beneficiaries, selecting the projects and monitoring implementation.

**Monitoring:** in relation to the protection of the EU's financial interests and the use of EU funds, routine reviewing and assessment, involving the collection and recording of financial and non-financial data and information, in order to obtain an overview of the current level of compliance with relevant laws and other regulations, norms, standards, agreements, contracts and procedures, and to allow risks threatening the financial interests of the EU to be detected and eliminated at an early stage.

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<sup>19</sup> Study on corruption in the healthcare sector, HOME/2011/ISEC/PR/047-A2, October 2012.

**Partnership agreement:** a document prepared by a Member State with the involvement of partners, in line with the multi-level governance approach, setting out the Member State's strategy, priorities and arrangements for using ESIF in an effective and efficient way for the purpose of pursuing the EU strategy for smart, sustainable and inclusive growth. Partnership agreements are approved by the Commission following an assessment of the document and discussion with the Member State concerned.

**Person concerned:** as defined in Regulation (EU, EURATOM) No 883/2013, any person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the EU and who is therefore subject to investigation by OLAF.

**Programme area:** a geographical area covered by a specific programme or, in the case of a programme covering more than one category of region, the geographical area corresponding to each separate category of region.

**Protection of the financial interests of the EU:** ensuring efficiency and transparency in the creation of revenue (agricultural duties, sugar levies, customs duties, VAT revenue and revenue dependent on GDP) for the EU budget; efficiency, effectiveness, frugality and transparency in using this budget and budgets managed by the EU, and in the use of the property owned by the EU, its institutions and bodies.

**Public expenditure:** any public contribution to the financing of operations from the budget of national, regional or local public authorities, the EU budget allocated to ESIF, the budget of public law bodies or the budget of associations of public authorities or of public law bodies. For the purpose of determining the co-financing rate for programmes receiving funding from the European Social Fund, it may also include any financial resources collectively contributed by employers and workers.

**Public private partnership:** a form of cooperation between public bodies and the private sector designed to allow better quality results to be achieved from investment in infrastructure projects or in other areas of public service. Partnerships can deliver public services more effectively as they have the advantage of being able to make use of risk sharing and pooling of private sector expertise and have access to additional sources of capital.

**Recipient:** a beneficiary, contractor, or any natural or legal person who receives grants or funding under a financial instrument.

**Recovery of funds:** circumstances in which the European Commission is obliged to ask a Member State to return the structural funding allocated to it. Recovery occurs when:

1. not all the funding given to the Member State was needed,;
2. funds have been received for a structural operation that has already been completed;  
or
3. money from EU Structural and Cohesion Funds has been misused due to fraud or negligence.

In any of these three situations, the European Commission has the right to ask the Member State to pay back the funding awarded. Recovery procedures laid down in EU law could be activated in order to recoup the money. For Cohesion Funds, a certifying authority draws up and sends to the Commission an inventory of expenditure and requests for payment for each operational programme. The authority must also certify the accuracy of the expenditure items and assess compliance with the relevant EU rules and regulations. If there is found to be a problem — identified through discrepancies in accounts or through inspections by the Commission or other bodies — the certifying

authority is responsible for overseeing the recovery of funding. If necessary, the local judicial system can be used to help enforce the recovery process.

**Risk assessment:** one of the steps in the risk management process. It involves measuring two quantities associated with the risk  $R$  — the magnitude of the potential loss  $L$  and the probability  $p$  that the loss will occur.

**Serious deficiency in the effective functioning of a management and control system:** as defined in Part IV of Regulation (EU) No 1303/2013, for the purposes of the implementation of the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, a deficiency for which substantial improvements in the system are required, which exposes the above funds to a significant risk of irregularities, and the existence of which is incompatible with an unqualified audit opinion on the functioning of the management and control system.

**Sound financial management:** compliance, on the part of the competent authority when carrying out its activities, with the principle of economy, the principle of efficiency — finding the best ratio between resources employed and results achieved — and the principle of effectiveness in attaining the specific objectives set.

**Structural Funds:** funding instruments that allow the EU to grant financial assistance to specific sectors, regions, or combinations of both, in order to resolve structural economic and social problems. Structural Funds comprise the European Regional Development Fund, the European Social Fund, the European Agriculture Guidance and Guarantee Fund and the Financial Instrument for Fisheries Guidance.

**Suspected fraud:** pursuant to Article 1a(4) of Regulations (EC) No 1681/94 and 1831/1994 as amended by Regulation (EC) No 2035/2005 and 2168/2005 respectively, 27(c) of Regulation (EC) No 1828/2006, 54(c) of Regulation (EC) No 498/2007 and Article 2(4) of Regulation No 1848/2006, any irregularity giving rise to the initiation of administrative and/or judicial proceedings at national level in order to establish the presence of intentional behaviour, such as fraud, as defined under Article 1(1)(a) of the Convention on the Protection of the European Communities' Financial Interests<sup>20</sup>. Since 2006, Member States have been required to specify whether the irregularity gives rise to a suspicion of fraud.

**Systemic irregularity:** as defined in Regulation (EU) No 1303/2013, any irregularity, which may be of recurring nature, with a high probability of occurrence in similar types of operations, which results from a serious deficiency in the effective functioning of a management and control system, including a failure to establish appropriate procedures in accordance with this Regulation and the Fund specific rules.

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<sup>20</sup> The Convention entered into force on 17 October 2002 together with its First Protocol and the Protocol on interpretation of the convention by the Court. The Second Protocol entered into force on 19 May 2009.



**Annex 3- Elaboration of a national anti-fraud strategy for ESIF- chart**

