



RA Circular 01/2015

To: Project Leaders
From: Head of Responsible Authority
Date: 7th January 2015
Subject: Anti-Fraud Measures

Article 5(2) of the Horizontal Regulation laying down the common provisions for the AMIF and the ISF ((EU) 514/2014) lays down that *Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid together with any interest on late payments. They shall notify those to the Commission and shall keep it informed of any significant progress in the related and administrative legal proceedings.*

Key experts from Member States, OLAF and Commission DGs produced practical guides to member states on 'forged documents' and 'conflicts of interest' to strengthen the member states' anti-fraud strategies and measures. Forged documents and conflicts of interest are two common fraudulent actions which Responsible Authorities and Audit Authorities should be on the lookout for. However, anti fraud measures and actions to mitigate the risk of fraud are the responsibility of each and every stakeholder involved in the systems and procedures applicable to the management and control of the AMIF and the ISF.

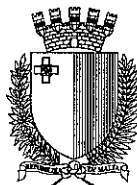
Forged Documents

A forged document is a document in respect of which the truth is altered: this means that the document does not accord with reality. The alteration may be:

- Physical - where a document may be modified physically, for example by crossing-out of items or references and manuscript addition of information altering the document or
- Intellectual - where the content of the document does not accord with the reality, for example false description of services rendered, false content of a report, false signatures on an attendance list, etc.

Hence, all types of documents provided to obtain grants, to participate in a public procurement process or for reimbursement of expenditure may be affected by forgery including contracts, identity papers, CVs, guarantees, invoices, reports, timesheets, attendance sheets and websites.

RA is obliged to apply financial corrections in the event of irregularities or fraud. These corrections consist in cancelling all or part of the public contribution depending on the



individual or systemic character of the irregularities, their nature and gravity and the final loss to the Funds. Consequently the presentation of a forged document may lead to financial correction on the whole project or on a part of it.

When faced with a document that may have been forged, the RA has to carry out a check to eliminate the doubt or to confirm the risk. If the risk is confirmed, the RA should consider carrying out an on-the-spot check. In such cases beneficiaries must make sure that all documentation available is presented to the RA for them to make all the necessary checks and ensure that there is no inconsistency between documents and information available.

Reactivity is of great importance and should lead to quick and appropriate reactions including suspending payments to the operation, safeguarding documents and evidence, or forwarding the information to the judicial authorities, directly or through hierarchy, without prejudice to internal and national rules.

Conflict of Interest

'A "conflict of interest" involves 'a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of his/her official duties and responsibilities.'

Article 57(2) of the Financial Regulation applicable to the general budget of the European Union (Regulation No 966/2012) gives a definition of conflict of interests for the purposes of spending and managing the EU's budget. It states:

- 1. Financial actors and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the Union.*
- 2. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.*

Beneficiaries must ensure that procurement procedures are transparent, equitable and fair. Conflict of interests' situations can lead economic operators to lose confidence in public procurement in the framework of EU funding *and* discourage honest operators from bidding. Excluding an employee/expert from proceedings should be considered not only if there is an actual conflict of interests but in any case that gives grounds for doubts about his/her impartiality.

In very exceptional cases, it might not be possible to exclude an official or an expert because of a lack of resources or specialised experts in certain fields. In that case, the contracting authority should ensure that its decision is fully transparent, set precise limits to the employee/expert's input and ensure that the final decision is based on transparent and fair evidence.



The occurrence of a conflict of interests is not necessarily illegal in itself. It is, however, irregular to take part in a procedure while being aware of a conflict of interests. It is therefore necessary to disclose any potential conflict of interests before taking any part in the procurement procedure and to take appropriate preventive measures.

Conflicts of interests change over time. It could be the case that at the beginning of the procurement process, one of the procurement officials did not have any conflict of interests, either actual or potential or apparent. However, during the process, circumstances change and for instance, he/she or a family member may have been hired by one of the potential bidders. Due to the fact that the situation changed, it is crucial that adequate declarations of absence of conflict of interests are followed up and updated.

Conflicts of interests can influence any phase of the decision-making process in procurement procedures.

The contracting authority should consider performing two types of checks:

- for prevention: to detect apparent/potential/actual conflicts of interests
- for sanction/remedy: to detect conflicts of interests, to sanction the person concerned and to remedy any wrong caused by the conflict of interests.

When identifying people who might have a conflict of interests, the following categories should be considered:

- staff members of the contracting authority, staff of procurement service providers and of other service providers who are directly involved in the procurement procedure;
- the chair of the contracting authority and members of the authority's decision-making bodies who, without necessarily being directly involved in the procurement procedure, may nevertheless influence the outcome.

Checks should be based on the official's declaration of absence of conflict of interests, taking into consideration data and information from:

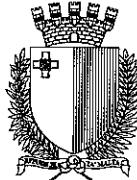
- the organisation itself: correlating personal data,
- Other organisations: correlating information obtained from national database on the identity of persons, databases on economic operators (like company registers), the tax administration's database, etc...

Responsibilities of stakeholders and response to fraud

Beneficiaries should bear in mind that in cases of suspected fraud, OLAF (the European Anti-Fraud Office) may perform on-the-spot checks on them in terms of Council Regulation 2185/96, to protect the financial interests of the European Union.

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Funds and Programmes Division

Beneficiaries are enjoined to consult with the SOLID manual of procedures, where Chapter 7.2 provides further detail and definitions of fraud, whilst also defining the responsibilities of all stakeholders in terms of anti fraud measures. This chapter also provides the procedures that need to be followed in response to suspected fraud.

Regards,

Raphael Scerri

A handwritten signature in black ink, appearing to read 'Raphael Scerri'.

Head of Responsible Authority
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