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## ESTRATÉGIA ANTIFRAUDE E AVALIAÇÃO DO RISCO DE FRAUDE

### Síntese

A presente Norma tem por objetivo fornecer orientações às Autoridades de Gestão para a implementação da estratégia antifraude definida pela Inspeção-Geral de Finanças – na qualidade de Serviço de Coordenação Anti-Fraude (AFCOS) –, bem como para a realização de uma avaliação do risco de fraude a realizar nos termos da alínea c) do n.º 4 do artigo 125.º do Regulamento (UE) n.º 1303/2013.

### Referências documentais e normativas

<b>Tratados:</b>
Tratado sobre o Funcionamento da União Europeia
<b>Regulamentos:</b>
Reg. (CE, Euratom) n.º 2988/95, do Conselho de 18 de dezembro, relativo à proteção dos interesses financeiros das Comunidades Europeias
Reg. (UE, EURATOM) n.º 966/2012, do Parlamento Europeu e do Conselho de 25 de outubro, relativo às disposições financeiras aplicáveis ao orçamento geral da União – Regulamento Financeiro
Reg. (UE, EURATOM) n.º 883/2013, do Parlamento Europeu e do Conselho de 11 de setembro, relativo aos inquéritos efetuados pelo Organismo Europeu de Luta Antifraude (OLAF)
Reg. (UE) n.º 1303/2013, do Parlamento Europeu e do Conselho de 17 de dezembro, que estabelece disposições comuns relativas ao FEDER, FSE, FC, FEADER e FEAMP e a disposições gerais relativas ao FEDER, ao FSE, ao FC e ao FEAMP
Reg. Delegado (UE) n.º 480/2014, da Comissão de 3 de março, que completa o Reg. (UE) n.º 1303/2013
Decreto-Lei n.º 137/2014, de 12 de setembro, que estabelece o Modelo de Governação dos fundos europeus estruturais e de investimento (FEEI), para o período de programação 2014-2020
Decreto-Lei n.º 159/2014, de 27 de outubro, que estabelece as regras gerais de aplicação dos programas operacionais (PO) e dos programas de desenvolvimento rural (PDR) financiados pelos FEEI, para o período de programação 2014-2020
<b>Documentos:</b>
Information Note on Fraud Indicators for ERDF, ESF and CF (COCOF 09/0003/00-EN, de 18/02/2009)
Guidance note on main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS) (Ref. ARES (2013) 3403880, de 04/11/2013)
Guidance for Member States and Programme Authorities on fraud risk assessment and effective and proportionate anti-fraud measures (EGESIF_14-0021-00, de 16/06/2014)



## Índice

1.	Enquadramento	3
2.	Requisitos Regulamentares	4
3.	Conceitos: Irregularidade, Fraude, Corrupção e Conflito de interesses	5
4.	Estratégia Antifraude	9
4.1	Objetivos	9
4.2	Pilares da estratégia antifraude	10
4.2.1	Primeiro pilar da estratégia: Prevenção	13
	Código de Ética e Conduta	14
	Plano de Gestão de Riscos de Corrupção e Infrações Conexas	16
	Avaliação de risco de fraude	18
4.2.2	Segundo pilar da estratégia: Detecção	20
4.2.3	Terceiro pilar da estratégia: Correção e mecanismos de reporte	21
5.	Prioridades e calendarização	22
	ANEXOS	23
	- Ferramenta de Avaliação de Risco de Fraude	
	- Outros documentos em anexo	



## 1. Enquadramento

O Tratado sobre o Funcionamento da União Europeia (TFUE) exige que a Comissão Europeia (CE) e os Estados-Membros (EM) combatam a fraude e quaisquer atividades ilegais lesivas dos interesses financeiros da União, devendo os EM adotar as mesmas medidas para combater a fraude lesiva dos interesses financeiros da União que adotam para combater a fraude lesiva dos interesses financeiros nacionais.

No âmbito da realização das tarefas relacionadas com a execução do orçamento, os EM devem então adotar todas as medidas necessárias para proteger os interesses financeiros da União, assegurando por um lado que as ações financiadas são executadas de forma correta e eficaz e por outro prevenido, detetando e corrigindo irregularidades e fraudes.

A regulamentação comunitária para o período de programação 2014-2020 traduz claramente a especial importância que a Comissão atribui a esta matéria, porquanto introduz que:

- as Autoridades de Gestão (AG) são responsáveis pela adoção de medidas antifraude eficazes e proporcionadas que tenham em conta todos os riscos identificados;
- no âmbito do processo de designação das AG, a Autoridade de Auditoria (AA) avalia a conformidade das autoridades com os critérios para a designação relativos ao ambiente de controlo interno, à gestão de riscos, às atividades de gestão e controlo – nomeadamente quanto aos procedimentos relativos à adoção de medidas antifraude eficazes e proporcionadas – e monitorização;
- a avaliação da AA se deve basear na cumprimento de um conjunto de requisitos-chave dos sistemas de gestão e controlo, incidindo um dos requisitos dirigidos à AG sobre a aplicação eficaz de medidas proporcionadas de combate à fraude.

Daqui decorre que a responsabilidade primária pela prevenção, deteção e correção de irregularidade e fraudes cabe às AG, devendo as mesmas implementar um sistema de gestão e controlo robusto que integre mecanismos adequados para a prevenção, deteção e correção de fraude.

Assim, para além das orientações já emitidas pela Agência para a elaboração da descrição do sistema de gestão e controlo das AG<sup>1</sup>, a presente norma visa então sistematizar os requisitos que se recomenda que as AG, enquadradas na estratégia antifraude estabelecida pela Inspeção-Geral de Finanças (IGF) na qualidade de Serviço de Coordenação Antifraude (AFCOS) descrita no ponto 4, implementem medidas antifraude eficazes e proporcionadas, incluindo a avaliação do risco de fraude a efetuar pelas AG. Esta norma visa também a harmonização dos procedimentos a adotar neste âmbito pelas diferentes AG.

<sup>1</sup> Norma n.º 01/AD&C/2015, de 2015/02/13, sobre a descrição do sistema de gestão e controlo para apoio no processo de designação.



N.º 04/AD&C/2015 - Data: 2015/04/23

Tendo em vista a melhor operacionalização das responsabilidades conferidas às AG em matéria de prevenção, deteção e correção de fraude, o presente documento integra para além das orientações específicas para esse efeito a estratégia antifraude que as enquadra.

De sublinhar que as orientações em matéria de avaliação do risco de fraude tiveram essencialmente por base o documento da CE *"Guidance for Member States and Programme Authorities on fraud risk assessment and effective and proportionate anti-fraud measures"* (EGESIF\_14-0021-00, de 16 de junho).

## 2. Requisitos Regulamentares

Os artigos 310.º e 325.º do TFUE exigem que a CE e os EM combatam a fraude e quaisquer atividades ilegais lesivas dos interesses financeiros da União. Os EM devem tomar as mesmas medidas para combater a fraude lesiva dos interesses financeiros da UE que tomam para combater a fraude lesiva dos interesses financeiros nacionais.

No âmbito desta gestão partilhada, o do n.º 2 do artigo 59.º do Regulamento (UE, EURATOM) n.º 966/2012 (Regulamento Financeiro), confere aos EM a responsabilidade pela prevenção, deteção e correção de irregularidades e fraudes. Por conseguinte, os EM devem criar sistemas de gestão e controlo robustos que respeitem os princípios da boa gestão financeira, da transparência e da não discriminação. Em concreto, tendo em vista proteger os interesses financeiros da União, os EM devem:

- tomar todas as medidas legislativas, regulamentares e administrativas necessárias, para prevenir, detetar e corrigir irregularidades e fraudes;
- proceder a controlos *ex ante* e *ex post*, incluindo, se for caso disso, verificações no local de amostras de operações representativas e/ou baseadas no risco;
- recuperar os montantes indevidamente pagos e, se necessário, instaurar ações judiciais para esse efeito;
- aplicar sanções efetivas, dissuasivas e proporcionadas aos destinatários, quando tal estiver previsto nas regras setoriais e nas disposições específicas do direito nacional.

Para o Período de Programação 2014-2020, nos termos da alínea h) do artigo 72.º do Regulamento (UE) n.º 1303/2013, os sistemas de gestão e controlo devem assegurar a prevenção, deteção e correção de irregularidades, incluindo fraudes, e a recuperação de montantes indevidamente pagos, juntamente com os eventuais juros de mora.

O artigo 122.º do Regulamento (UE) n.º 1303/2013 estabelece que os EM garantem que os sistemas de gestão e controlo dos programas respeitam as regras específicas dos fundos e funcionam de forma eficaz. Por outro lado, determina que os EM devem informar a Comissão das irregularidades que excedam 10.000€ da participação dos



N.º 04/AD&C/2015 - Data: 2015/04/23

Fundos e dos casos de suspeita de fraude, mantendo-a informada sobre a evolução significativa dos procedimentos administrativos e legais aplicáveis, bem como das medidas preventivas e corretivas que lhes estão associadas.

Já a alínea c) do n.º 4 do artigo 125.º do Regulamento (UE) n.º 1303/2013, exige que as AG ponham em prática medidas antifraude eficazes e proporcionadas que tenham em conta todos os riscos identificados<sup>2</sup>. Do mesmo modo esta competência integra a alínea c) do n.º 2 do artigo 26.º do Decreto-Lei n.º 137/2014, de 12 de setembro.

Sublinha-se que nos termos do artigo 59.º do Regulamento Financeiro os resultados das medidas adotadas deverão ser incluídos na declaração de gestão e resumo anual dos relatórios finais de auditoria e dos controlos realizados a emitir pela AG.

A responsabilidade primária pela prevenção, deteção e correção de fraude é das AG. Não obstante, o êxito da luta contra a fraude depende de uma combinação de esforços por parte das Autoridades de Gestão, de Certificação e de Auditoria, bem como de outras partes interessadas.

### 3. Conceitos: Irregularidade, Fraude, Corrupção e Conflito de Interesses

Para efeitos do Regulamento (CE, Euratom) n.º 2988/95 do Conselho, de 18/12/1995, relativo à proteção dos interesses financeiros das Comunidades Europeias, o conceito de “irregularidade” é vasto e cobre irregularidades intencionais e não intencionais cometidas por agentes económicos.

Segundo o n.º 2 do artigo 1.º do Regulamento (CE) n.º 2988/95 constitui irregularidade *qualquer violação de uma disposição de direito comunitário que resulte de um ato ou omissão de um agente económico que tenha ou possa ter por efeito lesar o orçamento geral das Comunidades ou orçamentos geridos pelas Comunidades, quer pela diminuição ou supressão de receitas provenientes de recursos próprios cobradas diretamente por conta das Comunidades, quer por uma despesa indevida*<sup>3</sup>.

A Convenção estabelecida com base no artigo K.3 do Tratado da União Europeia, relativa à proteção dos interesses financeiros das Comunidades Europeias define “fraude”, em matéria de despesas, como qualquer ato ou omissão intencionais relativos:

- à utilização ou apresentação de declarações ou de documentos falsos, inexatos ou incompletos, que tenha por efeito o recebimento ou a retenção indevidos de fundos provenientes do Orçamento

<sup>2</sup> Pode definir-se risco como um evento, situação ou circunstância futura com a probabilidade de ocorrência e potencial consequência positiva ou negativa na consecução dos objetivos de uma unidade organizacional.

<sup>3</sup> Para efeitos dos FEEI o ponto 36 do artigo 2.º do Reg. (UE) n.º 1303/2013 prevê uma definição adaptada: ““Irregularidade”, uma violação do direito da União, ou do direito nacional, relacionado com a sua aplicação resultante de um ato ou omissão de um operador económico envolvido na execução dos FEEI que tenha, ou possa ter, por efeito lesar o orçamento da União através da imputação de uma despesa indevida ao orçamento da União.”

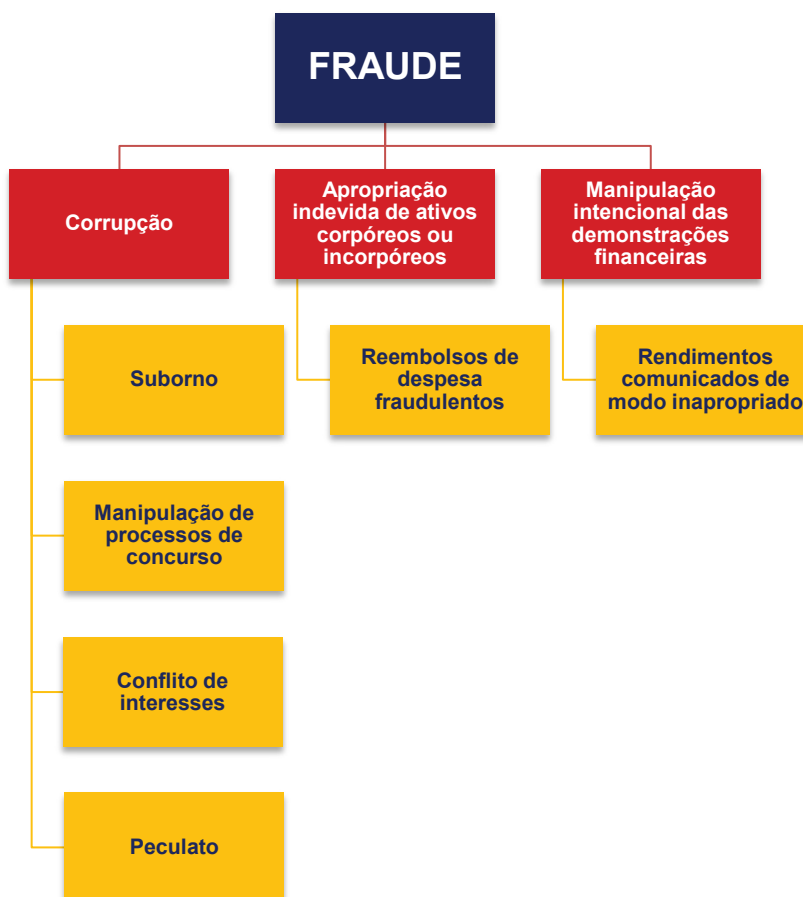


Geral das Comunidades Europeias ou dos orçamentos geridos pelas Comunidades Europeias ou por sua conta;

- à não comunicação de uma informação em violação de uma obrigação específica, que produza o mesmo efeito;
- ao desvio desses fundos para fins diferentes daqueles para que foram inicialmente concedidos.

O carácter intencional é o que distingue o conceito de fraude de irregularidade.

Na *Information Note on Fraud Indicators for ERDF, ESF and CF* (COCOF 09/0003/00-EN, de 18/02/2009), a CE utiliza a classificação de tipos de fraude da *Association of Certified Fraud Examiners* (ACFE), que considera a existência de três tipos de fraude:





O Protocolo estabelecido com base no artigo K.3 do Tratado da União Europeia, da Convenção relativa à proteção dos interesses financeiros da União define “corrupção” como:

- *corrupção passiva o facto de um funcionário, intencionalmente, de forma direta ou por interposta pessoa, solicitar ou receber vantagens de qualquer natureza, para si próprio ou para terceiros, ou aceitar a promessa dessas vantagens, para que pratique ou se abstenha de praticar, em violação dos deveres do seu cargo, atos que caibam nas suas funções ou no exercício das mesmas e que lesem ou sejam suscetíveis de lesar os interesses financeiros das Comunidades Europeias;*
- *corrupção ativa o facto de uma pessoa prometer ou dar intencionalmente, de forma direta ou por interposta pessoa, uma vantagem de qualquer natureza a um funcionário, para este ou para terceiros, para que pratique ou se abstenha de praticar, em violação dos deveres do seu cargo, atos que caibam nas suas funções ou no exercício das mesmas e que lesem ou sejam suscetíveis de lesar os interesses financeiros das Comunidades Europeias.*

Contudo, a Comissão tem vindo a adotar a definição que consta do programa global de luta contra a corrupção das Nações Unidas: “o abuso de poder em benefício pessoal”.

No que se refere ao “conflito de interesses” no setor público, segundo as recomendações do Conselho de Prevenção da Corrupção (CPC)<sup>4</sup>, de 07/11/2012, o mesmo pode ser entendido como:

- *qualquer situação em que o agente público, por força do exercício das suas funções, ou por causa delas, tenha de tomar decisões ou tenha contacto com procedimentos administrativos de qualquer natureza, que possam afetar, ou em que possam estar em causa, interesses particulares seus ou de terceiros e que por essa via prejudiquem ou possam prejudicar a isenção e o rigor das decisões administrativas que tenham de ser tomadas, ou que possam suscitar a mera dúvida sobre a isenção e o rigor que são devidos ao exercício de funções públicas.*

<sup>4</sup> Foi criado em 2008 como uma entidade administrativa independente que funciona junto do Tribunal de Contas e tem como fim desenvolver uma atividade de âmbito nacional no domínio da prevenção da corrupção e infrações conexas.



N.º 04/AD&C/2015 - Data: 2015/04/23

Segundo a mesma *Information Note on Fraud Indicators for ERDF, ESF and CF* (COCOF 09/0003/00-EN, de 18/02/2009), existem três elementos que concorrem para a perpetração da fraude, que podem ser apresentados no “triângulo da fraude”<sup>5</sup>.



Ainda naquela nota de informação, a CE apresenta uma maior concretização de cada um daqueles elementos:

- *Oportunidade*: para praticar um ato fraudulento tem que existir oportunidade.
- *Racionalização*: uma pessoa pode desenvolver uma justificação para si mesma, mediante a racionalização dos seus atos, o que a levará a decidir ou não pela prática de atos fraudulentos.
- *Pressão financeira*: a pressão pode surgir de problemas financeiros privados.

Visando a conceção e implementação de uma estratégia para a prevenção da ocorrência de fraude, a entidade deverá “quebrar o triângulo da fraude”<sup>6</sup>. Assim, por via da dissuasão, deverá restringir a oportunidade (identificação e caracterização da oportunidade para a ocorrência de atos fraudulentos), monitorizar e diminuir a pressão e limitar a capacidade de racionalização.

<sup>5</sup> Cf. consta na *Information Note on Fraud Indicators for ERDF, ESF and CF* (COCOF 09/0003/00-EN, de 18/02/2009), o conceito de triângulo da fraude foi criado pelo investigador Donald R. Cressey (fonte da CE “*The Handbook of Fraud Deterrence*”, de Harry Cendrowski, James P. Martin e Louis W. Petro, 2007, p. 41).

<sup>6</sup> Cf. consta na nota de informação sobre indícios de fraude para o FEDER, FSE e o FC (COCOF 09/0003/00-PT, de 18/02/2009) (fonte CE “*The Handbook of Fraud Deterrence*”, de Harry Cendrowski, James P. Martin e Louis W. Petro, 2007, p. 41).





N.º 04/AD&C/2015 - Data: 2015/04/23

A oportunidade assume-se como aquela que mais diretamente reflete a qualidade do sistema de gestão e controlo, visto que ineficiências no seu funcionamento (v.g. inexistência ou insuficiência de supervisão e verificação, inadequada separação de funções) aumentam a probabilidade de uma fraude não ser detetada.

A adequada monitorização dos sinais de alerta e indicadores de fraude pode conduzir à prevenção e deteção de irregularidades e de casos de suspeita de fraude. As situações de suspeita de fraude deverão ser reencaminhadas para as autoridades competentes que concluirão sobre a existência ou não de fraude.



## 4. Estratégia Antifraude

### 4.1 Objetivos

Face às responsabilidades dos EM, definidas no Regulamento (UE) n.º 1303/2013, para prevenir, detetar e corrigir irregularidades e fraudes, importa estabelecer uma estratégia que vise a adoção de medidas antifraude eficazes e proporcionadas tendo em conta o risco identificado.

Esta estratégia, por via da dissuasão, terá como objetivo promover uma cultura de prevenção, deteção e correção, com base no princípio da “tolerância zero” para a prática de atos ilícitos e situações de fraude e na aplicação dos princípios de cultura ética por parte de todos os dirigentes e colaboradores das entidades e assentará nos seguintes pilares:



N.º 04/AD&C/2015 - Data: 2015/04/23

1. prevenção do risco de fraude que passa pela avaliação do risco da sua ocorrência;
2. pro-atividade na deteção de fraudes;
3. adoção de medidas eficazes e proporcionadas para a correção de casos detetados de fraude ou suspeita de fraude.



As entidades envolvidas na gestão e controlo do Portugal 2020 deverão implementar um sistema de gestão e controlo capaz de mitigar efetivamente a possibilidade de ocorrência de situações irregulares e/ou casos de suspeita de fraude. Este sistema deverá dar ênfase à qualidade dos controlos (verificações de gestão), ao exercício da supervisão (quer sobre as tarefas exercidas pelos colaboradores, quer sobre as tarefas delegadas noutras entidades, nomeadamente nos Organismos Intermédios), bem como à segregação de funções.

Os controlos destinados a prevenir e a detetar a fraude fazem parte integrante do sistema de gestão e controlo (controlo da legalidade e regularidade das transações), devendo ser rigorosos, abrangentes e ter em conta os resultados da avaliação de risco. Assim, a estratégia antifraude não deve originar um nível suplementar de controlo, devendo no entanto ser adequadamente acautelado o risco de fraude.

#### 4.2 Pilares da estratégia antifraude

As entidades intervenientes no sistema de gestão e controlo devem estar munidas de mecanismos que lhes permitam dissuadir a ocorrência de situações fraudulentas, prevenir e identificar indícios de fraude, bem como corrigir e notificar às entidades competentes as situações detetadas.



N.º 04/AD&C/2015 - Data: 2015/04/23

Uma boa cooperação entre as autoridades nacionais, e obviamente com os serviços da CE, constitui um pilar para um combate eficaz contra a fraude. Neste contexto, todos os colaboradores em funções públicas têm o dever legal de denunciar os casos de suspeita de fraude de que tomem conhecimento.

**Como Proceder:** A denúncia pode ser feita à Polícia Judiciária, ao Ministério Público ou a qualquer outra autoridade judiciária ou policial, verbalmente ou por escrito, e não está sujeita a qualquer formalidade especial. Em qualquer caso a denúncia é transmitida ao Ministério Público, é registada e pode o denunciante requerer um certificado do seu registo. Deve ainda ser dado conhecimento à IGF na qualidade de Serviço AFCOS.

**Suspeita de atos de corrupção praticados por Funcionários e Agentes do Estado:** Nestas situações, a denúncia é obrigatoriamente reportada ao superior hierárquico, que deverá remeter imediatamente participação à entidade competente para instaurar o respetivo processo disciplinar, dando conhecimento ao Ministério Público, bem como à IGF na qualidade de Serviço AFCOS, dos factos passíveis de serem considerados infração penal. A infração é, nestes casos, passível de dupla responsabilidade – penal e disciplinar.

De referir que por via do Regulamento (UE, EURATOM) n.º 883/2013 relativo aos inquéritos efetuados pelo Organismo Europeu de Luta Antifraude (OLAF)<sup>7</sup>, a Comissão veio determinar que os EM devem designar um serviço de coordenação antifraude (AFCOS) que facilite a cooperação efetiva e o intercâmbio de informações com o OLAF. Em Portugal, por despacho da Senhora Ministra de Estado e das Finanças<sup>8</sup>, de 10/01/2014, foi designada a IGF para o exercício dessas responsabilidades.

O mandato AFCOS inclui a coordenação nacional das medidas legislativas, administrativas e investigações relacionadas com a proteção dos interesses financeiros da UE, bem como a cooperação com o OLAF e restantes EM, nos termos do artigo 325.º do TFUE. Neste contexto, importa destacar as seguintes funções do AFCOS<sup>9</sup>:

- Facilitar e assegurar a cooperação entre as administrações nacionais, as autoridades responsáveis pelas investigações e as autoridades judiciais, assim como entre estas autoridades e o OLAF, em caso de suspeita de fraude e irregularidades que afetem os interesses financeiros da UE;
- Aplicar a legislação da UE relativamente ao reporte de irregularidades e suspeita de fraude através de relatórios regulares por via do Sistema de Gestão de Irregularidades (IMS – Irregularities Management System), parte do Sistema de Informação Antifraude (FIS);
- Liderar a elaboração, coordenação e implementação da estratégia nacional antifraude;
- Divulgar informações às autoridades responsáveis pela gestão dos fundos, relativas às obrigações e procedimentos a serem seguidos em matéria de proteção dos interesses financeiros da União;
- Desenvolver sessões de formação no âmbito da luta contra a fraude.

<sup>7</sup> Para reforçar os meios de luta contra a fraude, a Comissão criou em 1999 o OLAF, serviço incumbido de efetuar os inquéritos administrativos antifraude.

<sup>8</sup> Despacho n.º 07/14/MEF.

<sup>9</sup> Conforme consta na Guidance note on main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS) (Ref. ARES (2013) 3403880, de 04/11/2013).



# norma

N.º 04/AD&C/2015 - Data: 2015/04/23

Neste contexto, e no âmbito da cooperação entre as autoridades nacionais, importa relevar que as entidades intervenientes no sistema de gestão e controlo devem ter acesso a todas as informações relevantes para a prossecução das suas funções em tempo oportuno. Assim, as entidades em causa deverão estabelecer procedimentos adequados de reporte no caso de suspeita de fraude, podendo ainda serem celebrados protocolos de cooperação que facilitem a troca de informação entre as entidades responsáveis pela deteção, investigação, prossecução, aplicação de sanções e recuperação.





## 4.2.1 Primeiro pilar da estratégia: Prevenção

Dadas as dificuldades em provar comportamentos fraudulentos e em reparar os danos reputacionais é recomendável apostar numa política de forte compromisso na prevenção, deteção e reporte porquanto a sua divulgação poderá até alterar comportamentos de potenciais prevaricadores. A prevenção visa a redução da possibilidade da ocorrência de fraude através da implementação de um sistema de gestão e controlo robusto, associado a uma avaliação de risco de fraude pró-ativa, estruturada e orientada, bem como à existência de uma política de formação e sensibilização abrangente que promova o desenvolvimento de uma cultura de ética para combater a racionalização de comportamentos.

Neste sentido as ações a desenvolver pelas AG deverão passar por:

- Elaboração de carta de missão, onde é expresso o objetivo da entidade em alcançar um elevado nível ético;
- Criação de um código de ética e conduta claro, perante o qual todos os colaboradores e dirigentes têm de, regularmente, declarar a sua adesão. Este código estabelece os princípios de ética abrangendo, entre outras, as questões de conflito de interesses, informação confidencial, requisitos para reportar a suspeita de fraude;
- Elaboração do Plano de Gestão de Riscos de Corrupção e Infrações Conexas;
- Estabelecimento de uma clara definição de responsabilidades e obrigações por parte de todos os colaboradores e atores externos (OI, Beneficiários) e a observância da segregação de funções no âmbito dos sistemas de gestão e controlo;
- Implementação de mecanismos de comunicação de informação sobre os novos sinais de alerta e indicadores de fraude;
- Definição de políticas de formação para as equipas técnicas e de sensibilização e divulgação junto dos beneficiários com o objetivo de criar uma maior consciência sobre a fraude e as suas implicações;
- Definição de procedimentos relativos ao reporte pelos colaboradores de irregularidades incluindo casos de fraude;
- Definição de regras adequadas para proteger os colaboradores de sanções no caso de reporte de situações irregulares.



## Código de Ética e Conduta

Na elaboração do código de conduta devem ser sistematizados os princípios de ética, subjacentes à prestação de serviço público:

### Código de Ética e Conduta

As entidades envolvidas na gestão e controlo dos fundos comunitários devem implementar uma cultura ética norteada pelos seguintes princípios éticos:

- Serviço Público – Os funcionários encontram-se ao serviço exclusivo da comunidade e dos cidadãos, prevalecendo sempre o interesse público sobre os interesses particulares ou de grupo
- Legalidade – Os funcionários atuam em conformidade com os princípios constitucionais e de acordo com a lei e o direito
- Justiça e da Imparcialidade – Os funcionários, no exercício da sua atividade, devem tratar de forma justa e imparcial todos os cidadãos, atuando segundo rigorosos princípios de neutralidade
- Igualdade – Os funcionários não podem beneficiar ou prejudicar qualquer cidadão em função da sua ascendência, sexo, raça, língua, convicções políticas, ideológicas ou religiosas, situação económica ou condição social
- Proporcionalidade – Os funcionários, no exercício da sua atividade, só podem exigir aos cidadãos o indispensável à realização da atividade administrativa
- Colaboração e da Boa Fé – Os funcionários, no exercício da sua atividade, devem colaborar com os cidadãos, segundo o princípio da Boa Fé, tendo em vista a realização do interesse da comunidade e fomentar a sua participação na realização da atividade administrativa
- Informação e da Qualidade – Os funcionários devem prestar informações e/ou esclarecimentos de forma clara, simples, cortês e rápida
- Lealdade – Os funcionários, no exercício da sua atividade, devem agir de forma leal, solidária e cooperante
- Integridade – Os funcionários regem-se segundo critérios de honestidade pessoal e de integridade de carácter
- Competência e Responsabilidade – Os funcionários agem de forma responsável e competente, dedicada e crítica, empenhando-se na valorização profissional

### Princípios éticos



Ainda na elaboração do código de conduta devem ser observados os seguintes aspetos:

<b>Código de Ética e Conduta</b>	
<b>Implementação</b>	Divulgado no âmbito de uma sessão de formação dirigida a todos os colaboradores
	Deve ser aplicado a todos os colaboradores
	Deve ser assinado por todos os colaboradores
	Deverá ser nomeado um responsável pelo cumprimento do código, que aconselha os colaboradores, monitoriza o seu cumprimento e recebe informações sobre as atividades que não estejam em conformidade
	Deverão ser comunicadas as sanções pelo seu incumprimento a todos os colaboradores
<b>Aspetos abrangidos</b>	O código de ética e conduta deve ser inequívoco quanto ao nível ético esperado dos colaboradores, bem como quanto aos princípios a respeitar devendo abranger nomeadamente o seguinte:
	- independência – explicação e responsabilidade para a atuação dos colaboradores
	- conflito de interesses – explicação, requisitos e procedimentos para a declaração de conflitos de interesse
	- presentes e convites pessoais – explicação e responsabilidade para a atuação dos colaboradores
	- confidencialidade de informação – explicação e responsabilidade dos colaboradores quanto à confidencialidade da informação na entidade
	- requisitos para reporte de suspeita de fraude por parte dos colaboradores
Os colaboradores devem periodicamente declarar adesão ao código de ética e conduta	

No que se refere a monitorizar e diminuir a pressão, importa estabelecer uma adequada política de recursos humanos que vise a diminuição da pressão sobre os colaboradores, nomeadamente através da implementação de procedimentos de rotação e segregação de funções para os colaboradores em “cargos sensíveis” (cargos cuja ocupação pode causar efeitos adversos na integridade e funcionamento da entidade em virtude da natureza da sua responsabilidade).



## Plano de Gestão de Riscos de Corrupção e Infrações Conexas

A Lei n.º 54/2008, de 4 de Setembro, criou o Conselho de Prevenção da Corrupção (CPC), o qual desenvolve uma atividade de âmbito nacional no domínio da prevenção da corrupção e infrações conexas. O CPC, entidade administrativa independente que funciona junto do Tribunal de Contas, aprovou a Recomendação n.º 1/2009, publicada no Diário da República, II Serie, nº 140, de 22 de Julho, através da qual todos os organismos públicos são instados a elaborar Planos de Prevenção da Corrupção e Infrações Conexas, bem como relatórios anuais sobre a execução dos mesmos.

No texto da generalidade dos Programas Operacionais do PORTUGAL 2020, no eixo de Assistência Técnica, está previsto o desenvolvimento de ações que assegurem a prevenção, deteção e correção de irregularidades, adotando nomeadamente medidas antifraude eficazes e proporcionadas, tendo em conta os riscos identificados, e um conjunto de medidas de natureza preventiva tais como a adoção de um “Plano de Gestão de Riscos de Fraude e Infrações Conexas”, a realização de ações de formação para as equipas técnicas e de divulgação junto dos beneficiários, e ainda a adoção de procedimentos internos para análise do risco e estabelecimento de procedimentos internos de natureza corretiva.

O Plano de Gestão de Riscos de Corrupção e Infrações Conexas visa fundamentalmente identificar as situações potenciadoras de riscos de corrupção e/ou de infrações conexas, elencar medidas preventivas e corretivas que minimizem a probabilidade de ocorrência do risco e definir a metodologia de adoção e monitorização das medidas elencadas, identificando os respetivos responsáveis.

Tais planos devem conter, nomeadamente, os seguintes elementos:

- a) Identificação, relativamente a cada área ou departamento, dos riscos de corrupção e infrações conexas;
- b) Com base na identificação dos riscos, identificação das medidas adotadas que previnam a sua ocorrência (por exemplo, mecanismos de controlo interno, segregação de funções, definição prévia de critérios gerais e abstratos, designadamente na concessão de benefícios públicos e no recurso a especialistas externos, nomeação de júris diferenciados para cada concurso, programação de ações de formação adequada, etc.);
- c) Definição e identificação dos vários responsáveis envolvidos na gestão do plano, sob a direção do órgão dirigente máximo;
- d) Elaboração anual de um relatório sobre a execução do plano.





Para efeitos da elaboração destes planos devem ser considerados, para além dos conceitos de fraude e corrupção já referidos, o conceito de Crimes Conexos:



- **Tráfico de influências:** *consiste na prática ilegal de uma pessoa se aproveitar da sua posição privilegiada dentro de uma empresa ou entidade, ou das suas conexões com pessoas em posição de autoridade, para obter favores ou benefícios para terceiros, geralmente em troca de favores ou pagamento.*
- **Peculato:** *em razão do cargo, o colaborador tem a posse de coisa móvel pertencente à administração pública ou sob a guarda desta (a qualquer título), e dela se apropria, ou a distrai do seu destino, em proveito próprio ou de outrem.*
- **Concussão:** *é o ato de exigir para si ou para outrem, dinheiro ou vantagem em razão da função, direta ou indiretamente, ainda que fora da função ou antes de assumi-la, mas em razão dela, vantagem indevida.*
- **Suborno:** *é a prática de prometer, oferecer ou pagar a uma autoridade, governante, funcionário público ou profissional da iniciativa privada qualquer quantidade de dinheiro ou quaisquer outros favores para que a pessoa em questão deixe de se portar eticamente com seus deveres profissionais.*
- **Participação Económica em Negócio:** *preenche o crime de participação económica em negócio o colaborador que, no exercício das suas funções públicas, ao invés de atuar como zelador do interesse público que lhe está confiado, abusa dos poderes conferidos pela titularidade do cargo com finalidade lucrativa para si ou para terceiro.*
- **Abuso de Poder:** *é o ato ou efeito de impor a vontade de um sobre a de outro, tendo por base o exercício do poder, sem considerar as leis vigentes.*



### Avaliação de risco de fraude

A avaliação de risco de fraude deverá ser efetuada de modo a serem identificadas e sinalizadas as situações de risco relacionadas com os principais processos da implementação dos Programas, tendo em conta os aspetos assinalados no quadro seguinte.

<b>Avaliação de Risco</b>	
<b>Nível</b>	Identificação do nível a que é realizada a avaliação: a nível organizacional, a nível de uma atividade específica
<b>Responsável pela realização</b>	A equipa deve conter representantes dos diferentes departamentos /unidades / núcleos da entidade
<b>Supervisão</b>	A hierarquia de topo da entidade deve realizar uma adequada supervisão, quando não estiver envolvida no processo de aprovação do nível de exposição ao risco residual
<b>Instrumentos para a deteção da fraude</b>	Relatórios de auditoria, relatórios de fraude, exercícios de autoavaliação do controlo interno, denúncias, sistema de idoneidade e fiabilidade ou outra fonte de informação
<b>Tipos de risco</b>	Identificação do risco interno e externo
<b>Periodicidade</b>	A avaliação deve ser realizada numa base anual durante o período de programação ou sempre que ocorram alterações significativas ao sistema de gestão e controlo, sendo que a primeira será efetuada antes da Designação ou até 6 meses após esse ato
<b>Procedimentos</b>	Elaboração de disposições internas que descrevam os procedimentos para a avaliação do risco de fraude
<b>Evidência</b>	Identificação da ferramenta utilizada para a realização do exercício de avaliação de risco. O processo de avaliação deve ser devidamente documentado, permitindo uma clara revisão das conclusões obtidas
<b>Tratamento dos resultados e monitorização</b>	Caso a avaliação do risco de fraude demonstre a existência de um risco residual de fraude significativo ou crítico – devido a insuficiência de controlo interno para mitigar o risco de fraude – devem ser adotados procedimentos para transpor os resultados da avaliação de risco num plano de ação, bem como procedimentos para o seu follow-up. Devem ser identificadas as ações e respetiva calendarização, bem como os responsáveis pela sua realização

Para efeitos de avaliação de risco de fraude, e com base no documento de orientações da CE *“Guidance for Member States and Programme Authorities on fraud risk assessment and effective and proportionate anti-fraud measures”* (EGESIF\_14-0021-00, de 16 de junho), foi desenvolvida uma ferramenta de auto-avaliação em risco de fraude, cujo principal objetivo é facilitar a realização da auto-avaliação pelas AG quanto ao impacte e respetivas probabilidades da ocorrência de cenários específicos de fraude.



N.º 04/AD&C/2015 - Data: 2015/04/23

Esta ferramenta, foi estruturada em torno de três processos chaves que se consideram de maior vulnerabilidade à incidência de risco de fraude:

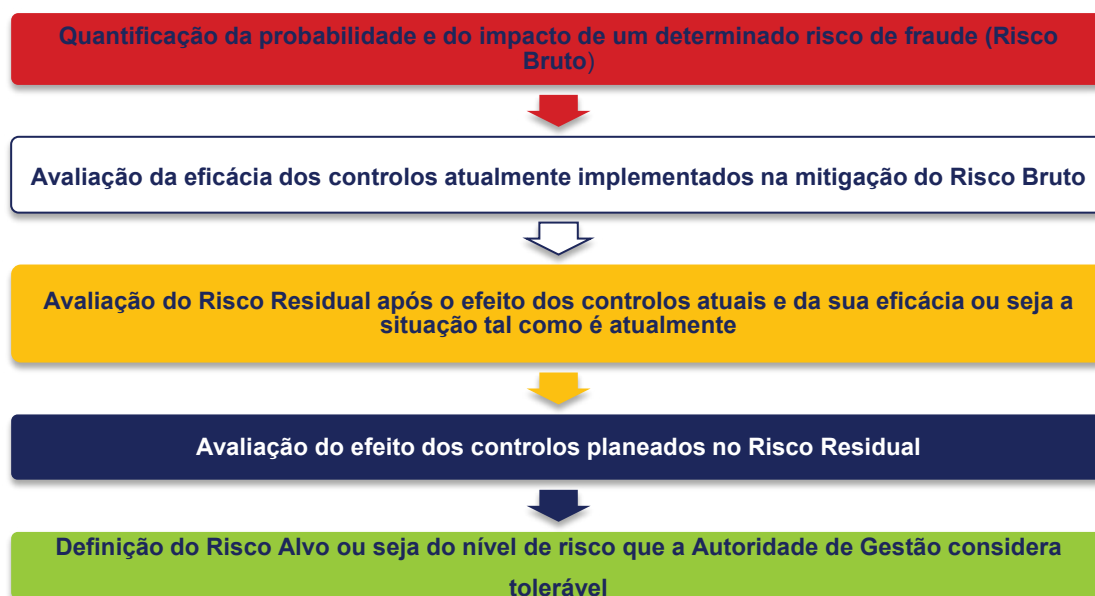
1. seleção das candidaturas;
2. execução e verificação das operações (com forte enfoque em matéria de contratação pública);
3. validação das despesas e consequente proposta de pagamento ou pagamento se aplicável.

A ferramenta contempla igualmente a avaliação de risco de fraude relativamente a qualquer procedimento de contratação pública desenvolvido diretamente pela AG, por exemplo no contexto da assistência técnica.

De salientar que sendo esta ferramenta dinâmica, a mesma permite às AG a integração de outros riscos que venham a ser identificados e que justifiquem uma avaliação de risco de fraude.

Esta ferramenta bem como os aspetos a serem ponderados na sua aplicação integram o Anexo da presente Norma.

A metodologia para esta auto-avaliação de risco de fraude encontra-se estruturada em 5 passos:



Assim e para cada um dos riscos específicos, o objetivo principal consiste na avaliação do risco bruto da ocorrência de determinados cenários de fraude, identificando e avaliando a eficácia dos controlos atualmente implementados na mitigação desses riscos de fraude.

Caso a avaliação do risco de fraude demonstre a existência de um risco residual de fraude significativo ou crítico – devido a insuficiência de controlo interno para mitigar o risco de fraude – devem ser adotados procedimentos para



N.º 04/AD&C/2015 - Data: 2015/04/23

transpor os resultados da avaliação de risco num plano de ação, bem como procedimentos para o seu follow-up. Devem ser identificadas as ações e respetiva calendarização, bem como os responsáveis pela sua realização.

Dependendo da dimensão do Programa e da AG, a avaliação do risco de fraude deverá ser efetuada por uma equipa que contenha representantes das diferentes áreas de intervenção/departamentos das AG, sendo recomendável que a gestão de topo realize uma adequada supervisão e/ou esteja envolvida no processo de avaliação do nível de exposição ao risco residual.

A avaliação do risco de fraude (auto-avaliação) a desenvolver pela AG deve ser devidamente documentada, permitindo uma clara revisão das conclusões obtidas

#### 4.2.2 Segundo pilar da estratégia: Detecção

Conforme referido anteriormente, um sistema de gestão e controlo que funcione adequadamente e que se baseie em instrumentos de apoio à deteção de irregularidades e casos de suspeita de fraude, configura um importante mecanismo de deteção da fraude. Assim, e tendo em vista a deteção de irregularidades e casos de suspeita de fraude, no âmbito da execução das suas funções as entidades responsáveis devem:

- ponderar os resultados da avaliação de risco por forma a que as áreas de maior risco sejam contempladas nos controlos/auditorias;
- realizar verificações cruzadas de informação junto de terceiros em casos de suspeita de fraude. Neste âmbito serão definidos protocolos com outras entidades;
- utilizar uma ferramenta específica para identificar situações suscetíveis de risco de fraude, conflito de interesse ou irregularidade, bem como monitorizar a informação fornecida por essa ferramenta, de modo a que no âmbito da realização das verificações sejam ponderados os sinais de alerta (red flags) e indicadores de fraude<sup>10</sup>;
- elaborar e monitorizar uma listagem sobre esquemas fraudulentos, de modo a que no âmbito das verificações sejam referenciadas situações que indiciam risco de fraude elevado;
- sensibilizar os colaboradores, nomeadamente os que executam os controlos/auditorias, sobre situações de fraude;
- adotar uma política de recursos humanos adequada, bem como proceder à sua monitorização nomeadamente através da realização de auditorias internas;
- monitorizar a cumprimento do código de ética e conduta;
- definir procedimentos de comunicação e gestão de denúncias;

<sup>10</sup> A Agência, IP desenvolverá no âmbito do PORTUGAL2020 - Base Única de Promotores uma ferramenta de identificação de idoneidade.



N.º 04/AD&C/2015 - Data: 2015/04/23

- considerar no âmbito dos controlos/auditorias as denúncias<sup>11</sup> efetuadas;
- considerar as queixas apresentadas ao curador do beneficiário, diretamente relacionadas com atos ou omissões dos órgãos de governação, nos termos do artigo 63.º do Decreto-Lei n.º 137/2014.

#### 4.2.3 Terceiro pilar da estratégia: Correção e mecanismos de reporte

As entidades deverão estabelecer procedimentos para o seguimento de qualquer caso de irregularidade e suspeita de fraude relacionado com a recuperação de fundos comunitários aplicados de forma fraudulenta, que incluam os seguintes aspetos:

- registo célere de irregularidades e casos de fraude em sistema de informação – Controlo e Auditorias, no sistema contabilístico de dívidas sempre que tenha havido lugar a um pagamento, bem como para o respetivo acompanhamento;
- comunicação de irregularidades, suspeitas de fraude e casos de fraude ao AFCOS/OLAF via sistema de gestão de irregularidades (IMS);
- comunicação de casos de suspeita de fraude às entidades competentes (v.g. Ministério Público, Tribunal de Contas, IGF, Autoridade Tributária e Aduaneira), dando sempre conhecimento à IGF na qualidade de AFCOS;
- correção e recuperação dos montantes irregulares, nomeadamente os que decorrem de casos de fraude;
- aplicação das sanções (impedimentos e condicionamentos<sup>12</sup>) previstas no artigo 14.º do Decreto-Lei n.º 159/2014, de 27 de outubro, que estabelece as regras gerais de aplicação dos PO financiados pelos FEEI;
- aplicação de sanções aos colaboradores no caso de desrespeito, nomeadamente, pelo código de ética e conduta;
- acompanhamento do processo administrativo e judicial das irregularidades<sup>13</sup>;
- considerar as recomendações proferidas pelo curador<sup>14</sup> do beneficiário.

Estes procedimentos deverão ser transmitidos aos colaboradores das diferentes entidades responsáveis pela gestão e controlo dos fundos comunitários.

<sup>11</sup> No portal do PORTUGAL2020 será criada uma área específica para a apresentação de denúncias e queixas, sem prejuízo de outras formas que sejam utilizadas.

<sup>12</sup> Vidé nota 10.

<sup>13</sup> Vidé nota 10.

<sup>14</sup> Nos termos do artigo 63.º do Decreto-Lei n.º 137/2014 compete ao curador do beneficiário receber e apreciar as queixas, apresentadas pelos beneficiários dos FEEI, diretamente relacionadas com atos ou omissões dos órgãos de governação, e emitir recomendações sobre elas.



N.º 04/AD&C/2015 - Data: 2015/04/23

Por outro lado, deverão ser divulgados, quer interna quer externamente (nomeadamente aos beneficiários e potenciais beneficiários), os resultados da implementação da estratégia antifraude a adotar pelas AG.

Sublinha-se que a IGF – na qualidade de AFCOS – definirá os procedimentos de articulação com as diferentes entidades responsáveis pela gestão e controlo dos fundos comunitários em matéria de comunicação de irregularidades, casos de suspeita de fraude, coordenação e implementação da estratégia antifraude, em respeito pelo princípio de segregação de funções.

## 5. Prioridades e calendarização

No quadro seguinte são identificadas as prioridades da estratégia antifraude, bem como a calendarização para a sua execução para um período de três anos.

Anos	Prioridades
2015	Elaboração da Descrição do sistema de gestão e controlo - Estabelecimento de orientações e definição das metodologias para a concretização das ações subjacentes aos princípios éticos e normas de conduta e para a avaliação de risco de fraude
	Realização de ações de formação e sensibilização em matéria de combate à fraude, avaliação do risco de fraude e adoção de medidas que mitiguem as áreas de risco identificadas
	Realização da avaliação de risco (a efetuar anualmente, sendo que a primeira deverá ser efetuada antes da Designação ou até 6 meses após esse ato)
2016	Consolidação e implementação das metodologias
	Implementação de procedimentos de controlo interno que se revelem adequados para mitigar as áreas em que o risco de fraude é considerado significativo
	Avaliação, no quadro das auditorias a realizar, da efetiva implementação de medidas antifraude
2017	Em função dos resultados, revisão da estratégia antifraude e consequentemente das metodologias especificamente criada para esse efeito
	Revisão dos resultados da avaliação de risco desenvolvida ao nível das AG
	Reorientação das prioridades estratégicas para as áreas de risco significativo identificadas



norma

N.º 04/AD&C/2015 - Data: 2015/04/23

Anexos





norma

N.º 04/AD&C/2015 - Data: 2015/04/23

# Ferramenta de Avaliação de Risco de Fraude





## ANEXO – FERRAMENTA DE AVALIAÇÃO DE RISCO DE FRAUDE

A ferramenta de autoavaliação de risco foi estruturada em suporte Excel e tal como já referido incide sobre as seguintes áreas específicas de risco, podendo sempre que se justifique serem adicionadas novas áreas:

1. Seleção das candidaturas;
2. Execução e verificação das operações (com forte enfoque em matéria de contratação pública);
3. Validação das despesas e consequente proposta de pagamento ou pagamento se aplicável;
4. Procedimentos de contratação pública adjudicados diretamente pela AG.

Cada um destes processos contém riscos específicos que se encontram identificados e numerados (ex. SR1, SR2 etc.) e precedidos por uma folha de cobertura que identifica os riscos específicos relevantes para o processo.

Para auxílio do exercício de autoavaliação, a ferramenta disponibilizada integra um conjunto de situações de risco pré-definidas que deverão ser alvo de avaliação pelas AG. Na eventualidade de virem a ser identificadas novas situações adicionais de risco estas poderão ser integradas através do seu acréscimo em novas linhas.

Título da coluna	Orientações
<b>Ref.</b>	Uma única referência de risco. As letras referem-se à secção o onde o risco foi identificado. (SR = Seleção dos beneficiários, IR = Implementação e monitorização, CR = Validação e pagamento e PR = Procedimentos de CP adjudicados diretamente pela AG) e o número será a referência de identificação sequencial. Este campo apenas necessita de ser preenchido para novos riscos identificados.
<b>Designação do Risco</b>	Este campo apenas necessita de ser preenchido para novos riscos identificados.
<b>Descrição do Risco</b>	Este campo apenas necessita de ser preenchido para novos riscos identificados.
<b>Atores envolvidos no risco?</b>	Identificação dos organismos aos quais os indivíduos envolvidos na perpetração de fraudes pertencem, são indicados neste campo Este campo apenas necessita de ser preenchido para novos riscos identificados.
<b>O risco é interno (à AG), externo ou resulta de conluio?</b>	Detalhes de que a fraude será interna (apenas na AG), externa (somente numa das entidades externas à AG) ou em resultado de uma concertação (envolvendo uma ou mais entidades) são indicados neste campo. Este campo apenas necessita de ser preenchido para novos riscos identificados.



# Os 5 passos-chave na autoavaliação de riscos

## 1 Risco bruto

Refere-se ao nível de risco existente antes de se ter em conta o efeito de quaisquer controlos efetuados ou previstos. A quantificação do risco consiste normalmente numa combinação da “probabilidade” do mesmo – quão provável é de acontecer e o “impacto” do risco – que consequências terá financeira e não financeiramente.

De forma a garantir a consistência da avaliação, deverá ser estabelecida uma calendarização após determinada a probabilidade, que neste caso deverá ser o período de sete anos da programação.

Designação da Coluna	Orientações															
<b>Impacto do Risco (Bruto)</b>	<p>A partir do menu de seleção, a equipa de avaliação deverá selecionar uma valoração de 1 a 4, de acordo com a consequência que o risco teria caso tivesse ocorrido, de acordo com os seguintes critérios:</p> <table border="1"><thead><tr><th></th><th>Classificação</th><th>Por objetivos</th></tr></thead><tbody><tr><td>1</td><td>Impacto limitado</td><td>Trabalhos adicionais atrasam outros processos</td></tr><tr><td>2</td><td>Impacto reduzido</td><td>Concretização do objetivo operacional adiado</td></tr><tr><td>3</td><td>Grande impacto, ex. quando a natureza da fraude é particularmente grave ou envolve vários beneficiários.</td><td>Concretização dos objetivos operacionais pode estar comprometida ou adiada</td></tr><tr><td>4</td><td>Inquérito formal por parte dos interessados</td><td>Objetivos estratégicos comprometidos</td></tr></tbody></table>		Classificação	Por objetivos	1	Impacto limitado	Trabalhos adicionais atrasam outros processos	2	Impacto reduzido	Concretização do objetivo operacional adiado	3	Grande impacto, ex. quando a natureza da fraude é particularmente grave ou envolve vários beneficiários.	Concretização dos objetivos operacionais pode estar comprometida ou adiada	4	Inquérito formal por parte dos interessados	Objetivos estratégicos comprometidos
	Classificação	Por objetivos														
1	Impacto limitado	Trabalhos adicionais atrasam outros processos														
2	Impacto reduzido	Concretização do objetivo operacional adiado														
3	Grande impacto, ex. quando a natureza da fraude é particularmente grave ou envolve vários beneficiários.	Concretização dos objetivos operacionais pode estar comprometida ou adiada														
4	Inquérito formal por parte dos interessados	Objetivos estratégicos comprometidos														
<b>Probabilidade do Risco (Bruto)</b>	<p>A partir do menu de seleção, a equipa de avaliação do risco deverá selecionar a uma pontuação de 1 a 4 da probabilidade do risco, baseada na probabilidade do risco ocorrer no período dos sete anos de programação, de acordo com os seguintes critérios:</p> <table border="1"><tbody><tr><td>1</td><td>Quase nunca ocorrerá</td></tr><tr><td>2</td><td>Raramente ocorrerá</td></tr><tr><td>3</td><td>Ocorrerá algumas vezes</td></tr><tr><td>4</td><td>Ocorrerá com frequência</td></tr></tbody></table>	1	Quase nunca ocorrerá	2	Raramente ocorrerá	3	Ocorrerá algumas vezes	4	Ocorrerá com frequência							
1	Quase nunca ocorrerá															
2	Raramente ocorrerá															
3	Ocorrerá algumas vezes															
4	Ocorrerá com frequência															
<b>Classificação Total do Risco (Bruto)</b>	<p>Este campo é automaticamente calculado a partir das informações de Impacto e Probabilidade do Risco. É classificado de acordo com a seguinte pontuação:</p> <ul style="list-style-type: none"><li>• 1 – 3 – Tolerável (Verde)</li><li>• 4 – 6 – Significante (Laranja)</li><li>• 8 – 16 – Crítico (Vermelho)</li></ul>															



## 2 Controlos de mitigação do risco atuais

Na ferramenta de autoavaliação encontra-se pré-definido um conjunto de controlos, não obstante podem ainda ser aduzidos outros que se considerem adequados para mitigar os riscos identificados.

Poderá acontecer que um controlo atualmente atribuído a um risco particular, também possa ser relevante para outros riscos - em tais casos, os controlos podem ser repetidos tantas vezes quanto as necessárias. Em particular, o exercício pode ser facilitado fazendo uma ligação aos atuais controlos que são descritos e/ou listados, por exemplo, na Descrição dos Sistemas de Gestão e Controlo e manuais de procedimentos.

Designação da Coluna	Orientações
<b>Ref. do Controlo</b>	Uma única referência de controlo. Os números foram sequencialmente atribuídos a cada risco, exemplo SR1 começa com SC 1.1, Controlos do risco IR2 começa com IC 2.1.  Este campo apenas necessita de ser preenchido para os novos riscos identificados
<b>Descrição do Controlo</b>	Este campo apenas necessita de ser preenchido para novos riscos identificados.
<b>Qual a fonte de informação que prevê a execução deste Controlo?</b>	Deverá ser identificado a fonte de informação em que se encontra prevista a execução do controlo, por exemplo em determinada página da Descrição do Sistema de Gestão e Controlo ou Manual de Procedimentos, etc.
<b>Existe evidência da operacionalização deste controlo?</b>	A partir do menu de seleção a equipa de avaliação de riscos deverá selecionar “sim” ou “não” se a evidência do controlo se encontra documentada.
<b>O controlo é regularmente testado?</b>	A partir do menu de seleção, a equipa de avaliação de riscos deverá selecionar “sim” ou “não” para confirmar se a operacionalização do controlo é testada com regularidade. Esta tarefa poderá ser avaliada por uma equipa de auditoria interna ou externa, ou por qualquer outro mecanismo de monitorização.
<b>Qual o nível de confiança relativamente à eficácia deste controlo?</b>	Com base nas respostas às duas anteriores questões, a equipa de avaliação de riscos deverá indicar qual o nível de confiança relativamente à eficácia do controlo na mitigação dos riscos identificados (alta, media ou baixa). Se a eficácia do controlo não é clara ou não é testável, o nível de confiança será baixo. Se o controlo não é evidente, então claramente, não será testável.
<b>Resultado do efeito de controlos combinados no impacto de risco, considerando os níveis de confiança.</b>	A partir do menu de seleção, a equipa de avaliação de riscos deverá indicar uma pontuação de -1 a -4, valorando o quanto se acredita que o impacto do risco foi reduzido pelos controlos existentes. Os controlos que detetam fraudes reduzem o impacto dessa fraude se demonstrarem que o mecanismo de controlo interno funciona.
<b>Resultado do efeito dos controlos</b>	A partir do menu de seleção, a equipa de avaliação de riscos deverá



Designação da Coluna	Orientações
<b>combinados na probabilidade de riscos, tendo em conta os níveis de confiança.</b>	indicar uma pontuação de -1 a -4, indicando o quanto se acredita que a probabilidade de ocorrência do risco terá sido reduzida pelos controlos existentes. Os controlos que detetam fraudes reduzindo o impacto da fraude apenas reduzem de forma indireta a probabilidade de ocorrência de fraudes.



## 3 Risco Residual

Refere-se ao nível de risco após ter em consideração o efeito da realização de qualquer controlo e a sua eficácia i.e. a situação tal como é atualmente.

Coluna	Referência														
<b>Impacto do Risco (Residual)</b>	<p>Esta célula é automaticamente calculada através da dedução do efeito combinado dos controlos que mitigam o Impacto do Risco Bruto. O resultado deve ser revisto tendo em conta os seguintes critérios de forma a confirmar se a avaliação se mantém razoável:</p> <table border="1"><thead><tr><th>Classificação</th><th>Por objetivos</th></tr></thead><tbody><tr><td>1</td><td>Impacto limitado</td><td>Trabalhos adicionais atrasam outros processos</td></tr><tr><td>2</td><td>Impacto reduzido</td><td>Concretização do objetivo operacional adiado</td></tr><tr><td>3</td><td>Grande impacto, ex. quando a natureza da fraude é particularmente grave ou envolve vários beneficiários.</td><td>Concretização dos objetivos operacionais pode estar comprometida ou adiada</td></tr><tr><td>4</td><td>Inquérito formal por parte dos interessados</td><td>Objetivos estratégicos comprometidos</td></tr></tbody></table>	Classificação	Por objetivos	1	Impacto limitado	Trabalhos adicionais atrasam outros processos	2	Impacto reduzido	Concretização do objetivo operacional adiado	3	Grande impacto, ex. quando a natureza da fraude é particularmente grave ou envolve vários beneficiários.	Concretização dos objetivos operacionais pode estar comprometida ou adiada	4	Inquérito formal por parte dos interessados	Objetivos estratégicos comprometidos
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1	Impacto limitado	Trabalhos adicionais atrasam outros processos													
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4	Inquérito formal por parte dos interessados	Objetivos estratégicos comprometidos													
<b>Probabilidade do Risco (Residual)</b>	<p>Esta célula é automaticamente calculada através da dedução do efeito combinado dos controlos que mitigam a Probabilidade do Risco Bruto. O resultado deve ser revisto com base nos seguintes critérios para confirmar a razoabilidade da avaliação:</p> <table border="1"><tbody><tr><td>1</td><td>Quase nunca ocorrerá</td></tr><tr><td>2</td><td>Raramente ocorrerá</td></tr><tr><td>3</td><td>Ocorrerá algumas vezes</td></tr><tr><td>4</td><td>Ocorrerá com frequência</td></tr></tbody></table>	1	Quase nunca ocorrerá	2	Raramente ocorrerá	3	Ocorrerá algumas vezes	4	Ocorrerá com frequência						
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4	Ocorrerá com frequência														
<b>Pontuação Total do Risco (Residual)</b>	<p>Esta célula é automaticamente calculada através dos valores do Impacto do Risco e da Probabilidade. Será classificada de acordo com os seguintes intervalos:</p> <ul style="list-style-type: none"><li>• 1 – 3 – Tolerável (Verde)</li><li>• 4 – 6 – Significante (Laranja)</li><li>• 8 – 16 – Crítico (Vermelho)</li></ul>														



## 4 Plano de ação para a concretização de medidas antifraude eficazes e proporcionadas

Coluna	Referência
<b>Controlo adicional planeado</b>	Deve ser apresentada uma descrição completa dos controlos planeados /medidas antifraude eficazes e proporcionadas. <b>O Anexo 2 da Nota EGESIF_14-0021-00, de 16-06-2014, disponibiliza um conjunto de exemplos de controlos de mitigação.</b>
<b>Responsável</b>	Deverá ser identificado um responsável, que pode ser individual ou por área funcional, para qualquer controlo planeado. Este responsável deve concordar em assumir a responsabilidade pelo controlo nomeadamente na sua implementação e funcionamento efetivo.
<b>Prazo de implementação</b>	Deve ser apresentado um prazo para a implementação do novo controlo. O responsável deverá concordar com este prazo e comprometer-se com o seu cumprimento na implementação do novo controlo.
<b>Resultado do efeito combinado dos controlos adicionais no Impacto do Risco Residual</b>	A partir do menu de seleção a equipa de avaliação do risco deve selecionar uma pontuação entre -1 a -4 refletindo o quanto acredita que o impacto do risco será reduzido através dos novos controlos planeados.
<b>Resultado do efeito combinado dos controlos adicionais na Probabilidade do Risco Residual.</b>	A partir do menu de seleção a equipa de avaliação do risco deve selecionar uma pontuação entre -1 a -4 refletindo o quanto acredita que a probabilidade do risco será reduzida através dos novos controlos planeados



**5** O **Risco Alvo** refere-se ao nível do risco após ter em conta o efeito de qualquer controlo quer em realização quer planeado.

Coluna	Referência															
<b>Impacto do Risco (Alvo)</b>	<p>Esta célula é automaticamente calculada através da dedução do efeito combinado dos controlos que mitigam o Impacto do Risco Residual. O resultado deve ser revisto tendo em conta os seguintes critérios de forma a confirmar se a avaliação se mantém razoável:</p> <table border="1"><thead><tr><th></th><th>Classificação</th><th>Por objetivos</th></tr></thead><tbody><tr><td>1</td><td>Impacto limitado</td><td>Trabalhos adicionais atrasam outros processos</td></tr><tr><td>2</td><td>Impacto reduzido</td><td>Concretização do objetivo operacional adiado</td></tr><tr><td>3</td><td>Grande impacto, ex. quando a natureza da fraude é particularmente grave ou envolve vários beneficiários.</td><td>Concretização dos objetivos operacionais pode estar comprometida ou adiada</td></tr><tr><td>4</td><td>Inquérito formal por parte dos interessados</td><td>Objetivos estratégicos comprometidos</td></tr></tbody></table>		Classificação	Por objetivos	1	Impacto limitado	Trabalhos adicionais atrasam outros processos	2	Impacto reduzido	Concretização do objetivo operacional adiado	3	Grande impacto, ex. quando a natureza da fraude é particularmente grave ou envolve vários beneficiários.	Concretização dos objetivos operacionais pode estar comprometida ou adiada	4	Inquérito formal por parte dos interessados	Objetivos estratégicos comprometidos
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<b>Probabilidade do Risco (Alvo)</b>	<p>Esta célula é automaticamente calculada através da dedução do efeito combinado dos controlos que mitigam a Probabilidade do Risco Residual. O resultado deve ser revisto com base nos seguintes critérios para confirmar a razoabilidade da avaliação:</p> <table border="1"><tbody><tr><td>1</td><td>Quase nunca ocorrerá</td></tr><tr><td>2</td><td>Raramente ocorrerá</td></tr><tr><td>3</td><td>Ocorrerá algumas vezes</td></tr><tr><td>4</td><td>Ocorrerá com frequência</td></tr></tbody></table>	1	Quase nunca ocorrerá	2	Raramente ocorrerá	3	Ocorrerá algumas vezes	4	Ocorrerá com frequência							
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4	Ocorrerá com frequência															
<b>Pontuação Total do Risco (Alvo)</b>	<p>Esta célula é automaticamente calculada através dos valores do Impacto do Risco e da Probabilidade. Será classificada de acordo com os seguintes intervalos:</p> <ul style="list-style-type: none"><li>• 1 – 3 – Tolerável (Verde)</li><li>• 4 – 6 – Significante (Laranja)</li><li>• 8 – 16 – Crítico (Vermelho)</li></ul>															

## 1: AVALIAÇÃO DA EXPOSIÇÃO A RISCOS DE FRAUDE ESPECÍFICOS - SELEÇÃO DE CANDIDATURAS PELAS AUTORIDADES DE GESTÃO

DESCRIÇÃO DO RISCO						
Ref.	Designação do Risco	Descrição do Risco	Atores envolvidos no risco? (Autoridade de Gestão (AG) / Organismos Intermédios (OI) / Beneficiários (BF) / Entidades Terceiras (ET))	O risco é interno (AG), externo ou se resulta de conluio?	Este risco é relevante para a Autoridade de Gestão?	Se a resposta foi NÃO deverá ser apresentada fundamentação.
SR1	Conflito de interesses dos colaboradores com responsabilidade pela análise de candidaturas	Os colaboradores da AG influenciam de forma intencional a análise e a seleção de candidaturas, com o objetivo de favorecer determinados candidatos, nomeadamente através de tratamento preferencial na avaliação das candidaturas desses candidatos ou exercendo pressão sobre outros elementos da equipa de avaliação.	Autoridade de Gestão e Beneficiários	Interno / Conluio		
SR2	Falsas declarações prestadas pelos candidatos	Os candidatos prestam falsas declarações em sede de candidatura com o objetivo de levar a equipa de análise a considerar que são cumpridos os critérios de seleção, com a consequente aprovação das respetivas candidaturas.	Beneficiários	Externo		
SR3	Duplo financiamento	Uma entidade apresenta a mesma candidatura para beneficiar de duplo financiamento pelo mesmo fundo ou por diferentes fundos comunitários e/ou em diversos Estados Membros, sem que essa situação seja devidamente declarada.	Beneficiários	Externo		
SRX		<i>Identificar outras situações de risco ...</i>				











## 2: AVALIAÇÃO DA EXPOSIÇÃO A RISCOS DE FRAUDE ESPECÍFICOS - EXECUÇÃO DAS OPERAÇÕES (vg. Contratação Pública e Custos com Pessoal)

DESCRIÇÃO DO RISCO							
Ref.	Designação do Risco	Descrição do Risco	Descrição detalhada do Risco	Atores envolvidos no risco? (Autoridade de Gestão (AG) / Organismos Intermédios (OI) / Beneficiários (BF) / Entidades Terceiras (ET))	O risco é interno (AG), externo ou a resulta de conluio?	Este risco é relevante para a Autoridade de Gestão?	Se a reposta foi NÃO deverá ser apresentada fundamentação.
<b>Implementação - Riscos na contratação pública nas aquisições promovidas e geridas pelos Beneficiários</b>							
IR1	Conflitos de interesse ou subornos e comissões ilegais	Um colaborador do beneficiário favorece um concorrente porque: - existe um conflito de interesse não declarado ou - foram pagos subornos ou comissões ilegais	1) Os beneficiários podem adjudicar contratos a entidades com as quais um dos seus colaboradores tem um determinado interesse, podendo este ser financeiro ou de outro tipo. Do mesmo modo, as entidades podem não identificar todas as situações de conflito de interesse quando apresentam propostas num determinado procedimento de contratação pública, ou 2) As entidades concorrentes podem subornar ou oferecer comissões ilegais a um dos colaboradores do beneficiário com o objetivo de influenciar a adjudicação dos respetivos contratos.	Beneficiários e Entidades Terceiras	Externo		
IR2	A adoção de procedimentos que violem o princípio da concorrência	Um beneficiário evita a adoção de procedimentos de contratação pública que promovam a concorrência com o objetivo de favorecer um determinado concorrente, quer no que respeita a novas aquisições de bens ou serviços quer no que envolve a manutenção/prorrogação de contratos já existentes, através de : - fracionamento ou - ajustes diretos injustificados ou - não adoção de um procedimento concursal ou - extensões/prorrogações irregulares de contratos.	1) Os Beneficiários podem fracionar uma aquisição em 2 ou mais parcelas ou aquisições com o objetivo de evitar a abertura de um procedimento concursal mais exigente ou 2) Os Beneficiários podem falsificar a fundamentação dos procedimentos através da adoção de especificações técnicas restritivas ou limitadas com a finalidade de selecionar um determinado concorrente ou 3) Os Beneficiários podem adjudicar contratos para favorecer entidades terceiras sem a adoção de um adequado procedimento concursal ou 4) Os Beneficiários podem autorizar a manutenção ou renovação de contatos existentes através de adendas ou de condições suplementares, com o objetivo de evitar um novo procedimento concursal.	Beneficiários e Entidades Terceiras	Externo		
IR3	Manipulação de procedimentos concursais	Um colaborador do Beneficiário favorece um determinado concorrente através de: - falsas especificações ou - divulgação de informação confidencial ou privilegiada ou - manipulação das propostas.	1) Os Beneficiários podem incluir intencionalmente requisitos ou especificações que correspondem às qualificações de um determinado concorrente ou que só podem ser cumpridos por um concorrente específico. As especificações que são muito restritivas e particulares podem ter como finalidade a exclusão de outros potenciais concorrentes ou 2) O pessoal envolvido no processo de contratação, na conceção do projeto ou das especificações ou na avaliação das propostas pode divulgar informação confidencial ou privilegiada com o intuito de favorecer um determinado concorrente, dando-lhe a possibilidade de apresentar uma proposta mais favorável em termos técnicos e/ou financeiros. Exemplos dessa informação privilegiada podem ser as soluções técnicas preferenciais, detalhes das propostas de outros concorrentes ou os limites orçamentais preferenciais ou 3) Os Beneficiários podem manipular as propostas após a sua receção de forma a garantir a seleção de um determinado fornecedor.	Beneficiários e Entidades Terceiras	Externo		
IR4	Concertação de propostas	Os concorrentes manipulam o procedimento concursal com o objetivo da proposta de um determinado concorrente ser vencedora e, assim, adjudicada. Esta manipulação pode ser conseguida através do conluio entre concorrentes ou com recurso a falsos concorrentes: - propostas em conluio incluindo propostas de empresas com ligações entre si ou - empresas fictícias.	1) Os concorrentes de uma determinada área geográfica, região ou atividade podem concertar-se de forma a eliminar a concorrência e aumentar os preços praticados através de vários esquemas de propostas concertadas, tais como: propostas complementares, supressão de propostas, rotação de propostas e divisão do mercado ou 2) Os concorrentes apresentam propostas de falsos fornecedores de forma a inflacionar os custos.	Entidades Terceiras	Externo		
IR5	Preços (orçamentos) inadequados	Um concorrente manipula o procedimento não identificando, nas suas propostas, toda a informação necessária para a determinação do preço final.	Os concorrentes podem não incluir nas propostas informação atualizada, completa ou precisa sobre os custos ou a determinação do preço, do que poderá resultar um aumento do valor do contrato.	Entidades Terceiras	Externo		
IR6	Manipulação dos orçamentos e da faturação	Um adjudicatário pode manipular os orçamentos ou a faturação de forma a sobrefaturar ou refaturar determinadas despesas. - Duplicação dos custos ou - Faturas falsas, inflacionadas ou duplicadas.	1) Um fornecedor que desempenhe, em simultâneo, outras atividades similares pode faturar os mesmos custos (pessoal, custos administrativos, etc.) ou as mesmas despesas em vários contratos ou 2) Os adjudicatários podem, intencionalmente, submeter faturas falsas, inflacionadas ou duplicadas, podendo fazê-lo a título individual ou em concertação com os colaboradores do Beneficiário.	Entidades Terceiras	Externo		
IR7	Trabalhos, Bens e/ou serviços não fornecidos ou substituídos	Os fornecedores violam as condições contratuais através da não entrega dos produtos ou trabalhos previstos ou procedendo à sua alteração ou substituição por outros de qualidade inferior: - Substituição de produtos ou - Trabalhos não realizados ou - Não existência dos produtos ou operações não efetuadas de acordo com as especificações contratuais.	1) Os fornecedores podem, de forma intencional, substituir os bens previstos contratualmente por outros de qualidade inferior ou que não cumpram as especificações contratuais. Os Beneficiários podem ser cúmplices neste esquema de fraude ou 2) Alguns ou mesmo todos os produtos e/ou serviços a prestar no âmbito de um contrato podem não ser fornecidos, ou pode o contrato não ser intencionalmente cumprido nas condições previstas. 3) Alguns ou mesmo todos os trabalhos a realizar no âmbito de um contrato podem não ser executados, ou pode o contrato não ser intencionalmente cumprido nas condições previstas.	Beneficiários ou Entidades Terceiras	Externo		
IR8	Alterações contratuais	O beneficiário e o fornecedor podem, de forma concertada, proceder à modificação de termos contratuais durante a sua execução, sem lançamento de um novo procedimento de contratação e em violação da regras da contratação pública.	As alterações contratuais podem ser efetuadas na sequência de acordos entre o beneficiário e o fornecedor, através da modificação de termos e/ou condições contratuais em violação das regras da contratação pública.	Beneficiários ou Entidades Terceiras	Externo		

## 2: AVALIAÇÃO DA EXPOSIÇÃO A RISCOS DE FRAUDE ESPECÍFICOS - EXECUÇÃO DAS OPERAÇÕES (vg. Contratação Pública e Custos com Pessoal)

DESCRIÇÃO DO RISCO							
Ref.	Designação do Risco	Descrição do Risco	Descrição detalhada do Risco	Atores envolvidos no risco? (Autoridade de Gestão (AG) / Organismos Intermediários (OI) / Beneficiários (BF) / Entidades Terceiras (ET))	O risco é interno (AG), externo ou a resulta de conluio?	Este risco é relevante para a Autoridade de Gestão?	Se a resposta foi NÃO deverá ser apresentada fundamentação.
<b>Implementação - Risco com custos de pessoal dos Beneficiários ou de Fornecedores</b>							
IR9	Falsificação das qualificações ou das atividades desenvolvidas pelos recursos humanos	Um fornecedor pode intencionalmente falsear a qualificação do pessoal ou as atividades desenvolvidas com o objetivo de as declarar como despesas elegíveis. - Recursos humanos sem qualificações adequadas ou - Imprecisões na descrição das atividades realizadas	1) Um beneficiário ou fornecedor podem apresentar uma proposta com uma equipa com pessoal qualificado e vir a realizar as atividades recorrendo a pessoal sem qualificações ou 2) Um beneficiário ou fornecedor podem, de forma intencional, falsificar as descrições das tarefas realizadas pelo pessoal de forma a garantir que os custos declarados são considerados elegíveis.	Beneficiários ou Entidades Terceiras	Externo		
IR10	Falsificação de custos com pessoal	Um beneficiário declara intencionalmente falsos custos com pessoal relacionados com atividades que não são desenvolvidas ou que não se encontram previstas no contrato de financiamento: - Falsos custos de trabalho ou - Horas extraordinárias não remuneradas ou - Taxas de imputação incorretas ou - Declaração de custos com pessoal inexistente ou - Declaração de custos de pessoal relacionados com atividades que decorreram fora do período de elegibilidade.	1) O beneficiário ou o fornecedor podem intencionalmente declarar falsos custos de pessoal, inflacionado o número de horas efetuadas pelo pessoal, ou falsificando os documentos de suporte à verificação da realização dos eventos, tais como folhas de presença e faturas de arrendamento dos espaços de formação ou 2) O Beneficiário ou o fornecedor podem intencionalmente declarar horas extraordinárias quando normalmente essas horas não são pagas ao pessoal ou 3) O Beneficiário ou o fornecedor podem intencionalmente declarar taxas inflacionadas de ocupação de tempos de trabalho 4) O Beneficiário ou o fornecedor podem falsificar documentação com o objetivo de declarar custos com pessoal que não são seus empregados ou que não existem ou 5) O Beneficiário ou o fornecedor podem intencionalmente falsificar documentação de forma a enquadrar os custos no período de elegibilidade.	Beneficiários ou Entidades Terceiras	Externo		
IR11	Custos com pessoal afetados incorretamente a projetos específicos	O Beneficiário, de forma intencional, afeta incorretamente custos com pessoal entre projetos financiados pelos fundos comunitários e outras fontes de financiamento	O Beneficiário pode intencionalmente afetar de forma incorreta custos de pessoal a projetos financiados pelos Fundos Comunitários e a outras fontes de financiamento.	Beneficiários	Externo		
IRXX		<i>Inserir a descrição de riscos adicionais ...</i>					





























### 3: AVALIAÇÃO DA EXPOSIÇÃO A RISCOS DE FRAUDE ESPECÍFICOS - VALIDAÇÃO DE DESPESA E PAGAMENTOS

DESCRIÇÃO DO RISCO						
Ref.	Designação do Risco	Descrição do Risco	Atores envolvidos no risco? (Autoridade de Gestão (AG) / Organismos Intermédios (OI) / Beneficiários (BF) / Entidades Terceiras (ET))	O risco é interno (AG), externo ou a resulta de conluio?	Este risco é relevante para a Autoridade de Gestão?	Se a resposta foi NÃO deverá ser apresentada fundamentação.
CR1	Processo de verificações de gestão incompleto ou desadequado	As verificações de gestão podem não dar garantias suficientes da ausência de fraude, devido à falta de qualificação adequada dos recursos da AG.	Autoridade de Gestão	Interno		
CR2	Processo de validação de despesa incompleto ou desadequado	A análise e validação de despesa podem não dar garantias suficientes da ausência de fraude, devido à falta de uma adequada segregação de funções ou qualificação adequada do pessoal da AG ou à existência de conflitos de interesses	Autoridade de Gestão	Interno		
CR3	Duplo financiamento	Uma entidade apresenta as mesmas despesas para efeitos de financiamento pelo mesmo fundo ou por diferentes fundos comunitários.	Beneficiários	Externo		
CR4	Conflito de interesse na Autoridade de Gestão	Os pagamentos podem ser propostos por uma Autoridade de Gestão que tem relações com os beneficiários.	Autoridade de Gestão e Beneficiários	Interno / Conluio		
CRX		<i>Inserir a descrição de riscos adicionais ...</i>				













#### 4: AVALIAÇÃO DA EXPOSIÇÃO A RISCOS DE FRAUDE ESPECÍFICOS - PROCEDIMENTOS DE CONTRATAÇÃO PÚBLICA ADJUDICADOS DIRETAMENTE PELA AG

DESCRIÇÃO DO RISCO							
Ref.	Designação do Risco	Descrição do Risco	Descrição detalhada do Risco	Atores envolvidos no risco? (Autoridade de Gestão (AG) / Organismos Intermédios (OI) / Beneficiários (BF) / Entidades Terceiras (ET))	O risco é interno (AG), externo ou a resulta de conluio?	Este risco é relevante para a Autoridade de Gestão?	Se a resposta foi NÃO deverá ser apresentada fundamentação.
PR1	A adoção de procedimentos que violem o princípio da concorrência	Um colaborador da AG evita a adoção de procedimentos de contratação pública em violação do princípio da concorrência com o objetivo de favorecer um determinado concorrente: - fracionamento ou - ajustes diretos injustificados ou - não adoção de um procedimento concursal ou - extensões/prorrogações irregulares de contratos.	1) A AG pode fracionar uma aquisição em 2 ou mais parcelas ou aquisições com o objetivo de evitar a abertura de um procedimento concursal mais exigente ou 2) A AG pode falsificar a fundamentação dos procedimentos em que se verifica uma única proposta através da adoção de especificações técnicas restritivas ou limitadas ou 3) A AG pode adjudicar contratos para favorecer entidades terceiras sem a adoção de um adequado procedimento concursal ou 4) A AG pode autorizar a manutenção ou renovação de contratos existentes através de adendas ou de condições suplementares, com o objetivo de evitar um novo procedimento concursal.	Autoridade de Gestão e Entidades Terceiras	Interno / Conluio		
PR2	Manipulação de procedimentos concursais	Um colaborador da AG favorece um determinado concorrente através de: - falsas especificações ou - divulgação de informação confidencial ou privilegiada ou - manipulação das propostas.	1) A AG pode incluir intencionalmente requisitos ou especificações que correspondem às qualificações de um determinado concorrente ou que só podem ser cumpridos por um concorrente específico. As especificações que são muito restritivas e particulares podem ter como finalidade a exclusão de outros potenciais concorrentes ou 2) O pessoal envolvido no processo de contratação, na conceção do projeto ou das especificações ou na avaliação das propostas pode divulgar informação confidencial ou privilegiada com o intuito de favorecer um determinado concorrente, dando-lhe a possibilidade de apresentar uma proposta mais favorável em termos técnicos e/ou financeiros. Exemplos dessa informação privilegiada podem ser as soluções técnicas preferenciais, detalhes das propostas de outros concorrentes ou os limites orçamentais preferenciais ou 3) A AG pode manipular as propostas após a sua receção de forma a garantir a seleção de um determinado fornecedor.	Autoridade de Gestão e Entidades Terceiras	Conluio		
PR3	Conflitos de interesse ou subornos e comissões ilegais	Um colaborador da AG favorece um concorrente porque: - existe um conflito de interesse não declarado ou - foram pagos subornos ou comissões ilegais	1) A AG pode adjudicar contratos a entidades com as quais um dos seus colaboradores tem um determinado interesse, podendo este ser financeiro ou de outro tipo. Do mesmo modo, as entidades podem não identificar todas as situações de conflito de interesse quando apresentam propostas num determinado procedimento de contratação pública, ou 2) As entidades concorrentes podem subornar ou oferecer comissões ilegais aos colaboradores da AG com o objetivo de influenciar a adjudicação dos respetivos contratos.	Autoridade de Gestão e Entidades Terceiras	Conluio		
PRX		Inserir a descrição de controlos adicionais .....					











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**Information Note on Fraud Indicators for ERDF, ESF and CF (COCOF  
09/0003/00-EN, de 18/02/2009)**





EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL POLICY

# Information Note on Fraud Indicators for ERDF, ESF and CF

**DISCLAIMER:**

*This is a Working Document prepared by the Commission services. On the basis of the applicable Community law, it provides technical information to the attention of public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of Cohesion Policy on how to interpret and apply the Community rules in this area. The aim of the working document is to provide Commission services' explanations and interpretations of the said rules in order to facilitate the implementation of operational programmes and to encourage good practices. However, this information note is without prejudice to the interpretation of national laws, the Court of Justice and the Court of First Instance or evolving Commission decision making practice.*



## TABLE OF CONTENTS

1.	INTRODUCTION.....	3
1.1.	Background .....	3
1.2.	Joint Fraud Prevention Strategy .....	4
2.	DEFINITIONS .....	5
2.1.	Definition of irregularity .....	5
2.2.	Definition of fraud in the Treaty .....	5
2.3.	Fraud types .....	6
3.	THE REASONS BEHIND FRAUD .....	6
4.	RESPONSIBILITIES FOR FRAUD PREVENTION AND DETECTION .....	7
4.1.	Managing and certifying authorities ("management").....	7
4.2.	Audit authorities (and other audit bodies performing audit work) .....	8
5.	RECOMMENDATIONS FOR USE OF THIS INFORMATION NOTE .....	9
Annex 1	Contract and procurement fraud schemes and indicators	
Annex 2	Consultancy services fraud schemes and indicators	
Annex 3	Procedure for reporting of fraud to OLAF	

## 1. INTRODUCTION

### 1.1. Background

In line with Article 274 of the Treaty the Commission shall implement the budget under its own responsibility having regard to the principles of sound financial management. Furthermore, Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

Article 280 of the Treaty stipulates that the Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community.

Furthermore, under Article 53 b (2) of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>1</sup>, Member States are responsible to prevent and deal with irregularities and fraud in the area of shared management. Under the legal arrangements for shared management, in order to protect the financial interests of the Community, the Member States are principally responsible for setting up management and control systems which are in compliance with the Community law requirements, for verifying that the systems function effectively, through audits by designated bodies, to prevent, detect and correct irregularities and fraud.<sup>2</sup> In the case of irregularity or suspected fraud the Commission must be informed in accordance with the reporting procedures laid down in Commission Regulations (EC) N° 1681/94 and (EC) N° 1831/94 concerning irregularities for cases related to the programming period 2000-2006 and in accordance with Commission Regulation (EC) N° 1828/2006 (Articles 27-36) for cases related to the programming period 2007-2013.

Regardless of whether the irregularity is non-intentional or intentional (fraud), the affected expenditure must be excluded from co-financing by the Community budget.

This information note provides a list of fraud schemes and related fraud indicators which may be relevant in the area of structural actions with the aim of raising fraud awareness in Member States so that management and control systems can be strengthened to more effectively prevent and detect fraud<sup>3</sup>.

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<sup>1</sup> OJ L 248, 16.09.2001.

<sup>2</sup> Article 70 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L 210, 31.7.2006 and Section 4 (Articles 27-36) of Commission Regulation (EC) No 1828/2006 setting out rules for the implementation of Regulation (EC) No 1083/2006, OJ L 371, 27.12.2006.

<sup>3</sup> Each year the Commission publishes an annual report on the fight against fraud in the Community (e.g. for 2007: *Commission Report to the European Parliament and to the Council, Protection of Communities' Financial Interests – Fight Against Fraud – Annual report 2007* – SEC(2008)2300 and SEC(2008)2301) which includes a statistical annex on irregularities, suspected fraud and fraud. In the structural actions area in the 2000-2006 programming period, when reporting on irregularities to the Commission under the reporting

## 1.2. Joint Fraud Prevention Strategy

The information note is one of the actions stemming from a broader initiative started in 2008: DG Regional Policy and DG for Employment, Social Affairs and Equal Opportunities, assisted by OLAF, have developed a Joint Fraud Prevention Strategy (JFPS) which comprises a series of anti-fraud actions to raise the level of fraud awareness under shared management and provide guidance and more proactive tools to counter fraud.

As regards guidance in general, starting from 2009, the objective is to make available a "package" to authorities managing the Structural Funds in the Member States, to desk officers in the Commission and Commission and Member States' auditors on various issues relating to fraud.

More specifically, the strategic objectives of the JFPS are to

- reinforce fraud risk assessment;
- **introduce more proactive guidance for Member States for fraud detection;**
- provide more support to Member States' authorities for fraud prevention and detection work;
- raise the level of fraud awareness in DG Regional Policy and DG for Employment, Social Affairs and Equal Opportunities;
- raise the level of fraud awareness in the Member States.

As one of the strategic objectives in the JFPS is to provide more proactive guidance for fraud detection which can in turn contribute to fraud prevention, the Commission has elaborated this information note on fraud indicators so that Member States can add to their awareness on fraud schemes and fraud indicators.

Annexes 1 and 2 to this information note contain an inventory of generally recognised common and recurrent fraud schemes in the fields of contracting and public procurement, as well as labour charges and consultancy services, and the associated fraud indicators.<sup>4</sup>

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regulations in force, Member States have indicated that 12-15 % of the irregularities are "suspected fraud". On the basis of this estimation, in 2007, reported "suspected fraud" affects about 0,31 % of the commitments. These figures, as they are preliminary, should be treated with adequate caution since only a competent judicial authority can qualify suspected fraud as a case of fraud.

<sup>4</sup> A significant part of the information draws on the Association of Certified Fraud Examiner's (ACFE) guide to Contract and Procurement Fraud from 2008. This guide is based on world-wide fraud case investigations and known fraud schemes. See [www.acfe.com](http://www.acfe.com).

Annex 3 to this information note summarises the procedures for reporting of fraud to the European Anti-Fraud Office (OLAF).

## 2. DEFINITIONS

### 2.1. Definition of irregularity

For the purposes of Council Regulation (EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests the term irregularity is a wide concept and covers both intentional and non-intentional irregularities committed by economic operators.

Article 1(2) of Regulation (EC) No 2988/95<sup>5</sup> defines "**irregularity**" as:

*"any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure"*<sup>6</sup>

### 2.2. Definition of fraud in the Treaty

The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests<sup>7</sup> defines "**fraud**", in respect of expenditure, as 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 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*

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<sup>5</sup> OJ L 312, 23.12.1995, p.1.

<sup>6</sup> For the purpose of the Structural Funds an adapted definition is set out in Article 1a of the Regulation (EC) No 1681/94: "irregularity" means any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the Community budget". The same definition is set out in Article 2 (7) of Council Regulation (EC) No 1083/2006 laying down general provisions for the European Regional Development Fund, the European Social Fund and the Cohesion Fund for the 2007-2013 period.

<sup>7</sup> OJ C 316 , 27.11.1995, p. 49.

It is therefore the component of intentional deceit which distinguishes fraud from the more general term of "irregularity".

In accordance with Article 3(e) of Regulation (EC) No 1681/94 since 2006 the Member States are required to identify, when they notify irregularities to the Commission, whether the irregularities involved "**suspected fraud**".<sup>8</sup>

### 2.3. Fraud types

It is recommended that any fraud type classification is tailored to the specific circumstances and environment in which an organisation is working.

The Association of Certified Fraud Examiners (ACFE)<sup>9</sup> uses a specific taxonomy which lists the type of fraud an organisation might encounter. ACFE divides fraud into three fraud types as a starting-point for an organisation to identify which areas are vulnerable to fraud:

1. Intentional manipulation of financial statements (e.g. inappropriately reported revenues)
2. Any type of misappropriation of tangible or intangible assets (e.g. fraudulent expense reimbursements)
3. Corruption (e.g. bribery, bid rigging, undisclosed conflict of interest, embezzlement)

### 3. THE REASONS BEHIND FRAUD

There are three elements behind the perpetration of fraud, which can be summarised as the "fraud triangle"<sup>10</sup>:

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<sup>8</sup> Article 1a(4) of Regulation (EC) No 1681/94 defines "suspected fraud" as "an 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". This definition is reproduced in Article 27 (c) of Regulation (EC) No 1828/2006.

<sup>9</sup> See "*Managing the Business Risk of Fraud – A Practical Guide*", the Institute of Internal Auditors, the American Institute of Certified Public Accountants and the Association of Certified Fraud Examiners, 2008. <http://www.ifa-iaf.be/v1/frontEnd/libraryIfa/index.php?action=detail&id=29>.

<sup>10</sup> The concept of the fraud triangle was originated by fraud researcher Dr. Donald R. Cressey. See "*The Handbook of Fraud Deterrence*", by Harry Cendrowski, James P. Martin and Louis W. Petro, 2007, p. 41.



Opportunity: Even if a person has a motive, an opportunity must be given. Slack internal control systems may give rise to an opportunity (*the presumed likelihood of the fraud not being detected is a crucial consideration for the fraudster*). Examples of weaknesses in the internal control systems are inadequacies related to:

- supervision and review;
- segregation of duties;
- management approval;
- system controls.

Fraud may also occur, if controls are not applied or if persons in positions of authority create opportunities to override existing controls.

Rationalisation: A person can develop a justification for himself/herself by rationalising their acts, e.g. "It is fair to do this – I deserve this money" or "They owe me". "I am just borrowing the money – I will pay it back".

Financial pressure, incentive or motive: The "need or greed" factor. Pure greed can often be a strong motive. Other pressure can arise from personal financial problems or personal vices such as gambling, drug addiction etc.

“Breaking the fraud triangle”<sup>11</sup> is key to fraud prevention. Of the three elements, opportunity is most directly affected by strong internal control systems and therefore it is the element which can most easily be managed.

#### **4. RESPONSIBILITIES FOR FRAUD PREVENTION AND DETECTION**

##### **4.1. Managing and certifying authorities ('management')**

Under the system of shared management of the Structural Funds the Member States are principally responsible for setting up management and control systems which are in

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<sup>11</sup> See “*The Handbook of Fraud Deterrence*”, by Harry Cendrowski, James P. Martin and Louis W. Petro, 2007, p. 41.

compliance with Community requirements, for verifying that the systems function effectively, through audits by designated bodies, to prevent, detect and correct irregularities and fraud.

Whereas primary responsibility for fraud prevention rests with management, successful fraud deterrence may depend on a combination of the efforts of management and auditors.<sup>12</sup>

The aim should be to reduce the element of opportunity in the fraud triangle.

The principal mechanism for reducing opportunity is strong internal control, covering in particular adequate supervision and review and segregation of duties.

Management should also have sufficient knowledge for identifying fraud indicators and should be aware of the obligations to report irregularities and suspected fraud under the regulations in force.

Member States need to pay attention to the correct implementation and dissemination of guidance internally on the reporting obligations with regard to irregularities and suspected fraud as laid down in the applicable regulations.<sup>13</sup>

#### **4.2. Audit authorities (and other audit bodies performing audit work)**

According to IIA standard 1210.A2<sup>14</sup>, the internal auditor (and the external auditor) should have sufficient knowledge to identify the indicators of fraud but is not to have the expertise of a person whose primary responsibility is detecting and investigating fraud.

By exercising adequate professional scepticism<sup>15</sup>, auditors should be particularly alert to opportunities for fraud, such as control weaknesses in the control and management systems. When relevant, in particular if the management and control environment can be considered high risk, auditors are recommended to make enquiries with managing authorities about their views as to the risk of fraud in order to test the anti-fraud measures in place.

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<sup>12</sup> See *"The Handbook of Fraud Deterrence"*, by Harry Cendrowski, James P. Martin and Louis W. Petro, 2007, p. 29.

<sup>13</sup> Article 70 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006) and Section 4 (Articles 27-36) of Commission Regulation (EC) No 1828/2006 setting out rules for the implementation of Regulation (EC) No 1083/2006, (OJ L 371, 27.12.2006).

<sup>14</sup> Institute of Internal Auditors, *International Standards for the Professional Practice of Internal Auditing*.

<sup>15</sup> International standard on auditing 240: *"The auditor's responsibility to consider fraud in an audit of financial statements"*. The same standard also recognises that "the risk of not detecting a material misstatement resulting from fraud is higher than the risk of not detecting a material misstatement resulting from error because fraud may involve sophisticated and carefully organised schemes designed to conceal it, such as forgery, deliberate failure to record transactions, or intentional misrepresentations..."

Audit authorities verify, as part of both system audits of management and control systems and audits on operations, that the mechanisms in place for fraud prevention are adequate and effective.

Audit authorities may need to be alert with regard to fraud in particular as regards the procedures for grant awards and contract and public procurement fraud (when discussing, designing and performing the audit the auditor may consider the procurement area as highly exposed to the risks of fraud).<sup>16</sup>

## 5. RECOMMENDATIONS FOR USE OF THIS INFORMATION NOTE

It is recommended that Member States:

1. Take note of this information note for awareness raising purposes and ensure its wide dissemination to all bodies managing structural funds.
2. Use the information provided on fraud schemes in *Annex 1* and *Annex 2*, on a best practice basis, in order to update procedures in connection with checks on and approval of payment claims from final beneficiaries. This could be done by e.g. including in the checklists a reference to this note, and/or any of the fraud schemes listed, in particular in situations in which risk assessment might indicate a high fraud risk.
3. Ensure awareness<sup>17</sup> of fraud reporting procedures, e.g. the websites of the managing bodies and intermediate bodies could include such information (see fraud reporting procedures in *Annex 3*).
4. Ensure that management verifications are carried out in an adequate manner as these verifications are an important tool in deterring and detecting fraud. Reference is made to guidance note *"Guidance document on management verifications to be carried out by Member States on operations co-financed by the Structural Funds and the Cohesion Fund for the 2007 – 2013 programming period"*<sup>18</sup>.
5. Use cross-checking of information, including verification of information with a third party if there are fraud suspicions. For instance, the veracity of a doubtful invoice presented by a final beneficiary may be verified with the service provider itself, if needed by examining the book-keeping and records of the service provider on-the-spot.

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<sup>16</sup> See Exposure Draft Practice Note to International Standard on Auditing 240 providing additional guidance on public sector issues, point 3.

<sup>17</sup> Most fraud case investigations originate from tips and reports received. Free-phones are instrumental in this respect.

<sup>18</sup> Final version of 05/06/2008, document COCOF 08/0020/04.



## **CONTRACT AND PUBLIC PROCUREMENT FRAUD**

### **Common and recurrent fraud schemes and the relevant fraud indicators (red flags)**

This annex lists sixteen common and recurrent fraud schemes with a description of the scheme and the relevant fraud indicators in the area of contracts and public procurement.

This is a non-exhaustive list of generally recognised schemes.

This annex uses much of the structure and contents which ACFE<sup>19</sup> applies in its instruction for professionals in the field of fraud prevention and detection.

#### **1. Corruption – bribes and kickbacks**

##### Scheme description:

Bribes and kickbacks refer to the giving or receiving of a “thing of value” to influence an official act or a business decision.

##### ***Corrupt payments***

The “thing of value” need not be money, and often is not (the ambiguity remains and the perpetrator can more easily invent excuses if needed). Any tangible benefit given or received with the intent to corruptly influence the recipient can be a bribe. Specific “things of value” that have been given and received as bribes include e.g.: gifts whose value exceeds thresholds set by organisations/companies, “loans” whether or not repaid, use of credit cards, overpaying for purchases (e.g. paying € 500,000 for an apartment worth € 200,000), free use of apartment, or discounted rent, free use of a leased car, cash payments, payment by check or bank transfer of false “fees or commissions”, often an agreed percentage of the contract obtained, and paid through a middleman or a *shell company*<sup>20</sup> set up by the recipient and hidden ownership interest in the corrupt contractor or seller). The things of value are often given in the order of this listing. This is because the parties may be unsure of the other’s intentions at the outset and the bribe payer may not be able to afford more substantial payments until a contract is awarded.

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<sup>19</sup> Association of Certified Fraud Examiners, [www.acfe.com](http://www.acfe.com). More specifically, the structure and contents draw on the "Contract and Procurement Fraud" training for Fraud Examiners.

<sup>20</sup> A shell company is a company that does exist but does not actually do any business or have any assets.

After the contract award, most bribes are paid in the form of kickbacks, meaning that the contractor will pay or “kickback” an agreed percentage of each invoice payment it receives. Whatever manner the bribes are paid, prices are usually inflated or the quality of goods and services reduced, to cover the cost of the payments.

Corrupt payments facilitate many other types of fraud, such as false invoicing, phantom expenditure or failure to meet contract specifications.

### ***Corrupt influence***

Corrupt influence in the contract and procurement area is often reflected as: improper selection such as unjustified single source acquisition (there might be multiple awards under the threshold for public procurement), unjustified high prices, excessive quantity of purchases, acceptance of low quality and delayed or no delivery.<sup>21</sup>

### **Fraud indicators:**

The most common indicator of bribes and kickbacks is unexplained favourable treatment of a contractor by a contracting employee over a period of time.

Other red flags:

- close socialisation between a contracting employee and service or product provider;
- unexplained or sudden increase in wealth by the contracting employee;
- contracting employee has an undisclosed outside business;
- contractor has a reputation in the industry for paying kickbacks;
- undocumented or frequent changes to contracts increasing the value of the contract;
- contracting employee declines promotion to a non-procurement position;
- contracting employee fails to file or complete conflict of interest declaration.

## **2. Undisclosed conflict of interest**

### **Scheme description:**

A situation of conflict of interest can occur if an employee of the contracting organisation has an undisclosed financial interest in a contract or contractor. A potential conflict of interest might be immune from legal action if it is fully disclosed and approved by the employer in a timely manner. An employee might e.g. secretly own a supplier or a contractor, set up a shell company through which he or she purchases supplies at an inflated price or have an undisclosed interest in property sales or leases.

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<sup>21</sup> This is often summarised as the "SPQQD" factors: improper Selection, high Price, excessive Quantity, low Quality, delayed or no Delivery.

### Fraud indicators:

- unexplained or unusual favouritism of a particular contractor or seller;
- continued acceptance of high priced, low quality work etc;
- contracting employee fails to file or complete conflict of interest declaration;
- contracting employee declines promotion to a non-procurement position;
- contracting employee appears to conduct side business.

### **3. Collusive bidding**

#### Scheme description:

Contractors in a particular geographic area or region or industry can conspire to defeat competition and raise prices through various collusive bidding schemes.

#### ***Complementary bidding***

Complementary bids, also known as “shadow” bids, are intended only to give the appearance of genuine bidding and not to secure the buyer’s acceptance.

Cooperating bidders agree to submit higher priced or deliberately non-responsive bids to allow the selection of a favoured contractor at an inflated price. The winner shares a percentage of its profits with the losing bidders, hires them as subcontractors, or allows them to win other high priced contracts. Complementary bids may also be submitted from shell companies or from affiliated firms.

#### ***Bid suppression***

For bid rigging schemes to succeed the number of bidders must be limited and all must agree to the conspiracy. If a new (a so-called “diver”) or uncooperative bidder enters the competition, the price inflation will become apparent. To prevent this, the conspirators may pay-off outside companies not to bid or use more forceful means to discourage their participation. The conspirators can also coerce suppliers and subcontractors not to deal with non-cooperating companies to protect their monopoly.

#### ***Bid rotation***

The conspirators submit complementary bids or refrain from bidding in order to allow each bidder to be the low bidder on a rotating basis. The rotation can be based on geographic area – one road contractor gets all work in one region, another company in the next – or by type of job, or by time, etc

#### ***Market division***

The cooperating companies may divide markets or product lines and agree not to compete in each other's area, or to do so through collusive measures, such as submitting only complementary bids. Sometimes employees may be involved in collusive bidding schemes – sometimes with a financial interest in the “competing” businesses – and receive a share of the inflated prices.

Fraud indicators:

- winning bid is too high compared to cost estimates, published price lists, similar works or services or industry averages and fair market prices;
- persistent high prices by all bidders;
- bid prices drop when new bidder enters the competition;
- rotation of winning bidders by region, job, type of work;
- losing bidders hired as subcontractors;
- unusual bid patterns (e.g. the bids are exact percentage apart, winning bid just under threshold of acceptable prices, exactly at budget price, too high, too close, too far apart, round numbers, incomplete, etc);
- apparent connections between bidders, e.g. common addresses, personnel, phone numbers etc;
- contractor includes subcontractors in its bid which are competing for the main contract;
- qualified contractors fail to bid and become subcontractors or low bidder withdraws and becomes a subcontractor;
- certain companies always bid against each other, others never do;
- losing bidders cannot be located in the Internet, business directories, have no address etc (in other words they are fictive);
- correspondence or other indications that contractors exchange pricing information, divide territories, or otherwise enter informal agreements;
- collusive bidding has been found in the following sectors and is also relevant for structural funds: asphalt paving, building construction, dredging, electrical equipment, roofing, waste disposal.

#### **4. Unbalanced bidding**

Scheme description:

In this fraud scheme contracting personnel provide a favoured bidder with useful inside information which is not available to other bidders, for example, that one or several line items in a request for bid will not be used in the contract (some line items may also be vague or ambitious on purpose and the favoured bidder is instructed how to respond). This

information allows the favoured firm to submit a lower price than the other bidders, by quoting a very low price on the line item which will not be included in the final contract. Unbalanced bidding is one of the more effective bid rigging schemes as the manipulation is not as obvious as in other popular schemes, such as unjustified single source acquisitions.

Fraud indicators:

- particular line item bids appear to be unreasonably low;
- changes are issued soon after contract awards to delete or modify line item requirements;
- line items for bids are different than the actual contract;
- bidder close to procurement personnel or participated in drafting specifications.

## **5. Rigged specifications**

Scheme description:

Requests for bids or proposals might contain specifications which are tailored to meet the qualifications of a particular bidder, or which only one bidder can meet. This is particularly common in IT and other technical contracts.

Specifications which are too narrow can be used to exclude other qualified bidders, or to justify single source acquisitions and avoid competition altogether.

A pattern of rigged specifications which favour a particular contractor suggests corruption.

Fraud indicators:

- only one or a few bidders respond to request for bids;
- similarity between specifications and winning contractor's product or services;
- complaints from other bidders;
- specifications are significantly narrower or broader than similar previous requests for bids;
- unusual or unreasonable specifications;
- high number of competitive awards to one supplier;
- socialisation or personal contacts between contracting personnel and bidders during the bidding process;
- the buyer defines an item using brand name rather than generic description.

## **6. Leaking bid data**

### Scheme description:

Contracting, project design or bid evaluation personnel can leak confidential information to help a favoured bidder formulate a technical or financial proposal, such as estimated budgets, preferred solutions, or the details of competing bids.

### Fraud indicators:

- poor controls on bidding procedures, e.g. failure to enforce deadlines;
- winning bid just under the next lowest bid;
- some bids opened early;
- acceptance of late bids;
- late bidder is the winning low bidder;
- all bids are rejected and contract is re-bid;
- winning bidder communicates privately with contracting personnel by e-mail or otherwise during bidding period.

## **7. Manipulation of bids**

### Scheme description:

In a poorly controlled bidding process contracting personnel can manipulate bids after receipt to ensure that a favoured contractor is selected (changing bids, “losing” bids, voiding bids for alleged errors in specifications, etc)

### Fraud indicators:

- complaints from bidders;
- poor controls and inadequate bidding procedures;
- indications of changes to bids after reception;
- bids voided for errors;
- a qualified bidder disqualified for questionable reasons;
- job not re-bid even though fewer than the minimum number of bids were received.

## **8. Unjustified single source awards**

### Scheme description:

This scheme often results from corruption, in particular if the pattern is repeated and questionable.

Such awards can be made by splitting purchases to avoid competitive bidding thresholds, falsifying single source acquisition justification, drafting very narrow specifications, extending previously awarded contracts rather than re-bidding.

Fraud indicators:

- single source awards above or just below competitive bidding thresholds;
- previously competitive procurements become non-competitive;
- split purchases to avoid competitive bidding threshold;
- request for bid mailed only to one service provider.

## **9. Split purchases**

Scheme description:

Contracting personnel may split a purchase into two or more purchase orders or contracts in order to avoid competition or higher-level management review. For example, if the threshold is €250,000, a single procurement of goods and services for €275,000 can be split into two contracts – one for goods for €150,000 and the other for €125,000 – to avoid bidding.

Split purchases (often called “salami slicing”) can indicate corruption or other schemes by a purchasing employer.

Fraud indicators:

- two or more consecutive, related procurements from the same contractor just under competitive bidding or upper level review thresholds;
- unjustified separation of purchases, e.g. separate contracts for labour and materials, each of which is below bidding thresholds;
- sequential purchases just under the thresholds.

## **10. Co-mingling of contracts**

Scheme description:

A contractor with multiple similar work orders might charge the same personnel costs, fees or expenses to several of the orders, resulting in over-invoicing

Fraud indicators:

- similar invoices presented under different jobs or contracts;
- the contractor invoices for more than one job for the same time period.

## **11. Cost mischarging**

Scheme description:

A contractor can commit fraud by intentionally charging costs which are not allowable or reasonable, or which can not be allocated, directly or indirectly, to a contract. Labour costs are more susceptible to mischarging than material costs because employee labour can in theory be charged to any contract.

Labour costs can be manipulated by creating fictitious time sheets, altering time sheets or supporting documentation or simply invoicing for inflated labour costs without supporting documentation.

Fraud indicators:

- excessive or unusual labour charges;
- labour charges inconsistent with contract progress;
- apparent changes to time sheets;
- time sheets cannot be found;
- the same material costs charged to more than one contract;
- charging indirect costs as direct costs.

## **12. Defective pricing**

Scheme description:

Defective pricing occurs in contracts if contractors fail to disclose current, complete and accurate cost or pricing data in their price proposals resulting in an increased contract price.

Fraud indicators:

- contractor refuses, delays or is unable to provide supporting documents for costs;



- contractor provides inadequate or incomplete documentation;
- out-of-date pricing information;
- apparent high prices compared to similar contracts, price lists or industry averages;

### **13. Failure to meet contract specifications**

#### Scheme description:

Contractors which fail to meet contract specifications and then knowingly misrepresent that they have met them commit fraud.

Examples of such schemes include the use of sub-standard building materials, inferior quality parts, failure to lay the required foundation in road projects etc. The motive, of course, is to increase profits by cutting costs or to avoid penalties for failing to meet deadlines etc. Many such schemes are difficult to detect without close inspections or tests by independent subject matter experts. The fraudsters may seek to bribe the inspectors though.

#### Fraud indicators:

- discrepancy between test and inspection results and contract claims and specifications;
- absence of test or inspection document or certificates;
- low quality, poor performance and high number of complaints;
- indications from the contractor's expense records that the contractor did not e.g. purchase materials necessary for the works, does not own or did not lease equipment necessary for the work or did not have the necessary labour on the site (NB: this type of cross-checking can be valuable).

### **14. False, inflated or duplicate invoices**

#### Scheme description:

A contractor might knowingly submit false, inflated or duplicate invoices, either acting alone or in collusion with contracting personnel as the result of corruption.

#### Fraud indicators:

- invoiced goods or services cannot be located in inventory or accounted for;
- no acknowledgment of receipt for invoiced goods or services;
- questionable or no purchase order for invoiced goods or services;

- contractor's records do not reflect that the work was done or that the necessary costs were incurred;
- invoice prices, amounts, item descriptions or terms exceed or do not match contract items, purchase order, receiving records, inventory or usage records;
- multiple invoices with the same amount, invoice number, date etc;
- sub-contracts in cascade;
- cash payments;
- payments to off-shore companies.

## **15. Phantom service providers**

### Scheme description:

a) An employee can authorise payments to a fictitious seller in order to embezzle funds. The scheme is most common where there is a lack of segregation of duties between requisition, receipt and payment.

b) Contractors can set up phantom companies to submit complementary bids in collusive bidding schemes, to inflate costs or simply to generate fictitious invoices.

Experience has shown that fraudsters tend to use names of companies which are similar to the names of real companies.

### Fraud indicators:

- service provider can not be found in any directories, the Internet, Google and other search engines etc;
- service providers address can not be found;
- the service provider lists incorrect street address or phone number;
- off-shore company used.

## **16. Product substitution**

### Scheme description:

Product substitution refers to the substitution, without the purchaser's knowledge, of inferior quality items for those which are specified in the contract. At worst, product substitution can be life-threatening, e.g. deficiencies in infrastructure or buildings. Substitution is particularly attractive in contracts calling for expensive high grade materials that can be replaced by similar appearing, much less expensive, products. The

substitution often involves component parts which are not easily detected. Specially created samples can also be presented for inspection in order to deceive.

Fraud indicators:

- unusual or generic packaging: packaging, colours or design different than the norm;
- discrepancy between expected appearance and actual appearance;
- product identification numbers differ from published or catalogue numbers or numbering system;
- above average number of test or operation failures, early replacements, or high maintenance or repair costs;
- compliance certificates signed by unqualified or non-certified person;
- significant difference between estimated and actual costs for materials;
- contactor is behind schedule but quickly catches up;
- unusual or obliterated serial numbers; serial numbers are not consistent with legitimate manufacturer's numbering system;
- invoice or inventory item numbers or descriptions do not match purchase order terms.

## **LABOUR CHARGES AND CONSULTANCY SERVICES FRAUD**

### **Common and recurrent fraud schemes and the relevant fraud indicators (red flags)**

This annex lists common and recurrent fraud schemes with a description of the scheme and the relevant fraud indicators in the area of consultancy services.

The most important control in the labour accounting system is the individual employee and the employee's acceptance of the responsibility to accurately record time worked.

This is a non-exhaustive list of generally recognised schemes:

#### **1. Incurred labour cost**

##### Scheme description:

Without any external independent or physical verification, labour is very vulnerable to manipulation. A promoter might knowingly claim false labour, direct and indirect. The critical issue is whether the employee's time is properly charged to the project actually worked on. (No third party documentation may exist such as invoices, purchase orders, etc., to support labour costs).

##### Fraud indicators:

- distinctive charging patterns;
- sudden, significant shifts in charging;
- decrease in charges to projects/contracts in overrun or near ceilings;
- a disproportionate percentage of employees charging indirect;
- large number of employees reclassified from direct to indirect or vice versa;
- same employees constantly reclassified from direct to indirect or vice versa;
- weak internal controls over labour charging, such as employee time cards signed in advance, employee time cards filled in by the supervisor, time cards filled in with pencil or time cards filled in at the end of the pay period;
- actual hours and euros consistently at or near budgeted amounts;
- use of adjusting journal entries to shift costs between contracts, R&D, commercial work;
- significant increases or decreases in charging to sensitive accounts;
- employee's time charged differently than associated travel costs.

## **2. Uncompensated overtime**

### Scheme description:

A promoter might knowingly claim false overtime where no informal credit for the extra hours, such as additional time off, is usually given. The critical issue is whether the employee's time is properly charged to the project actually worked on. No third party documentation exists.

### Fraud indicators:

- professional staff required to work a significant amount of unpaid overtime on a variety of projects-both direct and indirect;
- salaried employees only charging the regular hours worked during any day for an extended period;
- a pattern of management directed unpaid overtime with employee bonus based on the extra hours worked;
- overrun contracts/projects worked on only during unpaid hours.

## **3. Consulting/professional service**

### Scheme description (based on a real case):

The services were properly supported with detailed consulting agreements, invoices and reports. The subjects covered were germane to the contractor's operations and provided appropriate recommendations to improve the efficiency of certain operations. The contractor implemented the majority of the recommendations. The applicable agreements contained the necessary level of detail and the fees were considered reasonable.

However, for some companies contracted, their services were not previously used. The agreements were not specific in what services the companies were to provide; however, they did detail who would perform the services and the hourly rate involved. The individuals' resumes were not available. The fees were higher for these new companies. The company representative could not explain the higher fees or the specifics of what services were to be provided.

Moreover, invoices from these companies for services rendered in addition were vague in describing services and only referred to the agreement. The expense was a lump sum with no breakdown of hours spent, hourly rate, travel expenses or other expenses. No trip reports or other summary reports were available. No additional information on these companies was available; the promoter was unable to provide anything other than verbal assurances of the services provided.

Finally, the invoices showed a post office box as a mailing address and no listing of these companies in the telephone directory.

#### Fraud indicators:

- no formal signed agreements or contracts; however, large sums paid for "services rendered" based on invoices with few specifics;
- formal agreements or contracts exist but are vague as to services to be rendered, and no other documented support, such as detailed invoices, trip reports or studies, exists to justify the expenses;
- services paid for were used to improperly obtain, distribute or use information or data protected by law or regulation;
- services paid for were intended to improperly influence the content of a solicitation, the evaluation of a proposal or quotation, the selection of sources for contract award or the negotiation of a contract, modification or claim. It does not matter whether the award is by the prime contractor or any tier subcontractor;
- services paid for were obtained or performed in some way that violated a statute or regulation prohibiting improper business practices or conflict of interest;

#### **4. Labour categories**

##### Scheme description (based on a real case):

A contractor's proposal for a renewal of time and material (T&M) contract, which had been awarded on a yearly basis for the last two years, indicated that the incurred hourly rates were significantly lower than the proposed rates, except for the administrative category. The original proposal had a full work force on board when the contract was originally bid. After being awarded the contract, the contractor hired/used employees at lower salaries than proposed. The qualifications of some of the newly hired employees were below the requirements per the request for proposal. The contractor had placed many of the newly hired employees in labour categories, for which they did not qualify.

##### Fraud indicators

- significant differences between proposed and actual unit costs or quantities with no corresponding changes in work scope or job requirements;
- task-by-task invoicing consistently at the ceiling level established in the contract. An exception would be if the contract/work order specifies how many hours to bill;
- specific individuals proposed as "key employees" not working on the contract;
- proposed labour not based on existing work force. Massive new hires needed. New hire labour rates significantly lower than proposed;
- employees' skills do not match the skill requirements as specified for their labour category or the contract requirements;
- employees typically charged indirect by the company being charged direct to the contract;

- partners', officers', supervisors' and other employees' time being charged in noncompliance with the contract terms or with the company's established accounting policies and procedures.

## PROCEDURE FOR REPORTING OF FRAUD TO THE EUROPEAN ANTI-FRAUD OFFICE (OLAF)

### **Managing authorities or other authority designated to report on irregularities and fraud to OLAF:**

Quarterly reporting in accordance with Commission Regulations (EC) N° 1681/94 and (EC) N° 1831/94 for cases related to the programming period 2000-2006 and in accordance with Commission Regulation (EC) N° 1828/2006 (Articles 27-36) for cases related to the programming period 2007-2013.

### **Specific instructions to audit authorities<sup>22</sup>:**

An auditor performs an audit to obtain reasonable assurance that management and control systems function effectively so that certified expenditure is legal and regular. Auditors are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud. However, when obtaining reasonable assurance, an auditor maintains an attitude of professional scepticism<sup>23</sup> throughout the audit. If during risk assessment, planning of the audit or system and substantive tests, the auditor concludes that circumstances indicate the possible existence of fraud, he/she needs to know how to deal with the suspected fraud and how to report it.

The fraud suspicion is **not communicated to the audited entity concerned** (in order to ensure that evidence of fraud is preserved).

The auditors should inform the managing authority or other authority designated to report irregularities to OLAF of the suspected fraud (unless the alleged fraud concerns the Managing Authority itself or another designated responsible body) in order to allow it to take any necessary steps and protective measures to safeguard the Community's financial interests, including coordination with national bodies competent in fraud/irregularities.

### **General instructions to EU citizens:**

Anybody can inform OLAF about suspicions of fraud or corruption affecting the financial interests of the European Union. The general rule is: the earlier and the more concrete the information, the better. Any available documents to support the information, should be provided as well.

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<sup>22</sup> DG Regional Policy and DG for Employment, Social Affairs and Equal Opportunities have established their own internal fraud reporting procedures for its auditors and staff.

<sup>23</sup> ISA 240- The auditor's responsibility to consider fraud in an audit of financial statements defines professional scepticism as "an attitude that includes a questioning mind and a critical assessment of audit evidence". (IFAC, "*Handbook of International Auditing, Assurance, and Ethics Pronouncements*")



In this framework a key role can be played by the OLAF Anti-Fraud Communicators Network (OAFCN) (\*), which includes the OLAF Spokesman, spokespersons responsible for public relations and information officers in the national investigation services, with which OLAF co-operates in the Member States.

(\*) [http://ec.europa.eu/anti\\_fraud/olaf-oafcnc/en.html](http://ec.europa.eu/anti_fraud/olaf-oafcnc/en.html)

OLAF can be approached in all official languages through these different channels:

- By letter to: European Commission, European Anti-Fraud Office (OLAF), Investigations+Operations, B-1049 Brussels, Belgium
- By e-mail to: [OLAF-COURRIER@ec.europa.eu](mailto:OLAF-COURRIER@ec.europa.eu)
- Via the [freephone](http://ec.europa.eu/anti-fraud) lines (<http://ec.europa.eu/anti-fraud>)

All contact details: [http://ec.europa.eu/anti\\_fraud/contact\\_us/index\\_en.html](http://ec.europa.eu/anti_fraud/contact_us/index_en.html)



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**Guidance note on main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS) (Ref. ARES (2013) 3403880, de 04/11/2013)**





**EUROPEAN COMMISSION**  
**EUROPEAN ANTI-FRAUD OFFICE (OLAF)**

Policy  
**Inter-institutional & External Relations**

Brussels  
 October 2013

**Guidance note on main tasks and responsibilities of  
 an Anti-Fraud Co-ordination Service (AFCOS)**

**I. Purpose of this guidance note**

The purpose of this guidance note is to support the Member States' national administrations in designating their Anti-Fraud Co-ordination Service (AFCOS), as envisaged in Article 3(4) of the new OLAF Regulation<sup>1</sup> which entered into force on 1 October 2013:<sup>2</sup>

"Member States shall, for the purposes of this Regulation, designate a service ("the anti-fraud coordination service") to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, in accordance with national law, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation."

The Regulation introduces the concept of AFCOS without defining in more detail its mandate, institutional framework and the tasks of these services. This guidance note attempts to provide more detail, based on the Commission's expectations, recommendations and experience gained in cooperation with the competent national authorities in the field of protection of the EU's financial interests.

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<sup>1</sup> Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248/1, 18.9.2013

<sup>2</sup> The OLAF Regulation does not apply when it overlaps with provisions already laid down in sectoral regulations (i.e. *lex specialis*), except where the general rules in the Regulation serve to improve or reinforce the investigation procedure; in particular, the implementation of AFCOS in the Member States does not in any way affect the obligations of the competent authorities already designated in the Member States to provide assistance and information directly to the Commission (OLAF) as laid down *inter alia* in Regulation (EC) No 515/97 for the customs sector.

## II. Historical background

Since 2000, the Commission has encouraged every Candidate Country to establish or designate an operationally independent Anti-Fraud Co-ordination Service<sup>3</sup> (“AFCOS”) and thus reinforce the Candidate Countries’ institutional capacity for the protection of the EU's financial interests. These services should be responsible for the co-ordination of all legislative, administrative and operational aspects of the protection of the EU’s financial interests and should be capable of co-operating with OLAF at an operational level.

At the time of EU enlargement in 2004 and 2007 there was no relevant EU legal base for the designation of AFCOS. However, the designation of AFCOS was included as a priority in the 2001 Accession Partnerships and the Accession Countries committed themselves to this objective in their respective National Programmes for the Adoption of the *Acquis communautaire*, as well as in their Negotiation Positions under the relevant chapter on Financial Control.

In 2013, the AFCOS concept was positioned within the EU legislative framework by the adoption of the Regulation (EU, EURATOM) No 883/2013. The provision on the designation of AFCOS is not only applicable to the Member States, but also serves as a benchmark of the *Acquis communautaire* for the Candidate Countries in their accession to the EU.

Currently an AFCOS has been designated in the Member States of EU enlargement 2004, 2007 and 2013, as well as in some of the Candidate Countries (e.g. FYROM, Turkey, Montenegro). Recently, some of the old Member States have also taken steps to designate their AFCOS (e.g. France, the Netherlands).

## III. AFCOS mandate

The mandate of the AFCOS may vary, depending on country-specific circumstances. In all cases however, the AFCOS should have the mandate for:

- Co-ordinating, within the country, all legislative, administrative and investigative obligations and activities related to the protection of the EU’s financial interests; and
- Ensuring co-operation with OLAF and the Member States, as required by Article 325 of the TFEU.

To perform tasks described in the Annex, in particular those mentioned under point 1(ii), it is OLAF's preference that an AFCOS is vested with investigative powers (administrative or criminal), which can complement the administrative investigative powers of OLAF during the on-the-spot checks in respective Member States. Ideally, this includes the operational independence of the AFCOS.

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<sup>3</sup> These services were earlier named "Central or Single Contact Point". The name change was inspired by the recognition that their competencies should be much broader than merely acting as a point of contact with the Commission and the Member States, and should encompass wide-ranging co-ordinating powers.

#### **IV. Institutional framework of the AFCOS in the Member State**

##### **1. The placement of AFCOS**

It is Member State's decision where to best place the AFCOS within its national administrative structure. In any case the placement of AFCOS should provide for its visibility and importance in relation to other relevant authorities in the field of protection of the EU's financial interests.

The Member States joining the EU in 2004 and after placed their AFCOS either within the Ministry of Finance or the Ministry of Interior. Some Member States also established it as an independent Government's service, which is also OLAF's preference.

##### **2. Inter-institutional co-operation**

The AFCOS should have the mandate to ensure both co-ordination between the relevant services within the Member State concerned and co-operation with OLAF in cases related to the EU budget.

This would involve national authorities, such as:

- Administrative control authorities responsible for the control of the EU's financial assistance;
- Treasury control authorities and state auditors;
- Customs and Border Guards;
- Investigation authorities of Customs (Customs Police);
- Criminal or Financial Police or other investigative forces dealing with EU-financing matters;
- Prosecuting authorities.

Furthermore, the Member State's legislative and administrative framework should facilitate these activities as much as possible.

Cooperation arrangements should be concluded where necessary between the AFCOS and the other national institutions involved in the protection of the EU's financial interests to facilitate day-to-day cooperation and exchange of information.

##### **3. Investigative independence**

Apart from its administrative coordination role, AFCOS established as a functionally independent body or a service within an existing institution may be vested with investigative powers.

An AFCOS with investigative powers should ideally have a legal mandate which guarantees its independence in investigative matters.

## V. OLAF relations with AFCOS:

### 1. Administrative cooperation arrangement (ACA)

To create a more harmonised approach in cooperation with AFCOS in the Member States, in accordance with Article 1 (4) of the new OLAF Regulation, OLAF recommends the signing of an Administrative Cooperation Arrangement (ACA) between OLAF and AFCOS, setting out the framework for the working relationship between the partners subject to available resources.

An ACA is legally non-binding, does not create any obligations under international law or European Union law, and does not modify any existing legal rules or interfere with the legal frameworks governing the partners.

An ACA can be used to set practical arrangements and activities applicable to the national authority designated as AFCOS when supporting OLAF administrative investigations and on-the-spot checks performed in the Member State, as well as when exchanging investigative information with OLAF, for example collecting information at OLAF's request, sharing with OLAF information on EU linked investigations launched by Member States' authorities and ensuring the presence of persons at the interviews, etc.

### 2. Investigative support provided by OLAF

Investigative support provided by OLAF can include the analysis of relevant EU legislation, assistance in providing external expertise in technical matters and in investigations undertaken by the Member States' authorities and participation in investigations related to abuses of the EU budget. Such a participation can be either active (in which case the OLAF experts would act as investigators or coordinators), if the national provisions so allow, or passive (in which case OLAF experts act merely as observers or technical experts).

### 3. Institution building

OLAF can be involved in the organisation of meetings, training sessions and seminars on specific topics related to the fight against fraud (including organised crime) affecting the EU budget. Within certain limits, OLAF is able to co-finance (e.g. through Hercule and Pericles programme) such events, in which OLAF staff can participate as speakers or moderators.

## VI. Candidate Countries

OLAF can also assist the Candidate Countries during their accession process to the EU and their alignment with the requirements of the *Acquis communautaire*.

Member States should not hesitate to seek further explanations of these guidelines and/or ask for OLAF support in designation of their AFCOS.

## Annex

### AFCOS tasks

1. Investigative tasks, including the exchange of investigative information
  - a) AFCOS should facilitate and ensure co-operation between national administrations, investigation authorities and prosecution authorities, as well as between these authorities and OLAF<sup>4</sup>, in cases of suspected fraud or irregularities affecting the EU's financial interests:
    - i. With regard to information related to irregularities or cases of suspected fraud, AFCOS may be authorised to:
      - Request a relevant national administrative or law enforcement authority to analyse such information, for the purpose of initiating an investigation;
      - Request the said authority to initiate an investigation, if necessary;
      - Request to be informed of the results of such an investigation;
      - Ensure effective exchange of relevant information with OLAF.
    - ii. With regard to OLAF investigations and on-the-spot checks under Regulation (Euratom, EC) N° 2185/96, AFCOS should:
      - Be responsible for receiving the on-the-spot checks notifications and identifying the competent administrative or law enforcement authority, which may provide OLAF with the necessary assistance;
      - Put OLAF in contact with the relevant national authority that can provide the necessary cooperation in the case of an investigation;
      - Foresee the possibility for jointly carrying out investigations between OLAF and the relevant national authority;
      - Organise periodical meetings with all relevant national administrative and law enforcement authorities, in order to be always updated on the investigation developments and if necessary intervene in the case of excessive delay or in case of poor support provided by them;
      - Ensure effective exchange of relevant information with OLAF.

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<sup>4</sup> In cases of criminal investigation, OLAF should be able to refer directly to the national judicial authority. Information to the AFCOS will be subject to the consent, as the case may be, of the competent judicial authority.

- iii. With regard to implementation of OLAF's recommendations, AFCOS should:
- Facilitate exchange of information among the involved national authorities;
  - Ensure effective exchange of relevant information with OLAF, in particular with regard to recovery of misused EU funds;
  - Report back to OLAF on action taken following information transmitted to them, as envisaged in Article 11(6) of the Regulation (EU, EURATOM) No 883/2013<sup>5</sup>.

b) AFCOS should ensure the application of the Union's sectoral legislation on the reporting of irregularities, suspected fraud and fraud by sending regular reports via the Irregularity Management System (IMS) as part of the EU Anti-Fraud Information System (AFIS), of the detected irregularities, suspected fraud and established fraud, the amounts concerned and the progress of related administrative and legal proceeding.

If the above mentioned activities are performed by other competent national authorities, AFCOS should ensure any necessary coordination in this respect.

## 2. Preventive tasks

These tasks should include:

- a) Taking the lead in formulating, disseminating, co-ordinating and implementing a national anti-fraud strategy, aimed at reinforcing the protection of the EU's financial interests<sup>6</sup>;
- b) Monitoring of the legislative, regulatory and administrative adaptations, including the definition of relations with other institutions or bodies involved and the establishment of common co-ordination structures and mechanisms;
- c) Identification of possible weaknesses in the national system for the management of EU funds, including pre-accession funds;
- d) Dissemination of information to authorities responsible for the management of EU funds and revenues, concerning obligations and procedures to follow as regards the protection of the EU's financial interests.

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<sup>5</sup> "At the request of the Office, the competent authorities of the Member States concerned shall, in due time, send to the Office information on action taken, if any, following the transmission by the Director-General of his recommendations in accordance with paragraph 3, and following the transmission by the Office of any information in accordance with paragraph 5."

<sup>6</sup> In the context of the Commission Anti-Fraud Strategy (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, and the Court of Auditors on the Commission Anti-Fraud Strategy; COM(2011) 376 final)



3. Training tasks, including Hercule programme

These tasks should include:

- a) Definition of the training needs of different national institutions and bodies involved in the protection of the EU's financial interests;
- b) Development, in collaboration with OLAF, of general and specific training, including study visits and temporary exchange programmes (internships) with OLAF and Member States' administrations;
- c) Organisational support to training activities;
- d) Provision of assistance and advice to other national institutions and bodies involved in the protection of the EU's financial interests, and liaison with OLAF in this respect;
- e) Presentation of the results under the Hercule programme.



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**Guidance for Member States and Programme Authorities on fraud risk assessment and effective and proportionate anti-fraud measures (EGESIF\_14-0021-00, de 16/06/2014)**





European Structural and Investment Funds

Guidance for Member States and Programme Authorities

Fraud Risk Assessment and Effective and  
Proportionate Anti-Fraud Measures

June 2014

**DISCLAIMER:**

*"This is a working document prepared by the Commission services. On the basis of applicable EU law, it provides technical guidance for public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of the European Structural and Investment Funds on how to interpret and apply EU rules in this area. The aim of this document is to provide Commission services' explanations and interpretations of the said rules in order to facilitate programme implementation and to encourage good practice(s). However this guidance is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission."*

## Table of Contents

LIST OF ACRONYMS AND ABBREVIATIONS .....	3
1. INTRODUCTION .....	5
1.1. Background.....	5
1.2. A proactive, structured and targeted approach to managing fraud risk.....	6
2. DEFINITIONS .....	7
2.3. Definition of corruption.....	7
3. FRAUD RISK SELF-ASSESSMENT .....	8
3.1. The tool.....	8
3.2. Composition of the self-assessment team.....	9
3.3. Frequency of the self-assessment .....	10
4. GUIDANCE ON MINIMUM REQUIREMENTS FOR EFFECTIVE AND PROPORTIONATE ANTI-FRAUD MEASURES .....	10
4.1. Anti-fraud policy .....	10
4.2. Prevention.....	11
4.2.1. Ethical culture.....	12
4.2.2. Allocation of responsibilities.....	12
4.2.3. Training and awareness raising .....	12
4.2.4. Internal control systems.....	13
4.2.5. Data analytics and the ARACHNE tool .....	13
4.3. Detection and reporting .....	14
4.3.1. Developing an appropriate mind-set.....	14
4.3.2. Fraud indicators (red flags).....	14
4.4. Investigation, correction and prosecution.....	15
4.4.1. Recovery and criminal prosecution .....	16
4.4.2. Follow-up .....	16
5. AUDIT BY THE AA OF THE MA'S FRAUD RISK ASSESSMENT AND ITS ANTI-FRAUD MEASURES .....	16
5.1. Checklist for AAs .....	16
5.2. Frequency of the AA's verification .....	16
<b>Annex 1</b> Fraud risk assessment tool and instructions on how to use the tool	
<b>Annex 2</b> Recommended mitigating controls	
<b>Annex 3</b> Template for anti-fraud policy	
<b>Annex 4</b> Checklist for the AA	

## LIST OF ACRONYMS AND ABBREVIATIONS

AA – Audit Authority

CA – Certifying Authority

"the CPR" – Common Provisions Regulation (Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013, laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006)

ERDF – European Regional Development Fund

ESF – European Social Fund

The Financial Regulation – Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

"the Funds" – for this document specifically, this means: the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund

IB – Intermediate Body

MA – Managing Authority

OLAF – European Anti-Fraud Office

## EXECUTIVE SUMMARY

This guidance note provides assistance and recommendations to managing authorities (MAs) for the implementation of Article 125(4)(c) CPR, which lays down that the MA shall put in place effective and proportionate anti-fraud measures taking into account the risks identified. The Commission also provides guidance for the audit authority's (AA) verification of the compliance of the MA with this article.

The Commission recommends that MAs adopt a **proactive, structured and targeted approach to managing the risk of fraud**. For the Funds, the objective should be proactive and proportionate anti-fraud measures with cost-effective means. All programme authorities should be committed to zero tolerance to fraud, starting with the adoption of **the right tone from the top**. A well-targeted fraud risk assessment, combined with a clearly communicated commitment to combat fraud can send a clear message to potential fraudsters. Effectively implemented robust control systems can considerably reduce the fraud risk but cannot completely eliminate the risk of fraud occurring or remaining undetected. This is why the systems also have to ensure that procedures are in place to detect frauds and to take appropriate measures once a suspected case of fraud is detected. The guidance is intended to help as a step-by-step guide to addressing any remaining instances of fraud once other sound financial management measures have been put in place and are implemented effectively. However, the overall objective of the regulatory provisions is cost-effective fraud risk management and the implementation of effective and proportionate anti-fraud measures, which in practice means **a targeted and differentiated approach for each programme and situation**.

Therefore, the fraud risk self-assessment tool which is attached to this guidance note, together with detailed instructions, can be used to assess the impact and likelihood of common fraud risks occurring. Secondly, the guidance indicates the recommended mitigating controls which could help further reduce any remaining risks, not yet effectively addressed by current controls. The operational objective for the MA should be to deliver fraud responses which are proportionate to the risks and tailored to the specific situations related to the delivery of the Funds in a particular programme or region. Notably, following this risk assessment and related mitigating controls put in place at system level, managing authorities are recommended to address specific situations which may arise at the level of implementation of operations by further developing specific fraud indicators (red flags) and by ensuring effective cooperation and coordination between the managing authority, the audit authority and investigative bodies. The Commission will also assist Member States by offering a specific risk scoring tool, ARACHNE, which will help to identify, prevent and detect risky operations, projects, beneficiaries and contracts/contractors and will serve also as a preventive instrument.

The fraud risk self-assessment proposed by the Commission is straightforward, logical and practical and is based on five main methodological steps:

1. Quantification of the risk that a given fraud type would occur by assessing impact and likelihood (gross risk).
2. Assessment of the effectiveness of the current controls in place to mitigate the gross risk.
3. Assessment of the net risk after taking into account the effect of any current controls and their effectiveness i.e. the situation as it is at the current time (residual risk).

4. Assessment of the effect of the planned mitigating controls on the net (residual) risk.
5. Defining the target risk, i.e. the risk level which the managing authority considers tolerable after all controls are in place and effective.

Finally, the Commission plans to provide targeted roll-out support, when needed, to assist Member States in implementing Article 125(4)(c) CPR and this guidance.

## 1. INTRODUCTION

### 1.1. Background

According to Article 59(2) of the Financial Regulation, Member States shall take all necessary measures, including legislative, regulatory and administrative measures, to protect the EU's financial interests, namely by preventing, detecting and correcting irregularities and fraud.

The CPR includes specific requirements in relation to Member States' responsibility for fraud prevention. This guidance on fraud risk management is addressed to the MAs and AAs of the European Regional Development Fund (ERDF), the Cohesion Fund and the European Social Fund (ESF) and the European Maritime and Fisheries Fund (EMFF).

Apart from Article 72(h) CPR, which sets out that the management and control systems shall provide for the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest, Article 125(4)(c) CPR lays down that the MA shall put in place **effective and proportionate anti-fraud measures taking into account the risks identified**.

Fraud and corruption risks should be adequately managed. MAs have a responsibility to demonstrate that attempts at defrauding the EU budget is unacceptable and will not be tolerated. Dealing with fraud, and its causes and consequences, is a significant challenge to any management, as fraud is designed to avoid detection. MAs are also advised to take notice of Transparency International's *Corruption Perception Index*<sup>1</sup> and the EU anti-corruption report prepared by the Commission<sup>2</sup>, when assessing to what extent its overall operating environment is perceived to be exposed to potential corruption and fraud.

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 can therefore be 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 should be 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.

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<sup>1</sup> <http://cpi.transparency.org/cpi2012>

<sup>2</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 6 June 2011 – Fighting corruption in the EU (COM(2011)308 final).

In order to assess the impact and likelihood of any potential fraud risks which could harm the EU's financial interests, the Commission recommends that MAs use the attached fraud risk assessment tool in **Annex 1**. The assessment should be carried out by a self-assessment team set up by the MA<sup>3</sup>. The list of recommended but non-binding mitigating controls which the MA could put in place, in response to any remaining risks, is indicated in **Annex 2**. These proportionate measures could help further mitigate any remaining risks identified in the self-assessment, not yet effectively addressed by current controls.

Moreover, a voluntary template for an anti-fraud policy statement is also proposed at **Annex 3**, for the benefit of those MAs which wish to set out their anti-fraud programme in a policy statement, which communicates internally and externally their official position with regard to fraud and corruption.

In order to complement this guidance, the Commission also provides guidance for the AA's verification of the work done by the MA in the context of the fraud risk assessment and the corresponding measures it has put in place to mitigate the fraud risks. The checklists in **Annex 4** may prove useful in view of the systems audits to be performed by the AAs under Article 127 CPR. They will be used for the Commission's own risk assessment purposes and may also be useful for the purpose of the report and opinion of the independent audit body responsible for the assessment of the management and control system in view of the designation of MAs referred to in Article 124(2) CPR.

## **1.2. A proactive, structured and targeted approach to managing fraud risk**

The attached practical fraud risk self-assessment tool targets the main situations where key processes in the implementation of the programmes could be most open to manipulation by fraudulent individuals or organisations, including organised crime, the assessment of how likely and how serious these situations could be and, what is currently being done by the MA to tackle them. Three selected key processes considered to be most exposed to specific fraud risks are targeted:

- selection of applicants;
- implementation and verification of the operations;
- certification and payments.

The end output of the fraud risk assessment is the identification of those specific risks where the self-assessment concludes that not enough is currently being done to reduce the likelihood or impact of the potentially fraudulent activity to an acceptable level. This assessment will then form the basis for responding to the deficiencies by choosing effective and proportionate anti-fraud measures from the list of recommended mitigating controls. In some cases, the conclusion could be that most residual risks have been addressed and that therefore very few, if any, additional anti-fraud measures are required. In all assessment scenarios, it would be expected that arguments can be provided by the MA to support its conclusions.

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<sup>3</sup> In the case of European territorial cooperation, as MAs are responsible for all functions, the risk assessment should take into account fraud risks across the whole programme area and should seek to ensure that effective and proportionate anti-fraud measures are put in place, as necessary.



## 2. DEFINITIONS

This risk assessment deals only with specific fraud risks, not irregularities. **However, indirectly, effective implementation of the exercise may also have an impact on prevention and detection of irregularities at large**, being understood as a larger category than fraud.

It is the element of intention which distinguishes fraud from irregularity.<sup>4</sup>

### 2.1. 2.1. Definition of irregularity

For the purposes of Council Regulation (EC) No 2988/95 of 18 December 1995<sup>5</sup> on the protection of the European Communities' financial interests, the term irregularity is a wide concept and covers both intentional and non-intentional irregularities committed by economic operators.

Article 1(2) of Regulation (EC) No 2988/95<sup>5</sup> defines "**irregularity**" as:

*"any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure".*

### 2.2. 2.2. Definition of fraud in the Treaty

The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests<sup>6</sup> defines "**fraud**", in respect of expenditure, as 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 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."*

### 2.3. Definition of corruption

A broad definition of corruption used by the Commission is the abuse of (public) position for private gain. Corrupt payments facilitate many other types of fraud, such as false invoicing, phantom expenditure or failure to meet contract specifications. The most

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<sup>4</sup> The reasons behind fraudulent behaviour have been dealt with in COCOF 09/0003/00 of 18.2.2009 - Information Note on Fraud Indicators for ERDF, ESF and CF.

<sup>5</sup> OJ L 312, 23.12.1995, p. 1.

<sup>6</sup> OJ C 316, 27.11.1995, p. 49.

common form of corruption is corrupt payments or other advantages; a receiver (passive corruption) accepts a bribe from a giver (active corruption) in exchange for a favour.

### **3. FRAUD RISK SELF-ASSESSMENT**

#### **3.1. The tool**

The main objective of the fraud risk assessment tool at **Annex 1** is the facilitation of a self-assessment by the MA of the impact and likelihood of specific fraud scenarios occurring. The specific fraud risks which should be assessed were identified through knowledge of previous fraudulent cases encountered in cohesion policy, as well as commonly recognised and recurring fraud schemes. In other words, the tool has been pre-filled with a set of recognised specific risks. Any other known risks for the specific programme/region under assessment should be added by the self-assessment team (see section 3.2 below).

**The guidance in Annex 1 explains in detail how to complete the fraud risk assessment tool.**

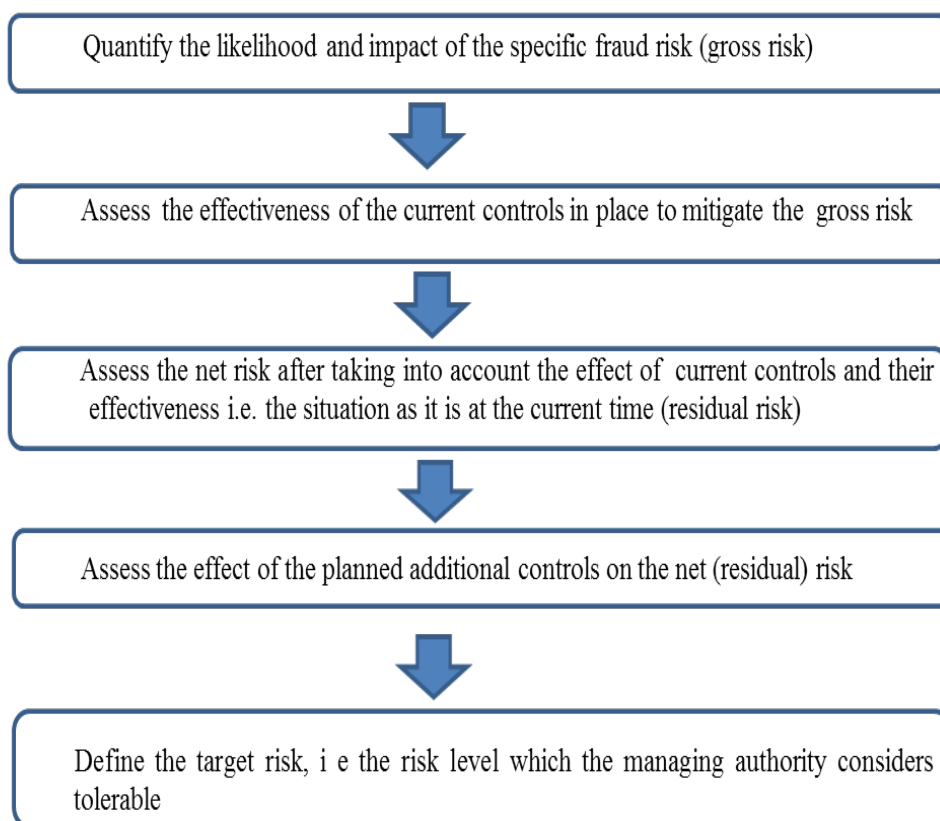
The tool covers the likelihood and impact of specific and commonly recognised fraud risks particularly relevant to the key processes:

- selection of applicants (worksheet 1 of the spreadsheet);
- implementation of the projects by the beneficiaries, focusing on public procurement and labour costs (worksheet 2);
- certification of costs by the MA and payments (worksheet 3).

Each section is preceded by a cover sheet, which lists the specific risks relevant to the section.

Moreover, the MA is recommended to assess the overall fraud risks in relation to public procurement contracts it may manage directly, e.g. in the context of procuring technical assistance (worksheet 4). If the MA does not carry out any public procurement for which a fraud risk assessment is necessitated, section 4 need not be filled in.

The methodology for this fraud risk assessment has **five main steps**:



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 – see the list of recommended mitigating controls<sup>7</sup> in **Annex 2**).

### **3.2. Composition of the self-assessment team**

Depending on the size of the programme and of the MA, it may be that each of the implementation processes is executed by different departments within the MA. It is recommended that the most relevant actors take part in the assessment in order that it is as honest and accurate as possible and so that it can be done in an efficient and smooth way. The assessment team could therefore include staff from different departments of the MA having different responsibilities, including selection of operations, desk and on the spot verification and authorisation of payments, as well as representatives from the certifying authority (CA) and implementing bodies. MAs may want to consider involving the Anti-Fraud Coordination Services ('AFCOS') or other specialised bodies, which could bring in specific anti-fraud expertise into the assessment process.

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<sup>7</sup> These constitute **non-binding suggestions** for additional controls in order to further mitigate the residual risk.

As the AA will audit the completed risk assessment, it is recommended that it does not take a direct role in deciding on the level of risk exposure, but it could be envisaged to participate in the assessment process in an advisory role or as an observer.

For obvious reasons, the self-assessment should not be outsourced as it requires a good knowledge of the operating management and control system and the programme's beneficiaries.

### **3.3. Frequency of the self-assessment**

**First, compliance with the requirements for adequate procedures for putting in place effective and proportionate anti-fraud procedures are part of the designation criteria for MAs.**

The recommendation is that this tool should be completed in full on an annual basis, as a general rule, or every second year. However, more regular reviews of progress against action plans related to additional controls which were put in place, changes to the risk environment and the continuing adequacy of assessment scores may be necessary (e.g. through management meetings). When the level of risks identified is very low and no instances of fraud were reported during the preceding year, the MA may decide to review its self-assessment only each second year. The occurrence of any new fraud instance, or main changes in the MA procedures and/or staff, should immediately lead to a review of perceived weaknesses in the system and of relevant parts of the self-assessment.

## **4. GUIDANCE ON MINIMUM REQUIREMENTS FOR EFFECTIVE AND PROPORTIONATE ANTI-FRAUD MEASURES**

Whereas this section provides general guidance on principles and methods which should be employed by the MA to combat fraud, **Annex 2** provides for each specific risk identified in the fraud risk assessment, the recommended non-binding mitigating controls which could be put in place in order to seek to reduce the risks to an acceptable level.

**The minimum standards set out in this chapter which MAs are recommended to comply with relate to the anti-fraud cycle.**

In order to successfully tackle the issue of fraud, the Commission recommends that the MA develop a structured approach to tackling fraud. There are four key elements in the anti-fraud cycle: prevention, detection, correction and prosecution. The combination of a thorough fraud risk assessment, adequate preventative and detective measures, as well as coordinated and timely investigations by competent bodies could significantly reduce the fraud risk as well as provide adequate deterrence against fraud.

### **4.1. Anti-fraud policy**

Many organisations use an anti-fraud policy to communicate their determination to combat and address fraud. Within any such policy, which should be simple and focused, the following topics should be covered:

- Strategies for the development of an anti-fraud culture;
- Allocation of responsibilities for tackling fraud;
- Reporting mechanisms for suspicions of fraud;
- Cooperation between the different actors.

This policy should be visible within an organisation (distributed to all new staff, included on intranet) and it should be clear to staff that it is actively implemented, via avenues such as regular updates on fraud matters and reporting of outcomes of investigations into fraud. See the suggested template for an anti-fraud policy in **Annex 3**, which provides a voluntary template for an anti-fraud policy statement for the benefit of those MAs which wish to go beyond the immediate regulatory requirements and to formalise and communicate internally and externally their official position with regard to fraud and corruption.

**4.2. Prevention**

If the MA demonstrates a clear commitment to combat fraud and corruption, raises awareness about its preventative and detective controls, and is determined in transmitting cases to the competent authorities for investigations and sanctions, it will send a clear message to any potential perpetrators and could change behaviours and attitudes towards fraud.

Given the difficulties in proving fraudulent behaviour and repairing reputational damage, it is generally preferable to prevent fraudulent activity rather than to have to deal with it after the event. Prevention techniques most often revolve around reducing opportunities to commit fraud via the implementation of a robust internal control system, combined with a proactive, structured and targeted fraud risk assessment, but comprehensive training and awareness raising activities and the development of an **‘ethical’ culture** can also be used to combat any potential ‘rationalisation’ of fraudulent behaviour.

The strongest preventative defence against fraud is the operation of a robust system of internal control which should be designed and operated as a proportionate response to the risks identified during a risk assessment exercise. An organisation should however also work to create the right structures and culture to discourage potential fraudulent behaviour.



#### 4.2.1. *Ethical culture*

The creation of an anti-fraud culture is key both in deterring potential fraudsters and also in maximising the commitment of staff to combat fraud within the MA. This culture can be created by a combination of specific anti-fraud structures and policies, as shown in the second circle in the above diagram and discussed in more detail below, but also through the operation of more general mechanisms and behaviours:

- **Mission statement** – a clear expression, visible to all internal and external observers, that the MA is striving to achieve the highest ethical standards;
- **Tone from the top** – oral and/or written communication from the highest level of the MA that the highest standard of ethical behaviour is expected from staff and beneficiaries (the latter can be implemented through the grant letters and contracts);
- **Code of conduct** – a unambiguous code of ethics that all staff must routinely declare adherence to, covering such things as:
  - Conflicts of interest – explanation and requirements and procedures for declaring them;
  - Gifts and hospitality policy – explanation and responsibilities of staff for compliance;
  - Confidential information – explanation and responsibilities of staff;
  - Requirements for reporting suspected fraud.

In short, staff should comply with principles such as integrity, objectivity, accountability and honesty.

#### 4.2.2. *Allocation of responsibilities*

Within the MA, there should be a clear allocation of responsibilities for setting up management and control systems which comply with EU requirements and for verifying that these systems function effectively in preventing, detecting and correcting fraud. This is to ensure that all actors fully understand their responsibilities and obligations, and to communicate both internally and externally, towards all potential programme beneficiaries, that the organisation has a coordinated approach towards combatting fraud.

#### 4.2.3. *Training and awareness raising*

Formal training and awareness-raising can be included within the organisation's overall risk management strategy, as necessary. All staff could be trained on both theoretical and practical matters, both to raise awareness of the MA's anti-fraud culture and also to assist them in identifying and responding to suspected instances of fraud. It could cover the detail of any anti-fraud policy, specific roles and responsibilities and reporting mechanisms.

Awareness-raising can also be carried out via less formal avenues, such as through newsletters, posters, intranet sites or inclusion as a regular agenda item for group meetings.

#### 4.2.4. *Internal control systems*

The strongest defence against potential fraud is a well-designed and operated system of internal control, where controls are focused at effectively mitigating the identified risks.

Management verifications must be thorough and the associated on-the-spot controls must be risk-based and carried out with sufficient coverage. **The likelihood of detecting potential fraud cases will increase when management verifications are thorough.** Staff in charge of desk and on-the-spot management verifications should be aware of the Commission and any national guidance on fraud indicators (see below).

#### 4.2.5. *Data analytics and the ARACHNE tool*

With the growth in sophistication of data gathering, storage and analytics comes an opportunity in the fight against fraud. Within and taking duly into account the limits of the respective legislation in each Member State, data analytics can be used at this stage to significantly enrich the risk assessment process, cross-check data with other public or private sector organisations (e.g. tax authorities, government departments, credit checking authorities) and detect potentially high risk situations even prior to the award of funding.

In the framework of the fight against fraud (and irregularities), the Commission offers a specific data mining tool called ARACHNE to MAs in order to identify projects which might be susceptible to risks of fraud, conflict of interest and irregularities. ARACHNE is a risk-scoring tool which can increase the efficiency of projects' selection, management verifications and audit, and further strengthen fraud identification, prevention and detection. It has been developed by the Commission and is particularly suited for the identification and assessment of fraud risks in the Funds, including, among other areas, public procurement, an area particularly prone to fraud and irregularities, such as collusive bidding.

The Commission submitted through the Data Protection Office on 17 May 2013 the required notification for prior checking concerning the processing of personal data to the European Data Protection Supervisor who, after thoroughly checking the relevant legal basis, issued on 17 February 2014 a positive opinion concerning the compliance of ARACHNE with the provisions of Regulation (EC) No 45/2001<sup>8</sup>. This included certain considerations concerning the processing of special categories of data in order to ensure their necessity, proportionality and quality. Other recommendations related to the feedback loop to ensure accuracy of data, measures to ensure high data quality, case-by-case analysis of data transfers to OLAF and the European Court of Auditors, deletion of data after a reasonable period of time and information to data subjects. All these considerations and recommendations are being thoroughly analysed in view of their implementation by the Commission.

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<sup>8</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

The correct use of ARACHNE will be considered by the Commission as a good practice in order to identify red flags and target fraud combatting measures, and should be taken into account when assessing the adequacy of current preventive and detective controls in place. The tool will be gradually rolled out in 2014 to all those Member States that voluntarily decide to implement it in order to further improve their fraud risk management controls. As opposed to a "one-size-fits-all" approach, such decision may well vary from Member State to Member State and even within different programmes/regions in a Member State, since, based on the figures shown in the latest PIF report,<sup>9</sup> the factual situation in terms of fraud detected and reported to the Commission also varies widely among Member States.

### 4.3. Detection and reporting

Preventative techniques cannot provide absolute protection against fraud and so the managing authority need systems that detect fraudulent behaviour in a timely manner. Such techniques include analytical procedures to highlight anomalies (eg data mining tools, such as the ARACHNE tool), robust reporting mechanisms and on-going risk assessments.

A strong ethical culture and a sound system of internal control cannot provide absolute protection against perpetrators of fraud. A fraud strategy must therefore take into consideration that instances of fraud may still occur, for which a series of fraud detection measures must be designed and implemented.

#### 4.3.1. Developing an appropriate mind-set

The MA could address fraud risks with specialised and focused detection techniques with designated individuals having responsibility for conducting them. In addition to this, all of those involved in implementing a structural funding cycle have a role to play in spotting potentially fraudulent activity and then acting upon it. This necessitates the cultivation of an appropriate mind-set. A healthy level of scepticism should be encouraged, together with an up-to-date awareness of what could constitute potential fraud warning signs.

#### 4.3.2. Fraud indicators (red flags)

Fraud indicators are more specific signs or 'red flags' that fraudulent activity is taking place, when an immediate response is required to verify whether further action is required.

Indicators can also be specific to those activities frequently taking place under structural funding programmes, such as procurement and labour costs. For this purpose, the Commission has provided the following information to Member States:

- *COCOF 09/0003/00 of 18.2.2009 - Information Note on Fraud Indicators for ERDF, ESF and CF*
- *OLAF Compendium of Anonymised Cases – Structural Actions*
- *OLAF practical guide on conflict of interest*
- *OLAF practical guide on forged documents*

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<sup>9</sup> Protection of the European Union's financial interests — Fight against fraud, 2012 Annual Report. COM(2013)548 final, 24.7.2013.



These publications should be read in detail and the content widely publicised amongst all staff who are in positions in which they could detect such behaviour. In particular, these indicators must be familiar to all of those working in roles involving the review of beneficiary activities, such as those performing both desk-based and on-the-spot management verifications or other monitoring visits.

#### 4.3.3. *Reporting mechanisms*

The establishment and promotion of clear reporting mechanisms is a key element of prevention, as well as detection. Any such mechanisms should facilitate the reporting of both suspicions of fraud and also control weaknesses that may increase the MA's susceptibility to fraud. MAs should have clear reporting mechanisms ensuring **sufficient coordination on anti-fraud matters with the audit authority and competent investigative authorities in the Member State**, including anti-corruption authorities.

Reporting to the Commission on the results of effective anti-fraud measures and any suspected instances of fraud will be part of the annual summary report and management opinion of the MA. The annual control report of the AA will also comprise a section on fraud suspicions detected during the year.

Communication and training with staff about these reporting mechanisms must ensure that they:

- understand where they should report suspicions of fraudulent behaviour or control;
- are confident that these suspicions are acted upon by management;
- are confident that they can report in confidence and that the organisation does not tolerate retaliation against any staff member who reports suspicions.

Suspected fraud must be reported to OLAF by the authority designated by the Member State in line with requirements under Article 122 CPR. In addition, beneficiaries should be made aware of how they can approach OLAF with any information they may have.<sup>10</sup>

#### 4.4. **Investigation, correction and prosecution**

Once a suspicion of fraud has been raised and correctly reported, the MA must transmit the case to the competent authority in the Member State for investigation and sanctions, including anti-corruption authorities where relevant, and inform OLAF accordingly.

The MA should also conduct a thorough and critical review of any related internal control systems that may have exposed them to the potential or proven fraud.

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<sup>10</sup> COCOF 09/0003/00 of 18.2.2009 - Information Note on Fraud Indicators for ERDF, ESF and CF, also contains information on reporting procedures.

Once a case of suspected fraud has been detected and reported in accordance with internal and EU requirements, in order for the competent body to make an assessment whether an investigation should be opened, recovery and criminal prosecution should ensue, as relevant.

#### *4.4.1. Recovery and criminal prosecution*

Recovery of undue payments from beneficiaries is required by MAs and CAs and so they should ensure that they have robust processes in place for following up any potential recoveries of EU funds spent in a fraudulent manner. These processes should also be clear on the cases in which civil and criminal proceedings will be pursued. **The implementation of such sanctions, and the visibility of these, are a key deterrent to potential fraudsters** and so the MA should be vigorous in pursuing such outcomes.

#### *4.4.2. Follow-up*

Once a fraud investigation has been concluded by competent authorities, or handed over to the relevant authorities for pursuit, a review of any processes, procedures or controls connected to the potential or actual fraud should be conducted. This should be objective and self-critical and should result in clear conclusions about perceived weaknesses and lessons learned, with clear actions, responsible individuals and deadlines. This should also feed into the subsequent review of the self-assessment, as indicated in section 3.3 above.

Full cooperation with investigative, law enforcement or judicial authorities should be ensured, in particular by keeping files concerning fraud cases in safe places and ensure a proper hand over in case of staff mobility.

## **5. AUDIT BY THE AA OF THE MA'S FRAUD RISK ASSESSMENT AND ITS ANTI-FRAUD MEASURES**

### **5.1. Checklist for AAs**

A proposal for a checklist for the AA's audit of the MA's (and its intermediate bodies') compliance with Article 125(4)(c) CPR is at **Annex 4**. This can be part of checklists used by the AA for its system audits.

The check list can also be used by the independent body in charge of assessing the management and control system for the purpose of designation in accordance with Article 124(2) CPR.

### **5.2. Frequency of the AA's verification**

In connection with audits on the functioning of the management and control systems, the AA should carry out verifications of the effective implementation of the anti-fraud measures by the MA as early as possible in the programming period.<sup>11</sup> Depending on the results of such audits and on the identified fraud risk

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<sup>11</sup> As regards European territorial cooperation, where it is not possible for the single AA to do this, a group of auditors should assist the AA.

environment, follow-up audits may be carried out as often as necessary. In some cases this may entail annual follow-up audits, depending on the gravity of fraud suspicion for each programme. Here again a targeted and proportionate (risk-related) approach is recommended. The conclusions should be included in the AA's annual control report.

The AA should also systematically review the implementation of effective and proportionate anti-fraud measures at the level of intermediate bodies, as part of its system audits.

## 1.1. HOW TO USE THE SELF-ASSESSMENT TOOL

The tool covers three key processes under three sections:

- selection of applicants (worksheet 1 of the spread-sheet);
- implementation of the projects by the beneficiaries, focusing on public procurement and labour costs (worksheet 2);
- certification of costs by the MA and payments (worksheet 3).

**Each of these three sections, containing the specific risks, which have been numbered (e.g. SR1, SR2 etc) is preceded by a cover sheet, which lists all the specific risks relevant to the section.**

Moreover, the MA is recommended to assess fraud risks in relation to any public procurement it manages directly, e.g. in the context of technical assistance (section 4 on direct procurement). In case the MA does not carry out any public procurement for which a fraud risk assessment is necessitated, section 4 need not be filled in.

Note: only yellow cells should be filled in by the self-assessment team.

### **RISK DESCRIPTION**

To help the team a certain number of risks have been pre-defined in the tool. These pre-defined risks should all be assessed by the team, but if additional risks are identified more rows can be added.

**The complete risk description can be found either in the cover sheet (as regards sections 2 and 4) or under the specific risk (sections 1 and 3).**

Column Heading	Guidance
<b>Risk Ref</b>	A unique risk reference. The letters refer to the section in which the risk has been identified (SR = Selection of beneficiaries, IR = Implementation and Monitoring, CR = Certification and Payment and PR = Direct Procurement by the MA) and the number is the sequential identification reference.  This cell only needs to be completed for new risks added.
<b>Risk Title</b>	This cell only needs to be completed for new risks added.
<b>Risk Description</b>	This cell only needs to be completed for new risks added.

<p><b>Who is involved in the risk?</b></p>	<p>Details of the bodies in which the individuals or actors involved in perpetrating any fraud are located are named here e.g. Managing Authority, Implementing bodies, Certifying Authority, Beneficiaries, Third Parties.</p> <p>This cell only needs to be completed for new risks added.</p>
<p><b>Is the risk internal (within the MA), external or the result of collusion?</b></p>	<p>Details of whether the fraud would be internal (only within the Managing Authority), external (only within one of the bodies external to the Managing Authority) or a result of collusion (involving one of more of the bodies) are given here.</p> <p>This cell only needs to be completed for new risks added.</p>

## 2. THE FIVE KEY STEPS IN THE SELF-ASSESSMENT

### 2.1. Gross risk

Gross risk refers to the level of risk **before taking into account** the effect of any **existing or planned** controls. The quantification of risk normally consists of a combination of the risk **‘likelihood’** – how likely is the event to happen and the risk **‘impact’** – what consequences will the event have, financially and non-financially. In order to ensure consistency of assessment, a **time horizon** should be set when determining the likelihood, which in this case should be the seven-year programming period.

Column Heading	Guidance																
<p><b>Risk Impact (GROSS)</b></p>	<p>From the drop-down menu, the risk assessment team should select a risk impact score from 1 to 4, based on the impact that the risk would have if it occurred, according to the following criteria:</p> <table border="1" data-bbox="624 1332 1256 1859"> <thead> <tr> <th></th> <th>Reputation</th> <th>On Objectives</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Limited impact</td> <td>Additional work delaying other processes</td> </tr> <tr> <td>2</td> <td>Minor impact</td> <td>Achievement of operational objective delayed</td> </tr> <tr> <td>3</td> <td>Major impact, e.g. because nature of fraud is particularly serious or several beneficiaries are involved</td> <td>Achievement of operational objective endangered or strategic objective delayed</td> </tr> <tr> <td>4</td> <td>Formal enquiry from stakeholders, e.g. Parliament and/or negative press</td> <td>Strategic objective endangered</td> </tr> </tbody> </table>			Reputation	On Objectives	1	Limited impact	Additional work delaying other processes	2	Minor impact	Achievement of operational objective delayed	3	Major impact, e.g. because nature of fraud is particularly serious or several beneficiaries are involved	Achievement of operational objective endangered or strategic objective delayed	4	Formal enquiry from stakeholders, e.g. Parliament and/or negative press	Strategic objective endangered
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<b>Risk Likelihood (GROSS)</b>	<p>From the drop-down menu, the risk assessment team should select a risk likelihood score from 1 to 4, based on the likelihood that the risk will occur in the seven-year programming period, according to the following criteria:</p> <table border="1" data-bbox="627 360 1142 490"> <tr> <td>1</td> <td>Will almost never happen</td> </tr> <tr> <td>2</td> <td>Will rarely occur</td> </tr> <tr> <td>3</td> <td>Will sometimes occur</td> </tr> <tr> <td>4</td> <td>Will often occur</td> </tr> </table>	1	Will almost never happen	2	Will rarely occur	3	Will sometimes occur	4	Will often occur
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<b>Total Risk Score (GROSS)</b>	<p>This cell is automatically calculated from the inputs into Risk Impact and Likelihood. It is ranked according to the total score:</p> <ul style="list-style-type: none"> <li>• 1 – 3 – Tolerable (Green)</li> <li>• 4 – 6 – Significant (Orange)</li> <li>• 8 – 16 – Critical (Red)</li> </ul>								

## 2.2. Current mitigating controls

A certain number of suggested preventative controls have been pre-defined in the tool. **These controls are examples only** can be removed by the assessment team, if the controls do not exist and more rows can be added if there are additional controls in place that counter the identified risk. **It may be that a control currently allocated to one particular risk is also relevant to other risks - in such cases the controls can be repeated several times. In particular, the exercise can be facilitated by making a simple cross-reference to current controls which are described and/or listed in e.g. the description of the management and control system, business processes and manuals.**

<b>Column Heading</b>	<b>Guidance</b>
<b>Control Ref</b>	<p>A unique control reference. The numbers have been sequentially allocated to each risk, e.g. controls for risk SR1 begin at SC 1.1, controls for risk IR2 begin at IC 2.1.</p> <p>This cell only needs to be completed for new controls added.</p>
<b>Control Description</b>	<p>This cell only needs to be completed for new controls added.</p>
<b>Do you evidence operation of this control?</b>	<p>From the drop-down menu, the risk assessment team should indicate ‘Yes’ or ‘No’ evidence for the operation of the control is documented. For example, evidence of approval is documented by a signature and the control is therefore visible.</p>
<b>Do you regularly test this control?</b>	<p>From the drop-down menu, the risk assessment team should indicate ‘Yes’ or ‘No’ as to whether the operation of the control is regularly tested. This could be tested by internal or external audit or any other monitoring system.</p>
<b>How confident are you in the effectiveness of this control?</b>	<p>Based partly on the responses to the previous two questions, the risk assessment team should indicate how confident they are in the effectiveness of the control in mitigating against the identified risk (High,</p>

	Medium or Low). If the control is not evidenced or not tested the confidence level will be low. If the control is not evidenced then it will clearly not be able to test it.
<b>Effect of combined controls on risk IMPACT taking into account confidence levels.</b>	From the drop-down menu, the risk assessment team should select a score from -1 to -4, indicating by how much they believe the risk impact has been reduced by the controls currently in place. Controls which detect fraud reduce the impact of fraud since they show that the internal control mechanisms work.
<b>Effect of combined controls on risk LIKELIHOOD taking into account confidence levels.</b>	From the drop-down menu, the risk assessment team should select a score from -1 to -4, indicating by how much they believe the risk likelihood has been reduced by the controls currently in place. Controls which detect fraud only indirectly reduce the likelihood of fraud.

### 2.3. Net risk

Net risk refers to the level of risk **after taking into account** the effect of any **existing** controls and their effectiveness i.e. the situation as it is at the current time.

Column Heading	Guidance															
<b>Risk Impact (NET)</b>	<p>This cell will be automatically calculated from deducting the effect of combined existing mitigating controls from the GROSS risk impact. The result should be reviewed against the following criteria to confirm that the assessment is still reasonable:</p> <table border="1" data-bbox="624 616 1256 1144"> <thead> <tr> <th></th> <th>Reputation</th> <th>On Objectives</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Limited impact</td> <td>Additional work delaying other processes</td> </tr> <tr> <td>2</td> <td>Minor impact</td> <td>Achievement of operational objective delayed</td> </tr> <tr> <td>3</td> <td>Major impact , e.g. because nature of fraud is particularly serious or several beneficiaries are involved</td> <td>Achievement of operational objective endangered or strategic objective delayed</td> </tr> <tr> <td>4</td> <td>Formal enquiry from stakeholders, e g Parliament and/or negative press</td> <td>Strategic objective endangered</td> </tr> </tbody> </table>		Reputation	On Objectives	1	Limited impact	Additional work delaying other processes	2	Minor impact	Achievement of operational objective delayed	3	Major impact , e.g. because nature of fraud is particularly serious or several beneficiaries are involved	Achievement of operational objective endangered or strategic objective delayed	4	Formal enquiry from stakeholders, e g Parliament and/or negative press	Strategic objective endangered
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<b>Risk Likelihood (NET)</b>	<p>This cell will be automatically calculated from deducting the effect of combined existing mitigating controls from the GROSS risk likelihood. The result should be reviewed against the following criteria to confirm that the assessment is still reasonable:</p> <table border="1" data-bbox="624 1328 1142 1458"> <tbody> <tr> <td>1</td> <td>Will almost never happen</td> </tr> <tr> <td>2</td> <td>Will rarely occur</td> </tr> <tr> <td>3</td> <td>Will sometimes occur</td> </tr> <tr> <td>4</td> <td>Will often occur</td> </tr> </tbody> </table>	1	Will almost never happen	2	Will rarely occur	3	Will sometimes occur	4	Will often occur							
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<b>Total Risk Score (NET)</b>	<p>This cell is automatically calculated from the values Risk Impact and Likelihood. It is ranked according to the total score:</p> <ul style="list-style-type: none"> <li>• 1 – 3 – Tolerable (Green)</li> <li>• 4 – 6 – Significant (Orange)</li> <li>• 8 – 16 – Critical (Red)</li> </ul>															



## 2.4. Action plan for putting in place effective and proportionate anti-fraud measures

Column Heading	Guidance
<b>Planned Additional Control</b>	A full description of the planned control/effective and proportionate anti-fraud measures should be given here. <b>Whereas section 5 of the guidance note sets out general principles and methods to combat fraud, Annex 2 provides for each identified risk, the recommended mitigating controls.</b>
<b>Responsible Individual</b>	A responsible individual (or role) for any planned controls should be given here. This individual should agree to taking responsibility for the control and be accountable for the introduction and its effective functioning.
<b>Deadline for Implementation</b>	A deadline for the implementation of the new control should be given here. The responsible individual should agree to this deadline and be accountable for the introduction of the new control by this date.
<b>Effect of combined planned additional controls on risk IMPACT</b>	From the drop-down menu, the risk assessment team should select a score from -1 to -4, indicating by how much they believe the risk impact will be reduced by the planned controls.
<b>Effect of combined planned additional controls on risk LIKELIHOOD.</b>	From the drop-down menu, the risk assessment team should select a score from -1 to -4, indicating by how much they believe the risk likelihood will be reduced by the planned controls.

## 2.5. Target risk

Target risk refers to the level of risk **after taking into account** the effect of any **current and planned** controls.

Column Heading	Guidance															
<p><b>Risk Impact (TARGET)</b></p>	<p>This cell will be automatically calculated from deducting the effect of combined planned mitigating controls from the NET risk impact. The result should be reviewed against the following criteria to confirm that the assessment is still reasonable:</p> <table border="1" data-bbox="624 618 1256 1144"> <thead> <tr> <th></th> <th>Reputation</th> <th>On Objectives</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Limited impact</td> <td>Additional work delaying other processes</td> </tr> <tr> <td>2</td> <td>Minor impact</td> <td>Achievement of operational objective delayed</td> </tr> <tr> <td>3</td> <td>Major impact , e.g. because nature of fraud is particularly serious or several beneficiaries are involved</td> <td>Achievement of operational objective endangered or strategic objective delayed</td> </tr> <tr> <td>4</td> <td>Formal enquiry from stakeholders, e g Parliament and/or negative press</td> <td>Strategic objective endangered</td> </tr> </tbody> </table>		Reputation	On Objectives	1	Limited impact	Additional work delaying other processes	2	Minor impact	Achievement of operational objective delayed	3	Major impact , e.g. because nature of fraud is particularly serious or several beneficiaries are involved	Achievement of operational objective endangered or strategic objective delayed	4	Formal enquiry from stakeholders, e g Parliament and/or negative press	Strategic objective endangered
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# 1: ASSESSMENT OF EXPOSURE TO SPECIFIC FRAUD RISKS - SELECTION OF APPLICANTS BY MANAGING AUTHORITIES

DESCRIPTION OF RISK						
Risk Ref	Risk Title	Risk description	Who is involved in the risk? (Managing Authority (MA) / Implementing Bodies (IP) / Certifying Authority (CA) / Beneficiaries (BF) / Third Parties (TP))	Is the risk internal (within the MA), external, or a result of collusion?	Is this risk relevant to your Managing Authority?	If you have answered NO, provide justification for your answer
SR1	Conflicts of interest within the evaluation board	Members of the MA's evaluation board intentionally influence the evaluation and selection of applicants to favour a certain applicant by providing favourable treatment to the their application in the evaluation or by exerting pressure on other panel members	Managing Authority and Beneficiaries	Internal / Collusion		
SR2	False declarations by applicants	Applicants submit false declarations in the application, misleading the evaluation board that they comply with the general and specific eligibility criteria to win an application procedure	Beneficiaries	External		
SR3	Double funding	An organisation applies for funding for the same project from several EU funds and/or Member States without declaring these applications	Beneficiaries	External		
SRX		<i>Insert description of additional risks...</i>				









## 2: ASSESSMENT OF EXPOSURE TO SPECIFIC FRAUD RISKS - IMPLEMENTATION OF PROGRAMME AND VERIFICATION OF ACTIVITIES

RISK DESCRIPTION							
Risk Ref	Risk Title	Risk description	Detailed risk description	Who is involved in the risk? (Managing Authority (MA) / Implementing Bodies (IP) / Certifying Authority (CA) / Beneficiaries (BF) / Third Parties (TP))	Is the risk internal (within the MA), external, or a result of collusion?	Is this risk relevant to your Managing Authority?	If you have answered NO, provide justification for your answer
<b>Implementation - public procurement risks for contracts tendered and managed by beneficiaries</b>							
IR1	Undisclosed conflict of interests or bribes and kickbacks	A member of staff of the beneficiary favours an applicant / tenderer because: - an undeclared conflict of interest occurred or - bribes or kickbacks were paid	1) Beneficiaries may award sub-contracts to third parties in which a member of staff has an interest, whether financial or otherwise. Similarly organisations may not fully disclose all conflicts of interest when applying for a contract or 2) Third parties that have applied for contracts may offer kickbacks or bribes to the beneficiaries in order to influence the award of contracts.	Beneficiaries and Third Parties	External		
IR2	Avoidance of required competitive procedure	A beneficiary avoids the required competitive procedure in order to favour a particular applicant in either winning or maintaining a contract by: - split purchases or - unjustified single source award or - not organising a tendering process or - irregular extension of the contract.	1) Beneficiaries may split a purchase into two or more purchase orders or contracts in order to avoid having to launch a competitive procedure or higher-level management review or 2) Beneficiaries may falsify single source acquisition justification by drafting very narrow specifications or 3) Beneficiaries may award contracts to favoured third parties without the required tendering process or 4) Beneficiaries may extend original contract lengths via a contract amendment or additional condition, in order to avoid a re-tendering process.	Beneficiaries and Third Parties	External		
IR3	Manipulation of the competitive procedure process	A member of staff of an MA favours a tenderer in a competitive procedure through: - rigged specifications or - leaking bid data or - manipulation of bids.	1) Beneficiaries may tailor requests for bids or proposals so that they contain specifications which are tailored to meet the qualifications of a particular bidder, or which only one bidder can meet. Specifications which are too narrow can be used to exclude other qualified bidders or 2) Contracting, project design or bid evaluation personnel from a beneficiary may leak confidential information to help a favoured bidder formulate a superior technical or financial proposal, such as estimated budgets, preferred solutions, or the details of competing bids or 3) Beneficiaries can manipulate bids after receipt to ensure that a favoured contractor is selected	Beneficiaries and Third Parties	External		
IR4	Collusive bidding	Bidders manipulate the competitive procedure organised by a beneficiary to win a contract by colluding with other bidders or setting up fake bidders: - collusive bidding including bidding by interlinked companies or - phantom service provider	1) Third parties in a particular geographic area or region or industry can conspire to defeat competition and raise prices through various collusive bidding schemes, such as complementary bidding, bid suppression, bid rotation and market division or 2) Third parties may set up a 'phantom' service provider to submit complementary bids in collusive bidding schemes, to inflate costs or simply to generate fictitious invoices. In addition, an employee of the beneficiary can authorise payments to a fictitious seller in order to embezzle funds.	Third parties	External		
IR5	Defective pricing	A bidder manipulates the competitive procedure by not specifying certain costs in its bid	Third parties may fail to disclose current, complete and accurate cost or pricing data in their price proposals resulting in an increased contract price.	Third Parties	External		
IR6	Manipulation of cost claims	A contractor manipulates cost claims or invoices to overcharge or recharge incurred costs. - Single contractor double claims costs or - False, inflated or duplicate invoices.	1) A third party with multiple similar work orders might charge the same personnel costs, fees or expenses to several contracts or 2) Third parties might knowingly submit false, inflated or duplicate invoices, either acting alone or in collusion with contracting personnel.	Third Parties	External		
IR7	Non-delivery or substitution of products	Contractors violate the contract conditions by non-delivery of agreed products or alterations and substitution with inferior quality - Product substitution or - Non-existence of products or operation not carried out in line with grant agreement	1) Third parties may substitute inferior quality items for those which are specified in the contract or otherwise fail to meet contract specifications and then knowingly misrepresent that they have. Beneficiaries may be complicit in this fraud or 2) Some or all products or services to be supplied as part of a contract may not be provided, or the contract was knowingly not carried out in line with the grant agreement.	Beneficiaries and Third Parties	External		
IR8	Amendment of existing contract	A beneficiary and a contractor collude to amend an existing contract with more favourable conditions for the third party to such an extent that the original procurement decision is no longer valid.	Amendment may be made to a contract after it has been agreed between a beneficiary and a third party, changing the contract terms/conditions to such an extent that the original procurement decision may no longer be valid.	Beneficiaries and Third Parties	External		



Implementation - risks with labour costs incurred within beneficiaries or third parties							
IR9	Overstatement of quality or activities of personnel	A contractor intentionally overstates the quality of provided personnel or activities to claim them as eligible costs. - Inadequately qualified labour or - Inaccurate descriptions of activities completed by personnel	1) A beneficiary or third party may propose a team of adequately qualified personnel in a tender, only to implement the action with personnel that are inadequately qualified or 2) A beneficiary or third party may knowingly falsify descriptions of tasks performed by personnel in order to ensure that costs claimed are considered eligible	Beneficiaries or Third Parties	External		
IR10	False labour costs	A beneficiary claims knowingly false labour costs for activities that are not carried out or not carried out in accordance with the contract. - False labour costs or - Uncompensated overtime or - Incorrect time rates claimed or - Staff costs claimed for personnel that do not exist or - Staff costs claimed for activities that took place outside the implementation period.	1) A beneficiary or third party may knowingly claim false labour, by inflating the number of working hours completed by the trainers, or by falsifying documents supporting the existence of such events, such as the record of attendance and invoices for the renting of teaching rooms or 2) A beneficiary or third party may knowingly claim overtime where no credit for the extra hours is usually give to staff or 3) A beneficiary or third party may knowingly claim inflated rates for personnel by misrepresenting hourly rates or actual working hours 4) A beneficiary or a third party may falsify documentation in order to claim costs for personnel that are not employed, or which do not exist or 5) A beneficiary or third party may knowingly falsify documentation to ensure that costs appear to have been incurred during the relevant implementation period.	Beneficiaries or Third Parties	External		
IR11	Labour costs are apportioned incorrectly to specific projects	A beneficiary knowingly incorrectly apportions staff costs between EU projects and other sources of funding	A beneficiary may knowingly incorrectly apportion staff costs between EU projects and other sources of funding	Beneficiaries	External		
IRXX		<i>Insert description of additional risks...</i>					



























**3: ASSESSMENT OF EXPOSURE TO SPECIFIC FRAUD RISKS - CERTIFICATION AND PAYMENTS**

RISK DESCRIPTION						
Risk Ref	Risk Title	Risk description	Who is involved in the risk? (Managing Authority (MA) / Implementing Bodies (IP) / Certifying Authority (CA) / Beneficiaries (BF) / Third Parties (TP))	Is the risk internal (within the MA), external, or a result of collusion?	Is the Managing Authority exposed to this risk?	If NO, provide justification
CR1	Incomplete / inadequate management verification process	Management verifications may not give adequate assurance for absence of fraud, due to a lack of the necessary skills or resources at the MA.	Managing Authority	Internal		
CR2	Incomplete / inadequate expenditure certification process	Expenditure certifications may not give adequate assurance for absence of fraud, due to a lack of the necessary skills or resources at the CA.	Certifying Authority	External		
CR3	Conflicts of interest within the MA	Members of the MA may have conflicts of interest which have undue influence on the approval of payments for certain beneficiaries.	Managing Authority and Beneficiaries	Internal / Collusion		
CR4	Conflicts of interest within the Certifying Authority	Expenditure may be certified by a Certifying Authority that has a connection to the beneficiary.	Certifying Authority and Beneficiaries	External		
CRXX		<i>Insert description of additional risks...</i>				













#### 4: ASSESSMENT OF EXPOSURE TO SPECIFIC FRAUD RISKS - DIRECT PROCUREMENT BY MANAGING AUTHORITIES

DESCRIPTION OF RISK							
Risk Ref	Risk Title	Risk description	Detailed risk description	Who is involved in the risk? (Managing Authority (MA) / Implementing Bodies (IP) / Certifying Authority (CA) / Beneficiaries (BF) / Third Parties (TP))	Is the risk internal (within the MA), external, or a result of collusion?	Is the Managing Authority exposed to this risk?	If NO, provide justification
PR1	Avoidance of required competitive procedure	A member of staff of the MA avoids the required competitive procedure in order to favour a particular tenderer in either winning or maintaining a contract by: - not organising a tender process or - split purchases or - unjustified single source award or - irregular extension of the contract.	1) A member of MA may split a purchase into two or more purchase orders or contracts in order to avoid having to launch a competitive procedure or higher-level management review or 2) A member of MA may falsify single source acquisition justification by drafting very narrow specifications or 3) A member of MA may award contracts to favoured third parties without the required tendering process or 4) A member of MA may extend original contract lengths via a contract amendment or additional condition, in order to avoid a re-tendering process.	Managing Authorities and Third Parties	Internal / Collusion		
PR2	Manipulation of the competitive procedure process	A member of staff of an MA favours an tenderer in a competitive procedure through: - rigged specifications or - leaking bid data or - manipulation of bids.	1) A member of MA may tailor requests for bids or proposals so that they contain specifications which are tailored to meet the qualifications of a particular bidder, or which only one bidder can meet. Specifications which are too narrow can be used to exclude other qualified bidders or 2) Contracting, project design or bid evaluation personnel from MA may leak confidential information to help a favoured bidder formulate a superior technical or financial proposal, such as estimated budgets, preferred solutions, or the details of competing bids or 3) A member of MA can manipulate bids after receipt to ensure that a favoured contractor is selected	Managing Authorities and Third parties	Collusion		
PR3	Undisclosed conflict of interests or bribes and kickbacks	A member of staff of an MA favours an applicant / tenderer because: - an undeclared conflict of interest occurred or - bribes or kickbacks were paid	1) A contract may be awarded to a beneficiary in which a member of staff has an interest, whether financial or otherwise. Similarly organisations may not fully disclose all conflicts of interest when applying for a contract or 2) Beneficiaries that have applied for contracts may offer kickbacks or bribes in order to influence the award of contracts.	Managing Authorities and Third parties	Collusion		
PRX		<i>Insert description of additional risks...</i>					











## Recommended mitigating controls

<b>1. SELECTION OF APPLICANTS</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Secondary panel could review individual decisions or a sample of decisions made by the evaluation panel.</li> <li>• Adequate training courses on ethics and integrity, covering individual responsibilities, as appropriate.</li> <li>• Use of data mining tools, such as <b>ARACHNE</b></li> <li>• Regular independent audits (e.g. by internal audit or by AA)</li> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour.</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Recommended mitigating controls</b>
Conflicts of interest within the evaluation board	<p><b>Selection of applicants</b></p> <ul style="list-style-type: none"> <li>• All calls for application are published</li> <li>• All applications are recorded</li> <li>• All applications are evaluated in accordance with applicable criteria</li> <li>• All decisions on the acceptance / rejection of applications are communicated to the applicants</li> </ul> <p><b>Audit trails</b></p> <ul style="list-style-type: none"> <li>• Procedures should be in place to ensure that all documents required to ensure an adequate audit trail are held</li> </ul> <p><b>Accounting, monitoring and financial reporting systems</b></p> <ul style="list-style-type: none"> <li>• A computerised system capable of providing reliable and relevant information works effectively</li> </ul>	<ul style="list-style-type: none"> <li>• The evaluation board is comprised of several senior management personnel who could be rotated, with some level of randomness in their selection for participation in each evaluation board.</li> <li>• <b>Conflict of interest policy</b>, with an annual declaration and register.</li> </ul>
False declarations by applicants		<ul style="list-style-type: none"> <li>• Cross-checking of supporting documents to independent sources of evidence</li> <li>• Use of prior knowledge of the beneficiary to make informed decisions as to the veracity of declarations and information submitted.</li> </ul>
Double funding		<ul style="list-style-type: none"> <li>• Cross checks with the national authorities administering other EU funds, and also other relevant Member States, whenever this is feasible, and whenever this risk is assessed as relevant and likely to occur.</li> </ul>

## Recommended mitigating controls

<b>2. IMPLEMENTATION AND VERIFICATION OF OPERATIONS</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Requirement for beneficiaries to have conflict of interest policies, with annual declaration and register</li> <li>• Provision of training for beneficiaries on the detection of fraudulent behaviour</li> <li>• Use of data mining tools, such as <b>ARACHNE</b></li> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour</li> <li>• Effective management verifications</li> <li>• Compliance with national requirements for independent audit of project costs by beneficiaries</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Recommended mitigating controls</b>
Split purchases	<p><b>Guidance to beneficiaries</b></p> <ul style="list-style-type: none"> <li>• Effective communication to beneficiaries of their rights and obligations in particular the national eligibility rules laid down from the programme, the applicable Community rules on eligibility, the specific conditions concerning the products or services to be delivered under the operation, the financing plan, the time-limit for execution, the requirements concerning separate accounting or adequate accounting codes, the information to be kept and communicated</li> <li>• The existence of clear and unambiguous national eligibility rules laid down for the programme</li> <li>• The existence of a strategy to ensure that beneficiaries have access to the necessary information and receive an appropriate level of guidance</li> </ul>	<ul style="list-style-type: none"> <li>• As appropriate, review by MA of list of proposed contracts prior to implementation of programmes for contracts just under threshold values</li> </ul>
Unjustified single source awards to avoid tendering		<ul style="list-style-type: none"> <li>• Review by the MA of a sample of beneficiaries' single source awards.</li> <li>• Prior MA approval for all single source awards.</li> </ul>
Lack of tendering process for favoured suppliers		<ul style="list-style-type: none"> <li>• Review by MA of a sample of significant size contracts prior to payment of any invoices for evidence of tendering.</li> </ul>
Extension of existing contracts to avoid retendering		<ul style="list-style-type: none"> <li>• Prior approval by MA for contract amendments that extend an original agreement above a pre-defined significant threshold.</li> </ul>
Rigged specifications to favour certain bidders		<ul style="list-style-type: none"> <li>• Requirement by MA for beneficiaries to have a secondary mechanism other than e.g. the procuring department to verify that bid specifications are not too narrow. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Leaking bid data		<ul style="list-style-type: none"> <li>• Requirement by MA for beneficiaries to have a secondary mechanism that conducts a review of a sample of winning bids against competition for any indications of prior knowledge of bid information. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Requirement by MA for a high level of transparency in the award of contracts, such as the publication of all contract information that is</li> </ul>

## Recommended mitigating controls

	<p><b>Management verifications</b></p> <ul style="list-style-type: none"> <li>The existence of written procedures and comprehensive checklists for management verifications</li> </ul>	<p>not publically sensitive. Review of the operation of this control by the MA for a sample of beneficiaries.</p> <ul style="list-style-type: none"> <li>Review by MA of a sample of winning bids against competition for any indications of prior knowledge of bid information.</li> </ul>
Undisclosed conflict of interest	<ul style="list-style-type: none"> <li>Management verifications to be completed before certification</li> </ul>	<ul style="list-style-type: none"> <li><b>Conflict of interest policy</b>, with an annual declaration and register.</li> </ul>
Bribes and kickbacks	<ul style="list-style-type: none"> <li>All applications for reimbursement to be subject to administrative verification, including review of claim and supporting documentation</li> <li>On-the-spot verifications to be undertaken when the project is well under way</li> <li>Evidence is kept for the work done and results obtained and follow up of findings</li> <li>Sampling to be based on adequate risk assessment</li> <li>Existence of procedures to ensure that certifying authority receives all necessary information</li> </ul>	<ul style="list-style-type: none"> <li>Requirement by MA for beneficiaries to have strong controls on bidding procedures, e.g. enforcing submission deadlines. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Requirement by MA for beneficiaries to review all contract awards with a secondary mechanism for indications such as winning bids being very close to the next lowest bid, late bids winning, and / or evidence of the winning bidder communicating privately with contracting personnel. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Review by MA of a sample of winning tenders for indications such as winning bids being very close to the next lowest bid, late bids winning, and / or evidence of the winning bidder communicating privately with contracting personnel, for any indications of fraudulent behaviour.</li> </ul>
Collusive bidding	<p><b>Audit trails</b></p> <ul style="list-style-type: none"> <li>Accounting records should be kept by the MA that provide detailed information on expenditure actually incurred in each co-financed operation by beneficiary</li> <li>Technical specifications and financial plan of the operation, progress and monitoring reports, documents concerning application, evaluation, selection, grant approval and tendering and contracting procedures and reports on inspections of the products and services co-financed should be kept at an appropriate management level</li> </ul>	<ul style="list-style-type: none"> <li>Requirement by MA for beneficiaries to have controls in place to detect persistently high or unusual bid data (such as bid evaluators that have a knowledge of the marketplace) and to unusual relationships between third parties (e.g. rotation of contracts). Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Requirement by MA that beneficiaries 'benchmark' price comparators for standard goods or services. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Manipulation of bids		<ul style="list-style-type: none"> <li>Requirement by MA for beneficiaries to have a tender process that includes a transparent bid opening process, and adequate security arrangements for unopened tenders. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Defective pricing	<ul style="list-style-type: none"> <li>The MA should verify whether the beneficiaries maintain either a separate accounting system or separate accounting code for all transactions</li> <li>Procedures should be in place to ensure that</li> </ul>	<ul style="list-style-type: none"> <li>Requirement by MA that beneficiaries have controls in place to corroborate prices quoted by the third parties to other independent sources. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Requirement by MA for the use of standard unit costs by the</li> </ul>

## Recommended mitigating controls

	all documents required to ensure an adequate audit trail are held	beneficiaries for regularly purchased supplies.
'Phantom' service providers	<b>Accounting, monitoring and financial reporting systems</b> A computerised system capable of providing reliable and relevant information works effectively	<ul style="list-style-type: none"> <li>Requirement by the MA for beneficiaries to complete background checks on all third parties. This can include general website checks, companies location and contact information etc. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Single contractor double claims costs		<ul style="list-style-type: none"> <li>Requirement by MA that beneficiaries review activity reports and contract outputs for evidence of costs (e.g. staff names) and are contractually permitted to request additional evidence in support (e.g. time recording systems). Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Product substitution		<ul style="list-style-type: none"> <li>Requirement by MA for beneficiaries to review products / services purchased against contract specifications, using relevant experts. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Review by MA of a sample of activity reports and specific products / services purchased against contract specifications.</li> </ul>
Non-existence of products or operation not carried out in line with grant agreement		<ul style="list-style-type: none"> <li>Requirement by MA for beneficiaries to request works certificates or other forms of verification certificates, awarded by an independent third party, on the completion of the contract. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Review by MA of a sample of works certificates or other forms of verification certificates.</li> </ul>
False, inflated or duplicate invoices		<ul style="list-style-type: none"> <li>Requirement by MA for beneficiaries to perform a review of invoices submitted for duplication (i.e. multiple invoices with the same amount, invoice no, etc.) or falsification. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Requirement by MA for beneficiaries to compare the final price of products / services against budget and generally accepted prices for similar contracts. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>Review by MA of a sample of project outputs against costs for any evidence that the work was not completed or that the necessary costs were incurred.</li> </ul>

## Recommended mitigating controls

<b>2. IMPLEMENTATION AND VERIFICATION OF OPERATIONS</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour</li> <li>• Use of data mining tools, such as <b>ARACHNE</b></li> <li>• Effective management verifications</li> <li>• Compliance with national requirements for independent audit of project costs by beneficiaries</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Recommended mitigating controls (or specific checks to be included in the management verifications)</b>
Costs claimed for inadequately qualified labour	<p><b>Guidance to beneficiaries</b></p> <ul style="list-style-type: none"> <li>• Effective communication to beneficiaries of their rights and obligations in particular the national eligibility rules laid down from the programme, the applicable Community rules on eligibility, the specific conditions concerning the products or services to be delivered under the operation, the financing plan, the time-limit for execution, the requirements concerning separate accounting or adequate accounting codes, the information to be kept and communicated</li> </ul>	<ul style="list-style-type: none"> <li>• Review of final activity and financial reports for any discrepancies between planned against actual personnel.</li> <li>• Request of additional evidence (e.g. certificates of qualification) to confirming the suitability of any significant substitutes.</li> <li>• Prior authorisation for significant changes in key personnel.</li> <li>• Requirement for beneficiaries to review key third party personnel involved within the implementation of a contract in comparison to those proposed in tenders and request evidence confirming the suitability of significant substitutes. Reviews of operation of this control by the MA in a sample of beneficiaries.</li> <li>• Requirement for beneficiaries to give prior authorisation to third parties for significant changes in personnel. Reviews of operation of this control by the MA in a sample of beneficiaries.</li> </ul>
False labour costs	<ul style="list-style-type: none"> <li>• The existence of clear and unambiguous national eligibility rules laid down for the programme</li> <li>• The existence of a strategy to ensure that beneficiaries have access to the necessary information and receive an appropriate level of guidance</li> </ul> <p><b>Management verifications</b></p> <ul style="list-style-type: none"> <li>• The existence of written procedures and comprehensive checklists for management verifications</li> </ul>	<ul style="list-style-type: none"> <li>• Verification of evidence from beneficiaries for completion of project activities e.g. attendance registers, time recording systems.</li> <li>• Review of final activity and financial reports received from beneficiaries for any discrepancies between planned and actual activities.</li> <li>• Requirement for beneficiaries to verify evidence supplied by third parties in support of the completion of activities e.g. attendance registers, timekeeping records. Review of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Requirement for beneficiaries to review final activity and financial reports for any discrepancies between planned and actual activities. Review of the operation of this control by the MA for a sample of</li> </ul>

## Recommended mitigating controls

Uncompensated overtime claimed as actual cost	<ul style="list-style-type: none"> <li>• Management verifications to be completed before certification</li> <li>• All applications for reimbursement to be subject to administrative verification, including review of claim and supporting documentation</li> <li>• On-the-spot verifications to be undertaken when the project is well under way</li> <li>• Evidence is kept for the work done and results obtained and follow up of findings</li> </ul>	<p>beneficiaries.</p> <ul style="list-style-type: none"> <li>• Review of final financial and activity reports and supporting documentation for indications that overtime is being claimed (excessive numbers of working hours for project staff, fewer number of implementing staff than planned but all activities achieved).</li> <li>• Requirement for beneficiaries to review invoices from suppliers against supporting documentation for indications that overtime is being claimed (excessive numbers of working hours for project staff, fewer number of implementing staff than planned) Review of the operation of this control by the MA in a sample of beneficiaries.</li> </ul>
Incorrect time rates claimed	<ul style="list-style-type: none"> <li>• Sampling to be based on adequate risk assessment</li> <li>• Existence of procedures to ensure that certifying authority receives all necessary information</li> </ul> <p><b>Audit trails</b></p> <ul style="list-style-type: none"> <li>• Accounting records should be kept by the MA that provide detailed information on expenditure actually incurred in each co-financed operation by beneficiary</li> </ul>	<ul style="list-style-type: none"> <li>• Review of final financial reports against evidence supporting actual salary costs incurred (e.g. contracts, payroll data) and time spent on project activities (e.g. time recording systems, attendance records).</li> <li>• For labour costs of third parties - the MA requires that beneficiaries review invoices for labour costs against evidence supporting actual salary costs incurred (e.g. contracts, payroll data) and time spent on project activities (e.g. time recording systems, attendance records). All evidence is scrutinised with appropriate scepticism. The MA reviews the operation of this control in a sample of beneficiaries.</li> </ul>
Labour costs are apportioned incorrectly between projects	<ul style="list-style-type: none"> <li>• Technical specifications and financial plan of the operation, progress and monitoring reports, documents concerning application, evaluation, selection, grant approval and tendering and contracting procedures and reports on inspections of the products and services co-financed should be kept at an appropriate management level</li> </ul>	<ul style="list-style-type: none"> <li>• Review of evidence from beneficiaries to independently verify the apportionment of staff costs for project activities e.g. attendance registers, time recording systems, data from accounting ledgers.</li> </ul>
Inaccurate descriptions of activities completed by personnel	<ul style="list-style-type: none"> <li>• The MA should verify whether the beneficiaries maintain either a separate accounting system or separate accounting code for all transactions</li> <li>• Procedures should be in place to ensure that all documents required to ensure an adequate audit trail are held</li> </ul>	<ul style="list-style-type: none"> <li>• Review of evidence from beneficiaries to independently verify the completion of project activities e.g. attendance registers, time recording systems.</li> <li>• Review of final activity and financial reports for discrepancies between planned and actual activities.</li> <li>• Requirement for beneficiaries to review evidence from third parties to independently support the completion of activities e.g. attendance registers, timekeeping records. Reviews of the operation of this control by the MA for a sample of beneficiaries.</li> <li>• Requirement for beneficiaries to review final activity and financial reports for any discrepancies between planned and actual activities. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>
Staff costs claimed for personnel that do not exist		<ul style="list-style-type: none"> <li>• Review of evidence from beneficiaries to independently verify the existence of staff e.g. contracts, social security details.</li> <li>• Requirement for beneficiaries to review evidence from third parties</li> </ul>

## Recommended mitigating controls

	<b>Accounting, monitoring and financial reporting systems</b>	that can independently verify the existence of staff e.g. contracts, social security details. Review of the operation of this control by the MA for a sample of beneficiaries.
Staff costs claimed for activities that took place outside of the implementation period	A computerised system capable of providing reliable and relevant information works effectively	<ul style="list-style-type: none"> <li>• Review of evidence from beneficiaries that can independently verify that costs were incurred within project deadlines e.g. original invoices, bank statements.</li> <li>• Requirement for beneficiaries to review evidence from third parties that can independently verify that costs were incurred within project deadlines e.g. original invoices, bank statements. Review of the operation of this control by the MA for a sample of beneficiaries.</li> </ul>

## Recommended mitigating controls

<b>3. CERTIFICATION AND PAYMENTS</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Conflict of interest policy, with an annual declaration and register</li> <li>• Effective management verifications</li> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour</li> <li>• Regular adequate training courses on ethics and integrity, covering individual responsibilities.</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Recommended mitigating controls</b>
Incomplete / inadequate management verification process that does not give adequate assurance against fraud	<b>Allocation of roles in MA and CA</b> <ul style="list-style-type: none"> <li>• Clear definition and allocation of functions</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed secondary review by MA of a sample of management verifications, ensuring they have been performed in line with relevant guidelines and standards.</li> </ul>
Incomplete / inadequate certification process that does not give adequate assurance against fraud	<b>Management verifications</b> <ul style="list-style-type: none"> <li>• The existence of written procedures and comprehensive checklists for management verifications</li> <li>• Management verifications to be completed before certification</li> <li>• All applications for reimbursement to be subject to administrative verification, including review of claim and supporting documentation</li> <li>• On-the-spot verifications to be undertaken when the project is well under way</li> <li>• Evidence is kept for the work done and results obtained and follow up of findings</li> <li>• Sampling to be based on adequate risk assessment</li> <li>• Existence of procedures to ensure that certifying authority receives all necessary information</li> </ul>	<ul style="list-style-type: none"> <li>• Staff carrying out expenditure certifications are adequately qualified and trained, with up to date refresher training on fraud awareness. The MA reviews the adequacy of these training programmes.</li> <li>• Review by the AA of expenditure certifications performed by the CA, ensuring they have been performed in line with relevant guidelines and standards.</li> </ul>
Conflicts of interest within the MA has undue influence on the approval of payments		<ul style="list-style-type: none"> <li>• The payment process has several segregated stages of approval, where evidence for the validity of expenditure is required (e.g. independent audit opinions) before approval can be given</li> </ul>
Conflicts of interest within the CA has undue influence on the certification	<b>Certifications</b> <ul style="list-style-type: none"> <li>• Adequate accounting records should be maintained in computerised form by the CA</li> <li>• Audit trail within the CA should allow reconciliation of the expenditure declared to the Commission with the</li> </ul>	<ul style="list-style-type: none"> <li>• The certification process has several segregated stages of approval before confirmation can be given for the validity of the expenditure</li> </ul>



**Recommended mitigating controls****3. CERTIFICATION AND PAYMENTS**

	<p>statements received from MA</p> <ul style="list-style-type: none"><li>• CA has specified the information that it requires on the procedures operated by the MA for the verification of expenditure and has put into place procedures to ensure that it receives it on a timely basis</li><li>• CA reviews the reports reviews the reports drawn up by the MA</li><li>• CA reviews the results of all audits</li><li>• CA ensures that the results of these examinations are properly taken into account</li><li>• CA reconciles and does an arithmetic check of the payment requests</li></ul>	
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## Recommended mitigating controls

<b>4. DIRECT PROCUREMENT BY MANAGING AUTHORITIES (only if applicable )</b>		
<b>Overarching controls</b>		
<ul style="list-style-type: none"> <li>• Review of tender awards by a secondary mechanism other than the selection panel (e.g. senior level personnel within the MA)</li> <li>• Regular independent audits</li> <li>• Conflict of interest policy, with an annual declaration and register</li> <li>• Whistle-blowing mechanism could be put in place for suspected fraudulent behaviour</li> <li>• Regular adequate training courses on ethics and integrity, covering individual responsibilities and consequences for non-adherence.</li> </ul>		
<b>Specific Fraud Risk</b>	<b>Control description</b>	<b>Additional recommended controls</b>
Unjustified single source awards to avoid tendering or select favoured suppliers	<p><b>Audit trails</b></p> <ul style="list-style-type: none"> <li>• Procedures should be in place to ensure that all documents required to ensure an adequate audit trail are held</li> </ul> <p><b>Accounting, monitoring and financial reporting systems</b></p> <ul style="list-style-type: none"> <li>• A computerised system capable of providing reliable and relevant information works effectively</li> </ul>	<ul style="list-style-type: none"> <li>• Prior approval for all single source awards are given by secondary mechanism other than the procuring department (e.g. senior level personnel within the MA).</li> </ul>
Lack of tendering process for favoured suppliers		<ul style="list-style-type: none"> <li>• Independent review of significant size contracts for evidence of tendering prior to payment of any invoices.</li> </ul>
Extension / extension of existing contracts to avoid retendering		<ul style="list-style-type: none"> <li>• Prior approval for all contract extensions are given by secondary mechanism other than the procuring department (e.g. senior level personnel within the MA).</li> </ul>
Rigged specifications to favour certain bidders		<ul style="list-style-type: none"> <li>• All contract notices are reviewed by a secondary mechanism than the procuring department prior to publication (e.g. senior level personnel within the MA), who each verify that bid specifications are not too narrow.</li> </ul>
Leaking bid data		<ul style="list-style-type: none"> <li>• A secondary panel conducts a review of a sample of winning bids against competition for any indications of prior knowledge of bid information.</li> <li>• High level of transparency in the award of contracts , such as the publication of all contract information that is not publically sensitive.</li> </ul>
Undisclosed conflict of interest		<ul style="list-style-type: none"> <li>• <b>Conflict of interest policy</b>, with an annual declaration and register</li> </ul>
Bribes and kickbacks		<ul style="list-style-type: none"> <li>• Enforced submission deadlines.</li> <li>• Review of a sample of winning bids for indications such as winning bids being very close to the next lowest bid, late bids winning, and / or evidence of the winning bidder communicating privately with contracting personnel.</li> </ul>

## ANTI-FRAUD POLICY<sup>1</sup> TEMPLATE

*[this template suggests how the managing authority (MA) could structure its anti-fraud policy statement, and also includes a commitment from the audit authority]*

### **Introduction**

The Managing Authority (MA) for *[insert programme details]* is committed to maintain high legal, ethical and moral standards, to adhere to the principles of integrity, objectivity and honesty and wishes to be seen as **opposed to fraud and corruption** in the way that it conducts its business. All members of staff are expected to share this commitment. The objective of this policy is to promote a culture which deters fraudulent activity and to facilitate the prevention and detection of fraud and the development of procedures which will aid in the investigation of fraud and related offences and which will ensure that such cases are dealt with timely and appropriately.

A procedure is in place for the **disclosure of situations of conflict of interests**.

The term fraud is commonly used to describe a wide range of misconducts including theft, corruption, embezzlement, bribery, forgery, misrepresentation, collusion, money laundering and concealment of material facts. It often involves the use of deception to make a personal gain for oneself, a connected person or a third party, or a loss for another – intention is the key element that distinguishes fraud from irregularity. Fraud does not just have a potential financial impact, but it can cause damage to the reputation of an organisation responsible for managing funds effectively and efficiently. This is of particular importance for a public organisation responsible for the management of EU funds. Corruption is the abuse of power for private gain. Conflict of interests exists where the impartial and objective exercise of the official functions of a person are compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with e.g. an applicant for or a recipient of EU funds.

### **Responsibilities**

- Within the MA, overall responsibility for managing the risk of fraud and corruption has been delegated to *[insert details of department or person]* who has the responsibility for
  - Undertaking a regular review, with the help of a risk assessment team, of the fraud risk;
  - Establishing an effective anti-fraud policy and fraud response plan;
  - Ensuring fraud awareness of staff and training;
  - Ensuring that the MA refers promptly investigations to competent investigation bodies when they occur;
- Process owners/managers of the MA are responsible for the day-to-day management of fraud risks and action plans, as set out in the fraud risk assessment and particularly for

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<sup>1</sup> The anti-fraud policy statement, together with procedures for adequate fraud risk assessment and the putting in place of effective and proportionate anti-fraud measures through an action plan (whenever the net risk after controls is significant or critical), are key components of the managing authority's anti-fraud programme or strategy.

- Ensuring that an adequate system of internal control exists within their area of responsibility;
- Preventing and detecting fraud;
- Ensuring due diligence and implementing precautionary actions in case of suspicion of fraud
- Taking corrective measures, including any administrative penalties, as relevant.
- The Certifying Authorities have a system which records and stores reliable information on each operation; they receive adequate information from the MA on the procedures and verifications carried out in relation to expenditure
- The Audit Authority has a responsibility to act in accordance with professional standards<sup>2</sup> in assessing the risk of fraud and the adequacy of the control framework in place.

### **Reporting Fraud**

The MA has procedures in place for reporting fraud, both internally and to the European Anti-Fraud Office [...*insert details of internal reporting lines and those reporting to the European Anti-Fraud Office*...].

All reports will be dealt with in the strictest of confidence and in accordance with [...*insert details of relevant Data Protection/Disclosure Act*...]. Staff reporting irregularities or suspected frauds are protected from reprisals.

### **Anti-fraud measures**

The MA has put in place proportionate anti-fraud measures based on a thorough fraud risk assessment (cf. the Commission's guidance on the implementation of Article 125.4 c)). In particular, it uses IT tools to detect risky operations (such as ARACHNE) and ensures that staff is aware of fraud risks and receives anti-fraud training. The MA carries out a vigorous and prompt review into all cases of suspected and actual fraud which have occurred with a view to improve the internal management and control system where necessary. [...*insert details of review procedures*...].

### **Conclusion**

Fraud can manifest itself in many different ways. The MA 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.

[*Delete or retain, as relevant:*] This policy and all relevant procedures and strategies are supported by the [...*insert title of oversight body who will approve the Fraud Policy e.g. a Board*..] who will proactively review and update them on a continual basis.

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<sup>2</sup> International Standards for the Professional Practice of Internal Auditing, International Standards on Auditing

**AUDIT AUTHORITY****Verification of the Managing Authority's  
compliance with article 125.4 c) regarding****Fraud risk assessment and effective and proportionate anti-fraud  
measures for 2014-2020**

		<b>Prepared</b>	<b>Reviewed</b>
<b>C.0</b>	Issues Log		
<b>C1.1</b>	Assessment Process		
<b>C1.2</b>	Gross Risk		
<b>C.1.3</b>	Existing Controls & Net Risk		
<b>C.1.4</b>	Action Plan and Target Risk		



C1.1	Assessment Process	Y/N/ n/a	Comments
	<b>Review the process for conducting the fraud risk assessment process and consider the following questions:</b>		
1.	Did the assessment team contain people with appropriate knowledge and experience of: fraud risks and associated responses, the design and operating effectiveness of controls, risk assessments?		
2.	Was an adequate amount of time and resource spent on the exercise for it to be a meaningful and credible exercise?		
3.	Is there evidence that sources of information such as audit reports, fraud reports and control self-assessments were taken into account during the risk assessment process?		
4.	Was the self-assessment process clearly documented, allowing for clear review of the conclusion reached?		
5.	Is there evidence that senior management had adequate oversight and/or involvement in the process and that approved the net level of risk exposure?		

C1.2	Gross Risks	Y/N/ n/a	Comments
	<p><b>Sample selection:</b>  <b>Select a sample of Risk References from the fraud risk assessment tool. This sample should:</b></p> <ul style="list-style-type: none"> <li>- cover all processes ( 1) selection of applicants, 2) implementation of programme, 3) certification and payments and 4) direct procurement by MA (when applicable))</li> <li>- include risks across all categories of gross risk scores (tolerable, significant and critical).</li> </ul> <p><b>For each of these risks, complete the following tests:</b></p>		
1	<p>Review the Risk Impact (GROSS) score against the scoring scales in the ‘Guidance Note on Fraud Risk Assessment’. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- explanations provided by the assessment team;</li> <li>- supporting evidence provided by the assessment team;</li> <li>- your knowledge of the GROSS risk environment.</li> </ul>		
2	<p>Review the Risk Likelihood (GROSS) score against the scoring scales in the ‘Guidance Note on Fraud Risk Assessment’. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- explanations provided by the assessment team;</li> <li>- supporting evidence provided by the assessment team;</li> <li>- your knowledge of the GROSS risk environment.</li> </ul>		
3	<p>Has the total GROSS risk been calculated correctly and has it been correctly graded (tolerable, significant, critical)?</p>		



C.1.3	Existing Controls and Net Risk	Y/N/ n/a	Comments
	<p><b>Sample selection:</b>  <b>Select a sample of risks from the fraud risk assessment tool. This sample should:</b></p> <ul style="list-style-type: none"> <li>- cover all processes ( 1) selection of applicants, 2) implementation of programme, 3) certification and payments and 4) direct procurement by MA (when applicable))</li> <li>- include risks across the significant and critical GROSS risk scores.</li> </ul> <p><b>For each of these risks, complete the following tests:</b></p>		
1	Review the details of the existing controls that the assessment team have documented. For each, confirm the following:		
a.	Do these controls exist?		
b.	Do you agree with the assessment team's response regarding whether the operation of these controls is documented? Is there documentary evidence to support this?		
c.	Do you agree with the assessment team's response regarding whether the controls are regularly tested? Is there documentary evidence to support this?		

C.1.3	Existing Controls and Net Risk	Y/N/ n/a	Comments
2.	<p>Review the score given for the effect of the combined controls on the gross risk IMPACT. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- your knowledge of the effectiveness of the design of the controls in mitigating the specific risk;</li> <li>- supporting evidence confirming that the controls are operating effectively (from testing carried out by the MA, the AA, IA or other audit body).</li> </ul>		
3.	<p>Review the score given for the effect of the combined controls on the gross risk LIKELIHOOD. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- your knowledge of the effectiveness of the design of the controls in mitigating the specific risk;</li> <li>- supporting evidence confirming that the controls are operating effectively (from testing carried out by the MA, the AA, IA or other audit body).</li> </ul>		
4.	<p>Has the total NET risk been calculated correctly and has it been correctly graded (tolerable, significant, critical)?</p>		

C.1.4	Action Plan and Target Risk	Y/N/ n/a	Comments
	<p><b>Sample selection:</b>  <b>Select a sample of risks from the fraud risk assessment tool. This sample should:</b></p> <ul style="list-style-type: none"> <li>- cover all processes ( 1) selection of applicants, 2) implementation of programme, 3) certification and payments and 4) direct procurement by MA (when applicable))</li> <li>- includes risks across the significant and critical NET risk scores.</li> </ul> <p><b>For each of these risks, complete the following tests:</b></p>		
1	<p>Review the score given for the effect of the planned new controls on the net risk IMPACT. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- your knowledge of the effectiveness of the design of the controls in mitigating the specific risk;</li> </ul>		
2	<p>Review the score given for the effect of the planned new controls on the net risk LIKELIHOOD. Is the score consistent with:</p> <ul style="list-style-type: none"> <li>- your knowledge of the effectiveness of the design of the controls in mitigating the specific risk;</li> </ul>		
3	<p>Has the total TARGET risk been calculated correctly and has it been correctly graded (tolerable, significant, critical)?</p>		

<b>C.1.4</b>	<b>Action Plan and Target Risk</b>	<b>Y/N/ n/a</b>	<b>Comments</b>
<b>4</b>	Do the planned additional controls appear to be optimal and well-considered?		