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Directorate D : Policy  
Unit D.2 : Fraud Prevention, Reporting and Analysis

## Guidelines on National Anti-Fraud Strategies

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

### *DISCLAIMER:*

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

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

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

**NOTA**

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

## Introduction

In 2012, the European Anti-Fraud Office (OLAF) set up a collaborative procedure with Member States aimed at developing exchange of experience and good practices between the Member States and with the Commission. This procedure is organised within the framework of the COCOLAF Fraud Prevention Group<sup>1</sup> and is carried out by a working group of Member States' experts and representatives from OLAF and other Commission services. The working group focuses each year on a specific topic selected by the Member States and based on drafts practical documents that can be used as guidance for strengthening Member States' anti-fraud measures/strategies.

The new Multiannual Financial Framework applicable to programming period 2014-2020 has been strengthened as regards fraud risk assessment, fraud prevention and detection. For shared management the sectoral Regulations<sup>2</sup> require Member States to put in place effective and proportionate anti-fraud measures, taking into account the risks identified, to take the necessary steps to prevent, detect and sanction fraud and irregularities effectively and to reimburse irregular amounts to the EU budget. However, Going beyond the immediate regulatory requirements and embedding these anti-fraud measures in a National Anti-Fraud Strategy (referred to from here on as the 'NAFS' or the 'Strategy') is encouraged in order to ensure better monitoring of the fight against fraud detrimental to the financial interests of the EU and that of the Member States, as well as to ensure homogenous and effective practices, especially where the organisational structures are decentralised.

In the last two years, the COCOLAF Fraud Prevention Group focused on various aspects of the NAFS topic. First, as a pilot project, the working group in 2014 prepared the 'Guidelines for National Anti-Fraud Strategies for European Structural and Investment Funds (ESIF)<sup>3</sup>. These guidelines laid down the foundation for drafting a National Anti-Fraud Strategy, however with a limited scope on expenditure in the field of ESIF. In the following year, another working group was set up to target the practical side of NAFS. As a result, in 2015 the document called 'Practical steps towards drafting of a National Anti-Fraud Strategy'<sup>4</sup> was issued together with a practical tool in the form of an xls file that can be used to carry out the assessment of the state of play with regard to the current measures in place, taking into account all the four stages of the anti-fraud cycle<sup>5</sup>.

The current guidelines represent an update of the NAFS guidelines issued in 2014. The working group in 2016 aimed at revising as well as enlarging the previous guidelines for the NAFS so that it become a horizontal document covering all shared management expenditure: European Structural and Investment Funds (ESIF), Agriculture, Home Affairs Funds (AMIF/ISF) and Fund for European Aid to the Most Deprived (FEAD). Besides, the guidelines were enriched with a number of concrete examples of Member States' practice that have proven to be successful.

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

<sup>2</sup> E.g. Regulation (EU) No 1303/2013, notably Art 125.4 (c)

<sup>3</sup> Ref. Ares(2015)130814 - 13/01/2015

<sup>4</sup> Ref. Ares(2015)5642419 - 07/12/2015

<sup>5</sup> The stages of the anti-fraud cycle are: 1-fraud prevention, 2-fraud detection, 3-investigation and prosecution, and 4-recovery and sanctions.

Whether Member States choose to create sectoral anti-fraud strategies or to set up an overarching national Strategy covering the overall budget, these guidelines can support the national authorities and decision-makers in the NAFS process in concrete terms.

The document provides Member States with:

- ✓ A step-by-step method for elaborating a National Anti-Fraud Strategy;
- ✓ Components of the National Anti-Fraud Strategy and template for its structure;
- ✓ Concrete examples of Member States' practice.

Yet, once again, these guidelines have no binding effect. Moreover, there is no 'one size fits all' recipe for drafting a National Anti-Fraud Strategy; it is for the Member States to assess their current anti-fraud situation, set their own goals and prepare their own tailor-made Action Plan.

*OLAF would like to thank all experts involved in the drafting of these guidelines for their efforts and contribution to the working groups, as well as for sharing their knowledge and experience with a view to produce this practical guide thereby helping Member States to initiate the NAFS process.*

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# I. Protecting effectively the EU's financial interests

## 1. Legal framework

### 1.1. EU law

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

Article 317 of the Treaty on the Functioning of the European Union (TFEU) states the principle of sound management is to be applied in the use of the EU budget by the Member States in co-operation with the Commission.

Articles 30 to 33 of the Financial Regulation<sup>6</sup> applicable to the general budget of the Union clarify the principle of sound financial management. This principle relates to the principles of economy, efficiency and effectiveness and to the implementation of effective and efficient internal control.

Article 59.2 (b) of the Financial Regulation gives the Member States the primary responsibility, in the framework of shared management, for preventing, detecting and correcting irregularities and fraud. In this regard the Member States have to build strong management and control systems to ensure sound financial management, transparency and non-discrimination. They have also to impose effective, dissuasive and proportionate penalties on recipients where provided for by EU or national rules.

Regulation (EC, Euratom) No 2988/1995 of 18 December 1995 provides for the definition of irregularity and common provisions related to the administrative measures and penalties that should apply.

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

The so-called 'PIF Convention' for the protection of the Union's financial interests of 26 July 1995 provides for a definition of fraud.

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<sup>6</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

Regulation (EU) No 1303/2013 of 17 December 2013 lays down the common provisions for the European Structural and Investment Funds (ESIF) for the programming period 2014-2020. Article 125.4 (c) clarifies the obligations for the Managing Authorities to put in place effective and proportionate anti-fraud measures taking into account the risks identified. The criteria and procedures laid down in Regulation (EU) No 1303/2013 of 17 December 2013 also apply to the bodies designated by the Member States to be responsible for the management and control of the actions supported by the European Globalisation Adjustment Fund (EGF) by virtue of Article 21 (2) of Regulation (EU) No 1309/2013 of 17 December 2013.

Within the framework of the Common Agricultural Policy (CAP) European Agricultural Guarantee Fund (EAGF) and European Agricultural Fund for Rural Development (EAFRD), Article 58 (1) (b) and (c) of Regulation (EU) No 1306/2013 of 17 December 2013 on the financing, management and monitoring of the common agricultural policy clarifies the obligation of the Member States to "adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Union, in particular to (...) (b) ensure effective prevention against fraud, especially in areas with a higher level of risk, and which will act as a deterrent, having regard to the costs and benefits as well as the proportionality of the measures; (c) prevent, detect and correct irregularities and fraud; (...)".

With regard to the Fund for European Aid to the Most Deprived (FEAD), Article 28 (h) of Regulation (EU) No 223/2014 of 11 March 2014 provides that "Management and control systems shall, in accordance with" the Principle of Sound Financial Management as stated in Article 30 of the Financial Regulation, "provide for (...) the prevention, detection and correction of irregularities, including fraud, (...)".

For the Asylum, Migration and Integration Fund (AMIF) and the instruments for financial support established as part of the Internal Security Fund (ISF)<sup>7</sup>, Article 5 of Regulation (EU) No 514/2015 of 16 April 2014 stipulates that "Member States shall offer effective prevention against fraud, especially as regards areas with a higher level of risk. Such prevention shall act as a deterrent, having regard to the benefits as well as the proportionality of the measures."

It is possible for a national anti-fraud strategy for the protection of financial interests of the European Union to cover both the expenditure and the revenue side. In addition to expenditure, the strategy could cover fraud involving traditional own resources – customs

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<sup>7</sup> Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 applies to Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA and to Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC, to the former pursuant to Articles 1, 2 (a), 2<sup>nd</sup> dash of Regulation (EU) No 514/2014, to the latter pursuant to Articles 1, 2 (a), 3<sup>rd</sup> dash of Regulation (EU) No 514/2014 and Article 19 of Regulation (EU) No 515/2014.



duties and levies – and even VAT. The Court of Justice has established, with its jurisprudence in cases C-539/09 European Commission v. Federal Republic of Germany (Judgment of 15 November 2011), C-617/10 Hans Åkerberg Fransson (Judgment of 26 February 2013), and C-105/14 Ivo Taricco and Others (judgment of 8 September 2015) that VAT is part of the financial interests of the European Union, that tax penalties and criminal proceedings for tax evasion, such as those applied where the information concerning VAT that was provided was false, constitute implementation of Articles 2, 250(1) and 273 of Directive 2006/112 (previously Articles 2 and 22 of the Sixth Directive) and of Article 325 TFEU, and that, lastly, but not least, the obligations of the Member States to effectively penalize fraud to the detriment of the financial interests of the European Union extend to VAT fraud.

## **1.2. National law**

National legislation applies with regards to administrative sanctions and criminal proceedings and penalties. In some countries, it establishes or mandates specialised services for the investigations and/or prosecution of potential fraud cases detrimental to the EU financial interests (e.g. the DLAF in Romania: Fight against Fraud Department).

## **2. Benefits of a National Anti-Fraud Strategy**

The main objective of a National Anti-Fraud Strategy is to ensure the effective and efficient protection of the EU financial interests. The Strategy must be a living and flexible document so that where there are new developments these may be incorporated into the Action Plan or in the Strategy itself. In this process, a multitude of benefits for the Member-State arise.

The National Anti-Fraud Strategy:

- ✓ Ensures the effective and efficient protection of the EU financial interests;
- ✓ Creates a link of co-operation between the expenditure and revenue part of the budget;
- ✓ Creates a stronger position for negotiating additional funding from the EU budget;
- ✓ Improves the prevention, detection and fight against irregularities and fraud;
- ✓ Achieves a higher degree of recovery of unduly spent funds from the budget of the European Union;
- ✓ Sets out a better working framework upon which the institutions involved in the process of implementation and control of EU funds could work together determines more precisely the roles and responsibilities of the institutions involved;
- ✓ Creates and/or develops new methods for prevention and combating fraud, corruption and any other illegal activities affecting the financial interests of the Union;
- ✓ Contributes for the imposing of proportionate and dissuasive penalties in accordance with the applicable law;
- ✓ Creates a framework with recommendations or actions to improve the administrative capacity;
- ✓ Answers the need for transparency in the process of protecting the EU's financial interests;

- ✓ Improves the access to information for the general public, since the NAFS is a public document;
- ✓ Creates a floor for legal development of the national framework, update and renewal of co-operation agreements and modus operandi;
- ✓ Ensures the effective co-ordination of a legislative, administrative and operational activities of the institutions;
- ✓ Strengthens the co-operation with OLAF as well as with the competent EU institutions, EU Member States and other countries.

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

- ✓ Identifying vulnerabilities to fraud in the systems;
- ✓ Assessing the main fraud risks;
- ✓ Setting and implementing responses;
- ✓ Evaluating the progress made;
- ✓ Adapting the response to the evolution of the fraud trends and the resources available;
- ✓ Ensuring the involvement of all relevant stakeholders, in particular by means of enhanced collaborative and coordinated actions.

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

### 3. Steps towards a National Anti-Fraud Strategy

As a general rule, the Strategy should consider each stage of the anti-fraud cycle:

- ✓ **Prevention** should be handled as a priority by managing, certifying and audit authorities, in order to mitigate the fraud risks. It shall be made more effective through closer co-operation between all stakeholders and an overall enhanced co-ordination of actions.
- ✓ **Detection** is a key stage that should be handled with due diligence and reactivity by all stakeholders, management and control authorities including audit authorities as well as law enforcement services.
- ✓ **Investigations and prosecution** are closely linked. Their efficiency requires specialisation of the staff, full co-operation of the management and control authorities and smooth collaboration among the authorities.
- ✓ **Recovery and sanctions** should be effective and rigorously followed up by the relevant administrative and law enforcement authorities.

The key steps towards establishing a National Anti-Fraud Strategy are as follows:

#### 1. Preliminary steps

These include defining the legal framework (i.e. reference to both national and EU legal framework); the scope of the Strategy according to the main national priorities regarding fight against fraud, corruption or any illegal activity; indicate the service in charge and the

institutions involved in the process of elaboration, implementation and monitoring of the Strategy. Furthermore, it should mention the link with other national strategies/policies.

## 2. Preparatory phase

This is a crucial phase in the process. It encompasses two main stages: a state of play (i.e. a stock-taking exercise assessing the current anti-fraud measures in place and their context, thereby determining the strengths and weaknesses of the system) and a fraud risk assessment. The result will allow defining the needs, the areas for improvement, which are to be translated into objectives and measures.

## 3. Elaboration phase

During the elaboration phase, the objectives and related performance indicators should be set. Objectives represent the needs of the Member State as well as they contribute to outlining the roadmap and the vision of the Member States in their fight against fraud. Objectives should be translated into concrete measures. Furthermore, performance indicators should be defined corresponding to each measure as these will contribute to assessing the progresses made. Objectives and measures are to be included in an Action Plan.

## 4. The Action Plan

The Action Plan defines the concrete actions to be carried out in respect of each objective, the service responsible for them, the deadline/timeframe for their implementation and the related performance indicators. It constitutes a monitoring tool for the implementation of the Strategy itself.

## 5. Evaluation of and updating the Strategy

The Strategy is an ever evolving document; therefore it requires evaluation and correlative updating. Following the interim evaluation(s) it will be decided whether to update the anti-fraud Strategy and the related Action Plan. The Strategy update will be performed in response to changes occurred during the implementation, in order to ensure accountability and the ability of the structure responsible for implementation to adopt and amend the strategic structure.

The above structure is purely indicative: it is the Member States to expand upon the document, taking into account the scope of the Strategy, the main objectives, the legal framework, the administrative structure etc.

A flowchart is included in annex providing an overview of the overall NAFS process: ***Annex 1 – Flowchart of the NAFS process***. Furthermore, for a detailed template structure of the Strategy itself, please consult ***Annex 2 – Template for the structure of NAFS***.

## II. Establishing the National Anti-Fraud Strategy

### 1. Preliminary steps

#### 1.1. Designation of the NAFS service

The government should designate a specific service (hereinafter referred to as 'NAFS service') for the elaboration of the NAFS. This service should have:

- ✓ Horizontal overview of the whole system of expenditure and revenue related to the EU Budget on one hand and of the anti-fraud measures on the other hand.
- ✓ Power to mobilise the relevant expertise from the different Ministries/authorities/services implementing the EU funds and the Ministries/authorities/services in charge of financial investigations and prosecution.

The designation of the NAFS service is crucial especially for Member States where the administrative system is decentralised.

The NAFS service should establish a team of experts with the ability to provide the appropriate expertise. This multidisciplinary team should be able to cover all the different stages of the anti-fraud cycle with its knowledge and its know-how. The key matters to be tackled in the anti-fraud cycle should be awareness of fraud, prevention and detection of fraud, sanctions and finally communication on fighting fraud.

The preparation phase will build on continuous dialogue with partners/stakeholders, especially through the setup of ad hoc working groups along with the needs identified.

The Anti-Fraud Co-ordination Service (AFCOS) can play a key role in the elaboration and the monitoring of a NAFS.

##### 1.1.1. AFCOS as the NAFS service

There are multiple advantages of having AFCOS designated as the national service responsible for elaborating the NAFS. Given the main functions of AFCOS, it could exercise effective co-operation and exchange of information as regards to the preparation, elaboration and adoption of a NAFS and its Action Plan. This function would facilitate the AFCOS to seek support from the authorities from both sides of the budget – expenditure and revenue, incl. those responsible for the management, implementation, certification, audit, investigation, prosecution and sanction imposing at national level and also from OLAF, the European Commission and international partners at Union and international level. In this respect, AFCOS could:

- ✓ Organise and coordinate the process of elaboration of NAFS and its Action Plan;
- ✓ Perform the screening of the organisational structure, actors, measures and procedures already in place;

- ✓ Conduct a fraud risk assessment and properly assess the current situation of a country regarding the anti-fraud measures in place taking into account all four stages of the anti-fraud cycle;
- ✓ Make an evaluation of the current situation regarding irregularities and fraud;
- ✓ Determine the scope and extension of NAFS and set an indicative calendar for the preparation of NAFS;
- ✓ Take care of the overall planning and of the division of tasks of elaborating the NAFS and the Action Plan;
- ✓ Serve as a Secretariat or Chair of the political organisational body that will provide political support for the adoption of the Strategy;
- ✓ Mobilise experts from the different authorities and services, representing both side of the budget – the expenditure part and the revenue part and also from the judicial authorities, the prosecutor’s office and law-enforcement authorities.
- ✓ Be responsible for the updating of the Strategy and the Acton Plan;
- ✓ Disseminate information and materials amongst the participants/institutions;
- ✓ Seek assistance/support from international partners, like OLAF, European Commission etc.;
- ✓ Involve the federal/regional level authorities;
- ✓ Raise awareness on the elaboration of NAFS (and include the Civil Society) and its adoption.

**EXAMPLE**

***The role of AFCOS Bulgaria in the NAFS***

*AFCOS Bulgaria serves as a Secretariat of the political body AFCOS Council; is responsible for the elaboration of NAFS and its Action Plan and their timely updates and reports to the AFCOS Council information on the implementation of the National Strategy for prevention and fight against irregularities and fraud, affecting the financial interests of the European Union for the period 2014 – 2020.*

## **EXAMPLE**

### ***The central co-ordinating role of AFCOS Latvia***

*In case of Latvia, the AFCOS is located in the Ministry of Finance and serves as a central co-ordinator and drafts the common/single Strategy, based on the information provided from its working group, where its members are representing the national AFCOS Council. In the AFCOS Council there are 10 permanent and 6 non-permanent experts members from different national competent authorities. Furthermore, the office of Transparency International is involved in the AFCOS institutional network as an external partner that can provide recommendations on drafting NAFS and also can participate in the meetings of AFCOS Council. Consequently, it is essential to have a common co-ordinating and implementing body to draft and implement the Strategy.*

## **1.2. Authorities to be involved in the NAFS process**

### ***1.2.1. National co-operation***

All authorities in charge of management and implementation, certification, audit, investigation, prosecution and sanctions should be involved. Expertise of these stakeholders should cover the management, control and judicial system. Wherever possible, they should come from:

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

It is advisable to involve organisations which have control, supervisory or management duties directly or indirectly related to projects financed by EU funding:

- Competition Control Authorities;
- Procurement Arbitration Committees;
- Tax authorities;
- Customs Authorities.

Moreover, it is possible to establish collaboration and involve different non-governmental organisations as external partners that play a role as a watchdog to prevent any

fraud and corruption risks. These organisations also provide support in the public awareness raising.

The team in charge should establish a working programme for the elaboration of the Strategy within a given deadline. It should aim at receiving full political support, as well as engaging the relevant stakeholders.

### **1.2.2. International co-operation**

The creation of an effective system for the elaboration and consequently the adoption of a NAFS requires not only good co-ordination between all structures involved in the process of implementation and control of EU funds, both at national and European level, but also strong administrative capacity with relevant experience, including international experience. In order to increase the competencies of all persons and institutions involved, as well as to create a network, where questions at stake and issues concerning the elaboration process of NAFS are discussed, several Member States have successfully organised bilateral meetings to exchange experiences in order to obtain appropriate expertise.

#### **EXAMPLE**

##### ***International bilateral experiences of Bulgaria***

*In an implementation of a project, carried out by AFCOS Bulgaria under Technical assistance programme, co-financed by the European Regional Development fund (ERDF), several international anti-fraud studies were organised between the Member States' AFCOS services. For example, AFCOS Bulgaria met - on a bilateral basis - with DLAF Romania, AFCOS Portugal, AFCOS Slovakia and AFCOS Greece. The latter two studies were carried out together with member states that have already developed a National Anti-Fraud Strategy and have officially transmitted it to the Commission. Such international bilateral co-operations have proved their significance on comparative basis as regards to the elaboration of a NAFS and the creation and updating of the Action Plan.*

## **EXAMPLE**

### ***International trilateral experiences of Latvia***

*Latvia had a successful experience with an international assistance of other Member States (with AFCOS Bulgaria and AFCOS Malta) in the form of a trilateral TAIEX Peer-to-Peer expert mission and workshop, with the view to develop Latvia's Anti-Fraud Strategy. As a result of this international collaboration, the analysis of the actual anti-fraud state of play was conducted and recommendations were provided. The experts shared their best practice and contributed to strengthen the AFCOS Latvia capacity and to emphasise the importance and the need to establish an Anti-Fraud Strategy at the highest political level.*

### **1.3. Time period covered by the Strategy**

Concerning the time period covered by the Strategy, there are two options.

A first option consists of linking the Strategy directly with the operational programmes. The next multi-annual financial framework addresses the 2014-2020 period. It could make sense to link the duration of validity of the Strategy with the period of the operational programmes. This would mean that the Strategy should be valid till the closure of the 2014-2020 operational programmes. In this option, the operational programmes of the period 2007-2013 should not be forgotten and the objectives should also apply to these programmes.

The second option is to set the NAFS period independently from the period of the operational programme/multi-annual financial framework, reflecting the specifics of the expenditure and the revenue part of the budget. In any case, a Strategy aiming at giving a long-term vision in an area should ideally be set for a minimum of 4 to 5 years. Yet, each country has its own framework and national planning: the period covered by the Strategy shall be adjusted accordingly.

### **1.4. Political support for the NAFS**

Given the wide range and number of bodies involved, the NAFS service may need the full political support of the Government.

Political support for this kind of document is extremely important to ensure its successful implementation. It needs not only to gain the legitimacy, but also to obtain binding effect onto involved bodies, without which it could be difficult to reach set goals. The best way to ensure political support is to publish the NAFS as a government decree thereby granting the Strategy the necessary legitimacy and binding effect. Alternatively, it is recommended to create a political committee, which will give the main directions to the Strategy, will secure the support of government as well as approve main changes. Similar committees have been established for example in Slovakia or Bulgaria that have proven to be successful.



The National Anti-Fraud Strategy shall be binding for all involved subjects, therefore it is highly recommended for the Member-states to create a political body, primarily responsible for providing political support to AFCOS and all bodies involved in the process of organisation, co-ordination, elaboration, adoption and control of the NAFS.

For the NAFS to be binding, the Strategy itself must be adopted with a legal act, such as an act of the Parliament, the Government etc.

The political body shall:

- ✓ Represent and mobilise all the institutions involved in the protection of the financial interests of the European Union. (In this respect, the political body shall have organisational functions.);
- ✓ Provide political support for the elaboration and adoption of the NAFS;
- ✓ Collaborate effectively with the designated national service which will elaborate the NAFS;
- ✓ Represent institutions engaged in the process of implementation and control of EU Funds, possibly even the civil society.

#### **EXAMPLE**

##### ***Steering Committee in Slovakia***

*Similar model of interaction is being implemented in Slovakia as regards to the political organizational body of the Steering Committee for the Protection of the Financial Interests of the EU in the Slovak Republic (The Steering Committee). The powers and responsibilities of the Steering Committee are set out in a Statute, approved by the Government Resolution No 748 of 5 September 2007 and is chaired by the General Director of the Section of Control and the Fight against Corruption (AFCOS Slovakia). The Steering Committee which supervises the fulfilment of tasks and measures arising from the implementation of the National Strategy; realises the cooperation with the Department of Central Contact Point for OLAF, in order to ensure the coordination and cooperation between the AFCOS Network partners in the protection of the EU financial interests in the Slovak Republic; establishes working groups to address specific tasks arising from the commitment of the Slovak Republic to protect EU financial interests, and to supervise their activities etc.*

## **EXAMPLE**

### **AFCOS Council in Bulgaria**

*The Council for Coordination in the Fight against Infringements affecting the Financial Interests of the European Union (AFCOS Council) is a political body, established by the Council of Ministers' Decree № 18 of 4 February 2003. The AFCOS Council provides a high political level of coherence and complementarity of the measures undertaken by the national authorities for the fight against irregularities and fraud involving EU funds. The Chairman of the Council is the Deputy Prime Minister and Minister of Interior, who implements the state policy on the protection of the financial interests of the EU. The Council Members are ministers, deputy ministers, executive directors, heads of control bodies and administrations, responsible for the management of the EU funds and programmes, directors of revenue agencies, certification, auditing, i.e. everyone who has a role in the fight against Infringements affecting the expenditure and revenue part of the budget. In AFCOS Council the judicial authorities, the prosecutor's office and the law-enforcement authorities are also represented.*

*The AFCOS Council suggests to the Council of Ministers projects of new legislative acts, strategies (incl. NAFS) and Action Plans regarding fight against fraud with EU funds; elaborates an annual report for the activities to the Council of Ministers and discusses issues regarding EU's financial interests, makes decisions and takes measures for optimization of the process of the fight against fraud with EU funds.*

*AFCOS Bulgaria serves as a Secretariat of the AFCOS Council which ensures the good cooperation between them and facilitates the elaboration and adoption of the NAFS and its Action Plan.*

## **EXAMPLE**

### ***The national anti-fraud committee (CNLF) in France***

*The national anti-fraud committee (Comité National de Lutte contre la Fraude, CNLF) was set up by a Decree of 18 April 2008 on coordinating the fight against fraud and creating a national anti-fraud unit. The committee is to steer the government's policy on combating fraud affecting public finances, be they compulsory taxes and other public authority revenue or social benefits. Each year the national committee approves a national plan to be implemented by the committees.*

*The committee is chaired by the Prime Minister and comprises the ministers with responsibility for the budget, labour, social security, health, justice, defence, the interior, agriculture and immigration.*

*The national plan for the fight against fraud for 2015, for example, was adopted by the Prime Minister at the national anti-fraud committee (CNLF) meeting on 23 June 2016. It reflected the policy guidelines on combating fraud against public finances which the government intended to follow in 2015 and early 2016, at international, national and local level.*

*For 2016, the CNLF has endorsed for the first time a strategic plan for 2016-2018 on 14 September 2016. The plan will include measures concerning national and European Union public finances. It will be structured around the main strategic lines and will include a scoreboard section (objectives, measures, stages, and deliverables) which will accurately report on progress on its implementation at the ensuing CNLF meetings. The French AFCOS (DNLF) is responsible for drafting the plan and for the evaluation of its implementation, in conjunction with all the partners.*

*The 5 strategic orientations of the plan are:*

- *To adapt controls process to the international mobility*
- *To optimize the management and the security of digital information*
- *To strengthen the fight against identity and documentary fraud*
- *To develop risk mapping*
- *To improve investigation technics, sanctions efficiency and recovery*

### **EXAMPLE**

#### ***Political support for NAFS in Romania***

*The Fight Against Fraud Department – DLAF (Romanian AFCOS) is the national coordinator of the fight against fraud affecting EU's financial interests in Romania, as it is stated in the legal framework. It is also responsible, by law, for drafting and coordinating the implementation of the NAFS.*

*The political support for the NAFS is ensured as DLAF is under the Prime-Minister's coordination. DLAF sent a memorandum to the Prime-Minister's Office informing it about the opportunity and the necessity for elaborating a NAFS and asked the Government's support in involving all the national authorities with responsibilities in the management of EU funds in this process. The support was granted. Consequently, the strategy will be approved by Government Decision.*

If the political support is not yet been ensured at the moment of drafting the NAFS, it is suggested to slowly develop it through a dialogue and by explaining the need for the Strategy. Furthermore, it is advisable to seek international expertise, such as support provided by OLAF or by other Member States which already have a NAFS, and to use these international recommendations in the dialogue in order to strengthen positions.

### **EXAMPLE**

#### ***Achieving the political support in Latvia***

*In Latvia, the AFCOS Anti-Fraud Strategy is currently being developed. Thanks to the successful international cooperation with other Member States, the international experts' recommendations were used as a ground to gain political approval. As a result, it is foreseen that the established AFCOS Anti-Fraud Strategy will be approved in the Cabinet of Ministers and that it will be legally binding to all institutions involved in the AFCOS network.*

However, even after the formal approval of the Strategy, it is essential to keep up the continuous dialogue with top level management and the general public.

## **1.5. Communication and public awareness-raising**

The NAFS service should also take care of the public awareness-raising of the Strategy itself. Indeed, one of the key tools to prevent irregularities, fraud and corruption is a communication/public relations strategy targeting the society. The NAFS communication strategy should suggest concrete means to inform the general public about the objectives of the Strategy and to explain the wider public sector their obligations regarding the protection of the financial interest. In this way, the national commitment to protect both national as well as EU budget will be pronounced to current and future beneficiaries.

### **EXAMPLE**

#### ***Anti-Fraud Awareness Campaign in Schools in Malta***

*Anti-fraud awareness campaign in schools was launched targeting students aged 14-16 years, in collaboration of the Ministry for Education and Employment. The Directorate for Quality and Standards in Education (DQSE) provided information about the initiative for teachers of Business Studies and Accounts across State, Church and Independent Schools Sectors. Students were encouraged to participate in an online Anti-Fraud Quiz, a prize-winning competition. The Quiz was part of the awareness-raising campaign against fraud and corruption that provided an opportunity to discuss with students this increasingly sensitive ethical issue.*

In case of decentralised administrative system, the best practice would be the establishment of mutual and integrated communication strategy between all services being involved in implementation of NAFS. Furthermore, the involvement of different side organisations (e.g. NGOs) is to be considered, as in some countries it may lead to achieving greater public support.

### **EXAMPLE**

#### ***Development of the strategic communication in Latvia***

*AFCOS Latvia has decentralised administrative system. The Anti-Fraud Strategy will be legally binding for all services included in the AFCOS institutional framework. Therefore, simultaneously to the drafting of the Strategy, the AFCOS communicators' network is being developed at national level.*

*The principle of the foreseen network is similar to the one followed in OLAF (OAFCN). As such, communicators from all institutions need to agree on the strategy and activities that will be implemented through the particular period of time, as well as on the actual plan through which the communication with the public on fraud and corruption prevention matters will be conducted. The main coordination role stays with AFCOS Latvia.*

## **2. Preparatory phase**

The preparatory phase in the establishment of a National Anti-Fraud Strategy is crucial and should be carried out with diligence. Sufficient time and resources should be devoted to this important part of the process. This phase aims at grasping a complete overview of the way fraud and irregularities are dealt with by all stakeholders in the expenditure and revenue part of the budget. This will constitute the baseline for making decisions when setting the objectives, the indicators and the related Action Plan.

The preparatory phase encompasses the following two stages:

- A state of play to take stock of the strengths and weaknesses of the national systems and the anti-fraud measures in place;
- Fraud risk assessment.

This phase will be implemented by: (1) screening the organisational structure, actors, measures and procedures already in place; (2) by conducting a fraud risk assessment. As far as weaknesses are discovered in those stages, their elimination should be projected in the objectives worked out during the elaboration phase which will subsequently appear in the Action Plan.

## **2.1. State of play of the anti-fraud situation**

The diagnosis of the situation requires a screening of the following areas in terms of their strengths and weaknesses, as regards their contribution to or impact on each of the four stages of the anti-fraud cycle (prevention, detection, investigation and prosecution, recoveries and sanctions):

- Legislation;
- Organisation (e.g. national (centralised or decentralised) or local, through a coordinator or not, the role of the AFCOS, etc.);
- Management and actors;
- Procedures (including controls in place, etc.);
- Means and resources (Human resources, appropriate tools: IT, documents, guidelines, training, communication etc.);
- Co-operation and collaboration at national level between the competent authorities (on experience and cases); and
- Co-operation at EU level (with the Commission and other Member States).

In this phase it is also important to identify the reasons behind the strengths and weaknesses identified, which will subsequently help to define solutions. The reasons are to be sought in the legal, institutional, economic, social and political environment.

In order to facilitate the assessment of the state of play, a practical document was developed by the COCOLAF Fraud Prevention working group in 2015. The document is called 'Practical steps towards drafting of a National Anti-Fraud Strategy'<sup>8</sup> and it contains a practical tool (in the form of an xls file) that can be used to carry out the assessment. This working document provides Member States with a substantial, yet non-exhaustive list of elements to consider with regard to each stage of the anti-fraud cycle. Furthermore, this document can also provide an example of how objectives may be structured and linked directly to the result of the assessment phase.

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<sup>8</sup> Ref. Ares(2015)5642419 - 07/12/2015

## EXAMPLE

### **Identifying the main underlying causes in Malta**

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

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

*(Extract of National Anti-Fraud Strategy of Malta)*

For completing the assessment, necessary information may be obtained by:

- ✓ Collecting and analysing of documents, reports, data (e.g., legislation, staff working documents, procedures, methodologies, guidelines)
- ✓ Using On-line questionnaires, surveys, direct contact with stakeholders, interviews (face-to-face, telephone, Skype or equivalent, etc.), discussion with experts, working groups etc.

Using information from various sources will help to substantiate the findings.

#### **2.1.1. Fraud prevention**

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

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

The screening regarding prevention measures and techniques should allow:

- ✓ Assessing the efficiency of the preventive measures and techniques already in place
- ✓ Proposals for correcting, adapting or abrogating the existing measures or creating new ones
- ✓ To better assess the degree of public awareness and ethical culture among Member States' employees on fraud affecting EU funds;

The prevention measures are based on strong administrative capacities such as:

- ✓ a fraud-proofed legislation (especially elimination of loopholes);<sup>9</sup>
- ✓ Transparency policy supported by a wide communication policy - public awareness raising;
- ✓ Strong internal control system;
- ✓ Ethical culture among employees involved in the protection of the EU financial interests is developed: (Is there a clear expression of the fact employees are striving to achieve high ethical standards, which is visible to observers?; Is there a solid and unambiguous document, such as a code of conduct, covering also the issue of conflict of interest?);
- ✓ Strong human resources policy: finding a right balance between staff turnover (to keep the experienced staff), and compulsory mobility (to mitigate risks of conflict of interests etc.);
- ✓ Structured, practical and targeted fraud risk management;
- ✓ Anti-Fraud Training Strategy;
- ✓ Close co-operation between bodies both at national and EU level.

#### **EXAMPLE**

##### ***Cooperation between authorities in Croatia***

*According to the Administrative Procedure Act\* (APA), all institutions shall exchange information and help each other in executing their tasks; furthermore, agreements (ACA) relating to administrative cooperation between two or more institutions may be concluded in order to arrange information exchange in detail i.e. deadlines to deliver information, the kind of information that can be exchanged, eventual sanctions if the institution refuses to deliver information, the way of delivering the information – hard copy, e-mail.*

*\* The provision regarding the sharing of information among institutions is set in Article 26 of the Administrative Procedure Act (OG 47/09).*

#### **2.1.1.1. Fraud-proofing of legislation**

Although it is hard to find absolutely fraud-proof legislation, the Member States endeavour to continuously improve their anti-fraud provisions so that the possibilities for committing fraud are reduced. Therefore, fraud-proofing of both existing and pending legislation should be the first step. This entails the search of relevant information on how the law is applied in practice. A number of information sources are available in this respect:

<sup>9</sup> See Com(2000)358 final of 28 June 2000 on the fight against fraud, in particular, paragraph 1.1: *To be permanently effective, a policy of defence of public interests and funds must rely on clear legislation, easily applicable and including provisions likely to strengthen sound financial management and effective control of Community policies. These provisions must be sufficiently dissuasive to deter irregular action as far as can be done.*



- [http://ec.europa.eu/smart-regulation/index\\_en.htm](http://ec.europa.eu/smart-regulation/index_en.htm)
- [http://ec.europa.eu/dgs/legal\\_service/law\\_making\\_en.htm](http://ec.europa.eu/dgs/legal_service/law_making_en.htm)
- European Parliament resolution of 14 September 2011 on better legislation, subsidiarity and proportionality and smart regulation (2011/2029(INI));
- *Criminal Preventive Risk Assessment in the Law Making Procedure: Final Report on the research project 1999/FAL/140 funded by the EU 'FALCONE' Programme and the Max Planck Institute, 2001;*

Fraud-proofing of legislation may be carried out, for example, by a designated authority, academics or in a form of an out-sourced project and coordinated by the national AFCOS, where appropriate.

The purpose of fraud-proofing is as follows:

- ✓ Reveal undesirable consequences of the existing and/or pending legislative provisions with regard to a special focus on the loopholes allowing committing fraud.
- ✓ Determine the risks arising from the provisions and wording of the relevant legislation that has not been fraud-proofed.
- ✓ Elaborate proposals for amendments to the legislation concerned in order to eliminate the existing or the rise of potential risks, to prevent arising new risks and to eliminate the opportunities for committing fraud.

#### **EXAMPLE**

##### ***Fraud-proofing of legislation in Slovakia***

*Fraud-proofing has been included in the Action Plan annexed to the National Strategy for the Protection of EU's Financial Interests in Slovakia. The Central Contact Point for OLAF (thereafter 'CCP') is the body entrusted with coordinating role in the fulfilment of the tasks related to this measure. Fraud-proofing of the national legislation is one of the tasks specified in the Action Plan accompanying the National Strategy for the Protection of EU's Interests in the Slovak Republic.*

*After studying relevant EU documentation on combating fraud and other relevant analytical materials, the CCP proposed 19 realms which are perceived as containing potential fraud risks. The following 6 realms were selected for further analysis: conflict of interests; double funding; effectiveness and efficiency of recoveries; effectiveness of penalties and sanctions; efficiency of management, control and selection of projects funded from the EU budget.*

*\* The provision regarding the sharing of information among institutions is set in Article 26 of the Administrative Procedure Act (OG 47/09).*

The experts chose the realm(s) with regard to their respective domains so that they could fully exploit their expertise when carrying out fraud-proofing of the legislation relevant to their domains. However, not only legislation in effect and proposed/pending legislation may be subject to fraud-proofing, but also other relevant binding documents.

The experts agree on a general procedure divided into phases. Each phase should include information on the purpose and objective, responsible person(s), deadlines and description of the activity.

For example, the first phase may include the description of real life situations perceived as posing a risk within selected legal areas from the perspective of the protection of EU's financial interests. The designation of experts/bodies responsible for fraud-proofing of the selected legislation/documents is based on the mutual agreement among the experts. In order to obtain relevant information, the selection of the sources include, e.g. existing/proposed legislation, judicial decisions, legal analyses, opinions of audit reports, the results of fraud risk analyses carried out by various sectors, mass media, conferences, NGOs, etc.

The second phase may include the selection of legislation to be fraud-proofed. The experts should propose a list of the relevant legislation/documents concerned.

The third phase may include the identification of weak points and loopholes in the selected legislation subject to fraud-proofing. Initial information should include the name of the document; wording of the provision(s) examined; the description of the way how the legislation and/or a particular provision responds to the particular situation; precise identification and assessment/evaluation of weak points and loopholes; specification of the legal obstacle(s) and proposed method for its/their elimination.

In the fourth phase, conclusions and recommendations should be made. The experts will summarise the findings and outcomes, and draft reports with regard to the area of the expert's responsibility. Afterwards, these reports, assessments, evaluations and analyses should be then summarised into one complex report. The final report may contain recommendations with regard to the wording of the provisions concerned.

The summary report should be submitted for comments to all members of the working group. Relevant and valuable comments and suggestions should be incorporated into the summary report. The amended summary report should be then submitted to the AFCOS network steering body for approval and subsequently to the Government.

In order to win political support and promotion, it is helpful when the Government adopts a measure on the need to carry out fraud-proofing of national legislation. The fraud-proofing clause should be anchored in the legislative rules. Within law-making, it is appropriate to propose a process that would serve for regular fraud-proofing of the legislation that is pending or under preparation. Additionally, involving NGO experts and using expertise of academics in the process of fraud-proofing constitute a significant asset.

### **2.1.2. Fraud detection**

Member States should be determined to detect irregularities and to initiate the appropriate rectification and sanctioning procedures. In this regard, it is crucial that all means and resources within the responsible national authorities are fully utilised and exploited to detect irregularities. The screening of the detection measures and techniques will allow:

- ✓ Making an inventory of existing internal and external control systems;
- ✓ Checking the existence and efficiency of a whistleblowing procedure;

- ✓ Verifying whether the flow of information following detection of suspected fraud cases is correctly and effectively channelled;
- ✓ Clarifying the reporting system of irregularities and fraud at national and EU level and checking whether that staff know these procedures;
- ✓ Specifying who is responsible for controlling the quality of reports (AFCOS or another entity).

The detection measures are based on strong administrative capacities like:

- ✓ Sound and clear procedures to handle the suspected fraud case detected and ensure a quick and appropriate flow of information to the relevant authorities;
- ✓ Clear and protective whistleblowing policy;
- ✓ Detection tools provided to staff;
- ✓ Training;
- ✓ Sound and efficient reporting mechanism (e.g. IMS).

### ***2.1.3. Investigation and prosecution***

The screening regarding investigation and prosecution measures and techniques should focus on fraud, corruption and any other illegal activity detrimental to the EU financial interests. It will allow:

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

The investigation and prosecution measures should be based on strong administrative capacities like:

- ✓ Clear and efficient rules related to the flow/exchange of information between the relevant administrative and judicial authorities;
- ✓ Strong and sound co-operation between the relevant administrative and judicial authorities;
- ✓ Specialisation of investigators and prosecutors in expenditure and revenue part of the budget of EU;
- ✓ Continuous training in the field.

### ***2.1.4. Recovery and sanctions***

According to Article 325 (2) TFEU, Member States have an obligation to sanction fraud, corruption and any other illegal activity detrimental to the EU financial interests with the same stringent efforts it would apply to its national interests. A key deterrent to potential fraudsters is the implementation of sanctions and their visibility.

The screening regarding reparation measures and techniques will allow:

- ✓ Assessing the legal, organisational and procedural rules concerning the administrative and criminal sanctions;

- ✓ Evaluating the deterring effect of the sanctions.

The reparation measures should be based on strong administrative capacities like:

- ✓ A system of effective, dissuasive and proportionate administrative and/or judicial penalties that should go beyond the financial corrections that are applicable in case of simple irregularities;
- ✓ Clearly appointed authorities in charge with the follow-up of the implementation of sanctions, and defined duties, ensuring their effective application;
- ✓ Efficient and effective recovery services;
- ✓ Statistical monitoring;
- ✓ Training, seminars, practical tools and manuals.

## 2.2. Fraud risk assessment

When formulating the fraud risk assessment methodology aimed at elaborating the anti-fraud Strategy, one should bear in mind the objective of the fraud risk management. The fraud risk assessment is intended to facilitate the formulation and implementation of proactive and proportionate anti-fraud measures with cost-effective means.

This implies, among other things that the national specificities of the Strategy should be taken into account. An appropriate balance needs to be found between a very detailed fraud risk assessment of all processes and procedures at operational level and a more global approach. The former would be appropriate for devising a Strategy at a regional or sectorial level, whilst the latter should be used for defining national objectives.

Performance of the fraud risk assessment may differ from one Member State to another, depending on the following:

- Size of the country;
- Degree of decentralisation;
- Type of organisations mandated to manage the EU funds;
- Administrative and/or judicial structure;
- Regulatory framework of the country.

Managing authorities have to perform a fraud risk assessment within the framework of the new Multiannual Financial Framework and the Regulation (EU) No 1303/2013 applicable to programming period 2014-2020. They may use the 'Guidance note on fraud risk assessment and effective and proportionate anti-fraud measures for the programming period 2014-2020' developed by the Commission<sup>10</sup>, or they may use another methodology.

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<sup>10</sup> EGESIF 14-0021-00 of 16 June 2014: <https://ec.europa.eu/sfc/en/2014/anti-fraud>

## EXAMPLE

### *Fraud risk assessment tool applied in Greece*

*In 2014 the Managing Authority of the Operational Programme of 'Competitiveness and Business 2007-2013' launched the EU fraud risk assessment tool (EGESIF 14-0021-00, 16/06/2014). The Managing Authority used the tool firstly for scrutinising the previous Administration and Control System (ΣΔΕ) and secondly, for the designation procedure as required by the regulatory framework 2014-2020.*

*Based on the above mentioned procedure, every Managing Authority has designated an Expert on fraud issues and has established a Fraud Risk Assessment Team. The Experts from all the Managing Authorities (ΔΑ) participate in the Internal Cooperation Network for the implementation of the Strategy against Fraud in relation to Structural Actions, which is coordinated by the Special Service on Institutional Support (ΕΥΘΥ).*

*Thanks to the collaboration of designated Experts, the Internal Cooperation Network proceeded in applying and optimizing the EU Tool in terms of the inclusion of all the existing control measures which Greece introduced in the Control System (ΣΔΕ) 2014-2020 Manual Procedures. This example demonstrates how the EU fraud risk assessment tool can contribute not only to comply with the above-mentioned regulation but also to prevent and combat fraud in the Structural Actions area.*

Whatever method is used, the fraud risk assessment should be carried out with due care to ensure that all business areas, sectoral funds and financial instruments are covered (public procurement, grants, technical assistance). Another possible model structure of the fraud risk assessment document can be found in **Annex 3 – Possible structure and content of the fraud risk assessment document**.

The aim of the fraud risk assessment is to provide a comprehensive risk control, allowing the maintenance of an acceptable level of risk exposure for the managing authority, with minimal costs.

The risk assessment should be performed by managing authority, intermediate bodies (if applicable), certifying authority, audit authority and Anti-Fraud Co-ordination Service (AFCOS).

A fraud risk assessment group within each authority must be established in order to facilitate and coordinate the fraud risk assessment procedure within the institution. It is recommended that risk assessment within one institution is coordinated by risk managers having in mind that they understand risk assessment techniques and terminology. However, the assessment itself should be performed by staff from departments responsible for different processes comprising: programme management (selection of operations/projects), contracting, verifications, payment authorization, public procurement, monitoring of the implementation

(documentary verifications and on-the-spot checks), internal audit, irregularities and anti-fraud control etc.) The departments know best which risks threaten these processes.

Prior to the beginning of the fraud risk assessment participants should be given adequate guidelines / instructions and attend trainings to ensure the proper use of the methodology.

The NAFS service (which could be the AFCOS) should coordinate and guide the entire risk assessment process and gather all the contributions from the managing authorities, including its own fraud risk assessment. The results should be used as a baseline for the elaboration of the National Anti-Fraud Strategy. Ad-hoc workshops with the management and control authorities may be organised to evaluate and adjust the consolidated work. Prioritisation of the fraud risks should be discussed at that level.

It is recommended **not to outsource** the fraud risk assessment as it requires a good knowledge of the operating management and control system and the programmes' beneficiaries.

It is also recommended that audit authorities do not take a direct role in any decision making concerning the risk assessment since they may be engaged in auditing of the whole process. However, they might be asked to participate in the assessment process in an advisory role or as an observer.

The risk assessment process should be duly documented.

The fraud risk assessment should be made yearly. When necessary, this period could either be reduced or extended (2 years), taking into consideration the evolution of the risks through the organisation.

Upon the conclusions drawn at the end of the process, periodic reviews and updates should be carried out.

### **2.2.1. Theoretical foundations of the fraud risk assessment**

There are differences between a fraud risk assessment and a common risk assessment:

- ✓ Common risk assessment is focused on analysis of events which may occur in environment (external or internal) and the analysis of potentially negative effect on achievement of (organisational) objectives which can be triggered by those events if controls put in place to prevent such events are not effective. Thus, common risk assessment is focused on achievement of objectives and is linked to the antifraud system in place (managing authorities and institutions with PIF attributions).

*Example: Late preparation and submission of tender documents for a specific project due to heavy workload or lack of necessary skills of tendering personnel could cause delays in contracting and implementation of activities and consequently delays in completion of contracts. Serious delays could result in cancellation of projects and loss of funds.*

- ✓ Fraud risk assessment, on the other hand, is specifically orientated towards the detection of events or conditions which may indicate the existence of incentives or pressures for the occurrence of irregularities and fraud, and towards the detection of

situations which may lead to the occurrence of irregularities and fraud. This assessment can be performed on the basis of:

- Irregularities and frauds which have actually occurred (historical data);
  - Symptomatic behaviours;
  - Opportunities to commit fraud.
- ✓ Fraud risk assessment is thus more oriented towards the human factor, i.e. existence of elements of so called “fraud triangle” or, even better, “fraud diamond”. Namely, when identifying fraud risks, it should be borne in mind that a fraudster acts in case the following factors are present:<sup>11</sup>:
- Opportunity: the fraudster is in the right place and in the right circumstances to act, the procedures in the sector are not clear or are easy to circumvent etc. Example: The procedures regarding the estimation of costs of services/goods/works and the tender procedures were general and permissive. So, the prices could be easily overrated and based on an agreement with the supplier could gain a certain percentage from the contract value (the percentage of co-financing).
  - Motivation: The fraudster has the motivation/incentive to commit fraud: the fraudster encounters problems at work with her/his hierarchy or in her/his family life or is in financial difficulties. Example: The beneficiary has initiated the fraudulent behaviour because of the financial pressures and insufficient resources due to the loss of several contracts/clients. The motivation was the need to gain more money to co-finance the project.
  - Rationalisation: the fraudster can rationalise her/his actions: s/he might feel justified in being resentful towards her/his employer (e.g. if s/he has been overlooked for promotion, s/he knows that colleagues are involved in fraud and senior staff are not leading by example). Example: The beneficiary considers that he/she won't be caught because other beneficiaries used the same method/technique and their businesses are prospering.

In general, opportunity opens the doorway to fraud, and incentive and rationalisation can draw the person toward it. But the person must have the capability to recognise the open doorway as an opportunity and to take advantage of it by walking through, not just once, but time and time again.

There are also other motivating factors for fraud, such as:

- Collusion incidence: the fraudster can collaborate with others in her/his working environment to take advantage of weaknesses in internal control environment for own gain;
- Capability: the fraudster has a capability: personal traits and abilities that play a major role in whether fraud may actually occur. Those may be:

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<sup>11</sup> Based on Fraud triangle theory developed by Donald R. Cressey in *Other People's Money* (Montclair: Patterson Smith, 1973) p. 30 and The Fraud Diamond: Considering the Four Elements of Fraud developed by Wolfe, D. T. and Hermanson, D. R. (2004), The CPA Journal p. 74.

position/function, knowledge and intelligence, confidence/ego, coercion skills, effective lying and immunity to stress.

Examples for such risks are given in **Annex 4 - Fraud risks**.

- ✓ Finally, when assessing the likelihood of fraud occurrence, a more conservative approach should be applied having in mind the ‘zero tolerance’ principle.

### **2.2.2. Methodology for fraud risk assessment**

The management of risks should start with a detailed inventory of the activities and of the key processes carried out within the managing authorities. The inventory could comprise the relations and the method of communication with other units. The risks must be carefully defined, understood and explained. Therefore, the techniques of analysis could include discussions with colleagues, workshops, questionnaires etc.

The fraud risk assessment is a continuous process which includes the following stages:

- ✓ Identification and formulation of the fraud risks
- ✓ Assessment and ranking of the fraud risks identified
- ✓ Planning, implementation and review of the preventive and corrective actions.

#### **2.2.2.1. Identification and formulation of the fraud risks**

Fraud risks could be identified and assessed based on the knowledge gathered in previous fraudulent cases encountered with regard to EU funds, as well as in respect of commonly recognised and recurring fraud schemes. Thus, the fraud risk assessment should be based on objective evidence, which means that it should be impartial and independent.

One could perform analysis of historical data where information on irregularities and frauds which have already occurred are analysed against the following criteria:

- Types of programmes or contracts (i.e. technical assistance, grants);
- Contract value;
- Duration of the project;
- Project stage /process (i.e. selection of applicants, implementation and verification of the operations, certification and payments);
- Type of activity funded by the project;
- Geographical indication;
- Type of beneficiaries, etc.

Namely, for each of the abovementioned criteria a number of cases of irregularity and/or (suspicions of) fraud should be calculated. Such an analysis allows identifying the riskiest processes or a profile of the risky project. A risky project profile may include a combination of different criteria the example of which is given in the following image:



IRREGULARITIES / FRAUDS AS PER TYPE OF BENEFICIARY / TERRITORIAL UNIT				
		Type of beneficiary		
		Public administration body	Non-governmental organisation	Small and medium enterprise
Territorial unit	Unit No. 1	Green	Green	Green
	Unit No. 2	Red	Green	Green
	Unit No. 3	Yellow	Green	Green
	Unit No. 4	Yellow	Red	Red
	Unit No. 5	Green	Green	Yellow

Red	<i>Irregularities/frauds in category occurred in over 50% of cases</i>
Yellow	<i>Irregularities/frauds in category occurred in 25%- 50% cases</i>
Green	<i>Irregularities/frauds in category occurred in below 25% of cases</i>

While formulating risks one should pay attention to risk description. This is important for defining the best-suited control. Namely, it must be clear what the cause of the risk is on one hand, and which its consequences are on the other hand.

The following parameters should be borne in mind during formulation of risks:

- ✓ Negative effect of the risk occurrence on the budget, reputation and/or objectives must be obvious;
- ✓ Risk comprises the element of uncertainty;
- ✓ Risk should be described as a potential event, not a negative state. Negative state is not a risk, but a problem which may or may not have negative consequences;
- ✓ Stating existence or inexistence of a control should be avoided;
- ✓ Risk should not be described as a negation of a business process (delayed, inefficient, ineffective or illegal). Risk description should include the cause of it;
- ✓ A distance should be made with regard to organisational assumptions since it indicates inadequate planning (i.e. lack of personnel).

The results of the analysis may serve as an input for self-assessment of exposure to the fraud risk. The ultimate aim of the fraud risk assessment is to establish a risk ranking, listing all the risks to which an organisation can be exposed. Risks identified and arranged according

to their significance, allows the setting up of the adequate methods to tackle the risks at the appropriate hierarchical level.

In order to facilitate risk identification and formulation, a non-exhaustive list of fraud risks, their possible causes and consequences are provided in **Annex 4 – Fraud risks**.

In addition, it is useful to take into account the following parameters while identifying and assessing risks:

- ✓ With regard to public procurement, or more specifically to its evaluation and selection phase, internal controls at the national authorities managing and monitoring the ESIF are usually very strong. Therefore, fraudulent activities usually occur before and after those phases (for example, disclosing confidential information by tendering personnel and tender manipulations made by tenderers on the one hand, and violation of contracts on the other). Relations between beneficiaries and third parties are riskier.
- ✓ Fraud risk increases in direct proportion to the size and percentage of the subsidy and the scope of the operation.
- ✓ Risks are also higher in smaller Member States, because it is more likely that different stakeholders (beneficiaries, officials, tenderers) are in a kind of relationship. The problem of revolving doors is also higher (a situation when officials leave the public sector to work for the private sector and vice versa, or when consultants are working for associations operating in the same field). It may happen that officials are engaged in projects as well.

Apart from risks affecting programme management processes one should identify risks which could affect the functioning of the AFCOS, e.g. the risk that fraud will not be adequately reported and processed. A non-exhaustive list of those risks is provided in **Annex 5 - Risks related to the functioning of the AFCOS**.

#### **2.2.2.2. Assessment and ranking of the fraud risks identified**

Once risks are formulated they should be assessed taking into account fraud mitigating controls in place.

The assessment is based on the two following indicators:

- ✓ Likelihood of fraud occurrence (probability): it means the possibility/probability of a risk to be materialised determining the chances of occurrence of a specific outcome;
- ✓ Impact of fraud in case of its occurrence (effect): it means the effects/consequences that arise from the materialization of a specific risk. The impact represents the effect on the expected objectives (outcomes) that can depend on the nature of the risk (positive or negative). The risk impact indicator should take into consideration the financial impact, affected activities, the level of confidence regarding the organisation, additional resources, and repeatability in the reference period.

Likelihood of fraud occurrence may be assessed as follows:

Evaluation	Probability	Meaning
1	Low	Probability of the risk occurrence is almost impossible or very low, and there are only few cases in the practice where these risks have actually been manifested.
2	Medium	Probability of the risk occurrence is substantiated by previous events and there is awareness of the occurred situations.
3	High	Probability of the risk manifestation is substantiated by clear and frequent events and by the awareness of the existence of these situations.

Impact of fraud in case of occurrence may be assessed as follows:

Evaluation	Effect	Meaning
1	Low	In case of the risk emergence, the underway tasks and planned activities will not be hampered or will be minimally hampered, and there is no need for additional resources. Risk emergence implies slow acquisition of public confidence and partially negative public attitude.
2	Medium	In case of the risk emergence, activities are significantly hampered and it is possible that it is necessary to invest additional resources in order to ensure the achievement of goals. Risk emergence implies partial loss of credibility and negative attitude of media.
3	High	In case of the risk emergence, activities are significantly hampered and significant investment of additional resources is necessary in order to ensure the achievement of goals. This category is also used when it is not possible to fulfil the set goals. Risk emergence implies major loss of credibility and public pressure for resignation of management.

The internal control systems in place in the national authorities managing and monitoring the ESIF should ensure a high level of safeguard of the EU and national financial interests. Therefore the likelihood of fraud occurrence should theoretically be quite low. That is why the main aspect to focus on when assessing the fraud risk is the impact and the scale of the potential damage (effect). As it can be seen from the table providing guidelines for evaluation of the effect, the effect may be reputational, financial or structural/organisational.

**Fraud risk ranking** consists of prioritising the fraud risks based on the total risk exposure and the type of risks.

The total risk exposure is calculated by multiplying the probability and the effect. Possible results and their interpretation are as follows:

		Probability			
		1	2	3	
Effect	1	1	2	3	6, 9 <i>Critical</i>
	2	2	4	6	3, 4 <i>Significant</i>
	3	3	6	9	1, 2 <i>Tolerable</i>

The most significant fraud risks (defined as significant and critical) should be addressed as a matter of priority.

Each institution should develop an action plan for mitigating risks it identified. Recommended content of an action plan is the following: risk number, risk description, risk mitigation measure, priority, indicator, responsible department / function, deadline, status of implementation, follow-up date.

Measures stated in action plans of different institutions are to be incorporated in the Action Plan accompanying the NAFS.

**2.2.3. Fraud risk identification and assessment in practice**

Fraud risk identification may be conducted in different ways.

One approach is to organise a working group (fraud risk assessment group) whose task is to identify fraud risks and develop a tool for assessment of such predefined risks. The tool may be extended retrospectively, during the assessment phase, by inserting additional risks identified by any assessor.

During the identification of risks, it is important to analyse the cause of the risk because the risk-mitigation measure should be directed to the cause of the risk. It is advisable that the cause of the risk is incorporated in the risk description.

Another approach is similar to that used in common risk assessment and includes gathering Alert forms from employees of the managing authority for the purpose of identifying risks. This approach is described in more detail below.

All the persons within the managing authority should, upon request of the risk manager or any time following the identification of new risk, fill in an **Alert form** which provides a preliminary risk assessment based on the two indicators referred above (likelihood and impact). The combination between the estimated likelihood and estimated impact represents the level of exposure to risk, based on which the risk profile is obtained. The Alert form should be sent to the risk manager.

The main points of the **Alert form** could be those presented in **Annex 6 - Main points of the Alert form**.

Next, the fraud risk assessment group gathers the alert forms and applies the same procedure as in case of the preliminary risk assessment: the group sets its own views on the likelihood and impact of each risk - by using the same scale - and decides if the risk is 'relevant', 'irrelevant' (consequently the alert form is archived) or 'need more information'.

Risk assessment itself consists of the following steps: 1) a quantification of the gross risk (the existing risk level before starting the verifications of the managing authority), 2) the evaluation of the efficiency of the current verifications in order to diminish the gross risks and the evaluation of the net/residual risk (the level of risk following the verifications depending on their effectiveness), 3) the evaluation of the efficiency of the planned verifications in order to diminish the net/residual risks, 4) identifying the target risk (the risk considered acceptable/admissible by the managing authority after all the verifications/checks are enforced and made effective).

The identified risks are registered in the **Risk Register**.

The **Risk register** is an internal document and a follow-up tool of each body. Its content may include the following: risk number, risk description, risk probability, risk effect and total score, risk mitigation measures, responsible department / function, deadline, note on the status of the measure and note whether the risk is closed or not. It should be regularly updated (once or twice in a year or following the direction in which the risk evolves) in order to check whether risk mitigation measures are implemented and whether expected results are achieved. The Risk Register could take the form of the model presented in **Annex 7 – Risk Register**.

During the **assessment process**, apart from quantifying the risk by means of likelihood and impact, the fraud risk assessment group:

- ✓ Defines actions to tackle the risks (actions to be carried out by the executive and management staff),
- ✓ Assigns the responsibilities for the actions to tackle the risks.
- ✓ Establishes deadlines etc.

As already mentioned, all this information is comprised in the **Risk Register**.

The risk assessment group may decide to warn the collaborating institutions in case of high risk situations.

At the same time, an **initial statement of intent** from the highest level of the managing authorities should be drawn up to show the commitment to fight against fraud since the very beginning, and an **annual statement of progress** (the initial statement of intent should be simpler than the annual statement of progress in order to be easier to follow and to understand the managing authority anti-fraud directions for action).

The main points of the initial statement of intent could be those presented in **Annex 8 - Main points of the Initial Statement of Intent**.

### **2.2.3.1. Assessment of the risk of fraud in the CAP budget**

A practical document was issued in 2016 by the Anti-fraud Adviser of the Directorate-General for Agriculture and Rural development (European Commission) on the 'Assessment of the risk of fraud and other serious irregularities to the detriment of the CAP budget'. This recent document provides input to risk assessments carried out by Member States and Candidate Countries and proposes possible mitigating measures. It covers:

- ✓ External fraud risks: fraud and other serious irregularities committed by final beneficiaries of the CAP budget
- ✓ Internal fraud risks: fraud and other serious irregularities committed by staff of national authorities involved in the administration of CAP funds, as well as
- ✓ Concrete mitigating measures are listed per type of risk.

Although mitigation of external fraud risks (mainly through prevention, detection and correction) lies in the hands of the Managing Authorities and Paying Agencies in the Member States, a number of measures and actions at EU level<sup>12</sup> have already contributed to mitigating these external fraud risks. Furthermore, the European Commission assists Paying Agencies and Managing Authorities, as well as the relevant bodies in Candidate Countries to implement the new anti-fraud provisions effectively and efficiently, by issuing guidance note and by holding anti-fraud seminars at the Member States' premises.

### **2.2.4. IT tools for risk identification**

IT tools today constitute precious instruments for fraud pattern analysis and for the identification of sectors at high fraud risk. Databases, data-mining and risk-scoring tools should be used intensively where available.

The role of managing and paying authorities in detecting fraud has grown since 2012 and should be further enhanced in the coming years under the new regulatory framework for the programming period 2014-2020. Given the complexity of the operations managed and the high number of beneficiaries concerned, managing authorities/paying agencies and audit/control authorities are invited to plan and focus their audits and control activities on the basis of risk analysis and performing IT tools, such as ARACHNE, IMS and the Fraud Risk Assessment tool (developed by the European Commission), as well as any other comparable national alternatives.

The Commission believes that the systematic and efficient use of appropriate IT tools will help national authorities to comply *inter alia* with the specific anti-fraud provisions of the new regulatory framework 2014-2020 and after.

#### **2.2.4.1. Irregularities Management System (IMS)**

For the protection of its financial interests, Union legislation lays down reporting requirements as regards Union fields of financial support. Member States, candidate countries

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<sup>12</sup> Regulation (EU) No 1306/2013, Commission Delegated Regulation (EU) No 907/2014 and Commission Implementing Regulation (EU) No 908/2014.

and potential candidate countries must send regular reports of the irregularities detected, the amount concerned and the progress of related administrative and legal proceedings.

The duty to report falls on Member States in all sectors of the Union budget which are managed directly by the Member States (ESI Funds, Agriculture, AMIF/ISF, Fisheries, FEAD ) or candidate countries and potential candidate countries (IPA).

In accordance with the EU reporting obligations<sup>13</sup>, Member States, candidate countries and potential candidate countries have to report irregularities in relation to these funds (both of fraudulent and non-fraudulent nature) to the European Commission (OLAF) via the Irregularity Management System (IMS) on a quarterly basis in the areas of shared management and without delays with regard to pre-accession assistance .

The information is used to carry out risk analyses, produce reports and develop early-warning systems which help to identify risks more effectively. Moreover, analysis of the results of Member States' actions assists the Commission services in enhancing fraud proofing of Union legislation.

In addition to being a tool for sound financial management, the reporting of fraudulent and other irregularities is also an information tool for the public, the European Parliament and Member States about the fight against fraud. This information is an input to the report on the protection of the EU's financial interests under Article 325 TFEU.

### **1) Reporting tool**

The IMS tool serves first of all as a reporting tool. It has more than 3.200 users in Member States, candidate countries and potential candidate countries. The Irregularities Management System constitutes a unique database that collects detailed information regarding irregularities and fraud.

IMS contains detailed information on:

- ✓ Support measure such as fund, programme, project, budget line;
- ✓ Financial impact (expenditure and irregular/fraudulent amount);
- ✓ Persons and/or entities involved (who committed the irregularity/fraud);
- ✓ How the irregularity/fraud was committed (modus operandi);
- ✓ When the irregularity/fraud was committed;
- ✓ Where the irregularity/fraud was committed;
- ✓ Mode of detection of the irregularity/fraud;
- ✓ Follow-up of the case (administrative, judicial or penal follow-ups);
- ✓ Sanctions imposed.

The reporting system has now been in place for years and the amount of information collected through it is of huge importance for both the European Commission (OLAF) and the reporting countries. It facilitates the acquisition of better knowledge of the types of

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<sup>13</sup> For the summary of the legal framework of the reporting obligation, please see: COMMISSION STAFF WORKING DOCUMENT Methodology regarding the statistical evaluation of reported irregularities for 2015 - Accompanying the document to the PIF Report(SWD(2016) 237 final) [http://ec.europa.eu/anti-fraud/sites/antifraud/files/methodology\\_statistical\\_evaluation\\_2015\\_en.pdf](http://ec.europa.eu/anti-fraud/sites/antifraud/files/methodology_statistical_evaluation_2015_en.pdf)

irregularities/frauds, the fraud patterns, the financial impact, the persons involved, the detection methods etc. This knowledge can be used to identify the most vulnerable budget areas and thus to adopt appropriate measures to mitigate the risks. It may also contribute to fraud awareness-raising among staff dealing with EU funding.

In this respect, the IMS is not only a reporting tool, but also an analysis tool.

## **2) Analysis tool**

The Irregularities Management System is the largest fraud database in Europe and can be used for fraud analysis. Since the release of its most recent version in April 2016, IMS also allows for a cross-sectorial analysis, as the reported data are now structured in a similar way for all sectors of shared management budget. In some Member States, IMS is already used for the integration of data available at local level, to enhance their risk scoring analysis (e.g. in Italy).

Analysis provided by the Commission in the framework of the PIF Report<sup>14</sup> is primarily based on the irregularities reported via IMS. A new built-in analytical tool will be put at disposal of the reporting countries (expected in 2017), which will further enhance the analytical capacities. All analysis based on IMS data (maybe combined with other dataset) are particularly valuable in combatting fraud and irregularities detrimental to both the EU's and national financial interests.

### **2.2.4.2. ARACHNE risk scoring tool**

The Commission has developed ARACHNE<sup>15</sup>, an integrated IT tool for data mining and data enrichment aiming at supporting Managing Authorities and Intermediate Bodies in their administrative controls and management checks on European Regional Development Fund, Cohesion Fund and European Social Fund. This is a powerful risk-scoring tool that helps to prevent and detect errors and irregularities among projects, beneficiaries, contracts and contractors.

The tool can help in performing improved ex-ante checks before the signature of grant agreements and contracts based on the calculated risk indicators and affinity diagrams. ARACHNE systematically provides risk-based information on project beneficiaries, contractors and subcontractors during the phases of selection, approval and implementation of operations. In this way, during selection and approval, it is possible to identify risks related to conflict of interest, to non-compliance with State aid rules or to the operational, administrative and financial capacity of companies to undertake operations co-financed by the EU. Furthermore, during the implementation of operations, several risk indicators provide valuable alerts on potential errors or irregularities for verification areas such as public

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<sup>14</sup> Report from the Commission to the European Council and the European Parliament on the protection of the EU's financial interests – fight against fraud.

[https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports\\_en](https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports_en)

<sup>15</sup> For more information please consult: Arachne charter V1.0 - 2016-01-07:

<http://ec.europa.eu/social/BlobServlet?docId=14836&langId=en>



procurement, eligibility of operations, concentration of projects and stakeholders or performance indicators.

ARACHNE is made available to all Member States. Once the managing authorities decide to use the tool, the European Commission can provide technical support for the implementation and training for the users. The use of the tool is optional, however, is recommended as it can constitute an effective and proportionate anti-fraud measure notably in light of Article 125.(4)(c) of Regulation (EU) No 1303/2013 as referred above.

#### **2.2.4.3. National anti-fraud databases**

##### **EXAMPLE**

##### **Anti-Fraud Database in Italy**

*The Central Anti-Fraud Coordination Office (AFCOS) in Italy has planned the development of a special electronic application known as D.N.A (National Anti-Fraud Database), with the aim of significantly reinforcing action to combat fraud entailing losses to the EU budget.*

*This is in line with the new regulatory provisions on EU funds for the 2014-2020 programming period which require Member States to adopt appropriate measures for preventing fraud, possibly through the development of IT tools. In order to achieve this, the anti-fraud software will be designed to:*

- ◆ *Make all individual and combined information on European financing streams in relation to projects or the relevant territory available to the supervisory authorities (ministerial or regional);*
- ◆ *Carry out a 'risk analysis' for use on a purely operational level and aimed at combating fraud.*

#### **1) Features and structure of a national anti-fraud IT application**

The national anti-fraud IT application should consist of a **single platform** which compiles data from different sources. In particular, the data included in the application should come from two types of sources: information databases and operational databases.

**Information databases** contain information on the use and destination of EU financing streams held by the Authorities (or Bodies) responsible for managing them. In this context, the system should extract information regarding:

- ✓ Contributions from operational programmes financed by structural funds: information compiled by the Ministry of Economic Affairs and Finance or other competent authority (e.g. the 'Banca Dati Unitaria centrale', the Single Central Database in Italy);
- ✓ Financing from the Common Agricultural Policy and the Common Fisheries Policy : information gathered by the Ministry for Agricultural, Food and Forestry Policy and the Agricultural Payments Agency or other competent authority (e.g. the 'Sistema Informativo Agricolo Nazionale' (S.I.A.N), the National Agricultural Information System in Italy);

- ✓ Irregularities and fraud entailing losses to the EU budget collected by the anti-fraud services in each Member State, registered in the 'Irregularities Management System (IMS) managed by the European Anti-Fraud Office of the European Commission (OLAF);
- ✓ Additional information related to the management of EU funding used by the Regions or other local administrations (e.g. the 'Sistemi Informativi Locali' the Local Information Systems in Italy);

**Operational databases** contain information that are cross-checked and combined with the data in the information databases, in order to carry out risk analysis:

- ✓ Database containing tax information concerning the potential beneficiaries of financing streams;
- ✓ Database containing the company and financial data of businesses;
- ✓ Records of previous criminal convictions relating to specific offences (fraud against the State, corruption, offences in public procurement procedures etc.) involving natural and legal persons;
- ✓ Records of previous financial losses in the public financing sector attributable to natural/legal persons.

The information from such databases should be updated regularly according to deadlines established in advance, differing according to the database concerned.

## **2) Functionalities of the databases**

Once the information from the abovementioned databases has been extracted, the System should carry out a series of operations using specific, predetermined functions which can be split into two categories: analysis functions and information functions.

### **A) Analysis functions**

Analysis functions might include context analyses, risk analyses and reports with regard to the data processing and cross-checking carried out by the analysis software, in order to provide a clear view of the ways in which EU funding is distributed across the country or to identify individual cases with indications of abnormalities which could have operational consequences.

**Context analysis** is the first function, by which specific combinations of information contained exclusively in the information databases are obtained (in particular the Single Databases managed by the Ministry of Economic Affairs and Finance, the Ministry of Agriculture and Regional Administrations).

This function will provide a general overview on the destination and the use of financing flows throughout Italy. In particular, the analysis would take its starting point from the automatic clustering of funded projects according to the fund used, the type of beneficiary, the location and nature of the projects. For example, by applying the filters YEAR and REGION, the system would generate a summary (in graph or table format) of all projects funded in the year and regions selected for each type of fund.

The results might be further refined through the relevant search filters, which generate, inter alia, a tree decomposition indicating the stages of the results obtained after applying the individual search settings selected each time.

For example, starting with projects funded by the European Social Fund in a given region, a 'territorial' filter could be applied in order to generate a figure for each individual province in that region (the level of detail that may be obtained by using the same setting to sub-divide funded projects for each individual municipality).

**Risk Analysis** is another function that the anti-fraud platform should be capable of performing is risk analysis, which would extract lists of beneficiaries of public funds who might constitute a risk of irregularities.

The system would calculate this risk with reference to persons as well as companies, on the basis of the match of individual subjective profiles with specific factors established when the platform was set up.

In essence, for each recipient of EU funding registered, the anti-fraud system should calculate an '*overall risk index*' using the weighted combination of homogeneous categories of settings. For example, the system might be set on 5 categories of pre-selected settings in order to calculate the level of risk of beneficiaries of funding, i.e.:

- ✓ 'Previous criminal convictions', identifying any previous criminal convictions (of the potential beneficiary of funding) for fraud entailing losses to the EU or national budget.
- ✓ In addition to these offences, the system might also be able to identify previous convictions for other types of offences which could be regarded as closely related to fraud entailing losses to the EU and national budget, such as crimes against the public administration (corruption and bribery), tax crimes and money laundering, including the proceeds from organised crime;
- ✓ Records of previous financial losses caused, identifying any previous findings (against the potential beneficiary of funding);
- ✓ Tax risk, which would take account of any anomalies and breaches in terms of tax obligations, such as the failure to submit declarations under tax law or in cases where a physical or legal person has had foreign financial dealings;
- ✓ Financing risk, identifying the frequency of access to financing from the EU budget for the same physical or legal person or whether the registered office of the beneficiary company and the region in which the funded project is located do not correspond;
- ✓ Corporate risk, which would assess aspects indicating anomalies related to corporate structure and chain of shareholding. This is the case for ownership of shareholding in economic activities that are financed or which cease shortly after the receipt of payments.

These parameters should be taken into account for the persons on which checks are being carried out and with regard to other individuals related to such persons, for example members of their family living with them or office-holders in a subsidiary.

The results of the report should be presented either in graph form or by highlighting names in red, yellow or green according to the level of risk, or by allocating a percentage indicating the degree of risk of the persons concerned.

**Specific risk analysis reports** can be generated automatically by the anti-fraud system. These reports take into consideration specific risk cases developed on the basis of operational experience gained in the sector. A few examples of such specific risk analysis reports are as follows:

- ✓ *'Losses to the EU budget'*: should include, in the appropriate format for each recipient, the number of reports of fraud against the EU and the total number of reports of fraud, so as to indicate the propensity for committing offences in this area.
- ✓ *'Location of projects' / 'Location of land'*: could indicate all beneficiaries of EU funding that have their registered offices in a different region to the one that the project or land (in the case of funding under the Common Agricultural Policy) is located in.
- ✓ *'Abnormal circumstances'*: In other cases, the System could flag up indicative of possible irregularities and which, as such, might receive greater operational scrutiny. In this context, a *double invoicing report* could indicate which persons seem to have used the same supporting documents to justify expenditure (invoices) in more than one publicly funded project.

### **B) Information functions**

Information functions, including a custom search and profile tab, mainly for fact-finding purposes since they would provide all the information available in the System concerning the persons registered in a succinct and organised manner.

**Personalised search function** should be one of these functions that enable the user to search by selecting (in the relevant panels) certain pre-determined settings, for example:

- ✓ Territorial scope of the project;
- ✓ Beneficiary's place of residence;
- ✓ Tax code/VAT number

**Profile tab function** should provide a complete file of the information available in the System for each person registered, including information on their risk category. This file should be made available by entering the tax code or VAT number in the relevant field or by clicking on the links included in the analysis tools described above.

The information in the file must be divided into separate sections for each subject to facilitate navigation that can be adjusted according to the requirements of the user. For example, the 'funding' section should provide information on the total number of funding grants received by a specific physical or legal person and the total amount of that funding. This figure should then be broken down for all years in which that person has received payments.

It should be noted that the core of the anti-fraud system must be the profile tab which, by extracting and bringing together the information collected in relation to the persons registered, should turn the System into a sort of 'register' of recipients of EU funding.

### ***2.2.5. Sources of information for risk identification***

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

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

- Annual reports from the Commission on the protection of the EU's financial interests;
- Specific documents such as lists of red flags<sup>16</sup>, guidelines on conflict of interests and forged documents; handbook on the role of auditors etc.
- OLAF Compendium of anonymised cases relating to structural actions (2011);
- Audit reports from the Commission's auditors;
- Audit reports from the European Court of Auditors;
- Audit reports from the national audit authorities;
- Managing authority verification check results;
- EU reports such as the EU anti-corruption report;
- Price Waterhouse Coopers study on the cost of corruption in public procurement;
- Guidance from Professional standards issued by IASB (ISAs) for assessing/ auditing control activities and control environment risk and procedures;
- National public procurement portals;
- Applicable National Law;
- Regulatory bodies compliance framework for whistleblowing, fraud and corruption.

Other sources can also be useful: questionnaires; workshops and meetings with responsible persons and employees; seminars/ conferences / events for the exchange of good practices at the national or international level.

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<sup>16</sup> A red flag is an indicator of possible fraud, corruption, etc. It is a signal that something is out of the ordinary and may need to be investigated further.

## 3. Elaboration phase

### 3.1. Setting the objectives

This section elaborates setting the objectives of the NAFS, i.e. formulating measures through the implementation of which the objectives should be achieved and the performance indicators for measuring the implementation results. As such, objectives of the NAFS constitute the roadmap of the Member State in the fight against fraud in the expenditure and revenue part of the budget for the coming years.

Objectives should be directly and logically linked to the results of the state of play and the results of the fraud risk assessment carried out in the preparatory phase. They should also take into account the Member State's overall national priorities in the expenditure and revenue part of the budget and the fight against fraud. This means that the objectives should also derive and/or at least be linked with a potential National Anti-Fraud/ Corruption Strategy if any already in place. Last but not least, they should also be aligned with the EU recommendations.

Objectives should be Specific, Measurable, Achievable, Realistic/Relevant, and Time-bound (SMART). They should not be too numerous to allow a proper and realistic implementation and follow-up of the NAFS. They should clearly state and show the priorities given by the Member State in the fight against fraud. The objectives should be realistic taking into account the resources available.

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

The objectives should encompass all stages of the anti-fraud cycle. It is important to consider each stage, namely prevention, detection, investigations/prosecution and recovery/sanctions. Yet, the stages of the anti-fraud cycle are not isolated, but closely interlinked. Ensuring the right flow of information and co-operation between the entities responsible for each stage is as much important as addressing each stage itself.

Swift transmission of key information and full co-operation between law enforcement bodies and the managing, certifying or audit authorities before, during and after investigations will ensure the efficiency of the investigations. It will also allow the managing authorities to make the right decision for the monitoring of the files, especially relating to precautionary measures, such as blocking or suspending the payments. Finally, apart from recovery, a high level of reactivity and relevance of the action taken acts as a strong deterrent.

A few examples of objectives are given below:

- Ensuring fraud-proofed environment (establishment of adequate legal environment);
- Promoting fraud prevention among the public and among staff;
- Maximising the efficiency of controls;

- Introducing a whistleblowing policy;
- Introducing a fraud education, training and awareness programme;
- Ensuring a sound recovery system for losses incurred.

For a template, please consult **Annex 9 – Template for setting the objectives**. Furthermore, the document 'Practical steps towards the drafting of national anti-fraud strategies'<sup>17</sup> can provide an example of how objectives may be structured and linked directly to the result of the assessment phase.

### 3.2. Setting the measures

While objectives reflect the intended result, measures show the path for reaching that result. Measures are thus more specific than objectives. Furthermore, one objective may be realised through the implementation of more than one measure. Therefore, it is important to choose a measure or measures which are the most efficient and effective with regard to achieving an objective. Finally, each measure should be accompanied by appropriate performance indicator.

Some possible measures to address could be:

- ✓ Setting up a whistleblowing policy
- ✓ Strengthening co-ordination and co-operation between the competent national authorities as regards exchange of knowledge of fraud patterns
- ✓ Strengthening legislation and methodological guidelines
- ✓ Raising public awareness
- ✓ Elaboration of a procedure to handle detected irregularities and suspected fraud in relation to expenditure and revenue side of the budget.
- ✓ Developing the power of data-mining and risk scoring tool to reveal risk factors at the level of individual projects
- ✓ Enhancing co-operation between the bodies of state administration involved in public procurement and control of competition
- ✓ Strengthening integrity and tackling conflict of interests in public procurement
- ✓ Elaborating a handbook for civil servants involved in public procurement to tackle irregularities, fraud and corruption in relation to EU funding
- ✓ Strengthening the exchange of experience between the national authorities and European partners (OLAF, relevant Commission DGs, and other Member States).

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<sup>17</sup> Ref. Ares(2015)5642419 - 07/12/2015

*Example of measures linked to the objectives:*

Objectives	Measures
Ensuring fraud-proofed environment (establishment of adequate legal environment)	Analysis of the current legal framework regulating investigations and prosecution of fraud against EU financial interests in co-operation with investigative and judicial bodies
	Depending on the results of analysis of the legal framework regulating investigations and prosecution of fraud against EU financial interests, drafting and adoption of amendments to the existing regulations or adoption of new regulations
Promotion of fraud prevention among public and staff	Drafting and adoption of a communication strategy specifically targeted at the prevention of irregularities and fraud in the expenditure and revenue part of the budget to be incorporated into the general communication strategy
	Implementation of communication activities in line with the communication action plan accompanying communication strategy
Enhancement of prosecution of cases	Comprehensive assessment of the training needs
	Creation / modification of training programmes in such a way to meet training needs of employees at management and control system bodies, investigative bodies and judicial bodies
	Organisation of appropriate trainings for employees at management and control system bodies, investigative bodies and judicial bodies

A useful measure which can contribute to a number of objectives is international co-operation in the form of a study visit.

A study visit is a short stay for a limited period of time (few days or weeks) in a host country created for an individual person or a group. It generally includes giving presentations and making visits to local institutions. Moreover, it is an excellent opportunity for forum discussions, exchange of information and experience, and learning about topics of common interest. An extra added value of a study visit is the opportunity to establish contacts and networks among colleagues from different countries.

Furthermore, working together, discussing job related issues and sharing different point of views provides organisers and participants with a solid basis for improving their working methods/procedures and can be useful for future common projects.



## EXAMPLE

### *Study visits carried out by Croatia*

*Within the framework of TAIEX programme and Hercule II programme representatives of the Service for Combating Irregularities and Fraud (hereinafter referred to as: SCIF) from Croatia visited AFCOS Bulgaria, AFCOS Malta and DLAF (Romania). Study visits were very successful. Therefore colleagues from host countries (Malta, Bulgaria and Romania) visited Croatia in order to additionally exchange knowledge and experience gained through their work not only with representatives of the SCIF but with representatives from other national institutions as well.*

### 3.3. Setting the performance indicators

The performance indicators are key elements that will show the progress made or the results reached towards the objectives. They will be used for reporting on the anti-fraud Strategy and will help assess the impact of the implementation of the Strategy.

The performance indicators may be quantitative or qualitative.

✓ Quantitative indicator may be:

- Number: e.g. number of co-operation agreements signed between competent authorities (e.g. audit authorities and judicial authorities) (pcs)
- Percentage showing a statement: e.g. the number of trainings (pcs)/number of participants by programmes (capita)/year
- Percentage showing the progress made: e.g.  $\frac{FC(\text{Year } N) - FC(\text{Year } N-1)}{FC(\text{Year } N-1)} * 100$  - (where FC=number of suspected fraud cases transmitted by the MA/CA/AA to the judicial authorities)

✓ A qualitative indicator may be:

- a statement with a yes or no position: e.g. code of ethics: yes
- the assessment of a level of compliance on a scale (high, medium, low)

A qualitative indicator may be considered as more subjective than a quantitative indicator. But it may be also more relevant and meaningful than a quantitative indicator. Moreover it should be borne in mind that the indicators should be analysed and commented not as stand-alone information but taking into account the context and the other indicators. They should be easy to establish and/or calculate. This means that their evaluation should not require burdensome work but should rely on existing and reliable tools (such as an existing database used for training, for fraud case reports (IMS), etc...) from which the key elements would be easy and quickly extracted. They should also be easy to verify to ensure full transparency for and confidence of the public. Well-selected indicators will be key to assessing the impact of the implementation of the Strategy and therefore to updating and/or revising the Strategy in due time. In this way, indicators are essential elements in the anti-fraud Strategy by measuring the progress made towards its objectives.

### *Examples of indicators*

<b>Objectives</b>	<b>Measures</b>	<b>Indicators</b>
Ensuring fraud-proofed environment (establishment of adequate legal environment)	Conduction of analysis of the legal framework regulating investigations and prosecution of fraud against EU financial interests in co-operation with investigative and judicial bodies	Analysis of the legal framework regulating investigations and prosecution of fraud against EU financial interests conducted Report on the analysis of the legal framework regulating investigations and prosecution of fraud against EU financial interests drafted and acknowledged by all stakeholders
	Depending on the results of analysis of the legal framework regulating investigations and prosecution of fraud against EU financial interests, drafting and adoption of amendments to the existing regulations or adoption of new regulations	Amendment of regulations (pcs)/year
Promotion of fraud prevention among public and staff	Drafting and adoption of the Communication Strategy specifically targeted at the prevention of irregularities and fraud in the expenditure and revenue part of the budget to be incorporated into the general Communication Strategy	Communication Strategy specifically targeted at the prevention of irregularities and fraud in the expenditure and revenue part of the budget drafted and adopted
	Implementation of communication activities in line with the communication action plan accompanying the communication strategy	In line with the communication action plan accompanying the communication strategy targeted at the prevention of irregularities and fraud in the expenditure and revenue part of the budget
Enhancement of prosecution of cases	Assessing the training needs in the field of protection of EU financial interests	Training-need analysis conducted Education Strategy in the field of protection of EU financial interests drafted
	Creation / modification of training programmes in the area of fight against fraud affecting the EU financial interests such a way to meet training needs of investigative and judicial bodies	In line with the Education Strategy in the field of protection of EU financial interests

	Organisation of appropriate trainings in the area of fight against fraud in the expenditure and revenue part of the budget for employees at investigative and judicial bodies	Number of investigators trained in the area of fight against fraud in the expenditure and revenue part of the budget Number of prosecutors trained in the area of fight against fraud in the expenditure and revenue part of the budget
Ensure a sound recovery system for losses incurred		Average amount of funds recovered through the courts

## 4. Setting the Action Plan

### 4.1. Content of the Action Plan

The Anti-Fraud Strategy should be accompanied by a detailed Action Plan, translating the objectives into actions/measures. The Action Plan should be elaborated by the service responsible for the National Anti-Fraud Strategy, supported by the team of experts established. This is the stage where the co-operation of all involved bodies is necessary to make sure they all have the possibility and capability to complete the task and that the terms are reasonably set-up and consider all required proceedings. This is crucial especially in cases where the implementing body has limited legal power to enforce the fulfilling of measures otherwise the Action Plan will have no practical effect.

At this stage, cost-benefit considerations and the availability of human resources become a key issue. The main efforts should be concentrated on priority measures. The outputs of the state of play and the fraud risk assessment should have provided some clear overview of the priorities.

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

- Drafting of legislation
- Organisation
- Management
- Procedures
- Means and Resources
- Co-operation and collaboration at national level between the competent authorities
- Co-operation at EU level (with the Commission and the other Member States).

The Action Plan is based on identified *priorities* and the correlated objectives. It assigns to the appropriate authorities a responsibility for the implementation of these priorities and corresponding follow-ups. These priorities should represent the main areas where the Strategy can contribute to the improvement of the anti-fraud action. It should also assign responsibilities to individual actors/AFCOS partners within the Member State, with support, where appropriate, from other partners, e.g. the EU and/or national institutions.

The Action Plan should comprise specific *tasks* assigned to the relevant entities to be responsible for carrying them out, and the target dates for their fulfilment. These tasks should be divided into areas implied by and in accordance with the NAFS.

Each task has to be considered with a view to achieving a synergy and encourage an integrated approach. For example, the Action Plan shall take into account the fact that EU funds are used to improve the living conditions of EU citizens, ensure growth and create jobs. That objective is undermined if the funds from the budget are misused.

Individual actions may be carried out in the form of projects to achieve the objectives set out in the anti-fraud Strategy. To implement the NAFS and the accompanying Action Plan, a structured network of authorities in each MS should be established. Their task would be to ensure that the NAFS and the Action Plan are implemented, evaluated and monitored in a systematic way, as well as updated and revised, when necessary.

#### 4.2. Period covered by the Action Plan

Since the Action Plan is based on the priorities identified in the NAFS and the correlating objectives, it will comprise of specific tasks. This means that the Action plan will be constantly updated or amended for the period of its effect. A suggested approach is not to link the duration of the Action plan with the duration of the Strategy. The NAFS shall represent a general guidance for the Member States set within the duration of the multiannual financial framework or outside of it, while the Action Plan will entail the implementation of specific tasks.

The recommended approach is to set an **annual** Action Plan which will be evaluated at the end of each calendar year.

#### *EXAMPLE*

##### *Action Plan of Bulgaria*

*In the Republic of Bulgaria the National strategy for prevention and fight against irregularities and fraud, affecting the financial interests of the European Union for the period 2014 – 2020 is accompanied by an Action Plan for the period 2015-2016, which already has been actualised for 2016. The Bulgarian experience shows that even a two-year plan is too long and could not address the current tasks and issues of the Strategy in the best manner. As of 2017 the plan shall be set within the time limits of the calendar year and will be evaluated at the end of each calendar year.*

The evaluation of the Action Plan should be carried out regularly (intervals from ½ to 2 years). From time to time, the progress made should be compared to the objectives and the Strategy should be up-dated in accordance with the results of this comparison. It has proven practicable to publish the Action Plan as a separated document, so the Strategy will not need to be changed every time the Action Plan is evaluated and revised.

#### 4.3. Possible role of AFCOS in setting the Action Plan

Depending on the organisation existing in each Member State, the implementation of the Action Plan could be monitored by the national anti-fraud coordinating service (AFCOS). AFCOS can take the leading role and mobilise the partners concerned and encourage them to propose measures and commit to results in terms of indicators or deliverables.

AFCOS could present a report on the implementation of the Action Plan on an annual basis (to cover the period from 1 January to 31 December). AFCOS could produce a review of the Action Plan after two years, with a similar format of the plan adopted.

### III. Evaluating and updating of the NAFS

The purpose of monitoring and evaluating the NAFS is to ascertain whether it is designed to provide assurance regarding the achievement of objectives in the effectiveness and efficiency of the fight against fraud and the protection of Union's financial interests.

Consequently, the Strategy should be a living document: it has to be adapted and updated taking into account the main structural and/or organisational changes, the evolution of fraud patterns that may occur over time, etc.

#### 1. Evaluating the Strategy

Evaluation criteria should aim at determining:

- ✓ To what extent the results of the implementation of the Strategy correspond to the objectives set out in the Strategy
- ✓ The ratio of the costs actually incurred to obtain the expected results to the costs estimated at the time of formulating the Strategy
- ✓ The fulfilment of the activities and deadlines set out in the Action Plan.

In order to make monitoring and evaluating the NAFS as easy as possible, it may be useful to draft guidance or manuals for that purpose.

The national AFCOS or another relevant entity that coordinates the implementation of the NAFS should take a leading role in conducting monitoring and evaluation. Where necessary, the Government can designate such an entity. It is essential that this entity should obtain full political support from the government of the Member State to ensure a smooth monitoring and evaluating process.

The designated entity should collect data and information from the stakeholders:

- Entities responsible for management, implementation, certification, audit, investigation, law enforcement, prosecution and imposing sanctions (e.g. managing, certifying, audit, control and investigative authorities, intermediate bodies, AFCOS, Courts etc.);
- Entities responsible for supervision and monitoring related to projects financed through Union funding should also be addressed (e.g. competition, procurement, tax and customs authorities).

Ensuring smooth co-operation with a wide range of anti-fraud stakeholders is essential to evaluating the NAFS properly. Additionally, co-operating with NGOs experts may be helpful in the evaluation, e.g. in order to enhance impartial view on the process and to motivate involvement of general public.

Monitoring may be either continuous or periodic. As a rule, it uses quantitative methods and does not focus on causality. It serves to collect data on the fulfilment of tasks, objectives and levels specified.

Evaluation should be conducted periodically, within specified timeframes (e.g. on a semi-annual or annual/biennial basis, short-term, mid-term, long term). When conducting an

interim or mid-term evaluation, it is useful to consider whether it is necessary to update the Strategy in order to ensure the achievement of the objectives set. An interim evaluation report should be drafted.

A final evaluation should be carried out at the end of the period specified in the Strategy. It will quantify the results of implementation and provide the foundation for the following Strategy.

It should focus on the system of implementation, establishing strengths and weaknesses that affect the anti-fraud stakeholders' ability to detect and eliminate fraud risks. It identifies reasons for failure to achieve objectives and meet the priorities.

Special attention should be paid to whether the results of the fraud risk analysis were incorporated into the NAFS.

Conducting the evaluation is not an end goal in itself. The proper evaluation should:

- ✓ Cover the whole anti-fraud cycle and all parts of the NAFS including the accompanying Action Plan;
- ✓ Examine whether and to what extent the defined measures and activities are relevant, efficient and effective with regard to the specified objectives;
- ✓ Determine the ratio of the costs actually incurred to obtain the expected results to the costs estimated at the time of formulating the Strategy;
- ✓ Determine to what extent the activities and deadlines set out in the Action Plan have been adhered to;
- ✓ Establish what improvements have been achieved and what are the trends and implications for the next period;
- ✓ Help to form a clear picture of the progress made in the fight against fraud;
- ✓ Help to adjust functional anti-fraud mechanisms, instruments and tools, make corrections and amend/update the NAFS and its Action Plan correspondingly. They should take into account both the main structural and/or organisational changes that may have occurred and the trends seen in fraud patterns;
- ✓ Include proposals for the specification of changes/amendments to the NAFS and its component parts in order to enhance the effectiveness and efficiency in the protection of Union's financial interests;
- ✓ Produce conclusions that would help to produce recommendations for updating and adapting the document in order to make demonstrable progress and achieve tangible outcomes and results in combating fraud and protecting EU's financial interests;
- ✓ Suggest solutions to the problems and ways to eliminate obstacles to the proper implementation of the NAFS.

The provided/obtained information shall include sufficiently clear and concrete data to be used in evaluating the measures and tasks formulated in the NAFS Action Plan.

To assess the indicators, the key question to be asked is whether a particular quantitative indicator is able to produce meaningful, objective and convincing information. Additionally, the causal relationship (i.e. "if-then") between the activities and outcomes may



be examined. Evaluator may ask questions such as: What happens if risk analysis has not been carried out? What happens if a particular indicator is not measurable? What are the consequences of no change?

To get a deep insight into both the progress attained and trends both in fraud patterns and combating fraud, the methodology should place an emphasis on qualitative indicators (e.g. acquisition of new skills by the persons involved in the protection of the Union's interests; removing loopholes in the legislation and making proposals for fraud-proof legislation etc.) reflecting quantitative data (e.g. measures adopted relating to quantity, number, percentage, etc.).

Finally, a report on the evaluation, both interim and final, should be drafted. It should include:

- ✓ Description of the methodology of evaluation;
- ✓ Assessment of the level of achievement of objectives;
- ✓ Conclusions and follow-up recommendations that should be formulated clearly and unambiguously, easily perceivable, based on verifiable findings and that should respond to fraud risks and problems identified.

## 2. Updating the Strategy

Updating and adjusting of the Strategy may entail:

- Updating and/or revising the objectives;
- Adjusting the planning and management resources;
- Adjusting the indicators;
- Updating the deadlines;
- Adjusting and/or updating the existing measures, actions and activities;
- Introducing new measures, actions and activities.

The results of each NAFS evaluation should be reported to the stakeholders involved in the fight against fraud and published in an annual report.

Updating the Action Plan and the Strategy for a longer period than they currently cover:

The NAFS and the Action Plan could be updated – not only as regards the content, but also as regards the timeframe they cover. Since the Action Plan is based on the priorities identified in the NAFS and the correlating objectives it will comprise specific tasks, meaning that it will be constantly updated or amended for the period of its effect, but it should not be prolonged for a longer period than the one covered by the Strategy. The recommended approach is to set an annual Action Plan which will be evaluated at the end of each calendar year. As regards the NAFS, updating a Strategy is more adequate when it is not related to a current Operational programme period.

The update should take into consideration various factors, such as:

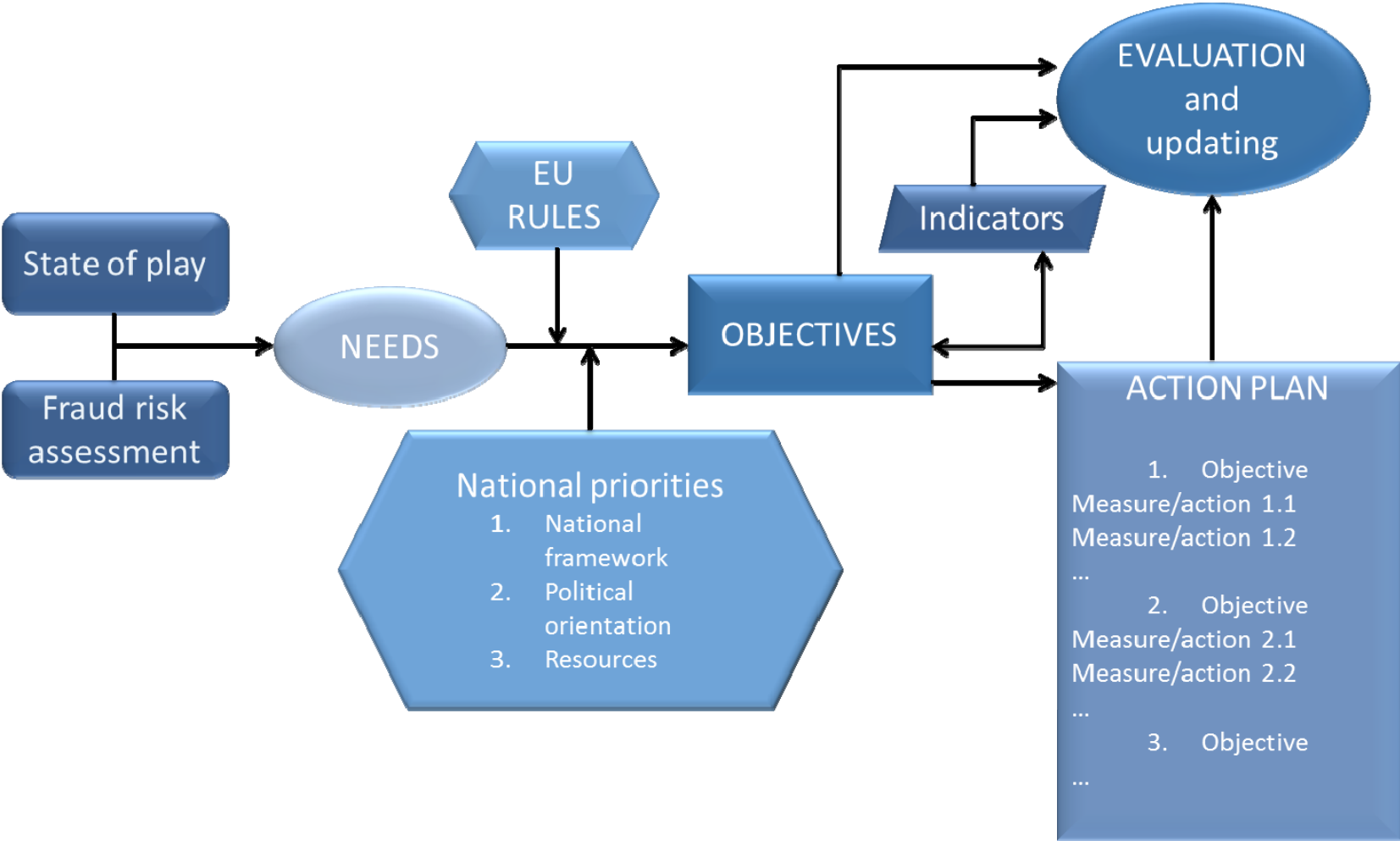
- What is the current period that the Strategy/AP addresses?

- What is the need to prolong the Strategy/AP?
- Are the indicators of Strategy/AP met?
- Is prolonging the current Strategy/AP preferable to creating a new one?
- Is there a new regulatory framework at EU/national level that requires deeper changes?
- Is the current programming period coming to an end?

The process of the update of the Strategy/AP could step on the know-how of their elaboration.

## **Annexes**

Annex 1 – Flowchart of the NAFS process



## **Annex 2 – Template for the structure of NAFS**

### **1. Introduction / General context**

This chapter should include the legal framework (i.e. reference to both national and EU legal framework); define the scope of the Strategy according to the main national priorities regarding fight against fraud, corruption or any illegal activity; indicate the service in charge and the institutions involved in the process of elaboration, implementation and monitoring of the Strategy. Furthermore, it should mention the link with other national strategies/policies. More concretely, this chapter should include:

#### **1.1. Legal framework**

- ✓ A reference to the European legal environment: Treaty, Regulations etc.;
- ✓ A reference to the national legal framework;
- ✓ A reference to the main national priorities that may have an impact on the fight against fraud/ corruption or any illegal activity;
- ✓ A reference to other national strategies/policies on the fight against fraud, corruption and all types of financial crimes; e.g. anti-corruption, fight against organised crime, money laundering, etc. Ideally these strategies should be linked with NAFS;
- ✓ A general commitment as regards the policy and the willingness of the authorities to put efforts in the fight against fraud, in particular when it concerns EU funds;
- ✓ Potential link with other national policies or political priorities.

#### **1.2. Institutional framework**

- ✓ Indicate which national entity/ministerial department is responsible for the drafting of the Strategy (and the Action Plan), and for the monitoring of their implementation;
- ✓ Mention of the Ministries/authorities/services involved in the monitoring of the EU funds and in the fight against fraud/corruption or any other illegal activity detrimental to the EU budget;
- ✓ Type of organisation for the monitoring of the EU funds: centralised, decentralised or other.

#### **1.3. Purpose of the Strategy**

- ✓ Describe the purpose of the Strategy and the key considerations that led to its establishment;
- ✓ Indicate the period covered by the Strategy.

#### **1.4. Methodology**

- ✓ Explain the basis on which the Strategy is made (sources of information such as risk assessment, inter-institutional working groups, questionnaires etc., and how information was obtained).

## **2. Preparatory phase: State of play and fraud risk assessment,**

This chapter aims at:

- ✓ Specifying the main areas where strengths and weaknesses were identified during the screening of the situation and provide indications on the reasons for these weaknesses. It is not necessary to detail each area (legislation, organisation, management and actors, procedures, means and resources, co-operation and collaboration at national level between the competent authorities, co-operation at EU level) but only to focus on the main areas where it was detected that there is room for improvement and which an objective will address;
- ✓ Summarising the main findings of the fraud risk assessment, and focus on those that will require specific input within the Strategy;
- ✓ Concluding with the areas for which the Strategy should bring an answer to fill in the gaps and bring an added value in the fight against fraud;
- ✓ Mentioning the principles and values that accompany the Strategy;
- ✓ Provide a list of objectives and give a brief description of each of them. Reference should also be made to the needs identified.

## **3. Elaboration phase: objectives and performance indicators**

During the elaboration phase, the objectives and related performance indicators should be set. Objectives represent the needs of the Member State as well as they contribute to outlining the roadmap and the vision of the Member States in their fight against fraud. Objectives should be translated into concrete measures. Furthermore, performance indicators should be defined corresponding to each measure as these will contribute to assessing the progresses made. Objectives and measures are to be included in an Action Plan.

Objectives should be set taking into account all stages of the anti-fraud cycle: (1) fraud prevention, (2) fraud detection, (3) investigation and prosecution, and (4) recoveries and sanctions. Ideally objectives are listed according to the anti-fraud cycle. One objective may be attributed to more than one stage.

When setting the objectives, it is essential to:

- ✓ Explain why a given objective is a priority;
- ✓ Describe what is the expected result the objective aims to achieve;
- ✓ Determine the performance indicator that will measure if the objective was successfully met.

This chapter should also describe briefly the means and resources that will play a role in the implementation of the Strategy (specialised services in the fight against fraud, co-ordination committees, interservice networks, interservice agreements, IT systems, procedures and guidelines etc.). In particular, it should:

- ✓ Present shortly the services in charge of the management, certification and audit of the EU funds
- ✓ Present shortly the services in charge of the fight against fraud/corruption and other illegal activity detrimental to the EU's financial interests
- ✓ Provide information on the place of the IT systems in the fight against fraud where relevant
- ✓ Provide information on training policy and training resources.

The following points should be mentioned in relation to the objectives: the name of the anti-fraud cycle phase, the weaknesses / current state of play, measure and performance indicator, as well as key actors (responsible institutions) and timeframe. These points could be presented in form of a xls table.

Such a structure best allows perceiving the link between risks/weaknesses, objectives and correspondent mitigating measures. The document 'Practical steps towards the drafting of national anti-fraud strategies'<sup>18</sup> can provide an example of how objectives may be structured and linked directly to the result of the assessment phase.

#### **4. Action plan**

The Action Plan is the implementing instrument of the national anti-fraud Strategy. It is an integral part of the Strategy. It proposes a series of actions/measures and assigns responsibilities to the relevant actors, with target dates/time frame by which the objective should be achieved. The target dates are geared to the level of priority.

The implementation of the Action Plan will be monitored by [name of the competent authority] and will be assessed [regularity to be determined by the competent authority: e.g. yearly or in every second year]. A report is to be drafted and submitted to the [name of the competent authority: e.g. Government, Ministry...].

The Action Plan covers all stages of the anti-fraud cycle: (1) fraud prevention, (2) fraud detection, (3) investigation and prosecution, and (4) recoveries and sanctions.

The columns 'objective', 'action/measures', 'service responsible', 'deadline/time frame' and 'key performance indicator' are mandatory, whilst the final two, 'risks' and 'financial and human resources' are optional yet highly recommended. Member States could consider adding other columns in accordance with their particular needs.

#### **5. Evaluation and update of the Strategy**

The Strategy is an ever evolving document; therefore it requires evaluation and correlative updating. Following the interim evaluation(s) it will be decided whether to update the anti-fraud Strategy and the related Action Plan. The Strategy update will be performed in response to changes occurred during the implementation, in order to ensure accountability

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<sup>18</sup> Ref. Ares(2015)5642419 - 07/12/2015

and the ability of the structure responsible for implementation to adopt and amend the strategic structure.

Therefore this chapter should entail reference to how the evaluation will be carried out mentioning the service responsible for evaluating the strategy, the timeline for interim evaluation and final evaluation of the Strategy etc. Each evaluation should be displayed in a report:

- ✓ Describing the methodology of the evaluation;
- ✓ Assessing the level of achievement of the objectives;
- ✓ Concluding on the following steps to take.

Following the interim evaluation(s) it will be decided whether to update the anti-fraud Strategy and the related Action Plan. The Strategy update will be performed in response to changes occurred during the implementation, in order to ensure accountability and the ability of the structure responsible for implementation to adopt and amend the strategic structure.

Updating and readjustment of the Strategy will include where relevant:

- ✓ Reconsidering the objectives;
- ✓ Better and more accurate redirection, planning and management of resources;
- ✓ Updating the measures and/or the deadlines;
- ✓ Reviewing the services responsible.



### Annex 3 – Possible structure and content of the fraud risk assessment document

PART OF THE DOCUMENT	CONTENT
Cover page	<ul style="list-style-type: none"> <li>- Institution which issued the document</li> <li>- Title of the document</li> <li>(- Version)</li> <li>- Date and place</li> </ul>
Table of content	Table of content
Abbreviations / glossary	Abbreviations and definitions
Introduction	<ul style="list-style-type: none"> <li>- Legal basis and institutional framework</li> <li>- Purpose of the document</li> <li>- Scope of implementation (regarding type of fund and period)</li> <li>- Beneficiaries of the document including note on confidentiality</li> </ul>
Content	<ul style="list-style-type: none"> <li>- Description of methodology and its tools</li> <li>- Instructions elaborating activities of the risk assessment process, responsibilities, outputs, reporting lines and deadlines</li> </ul>
List of annexes	<ul style="list-style-type: none"> <li>Risk assessment tools</li> <li>Risk register template</li> <li>Action plan template</li> </ul>
Appendix	References to useful sources of information for risk identification

## Annex 4 - Fraud risks

Risk	Cause	Consequences
Irregular selection of project application	Due to undisclosed conflict of interests or bribes and/or kickbacks, members of the evaluation board intentionally influence the evaluation and selection of applicants to favour a certain applicant by providing favourable treatment to the its application in the evaluation or by exerting pressure on other panel members.	Financial damage Distrust of the selection process Loss of credibility of the institution
Selection of a false project application	In order to win an application procedure, applicants submit false declarations in the application, misleading the evaluation board that they comply with eligibility criteria.	Financial damage Distrust of the selection process Loss of credibility of the institution
Double funding of a project/operation	Applicants fail to declare that they applied for funding for the same project from several EU funds and/or Member States.	Financial damage Distrust of the selection process Loss of credibility of the institution
Irregular selection of bids	Due to undisclosed conflict of interests or bribes and/or kickbacks, members of the evaluation board intentionally influence the evaluation and selection of bids to favour a certain tenderer by providing favourable treatment to the their application in the evaluation or by exerting pressure on other panel members.	Market competition distortion Financial damage Distrust of the tendering process Loss of credibility of the institution and Member State
Awarding of the contract to the tenderer who would not win the contract if competitive procedure was applied	Due to personal interests, tendering personnel avoid the required competitive procedure in order to favour a particular tenderer in either winning or maintaining a contract by: <ul style="list-style-type: none"> <li>- missing to organise a tendering process or</li> <li>- splitting purchases to avoid procurement thresholds or</li> <li>- awarding contract to a single source without proper justification</li> <li>- irregular extension of the contract.</li> </ul>	Market competition distortion Financial damage Distrust of the tendering process Loss of credibility of the institution and Member State

Annex 4 – Fraud risks

Risk	Cause	Consequences
Awarding contract to the tenderer who would not win the contract if the tendering procedure was not manipulated by tendering personnel	Due to personal interests, tendering personnel favour a particular tenderer in a competitive procedure through: - tailoring specifications to meet specifications of a particular tenderer - leaking confidential information to help a favoured tenderer formulate a superior proposal - manipulation of bids after receipt to ensure that a favoured tenderer is selected.	Market competition distortion Financial damage Distrust of the tendering process Loss of credibility of the institution and the Member State
Awarding of the contract to tenderer who manipulated the contracting procedure and who would not otherwise win the contract	In order to win a contract, a tenderer manipulates the competitive procedure while tendering personnel do not recognise it. Manipulation consists of colluding with other companies or setting up fake bidders, or not specifying certain costs in its bid.	Market competition distortion Financial damage Distrust of the tendering process Loss of credibility of the institution
Unjustified payment to the contractor	In order to obtain undue financial gain, a contractor manipulates cost claims or invoices by duplicating cost claims or by submitting false, inflated or duplicate invoices.	Financial damage Distrust of the verification and payment process Loss of credibility of the institution
Payment to the contractor who violated the contract	In order to obtain undue financial gain a contractor violates the contract conditions by non-delivery of agreed products or substitution with products of inferior quality.	Financial damage Distrust of the verification process Safety risks (i.e. if inferior material is used in infrastructure projects) Objectives of the project/operation endangered (if contracted activities are precondition for other activities) Loss of credibility of the institution
Payment to the contractor based on irregular contract	In order to obtain undue financial gain beneficiary and contractor amend an existing contract with more favourable conditions for contractor to such an extent that the original procurement decision is no longer valid.	Market competition distortion Financial damage Distrust of the verification process Loss of credibility of the institution

Annex 4 – Fraud risks

Risk	Cause	Consequences
Payment of irregular costs	In order to obtain undue financial gain contractor implements activities with inadequately qualified personnel and claim costs as if activities were implemented by qualified personnel. Contractor and beneficiary knowingly falsify descriptions of tasks performed by personnel in order to ensure that costs claimed are considered eligible.	Financial damage Distrust of the verification process Loss of credibility of the institution
Payment of irregular costs	Contractor and beneficiary manipulate labour costs in order to obtain undue financial gain. Possibilities of manipulation are the following: claiming false labour costs or overtime, claiming labour costs which are not properly calculated, claiming labour costs for personnel that do not exist or for activities which are not implemented within the implementation period.	Financial damage Distrust of the verification process Loss of credibility of the institution
Payment of irregular costs	In order to obtain undue financial gain, a beneficiary knowingly incorrectly distributes staff costs between EU projects and other sources of funding.	Financial damage Distrust of the verification process Loss of credibility of the institution
Approval of irregular payments	Due to the lack of the necessary skills or resources at the Management Authority or Intermediate Body, which may result from inadequate human resource planning or lack of adequate training programmes, management verifications may not give adequate assurance for absence of fraud.	Financial damage Distrust of the verification process Loss of credibility of the institution and the Member State
Verification of irregular expenditure	Due to the lack of the necessary skills or resources at the Certifying Authority, which may result from inadequate human resource planning or lack of adequate training programmes, expenditure certifications may not give adequate assurance for absence of fraud.	Financial damage Distrust of the certification process Loss of credibility of the institution and the Member State
Approval of irregular payments	Conflict of interests of personnel at the Management Authority or Intermediate Body result in undue influence on the approval of payments for certain beneficiaries.	Financial damage Distrust of the verification process Loss of credibility of the institution and the Member State

Annex 4 – Fraud risks

<b>Risk</b>	<b>Cause</b>	<b>Consequences</b>
Certification of irregular expenditure	Expenditure is certified by a Certifying Authority that has a connection with the beneficiary.	Financial damage Distrust of the certification process Loss of credibility of the institution and the Member State

### Annex 5 - Risks related to the functioning of the AFCOS

Risk	Cause	Consequences
Irregularities and (suspicions of) fraud are not adequately managed	Lack of irregularity management procedures or their inadequacy might cause errors and omissions with regard to irregularity management.	Unreliable reporting system Unreliable statistics Loss of credibility of institutions
Irregularities and (suspicions of) fraud are not adequately managed	Due to inadequate legal framework, functions of different institutions with regard to irregularity management might be unclear and result in weak co-operation and distorted flow of information.	Unreliable reporting system Unreliable statistics Loss of credibility of institutions
Irregularities and (suspicions of) fraud are not adequately managed	Due to the lack of the necessary skills at the management and control system bodies, which may result from the lack of or inadequacy of training programmes, errors and omissions with regard to irregularity management might be frequent.	Unreliable reporting system Unreliable statistics Loss of credibility of institutions
Irregularities and suspicious of fraud are not reported by beneficiaries and public	Since whistle-blowing mechanism for suspected fraudulent behaviour is not adequately promoted, public is not prone to reporting irregularities / suspicious of frauds or they do not provide necessary information.	Unreliable reporting system Unreliable statistics Financial damage Loss of reputation of the Member State
Irregularities and (suspicious of) fraud are not timely reported	Due to the lack of hand-over procedures at senior management levels, a discontinuity of reporting may materialise which can cause omissions or delays with regard to reporting on irregularities.	Unreliable reporting system Unreliable statistics Financial damage Loss of credibility of institutions
Organisational culture stimulates fraudulent activities	Employees at management and control system bodies operate in an organisational culture where ethical standards are weak (i.e. personal accountability is not promoted; controls dealing with conflict of interest are not in place; 'tone from the top' is not representative). This can contribute to development of 'rationalisation' (one of the elements of the so-called 'fraud triangle' or 'fraud diamond') thus increasing the possibility of undertaking fraudulent activities.	Unreliable management and control system Financial damage Loss of credibility of institutions

Annex 5 – Risks related to the functioning of the AFCOS

Risk	Cause	Consequences
Organisational culture stimulates fraudulent activities	Due to inadequate human resources management (too heavy workload due to inadequate human resource planning or distribution of tasks, inconsistencies with regard to rewarding, withholding valuable information, human resource management inconsistencies in general), employees at management and control system bodies have low motivation to perform their duties with due diligence. The result thereof might be high fluctuation of employees and lower credibility of the AFCOS as well as increasing possibility for undertaking fraudulent activities by employees (difficulties with her/his hierarchy or bad financial situation may prove as motivation for committing frauds – an element of the so-called ‘fraud triangle’ or ‘fraud diamond’).	Unreliable management and control system Financial damage Loss of credibility of institutions
Suspicious of fraud are not adequately processed by investigation and judicial authorities	Legal framework does not provide for adequate basis for efficient and effective processing suspicious of frauds by investigative and judicial bodies. (Investigations are cost-intensive and lengthy.)	Financial damage Loss of credibility of investigative and judicial bodies Loss of reputation for the Member State
Suspicious of fraud are not adequately processed by investigation and judicial authorities	Due to the lack of necessary skills at investigative or judicial bodies (partially due to the lack of / unavailability of adequate training programmes), processing suspicious of frauds is made difficult / inefficient / ineffective.	Financial damage Loss of credibility of investigative and judicial bodies Loss of reputation for the Member State
Public perception with regard to the AFCOS is vague / to some extent negative and opportunities to raise public awareness of the importance of the safeguard of public funds are lost	Due to the inadequate communication (with regard to the content of information and dynamics of communication) and/or inadequate communication channels, public perception about the AFCOS is vague and opportunity to raise public awareness is lost. In addition, information on irregularity trends may be susceptible to (wrong) interpretation. The root cause thereof may be inadequate planning of communication activities, lack of skills with regard to public relations or lack of support by senior management.	Social context susceptible for frauds Low level of credibility of institutions

Annex 5 – Risks related to the functioning of the AFCOS

Risk	Cause	Consequences
Information on irregularities / (suspicions of) fraud is unreliable	Irregularity reports and (internal) data basis do not provide for reliable and sufficient information on irregularities due to inadequate instructions or demotivation of employees.	Lack of credibility of institutions Unreliable input for statistical analysis and risk management
Recovery of funds is inefficient and ineffective	Due to inadequate legal framework or the lack of necessary skills of officials responsible for recovery of funds, recovery of funds is lengthy, i.e. recovery is in general difficult. (One of the reasons thereof might be bad socio-economic environment (external cause).)	Financial damage Loss of credibility of institutions Low ethical standards of society



**Annex 6 - Main points of the Alert form**

<i>Description of risk</i>	<i>Cause of risk</i>	<i>Likelihood of risk</i>	<i>Impact of risk</i>	<i>Who is involved in this risk</i>	<i>Internal / external risk</i>	<i>Measures to be carried out</i>
		<ol style="list-style-type: none"> <li>1. <i>low</i></li> <li>2. <i>medium</i></li> <li>3. <i>high</i></li> </ol>	<ol style="list-style-type: none"> <li>1. <i>low</i></li> <li>2. <i>medium</i></li> <li>3. <i>high</i></li> </ol>			

### Annex 7 - Risk Register

<b>DESCRIPTION OF RISK</b>			
<b>No. of registration</b>	<b>Description of risk</b>	<b>Who is involved in this risk</b>	<b>Internal (within the managing authority)/external risk</b>

<b>GROSS RISK</b>			<b>CURRENT VERIFICATIONS/CHECKS</b>				<b>NET RISK</b>	
<b>Likelihood of gross risk</b>	<b>Impact of gross risk</b>	<b>Exposure to risk (likelihood x impact)</b>	<b>Description of current verifications / checks</b>	<b>Is there evidence for conducting these verifications / checks?</b>	<b>Are these verifications / checks periodically tested?</b>	<b>The trust level regarding the verifications / checks</b>	<b>The consequence of combined verifications / checks on likelihood of gross risk taking into account the trust level</b>	<b>The consequence of combined verifications / checks on impact of gross risk taking into account the trust level</b>
1. <i>low</i> 2. <i>medium</i> 3. <i>high</i>	1. <i>low</i> 2. <i>medium</i> 3. <i>high</i>							

Annex 7 – Risk Register

NET RISK			ACTION PLAN					TARGET RISK		
Likelihood of net risk	Impact of net risk	Exposure to risk (likelihood x impact)	New planned verifications / checks (mitigating controls)	Responsible person	Deadline for implementation	Consequence of the new planned combined verifications / checks on likelihood of net risk	Consequence of the new planned combined verifications / checks on impact of net risk	Likelihood of target risk	Impact of target risk	Exposure to target risk (likelihood x impact)
1. low 2. medium 3. high	1. low 2. medium 3. high									

Explanation:

For each of the key processes there should be an analysis of the specific relevant risks, a quantification of the **gross risk** (the existing risk level before starting the verifications of the managing authority), the evaluation of the efficiency of the current verifications in order to diminish the gross risks and the evaluation of the **net/residual risk** (the level of risk following the verifications depending on their effectiveness).

The **target risk** is the risk considered acceptable/admissible by the managing authority after all the verifications/checks are enforced and made effective.

## **Annex 8 - Main points of the Initial Statement of Intent**

By the initial statement of intent the MA should commit to:

- a) Prosecute fraud, corruption and conflict of interest affecting the management of EU funds;
- b) Promote high legal, ethical and moral standards in order to ensure integrity, objectivity and honesty in the management and control systems regarding EU funds;
- c) Pay special attention to the risk of fraud and corruption which could affect the financial interest of the EU, by creating an anti-fraud team of experts within the MA. The anti-fraud team should be responsible to identify and assess the fraud risk, to establish an effective anti-fraud response plan, to ensure fraud awareness of staff and training;
- d) Implement the anti-fraud action plan, in particular ensuring that an adequate system of internal control exists, preventing and detecting fraud, ensuring due diligence and implementing precautionary actions in case of suspicion of fraud, taking corrective measures, including any administrative penalties, upon case;
- e) Implement procedures for reporting fraud, both internally and externally, respecting the confidentiality principle and protecting the whistle-blowers;
- f) Co-operate with the certifying authority, audit authority , DLAF (AFCOS) and the judicial authorities in case of suspected fraud;
- g) Have zero tolerance policy to fraud and corruption through adequate policies and a robust control system in place.

### Annex 9 – Template for setting the objectives

No.	Objectives	Strategy Chapter*	Measures	Activities	Target Group**	Responsibilities	Implementation period / target date	Key Performance Indicators	Risks	Financial resources / Human resources
1.	Objective 1		Measure 1							
			Measure 2							
2.	Objective 2		Measure 1							

\* (1) fraud prevention, (2) fraud detection, (3) investigation and prosecution, and (4) recoveries and sanctions.

\*\* AFCOS service, management and control system bodies (CB, MA, IBs, CA, AA), public/applicants/beneficiaries, State Attorney's / prosecution bodies, Ministry of Interior / investigative bodies

## Annex 10 - Glossary

**Action Plan for the national Strategy:** a roadmap setting out the steps for implementing the National Anti-Fraud Strategy and for monitoring progress towards its objectives.

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

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

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

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

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

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

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

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

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

by such a person of such undue advantage, for himself or herself or for anyone else, in exchange for that person acting or refraining from acting in the exercise of his or her functions or in breach of his or her duties.<sup>19</sup>

**Central exclusion database:** the European Commission's database holding information on bodies that, for various reasons including financial irregularities, are excluded from applying for EU funds and are subject to the conditions set out in Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the Central exclusion database.<sup>20</sup>

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

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

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

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

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

**Conflict of interest:** a situation in which a public official has a private interest such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.<sup>21</sup> Private interest is understood to mean any advantage to himself or herself, to his or her family, close relatives, friends and individuals or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto. Under Council Regulation (EC, Euratom) No 966/2012, a conflict of interest exists where the impartial and objective exercise of their role by a person involved in the implementation of the budget or by an internal auditor is compromised for reasons relating to family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.

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<sup>19</sup> Criminal Law Convention on Corruption, Strasbourg, 27.1.1999.

<sup>20</sup> OJ L 344, 20.12.2008.

<sup>21</sup> Council of Europe. Recommendation No R (2000) 10 of the Committee of Ministers to Member States on codes of conduct for public officials, Article 13.

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

**Control:** as defined in the Financial Regulation, any measure taken to provide reasonable assurance regarding the effectiveness, efficiency and economy of operations, the reliability of reporting, the safeguarding of assets and information, the prevention, detection and correction of fraud and irregularities and their follow-up, and the adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes and the nature of the payments concerned. Controls may involve carrying out various checks or implementing any policies and procedures to achieve the objectives described in the first sentence.

**Economic operator:** any natural or legal person or other entity taking part in the implementation of assistance from the Fund, with the exception of a Member State exercising its prerogatives as a public authority. For the purposes of this document, the terms ‘economic entity’ and ‘economic operator’ are considered substantially identical.

**Embezzlement** (diversion of assets): the misappropriation of property or funds legally entrusted to someone in their formal position as an agent or guardian. The UN Convention against Corruption has identified ‘embezzlement, misappropriation or other diversion of property by a public official’ as a corruption offence. However, embezzlement is not necessarily corruption- it can also be fraud (by a single actor)<sup>22</sup>.

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

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

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

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

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

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<sup>22</sup> Study on corruption in the healthcare sector, HOME/2011/ISEC/PR/047-A2, October 2012.



operation in criminal matters, Eurojust and Europol also have competence to support Member States in the fight against fraud and corruption.

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

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

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

**Fraud:** as defined under Article 1(1) of the Convention on the protection of the European Communities' financial interests drawn up on the basis of Article K.3 of the Treaty on European Union<sup>23,24</sup>:

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

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities<sup>25</sup> or budgets managed by, or on behalf of, the European Communities;
- non-disclosure of information in violation of a specific obligation, with the same effect;
- the misapplication of such funds for purposes other than those for which they were originally granted.

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

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

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<sup>23</sup> OJ C 316, 27.11.1995, p. 49.

<sup>24</sup> The European Parliament in its resolution of 10 May 2012 on the protection of the financial interests of the European Union draws attention to the fact that Article 325 TFEU concerns fraud and not irregularities. It further notes that fraud is wilful misconduct, which is a criminal offence, and that an irregularity is a failure to comply with a certain rule. It also calls for differentiation between fraud and irregularities and for corruption to be tackled together with fraud (see European Parliament resolution of 10 May 2012 on the protection of the EU's financial interests — Fight against Fraud — Annual Report 2010).

<sup>25</sup> For the purposes of this document, in line with the Lisbon Treaty, which entered into force on 1 December 2009, the term 'European Community' or 'European Communities' is understood to mean the 'European Union'. This is without prejudice to the previous relevant legislation.

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

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

**Intentional conduct:**<sup>26</sup> an act committed by a person who in doing so intended to infringe or prejudice an interest protected by law, or was aware that his or her conduct was likely to cause such an infringement or prejudice, and was prepared to accept that consequence, should it occur.

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

**Irregularity:** According to Article 1 (2) of Regulation (EC, Euratom) No 2988/95 on the protection of the European Communities financial interests, 'irregularity' shall mean 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.

For the Common Agricultural Policy, Article 2 (1) (g) of Regulation (EU) No 1306/2013 refers to the definition of irregularity contained in Article 1 (2) of regulation (EC, Euratom) No 2988/95.

However, for ESIF, and in accordance with Article 2 (36) of Regulation (EU) No 1303/2013 (Common Provision Regulation), 'irregularity' means any breach of Union law or of national law relating to the application of EU law, resulting from an act or omission by an economic operator involved in the implementation of the Fund, which has, or would have, the effect of prejudicing the EU budget by charging to it an unjustified item of expenditure. The same definition is introduced in Article 2 (16) of the Regulation (EU) No 223/2014 on the Fund for European Aid to the Most Deprived (FEAD).

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

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

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<sup>26</sup> By analogy, see Section 15 of Act No 300/2005 (Slovak Criminal Code).

**Kickback:** a form of negotiated bribery in which a commission is paid to the bribe-taker as an exchange for services rendered. Generally speaking, the remuneration (money, goods or services handed over) is negotiated ahead of time. The kickback varies from other kinds of bribes in that there is implied collusion between the two parties (rather than one party extorting the bribe from the other). The purpose of a kickback is usually to encourage the other party to co-operate in an illegal scheme.<sup>27</sup> The most common form of kickback involves a vendor submitting a fraudulent or inflated invoice (often for goods or services which were not needed, of inferior quality, or both), with an employee of the victim company assisting in securing payment. For his or her assistance in securing payment, the individual receives some sort of recompense (cash, goods or services) or favour (e.g. a job being offered to themselves or a relative). Kickbacks often occur in relation to corruption in the context of procurement.

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

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

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

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

**NAFS:** National Anti-Fraud Strategy

**NAFS service:** the body designated to elaborate the National Anti-Fraud Strategy

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

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<sup>27</sup> Study on corruption in the healthcare sector, HOME/2011/ISEC/PR/047-A2, October 2012.

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

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

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

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

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

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

**Risk** shall mean potential threat, event(s), activity(ies) or lost opportunities which can lead to irregularity i.e. unjustified item of expenditure, the need for financial corrections or reputational damage to the management and control system body. It can impact the performance of the management and control system body or even the performance of the management and control system as a whole.

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

**Risk management** shall mean a continuous, proactive and systematic process of identifying, assessing, and managing risks in line with the accepted risk levels, carried out at each body of the managing and control system in order to provide reasonable assurance as regards the achievement of the objectives and prevention of frauds.

**Serious deficiency in the effective functioning of a management and control system:** as defined in Part IV of Regulation (EU) No 1303/2013, for the purposes of the implementation of the European Regional Development Fund, the European Social Fund, the Cohesion Fund

and the European Maritime and Fisheries Fund, a deficiency for which substantial improvements in the system are required, which exposes the above funds to a significant risk of irregularities, and the existence of which is incompatible with an unqualified audit opinion on the functioning of the management and control system.

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

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

**Suspected fraud:** pursuant to Article 2 of Commission Delegated Regulations (EU) 2015/1970, 2015/1971, 2015/1972 and 2015/1973<sup>28</sup> an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in Article 1(1)(a) of 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>29</sup>. Since 2006, Member States have been required to specify whether the irregularity gives rise to a suspicion of fraud.

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

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<sup>28</sup> JO L 293, 10.11.2016.

<sup>29</sup> The Convention entered into force on 17 October 2002 together with its First Protocol and the Protocol on interpretation of the convention by the Court. The Second Protocol entered into force on 19 May 2009.