



# Anti-Fraud Strategy

**ENI CBC MEDITERRANEAN SEA BASIN PROGRAMME 2014-2020**

Approved by the Joint Monitoring Committee on

19.12.2023

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## LIST OF ACRONYMS

AA	Audit Authority
CBC	Cross-border cooperation
CCP(s)	Control Contact Point(s)
DMCS	Description of the Management and Control System
EC	European Commission
ENI	European Neighbourhood Instrument
EU	European Union
FA	Financing Agreement
IRs	ENI CBC Implementing Rules (Regulation (EC) No 897/2014)
JOP	Joint Operational Programme
JMC	Joint Monitoring Committee
JTS	Joint Technical Secretariat
LB(s)	Lead Beneficiary(ies)
MA	Managing Authority
MPC	Mediterranean Partner Countries
MIS	Management and Information System
NA(s)	National Authority(ies)
PP	Project partner

## LEGAL FRAMEWORK

REGULATION (EU) No 232/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 March 2014 establishing a European Neighbourhood Instrument

REGULATION (EU) No 236/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action

COMMISSION IMPLEMENTING REGULATION (EU) No 897/2014 of 18 August 2014 laying down provisions for the implementation of CBC programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument

COMMISSION IMPLEMENTING REGULATION (EU) 2020/879 of 23 June 2020 amending Implementing Regulation (EU) No 897/2014 as regards specific provisions to align the provisions for the implementation of cross-border cooperation programmes financed under the European Neighbourhood Instrument with specific measures in response to the COVID-19 pandemic

REGULATION (EU, Euratom) 2018/1046 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation No 966/2012

COUNCIL REGULATION (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests

REGULATION (EEC, EURATOM) No 1182/71 OF THE COUNCIL of 3 June 1971 determining the rules applicable to periods, dates and time limits

DIRECTIVE (EU) 2017/1371 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law

REGULATION (EU, EURATOM) No 883/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999

DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

DIRECTIVE (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law

ENI CBC Med Programme adopted by the European Commission on 17 December 2015 - Decision No C(2015) 9133), and its annexes

Financing Agreements signed between the EC and the Mediterranean Partner Countries

Grant Contracts signed between the Managing Authority and Lead Beneficiaries of projects funded under the ENI CBC MED Programme, with particular reference to Art. 17

Any other Regulations applicable at national level.

## OTHER RELEVANT DOCUMENTS

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COURT OF AUDITORS Commission Anti-Fraud Strategy: enhanced action to protect the EU budget (Brussels, 29.4.2019 COM(2019) 196 final)

EGESIF\_14-0021-00 16/06/2014 EUROPEAN COMMISSION DIRECTORATE-GENERAL European Structural and Investment Funds Guidance for Member States and Programme Authorities Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures June 2014

EUROPEAN COMMISSION EUROPEAN ANTI-FRAUD OFFICE (OLAF) Directorate D: Policy Unit D.2: Fraud Prevention, Reporting and Analysis Guidelines on National Anti-Fraud Strategies

## 1. SCOPE AND PURPOSE OF THE STRATEGY

The Anti-Fraud Strategy sets clearly out the Programme management structure joint approach to managing the risk of fraud and dealing with all aspects of fraudulent activity that may occur at the Programme.

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

Pursuant to Article 26(5)(c) of the COMMISSION IMPLEMENTING REGULATION (EU) No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument, the Managing Authority (MA) shall put in place effective and proportionate anti-fraud measures taking into account the risks identified. In addition, Article 30(1)(g) of the aforementioned Regulation stipulates that the management and control systems shall provide for prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest.

Finally, Article 30(3) of the COMMISSION IMPLEMENTING REGULATION (EU) No 897/2014 of 18 August 2014 states that participating countries shall prevent, detect and correct irregularities, including fraud and the recovery of amounts unduly paid, together with any interest pursuant Article 74 on their territories. They shall notify these irregularities without delay to the Managing Authority and the Commission and keep them informed of the progress of related administrative and legal proceedings.

In the light of the above, this strategy presents tips and recommendations as to prevent, to detect, and to respond to suspicions of fraud in Programme and projects implementation.

This Strategy is addressed to all subjects involved in Programme and project implementation, i.e. MA, National Authorities (NAs) and other bodies responsible for establishing and implementing of the control system, Joint Technical Secretariat (JTS), Control Contact Points (CCPs), AFCOS in Member States and OLAF counterparts in MPCs and project beneficiaries. The presented tips and recommendations do not impose new obligations on the institutions, they only highlight common tasks resulting from the law that must be performed at Programme and national level and also at Project level.

The ENI CBC Mediterranean Basin Programme is managed and supported by a series of different bodies that are responsible for ensuring its correct, efficient and smooth implementation. All participating countries have an equal say in the Programme decisions and in the selection of projects, in line with the principle of co-ownership. The Managing Authority of ENI CBC Mediterranean Basin Programme, as well as the national authorities of the participating countries, are committed to protect the EU public funds that have been entrusted to them. All staff of the management structures of the Programme, beneficiaries and contractors being fair and honest and, if able to do so, are expected to provide help, information and support to assist the investigation of fraud and corruption. The most likely areas for fraud have been identified at Programme and projects level and robust control systems have been set up, as well as measures and procedures in order to follow up on all suspected cases that will be highlighted. With the participant countries' representatives, MA will furthermore seek action on national level in line with their administrative and legal procedures, wherever the need arises.

The main idea behind the Strategy is to communicate that **no types of fraud will be tolerated**. Therefore, particular emphasis is placed to fraud prevention, including creation of an adequate culture of ethics in institutions and operation of the internal control system.

Aim of this anti-fraud strategy is to minimize opportunities to commit fraud and corruption through the introduction of an appropriate fraud response plan to protect the Programme resources.

Thus, the Strategy is designed:

- to promote a culture which deters fraudulent activity;
- to encourage and facilitate prevention of fraud at the Programme level;
- to promote detection;
- to develop procedures which will aid in the investigation of fraud and related offences and which will ensure that such cases are dealt in a timely and appropriate manner;
- to ensure effective communication with the national structures responsible with the investigation where suspected fraud or corruption has occurred, including reporting both nationally and to the European Anti-Fraud Office;
- to recover the un-duly paid financial resources, according to the court decisions.

In support of the Anti-fraud strategy, the following objectives have been set:

- Minimise the opportunities for individuals to commit fraud and provide an effective response when fraud occurs;
- Raise awareness of the fraud risks and ensure that effective anti-fraud measures are in place;

This Strategy is available at the Programme website and is valid throughout the Programme implementation period.

## 1.1 Definitions

In order to have a common understanding following the key definitions of Fraud, Suspected fraud, Corruption, Conflict of interest

**“Fraud”** (definition laid down in the Article 3 of the Directive (UE) 2017/1371):

“(omissis) 2. (omissis):

(a) in respect of non-procurement-related expenditure, any 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 or assets from the Union budget or budgets managed by the Union, or on its behalf;
- non-disclosure of information in violation of a specific obligation, with the same effect; or
- the misapplication of such funds or assets for purposes other than those for which they were originally granted;

(b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any 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 or assets from the Union budget or budgets managed by the Union, or on its behalf;
- non-disclosure of information in violation of a specific obligation, with the same effect; or

- the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;

(c) in respect of revenue other than revenue arising from VAT own resources referred to in point (d), any 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 Union budget or budgets managed by the Union, or on its behalf;
- non-disclosure of information in violation of a specific obligation, with the same effect; or
- misapplication of a legally obtained benefit, with the same effect;

(d) in respect of revenue arising from VAT own resources, any act or omission committed in cross-border fraudulent schemes in relation to:

- the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the Union budget;
- non-disclosure of VAT-related information in violation of a specific obligation, with the same effect; or
- the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds”.

“**Suspected fraud**”<sup>1</sup> is an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level, in order to establish the presence of an intentional behaviour, in particular fraud, that means that the legal/natural person/entity that committed the irregularity was aware that its acts or omissions would have an impact on public funds.

Intention is the key element that distinguishes fraud from irregularity. Intentional deceit is not easy to prove but there are some tell-tale signs such as:

- Motive – Pressure for results, financial hardship, revenge;
- Opportunity – Controls not functioning, staff changes/losses, tolerance;
- Repetition – If not detected it is repeated;
- Concealment – Attempt to cover up the evidence.

Fraud does not just have a potential financial impact, but it can cause damage to the reputation of an organisation responsible for effectively and efficiently managing funds. This is of particular importance for a public organisation responsible for the management of public funding in general and of EU funding in particular.

(a) The fraudsters could be:

- Members of the public – Either opportunistic or serial fraudsters, who take advantage of grants;
- Suppliers and contractors – Employees of external firms who spot the opportunity to exploit processes or systems;
- Insiders – A dishonest minority working within an organisation and either perpetrating fraud themselves or helping fraudsters on the outside;

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<sup>1</sup> The concept of suspected fraud, as well as the following of corruption and conflict of interest, are not defined in the Directive (UE) 2017/1371

- Serious organised criminals – Who target organisations to obtain funds fraudulently and work across a number of member state.

**Corruption** is the abuse of power for private gain. It undermines rule of law, distorts fair competition, and corrodes the social fabric of society and trust in public institutions. Corrupt payments facilitate many other types of fraud, such as false invoicing, phantom expenditure or failure to meet contract specifications. The most common form of corruption is corrupt payments or other advantages; a receiver (passive corruption) accepts a bribe from a giver (active corruption) in exchange for a favour<sup>2</sup>.

**Conflict of interests** exists where the impartial and objective exercise of the official functions of a person are compromised for reasons involving family, emotional life, economic interest or any other shared interest with e.g. an applicant for or a recipient of EU funds. This is particularly important to prevent within an EU grant beneficiary when dealing with public procurement contracts.

## 1.2 The anti-fraud institutional framework

The Programme management structures had developed systems, including internal working procedures that detect behaviour in a timely manner. The main actors involved in the elaboration, implementation and monitoring of anti-fraud strategy are described below.

- **The Managing Authority** has the overall responsibility for managing the risk of fraud and corruption. Thus, the MA has the responsibility for:
  - Defining strategies to develop an anti-fraud approach addressed to all the concerned Programme and project actors with clear indication of the definition of fraud, of the consequences according to the gravity of fraud as well as the cases in which civil and criminal proceedings will be pursued;
  - Providing clear responsibilities among Programme bodies in terms of fight against fraud; Specifying mechanisms to report any suspicious fraud situation;
  - Ensuring the cooperation among all the Programme bodies, including the Audit Authority (AA), and the national anti-fraud competent authorities of the participating countries;
  - Training of staff, project beneficiaries and auditors about prevention, detection and reporting of fraudulent behaviour.

As it is reported in the DMCS, once a suspicion of fraud has been raised and correctly reported, the MA must:

- transmit the case to the competent authority in the participating country for investigation and sanctions, including anti-corruption authorities where relevant;
  - inform OLAF accordingly;
  - review any procedure in the management and control system that may have exposed the MA to the potential or proven fraud;
  - review the Fraud Risk Assessment, the Programme Risk Management Plan and the Anti-Fraud Strategy.
- The independent **Auditors** who are in charge to produce the Expenditure Verification Report (EVR) and may detect potential fraud indicators.

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<sup>2</sup> EU Guide Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures, EGESIF\_14- 0021-00

Independent auditors should be sensitive to any symptoms of potential fraud. Verification consists in examining whether the costs of the project declared by the beneficiary are real, accurately recorded and eligible in accordance with the contract. During his/her verifications, the independent auditor also takes into account the findings of controls by other authorized institutions. The MA recommends conducting controls in compliance with the ‘four eyes’ principle, i.e. by at least two people. In addition, an independent auditor must sign a declaration which says he/she is impartial towards the project and he/she will not disclose any information connected with the project that he/she acquires during the control. According to the internal procedures, Auditors shall immediately inform the Managing Authority and National Authority and other relevant national bodies (according to the national legislation in force) about a suspicion of fraud. The MA (through its dedicated units) and the NA shall verify the reported cases for fraud indicators and shall report the cases to the national bodies responsible for fraud investigations.

- **The Joint Technical Secretariat** participates to the regular review of the fraud risks at Programme level and it ensures that an adequate system of control exists at JTS level and that fraud awareness and training for its staff are present. JTS may detect suspicions of fraud during the reimbursement claims, administrative verifications and also during the project monitoring process, including on-the-spot visits. If suspicions of fraud cases are identified, the JTS shall inform the MA. The MA and NA shall verify the reported cases for fraud indicators and shall report the cases to the national bodies responsible for fraud investigations, according to their internal procedures. The JTS can propose to the MA and NA correcting measures for beneficiaries and it ensures the implementation of the corrective measures at the beneficiaries’ level, with the approval of MA. A pro-active support to the development of ethics in EU granted projects is carried out through training and information. The training addresses LBs, PPs and Auditors and should include points on anti-fraud fight, actors, responsibilities, tools, risks. Monitoring is carried out constantly and findings are reported monthly. The control activities on projects carried out by the JTS are described in Annex 9 to the DMCS.
- **Audit Authority** and the members in the Group of Auditors (GoA) have a responsibility to act in accordance within professional standards in assessing the risk of fraud and the adequacy of the control framework in place. In this context, the Audit Authority, with the support of the members of the GoA conduct sample checks, including checks on the performance of the work of auditors carrying out expenditure verifications of project expenditure.
- **The National Authority** in accordance with the Implementing Regulation 897/2014 is the national institutional counterpart of the Managing Authority (MA) in each participating country and it is responsible for the implementation of the Programme in its own territory. In this context, the NA also participates to the regular review of the fraud risks at Programme level, and it ensures that an adequate system of control exists at NA level and that fraud awareness and training for its staff. The NA may detect potential fraud during its verification. According to the respective NA internal procedure, these cases shall be reported to the national institutions responsible with the fraud investigation and to the MA. Suspected irregularities should be monitored by participating countries until their resolution. The activities that each participating country will take to prevent, detect and correct irregularities and frauds are described in Annex 1 to the DMCS.
- **Control Contact Points (CCPs)** appointed by each participating country, support the MA in the control tasks linked to project expenditure verification. In order to ensure a common approach among all participating countries, the JOP foresees that each CCP will support the MA in:
  - Verifying implementation of the projects, that expenditure declared by the beneficiaries has been paid by them and that the payment complies with applicable Union and national law and with the Programme rules.

- Guaranteeing that the expenditure declared by the beneficiary in support of a request for payment is examined by an auditor or by a competent and independent public officer meeting the criteria set by the Implementing Rules.
- Supporting MA in auditors' training;
- Quality control of expenditure verification reports, in coordination with MA.

CCPs shall immediately inform the Managing Authority and National Authority and other relevant national bodies (according to the national legislation in force) about a potential fraud. The MA (through its dedicated units) and the NA shall verify the reported cases for fraud indicators and shall report the cases to the national bodies responsible for fraud investigations.

- **Anti-fraud coordination service (AFCOS)** designated by EU Member States in accordance with Article 12a of Regulation 883/2013 to facilitate effective cooperation and exchange of information, including information of an operational nature, with OLAF;
- **MPC Bodies responsible for the relationship with OLAF**, identified by the Mediterranean Partner Countries in compliance with the provisions set in Article 13 of the Financial Agreement Generale Conditions as specified in the Financing Agreements signed and listed in the Annex I to the DMCS.

## 2. STRATEGIC APPROACH: THE ANTI-FRAUD CYCLE

Combating fraud requires a strategic approach to preventing, detecting and investigating the loss of the Programme funds.

EC Guidance for Member States and Programme Authorities on Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures recommends implementation of actions that serve fraud prevention that comply with the **anti-fraud cycle**. There are four key elements in the anti-fraud cycle: prevention, detection,correction and prosecution. Proportionate implementation of all the above elements could significantly reduce the risk of fraud as well as provide adequate deterrence against fraud.

Fig. 1. Anti-fraud cycle.



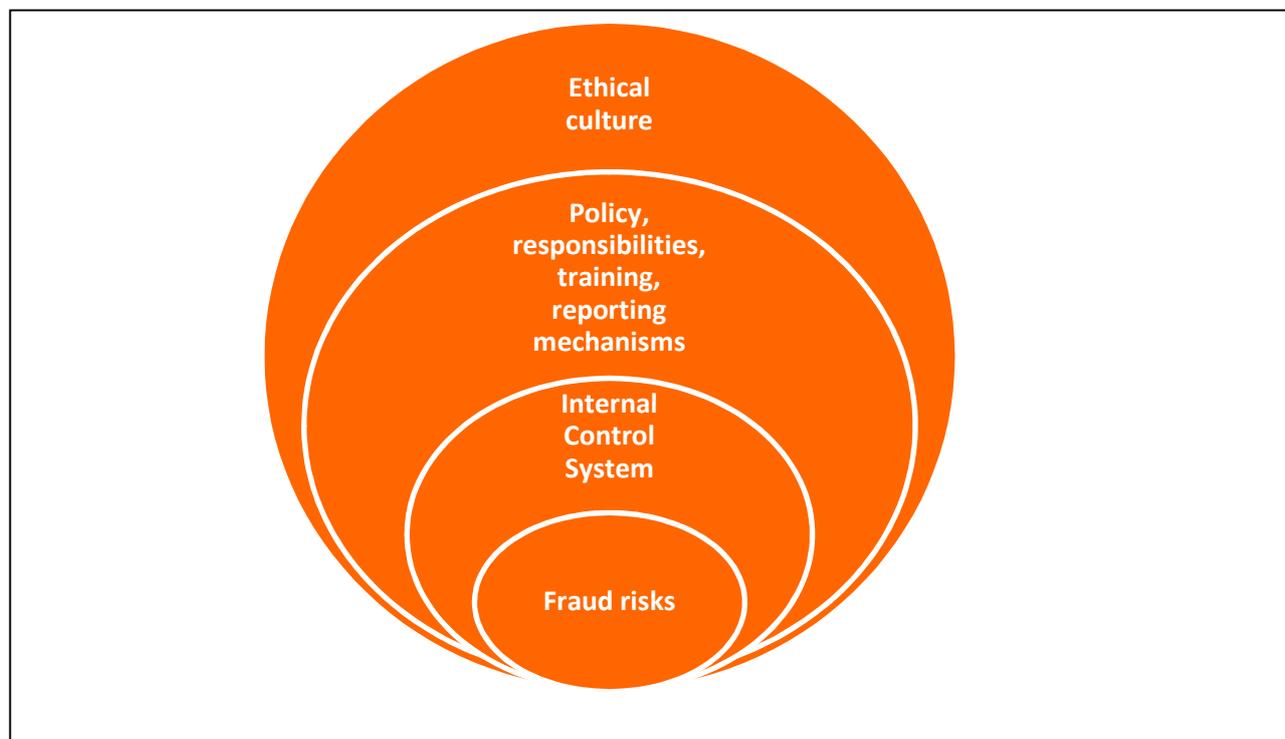
### 3. PREVENTION

The first cycle element is **prevention**. It consists in creating a clear and strong message from a given institution on inadmissibility of fraud that may happen during project implementation under the Programme.

The MA, by demonstrating a clear commitment to combat fraud and corruption, raising awareness about its preventative and detective controls, and being determined in transmitting the cases to the competent authorities for investigations and sanctions, it sends a clear message to any potential perpetrators, that could change their own behaviours and attitudes towards fraud. Indeed, the role of prevention is significant as it is easier to prevent negative phenomena than to take actions to mend undermined reputation afterwards, also given the difficulties in proving fraudulent behaviour. Investigation and prosecution may take years to achieve results and are often too late. This is the only element in the entire cycle that does not start to run until fraud actually takes place, but before. Therefore, it is a barrier against fraud and allows to avoid involvement of institution resources in subsequent cycle elements. To be noticeable, effective, and acceptable, preventive actions should be taken primarily in the sphere of shaping social awareness of the harmfulness of corruption.

EC Guidance defines four types of prevention actions that are the most effective in combating fraud: **ethical culture, policy, responsibilities, training, reporting mechanisms, internal control system, and fraud risks analysis**. Their significance and structure are presented in Fig. 2. The EC emphasizes that comprehensive implementation of all these actions brings about optimum effects.

Fig. 2. Prevention structure.



### 3.1 Ethical culture

Ethical culture is a very broad term at the foundations of all fraud type risk mitigation. While it is not measurable and shaping the desired attitudes is a long-term and multifaceted process, rooted in the institutions, among the employees and, where possible, the beneficiaries, ethical culture brings about measurable and long-term effects.

Ethical culture can be created through a combination of actions, structures and policies from the second circle on Fig. 2. There are also more general mechanisms that can considerably contribute to ethical culture development, such as **mission statement**, **tone from the top**, and **code of conduct**. They are characterized below.

#### MISSION STATEMENT

A clear expression that the **MA is striving to achieve the highest legal, ethical, and moral standards and that all participants involved in their implementation should comply with principles such as integrity, objectivity, accountability and honesty**. To the greatest extent possible, the MA will communicate its mission statement in its documents, during Programme meetings, and through direct messages communicated to individuals involved in work on Programme and project implementation.

#### TONE FROM THE TOP

Oral and/or written communication from the highest level, i.e. management of individual institutions, that the highest standard of ethical and moral behaviour is expected from the individuals involved in Programme and projects implementation. This message should be communicated in ongoing contacts and actions, and stem from the code of conduct. The management of individual institutions should respond to warning signals that may suggest negative corruption-encouraging phenomena during Programme and project implementation.

#### CODE OF CONDUCT

Code of conduct (code of ethics) that all employees of institutions involved in Programme and projects implementation must declare adherence to, by complying with the following principles:

- Principle of the rule of law
- Principle of accuracy
- Principle of impartiality
- Principle of avoiding conflicts of interest
- Principle of professionalism
- Principle of transparency
- Principle of responsibility

For the above purposes the Managing Authority:

- adopted the Antifraud policy, ensuring its widest possible dissemination by publishing it on the Programme website at the following link: <https://www.enicbcmec.eu/about-us/anti-fraud-policy>,
- carried out a qualitative fraud risk assessment in close consultation among all Units, quantifying the likelihood and impact of fraud, and the control of effectiveness in the conduct of risk-orientated administrative verifications,

- shared with the Programme bodies the Antifraud policy and extended the fraud risk assessment to the National Authorities and the Branch offices,
- ensured the full knowledge of the code of conduct adopted by Act 43/7 of 29.10.2021 by all the staff internal and external of the Managing Authority,
- set up a code of conduct for the organizations involved in the project implementation.

### 3.2 Policy, responsibilities, training, reporting mechanisms

For the purposes of prevention, the followings are relevant: the appropriate allocation of responsibilities in the institutions involved in program and projects implementation, the organization of training and awareness-raising in the prevention and fight against corruption and fraud are relevant.

#### *Allocation of responsibilities*

EC recommends allocating the responsibilities precisely so as to avoid any doubts as to the responsibility for certain tasks, including those associated with fraud combating. The staff should be aware of their responsibilities to be able to articulate them inside and outside.

The Management and control system ensured that the functions and tasks carried out by the institutions are precisely determined as, similarly, the tasks implemented within, and the principle of function separation is met.

Allocation of tasks was laid down in the following documents:

1. *Agreements on financing and implementation of the Mediterranean Sea basin ENI CBC Programme 2014-2020* - signed by the European Commission separately with EU Member States and Mediterranean Participating Countries.
2. ENI CBC Med Programme adopted by the European Commission on 17 December 2015 - Decision N.C(2015)[https://www.enicbcmec.eu/sites/default/files/Documents/ENI%20CBC%20MED\\_%20OP\\_Mod.%20July%202021\\_C\\_2021\\_4327\\_1.PDF](https://www.enicbcmec.eu/sites/default/files/Documents/ENI%20CBC%20MED_%20OP_Mod.%20July%202021_C_2021_4327_1.PDF)
3. Mediterranean Sea basin ENI CBC Programme 2014-2020 – *Description of the Management and Control System (DMCS) and Annexes*—published on the Programme website.
4. Joint technical Secretariat Manual

The DMCS clearly identifies Programme bodies and the actors involved in controls and verifications, with a detailed specification of roles and responsibilities.

The Annex 4 of the DMCS contains a clear allocation of responsibilities among the MA staff.

The DMCS and Annexes are published in the Programme web site to ensure that all actors fully understand their responsibilities and obligations, and to communicate both internally and externally, towards all potential Programme beneficiaries, that the MA has a coordinated approach towards combatting fraud.

In accordance with Article 26(8), since the institution hosting the MA is also a beneficiary under the Programme, it is also ensured suitable segregation of functions.

At the institution level the staff who are involved in the definition and management of the call for proposals, do not combine this function with evaluation tasks. Moreover, it is ensured separate and mutually incompatible function of the Authorizing Officer and Accounting Officer.

At the level of beneficiary, the transparent allocation of tasks among the organization personnel formally involved in the project work is requested. Time dedicated to the project work is adequately registered and documented, in order to avoid double funding.

### *Training and awareness-raising*

Training is another important element of the ethical and moral structure building in the Programme institutions. All staff of the Managing Authority is trained in both theoretical and practical matters of corruption and fraud prevention. Training of this kind helps build ethical awareness of the staff and prevents narrowing the definition of corruption to the bribery notion.

In relation to the above it is foreseen the training of staff, project beneficiaries and auditors about the reporting mechanisms aimed at:

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

In order to ensure initial training on the subject, all the bodies involved in the prevention and detection on fraud are encouraged to access to the new EU Funds Anti-fraud Knowledge and Resource website, developed by DG REGIO in close cooperation with OLAF and to the training modules and other tools published on the website. Moreover, specific trainings will be addressed to the relevant authorities of the participating countries in order to improve their administrative capacity in area of anti-fraud and anti-corruption. Finally, a workshop will be organized in order to make beneficiaries and their auditors aware of the pro-active anti-fraud system on field, clarifying that fraud is not admitted in any case and every behaviour leading to fraud is sanctioned.

Apart from the training, the current internal communication concerning ethics and corruption prevention also contributes to awareness-raising among the staff. It is multi-level and multi-directional and it is provided by means of any intranet systems, internal info portals, e-mail.



as “fraud triangle”. These include: **opportunity** (the motive alone is not sufficient, i.e. there must be an opportunity for a fraud), **rationalization** (justification of the fraud by rationalising it), **motive/financial pressure** (greed, human weaknesses). Breaking up this triangle is of key importance for prevention of fraud.

### *Internal control system*

The internal control is extremely important for the prevention of irregularities. Moreover, it is the only prevention measure that may minimize the chance for an opportunity for a fraud to emerge.

Management verifications are thorough and the on-the-spot controls risk-based and carried out with sufficient coverage.

Three main elements may be mentioned as a reason for fraud, which are defined

Sometimes a fourth element is identified, namely **capability**; this is the point at which the fraudster identifies the specific opportunity for fraud and has the means to make it happen (the “fraud diamond”).

Among the cited factors the institutions have the greatest impact on the occurrence or lack of an opportunity for fraud. This is why it is so important to have the internal control system in place to exclude any emergence of such opportunity, because it addresses such situations and, therefore, protects the employees against embarrassing situations and any suspicion.

In order to prevent such situations from occurring, the internal control system of the MA, as indicated above and as better described in the aforementioned DMCS, includes the following:

- Control inside the MA on an ongoing basis (verification of task implementation by the superiors, verification of the documentation on “four eye” principle basis);
- Controls of projects, including technical assistance projects (both desk and on-the-spot verifications);
- Cross-checks;
- Ongoing analysis of data collected in the IT system;
- Identification of so-called sensitive posts and putting in place the control mechanisms in order to eliminate the inherent risks;
- Monitoring of internal control (methodology approved with Decision n. 1336/150 on 14<sup>th</sup> June 2021)

### *Sensitive posts and fraud risks analysis*

The Managing Authority has established a self-assessment group on the risk of fraud, to assess, by adapting the Annex I to the Guidance on Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures (EGESIF\_14-0021-00 16/06/2014), the existence of the various specific risks of fraud inherent in the following processes:

- **selection of applicants** by the Managing Authority:
  - Conflict of interest within the evaluation board,
  - False declaration by applicants,
  - Double funding.
- **implementation of Programme and verification of activities:**
  - Undisclosed conflict of interests or bribes and kickbacks,
  - Avoidance of required competitive procedure,
  - Manipulation of the competitive procedure process,
  - Collusive bidding,
  - Defective pricing,
  - Manipulation of cost claims,
  - Non-delivery or substitution of products,
  - Amendment of existing contract,
  - Overstatement of quality or activities of personnel,

- False labour costs,
- Labour costs are apportioned incorrectly to specific projects.
- **Authorization and payments**
  - Incomplete/inadequate management verification process,
  - Incomplete/inadequate expenditure certification process,
  - Conflict of interest within the MA,
  - Conflict of interest within the MA and AA.
- **Direct procurement by MA**
  - Avoidance of required competitive procedure,
  - Manipulation of the competitive procedure process,
  - Undisclosed conflict of interests or bribes and kickbacks.

The preventive measures set up to protect against the potential fraud may reduce the risk of its occurrence, but they will not eliminate it entirely. Therefore, a risk analysis has been carried out in order to identify the areas and activities that may be subject to an increased risk. The risk analysis is annually updated as requested by the ENI CBC IR. The identification of harmful events for the achievement of the objectives of the Programme is conducted by the Risk Management Group<sup>3</sup> both at Programme and project level, in cooperation with branch offices and the Joint Technical Secretariat, as better described in the ENI CBC Mediterranean Basin Programme Risk Management Plan adopted with Decision n° 1821/215 on 25.11.2019.

The posts which include some of said tasks within the scope of all the allocated tasks are considered sensitive, as more vulnerable to fraud. Therefore, considering the risk of improper performance of the duties that may adversely affect the integrity and functioning of the Programme, appropriate control mechanisms have been put in place at such posts. These are described in detail in Annex 2 of the aforementioned ENI CBC Mediterranean Basin Programme Risk Management Plan.

Thus, the risk of fraud associated with the sensitive posts will be reduced to a minimum and the task which contribute to such risk will be subject to a strengthened control.

### 3.3 Preventing and counteracting conflict of interests

The MA aims at making decisions connected with Programme implementation objectively and impartially. Yet there may be situations where impartiality and objectivity of an employee could be compromised by some circumstances. Article 57(2) of the Financial Regulation stipulates that these circumstances include reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.

When an employee making a decision in a specific Programme implementation sphere or participating in preparing the decision has or may have private interest in the way in which a matter is handled, a conflict of interests takes place. A conflict of interests occurs not only when an employee is driven by his/her private interest, but also when it is theoretically possible that personal interest would prevail over public interest.

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<sup>3</sup> Decision of the Director of the managing Authority n° 887/73, 26.06.2019, "Risk management procedure: establishment of the Risk Management Group and approval of the methodology to identify the projects for which financial security shall be required

A conflict of interests should not be identified with corruption. Corruption usually requires a deal between at least two partners which comprises kind of a bribe, payment, or profit. A conflict of interests arises when a person has an opportunity to prefer private interest to official duties.

Programme and project implementation may lead to various situations where a conflict of interests may occur, therefore it is important to counteract conflict of interests, in particular by discovering it.

It consists *inter alia* in:

1. Application of the ‘four eyes’ principle, which means that tasks are performed by at least two people,
2. Committing employees to immediately notify their superiors of:
  - a. Potential conflict of interests,
  - b. Suspicions or becoming aware of irregularities connected with spending funds under the Programme.
3. Submission of declarations on absence of a conflict of interests when performing their duties by institution personnel, if required by a process.
4. Submission of other declarations resulting from national law and exclusion from a public procurement procedure in the case of such circumstances.
5. Participation in trainings, meetings, conferences, working groups and reading documents or other materials to expand staff awareness of preventing conflict of interests and corruption.
6. Issuing a code of conduct that would apply to all aspects of staff work, of which considerable part consists in contacts with the public, funds or areas where it is essential to treat all entities equitably.

Counteracting conflict of interests is of particular importance to following the principles of transparency, equal treatment and non-discrimination in public procurement.

If the risk of a conflict of interests is identified or if a conflict of interests has been notified or detected before or during a procedure, adequate measures must be taken to secure a contract award procedure on the basis of relevant national legislation. Depending on the existence of a declaration on absence of a conflict of interests, the nature of the conflict of interests and procedure stage, the following steps should be considered:

- Discussion of factual circumstances with the interested person to explain the situation, where applicable,
- Exclusion of the interested person from the contract award procedure regardless if he/she is an employee or an external expert,
- A change in the division of tasks and scope of responsibility of the personnel,
- Cancelling of the Contract award procedure.

Exclusion of an employee or expert from a procedure should be considered not only in case of an actual conflict of interests, but also in every case where there are grounds to doubt their impartiality. In exceptional cases exclusion of an official or an expert can be impossible due to budgetary shortages or absence of experts in specific fields. The contracting authority should then make sure its decision is fully transparent, specify the limits of this staff member’s/expert’s input in the procedure, and ensure that the final decision is based on transparent and honest evidence.

A declaration on absence of a conflict of interests must be signed when a given person accedes the procedure. It is an obligation that must be fulfilled immediately to protect the procedure and the individual.

A declaration on absence of a conflict of interests must include a definition of a conflict of interests and all requirements of the code of conduct or ethics applicable to a given procedure and connected with a conflict of interests, and reference to disciplinary, administrative, or penal sanctions for a false declaration.

The declarationshouldsay:

- Whether the person undersigned is in apparent, potential, or actual conflict of interests connected with the contract award procedure in question,
- Whether there are any circumstances that may put the person in apparent, potential, or actual conflict of interests in the near future,
- That the person undersigned commits to immediately notify any potential conflict of interests in case of any circumstances that may lead to such a conclusion.

The existence of a conflict of interests in itself does not necessarily violate the law. It is against the law to participate in a given procedure if a conflict of interests occurs. It is thus essential to reveal any potential conflict of interests before a given procedure starts and decisions are issued, and to take adequate precautions.

Detailed information on this subject is contained in the Annex 5 to the DMCS “*Procedures for the prevention and management of conflicts of interests within the ENI CBC MED Programme*”, which gives also indications and tools for External assessors, Lead beneficiaries and project partners, Project auditors.

## 4. FRAUD DETECTION

Detection is a critical stage that should be handled with due diligence and proactively by the programme bodies and national authorities, including the audit authority, as well as external auditors carrying out expenditure verification of projects.

Following the definitions contained in the § 1.1 below we present an indicative list of fraud patterns that, if detected, must be reported.

The legal/natural person/entity that knowingly committed the presumed irregularity makes declarations or uses documents that do not reflect reality; the following are typical cases:

- false / falsified accounts;
- false / falsified documents;
- a description of the facts, products, operations, goods, an origin or a destination that is known to be false;
- false / falsified supporting documents;
- the presentation of applications that are known to be false.

The legal/natural person/entity that knowingly committed the presumed irregularity strives to conceal or mask the actual facts in full knowledge of those facts. The following are typical cases:

- misappropriation of funds or goods;
- goods imported or exported without declaration;
- the presumed perpetrator of the irregularity invents a purely fictitious situation;
- fictitious execution of an action, project, use or processing;
- misrepresentation or falsification of the nature, quality or quantity of an action/project/product;
- refusal of control by economic operator;
- fictitious economic operator.

In other scenarios, intent should be checked case by case, as the economic operator might have acted in good faith or negligently. These categories might include:

- a combination of incompatible aid;
- failure to present accounts or supporting documents;
- failure to complete a transaction.

Prevention techniques are barriers to fraud and corruption, but they cannot ensure absolute certainty there will be none. Therefore, it is necessary to set up a management and control system as well as adequate mechanisms to support it in detecting fraud. The Programme management structures had developed systems, including internal working procedures that detect behaviour in a timely manner. The control system has been set up in a way that allows detection and identification of irregularities at various stages.

In order to facilitate the detection of fraud, the following strategic objectives are considered fundamental by the MA:

1. Maintain an effective system in detection of available data;
2. Maintain and enhance an anti-fraud culture underpinned by high level of awareness, integrity, impartiality and transparency;
3. Maintain updated staff on fraud indicators;

#### 4. Maintain an effective system for reporting of suspected fraud or irregularities;

The procedures to prevent, detect, correct and notify irregularities, including frauds and corruption, are described in § 4.2.5 of the DMCS.

##### 4.1 Maintain an effective system in the detection of available data.

Pursuant to Article 26(2)(d) of the Implementing Regulation an ICT system (MIS – Management Information System) has been set up in the Programme. It ensures electronic communication between the beneficiaries and the Programme institutions. Information on the life of project implementation such as signed contracts, sent request of payment, verified requests for payment and changes during project implementation will be fed to the MIS. The system doesn't have functionalities related to fraud detection, but only a section dedicated to debt recovery. The MIS has hosted the information concerning TA expenditures.

Therefore, through the MIS the Managing Authority receives adequate information from the Authorizing Unit on the procedures and verifications carried out in relation to expenditure, from the Accounting Unit on its specific activities (accounting, payment and debts records) and from other body within the Programme such as the JTS specific information on project implementation which is needed for fulfilling its tasks.

In order to prevent and detect the fraudulent use of EU funds, the competent National Authorities are required to provide the Managing Authority with a formal declaration on whether or not the competent bodies have detected cases of suspected fraud or other serious irregularities that could adversely affect EU public funds. Such declaration will have to be provided before the approval of the final report.

Furthermore, the MA has set up a whistle blowing system to report fraud and irregularities, that can be used by all the Programme bodies, National Authorities, Lead beneficiaries and Partners of the contracted projects and any other interested third party. The system guarantees the protection of the persons who report the irregularity (including fraud situation). The mechanism is described in detail in the paragraph "Maintain an efficient system for reporting of suspected fraud or irregularities".

##### 4.2 Maintain and enhance anti-fraud culture

All people involved in Programme and project implementation may see potential signs of fraudulent activity and are obliged to take appropriate steps in response. Critical thinking is a desirable quality in this respect, especially on the part of the people who perform control tasks. It means that when performing tasks, including control preparation and conduct, a healthy level of skepticism must be considered and as well as the risk that information obtained in relation to these tasks may be misleading or false. At the same time, the applicants and the beneficiaries are expected to act ethically and to observe the legal provisions provided by the Programme management structures.

The Programme management bodies are continuously developing an effective strategic framework to fight frauds through their internal working procedures. The MA and JTS staff involved in management verifications is constantly updated through the circulation of procedures concerning the conflict of interests, anticorruption mechanisms, etc. Besides, elements regarding the fraud cycle (prevention, detection, reporting) are included into the internal working procedures and check lists used. Finally, the provisions of working procedures are well known by the staff and implemented accordingly.

Moreover, ethic culture is guaranteed both at Programme and Project level through the full knowledge of the code of conduct adopted by Act 43/7 of 29.10.2021 by all the staff internal and external of the Managing Authority and the diffusion of the same ethical values through the set up of a code of conduct for the organizations involved in the project implementation.

#### 4.3 Maintain updated staff on fraud indicators

Fraud is intentional, which makes it more difficult to be detected than other irregularities. Fraudsters do whatever they can to make sure they remain undetected. Therefore, employees should be informed where to look for fraud indicators on an ongoing basis. Fraud indicators (or red flags) are more specific signs that fraudulent activity is taking place, when an immediate response is required to verify whether further action is required. Indicators can also be specific to those activities frequently taking place under the Programme, such as procurement and labour costs.

In order to enhance the above-mentioned critical thinking and to facilitate the detection of frauds, a list of the most important fraud indicators has been developed and it is reported in Annex 1 (Fraud indicators or red flags for Cross-border Cooperation Programme ENI CBC MED 2014-2020"). The list can be used for identification of fraudulent behaviour.

If any red flags emerge during Programme implementation, the information will be disseminated among the employees, for instance by e-mail, in order to help other staff members to detect potential signs of fraud. Red flags from a given year will be taken into account during the annual fraud risk analysis exercise.

The EC drafted and published documents that can help workers, especially those who control beneficiaries. In this respect, the MA recommended to all Programme staff the reading of these documents:

- Information note on fraud Indicators for ERDF, ESF AND CF. COCOF 09/003/00;
- OLAF Compendium of Anonymised Cases – Structural Actions;
- OLAF practical guide on conflict of interest;
- OLAF practical guide on forged documents.

#### 4.4 Maintain an efficient reporting system

The establishment and promotion of clear reporting mechanisms is a key element of prevention, as well as detection, of frauds. Any such mechanisms should facilitate the reporting of both suspicions of fraud and also control weaknesses that may increase the MA's susceptibility to fraud.

There are different ways that individuals may use to raise a concern or report a suspected fraud or irregularity. Any reports received will be treated confidentially in accordance with the Programme structures internal working procedures. As soon as an employee becomes reasonably concerned about a matter, they are encouraged to raise this in the first instance with their line manager. All managers have a responsibility to act on concerns raised.

According to the decision n. 30/15 dated 16.06.2015 on the procedures to report illicit situations to the Anti-Corruption office set within the Autonomous Region of Sardinia (whistle-blowing) any employee, without prejudice to the obligation of reporting to the judicial authority, shall report to the director any offence in their institution that they have learnt about. The director refers to the director general and to the responsible for corruption prevention. Employees can also directly report to the responsible for corruption prevention.

The staff of the Branch Office, without prejudice of the anti-corruption procedures foreseen by the respective hosting institutions, shall report to the Director of the MA any offence in their institution that they have learnt about and any illicit situation concerning the implementation of the Programme.

Regarding the whistleblowing system, on the institutional website of the Autonomous Region of Sardinia, the subsection "Whistleblowing" within the Transparent Administration section has been updated. The Level II subsection contains useful information to enable the transmission of a report in full compliance with current legislation, which defines the regulatory framework for the protection of individuals who report wrongdoing.

In particular, in case of suspicion of wrongdoing/ potential fraudulent situation detected by any interested person, this person can directly access the Information Platform of the Autonomous Region of Sardinia: Ras.Whistleblowing (at the following internet address: <https://ras.whistleblowing.it/#/> ).

Employees of the Managing Authority can report any irregularity through the whistleblowing system:

<https://ras.whistleblowing.it/#/>

Frauds can also be reported to OLAF following the link:

[https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud\\_en](https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud_en)

[https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud\\_fr](https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud_fr)

All information received by the Managing Authority regarding suspicion of fraud or corruption will be taken into account and investigated accurately. The identity of whistle blower is protected.

## 5. NOTIFICATION AND CORRECTION

### 5.1 Notification of the EC about suspected fraud

In the light of Article 31 (3) participating countries shall notify irregularities without delay to the MA and the Commission and keep them informed of the progress of related administrative and legal proceedings. Also, according to the Financing Agreements between the EC and the CBC Partner Countries, “The CBC Partner Country shall immediately inform the Managing Authority and the Commission of any element brought to its attention which arouses suspicions of irregularities, fraud or corruption and of any measure taken or planned to deal with them.”

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

The MA will immediately inform the EC through an official letter about irregularities relating to amounts of equal or more than EUR 10 000 (EU funds) and/or have been the subject of a primary administrative or judicial finding. Moreover, the MA, according to the Italian “Circolare Interministeriale (Ministerial Guidelines)” dated 12.10.2007 will use the dedicated Irregularity Management System (IMS) provided on the Anti-Fraud Information System platform established by the Commission.

For irregularities involving amounts lower than EUR 10,000,00 and which have not been the subject of a primary administrative or judicial finding, the MA will report the irregularities in the annual report, unless the EC expressly requests a notification.

This exemption from reporting does not preclude the Managing Authorities/ participating countries from their obligation to pursue and correct any irregularity irrespective of its nature or financial volume.

With reference to irregularity reported as suspected fraud, Member States and Mediterranean Participating Countries have a duty to provide information in follow-up reports on the initiation, conclusion or abandonment of any procedures or proceedings for imposing administrative measures, administrative penalties or criminal penalties, and on the outcome of those procedures or proceedings. In particular, with regard to irregularities for which penalties have been imposed, Member States must also indicate: (a) whether the penalties are of an administrative or a criminal nature; (b) whether the penalties result from a breach of Union or national law, and details of the penalties; (c) whether fraud was established.

### 5.3 Correction of irregularities

As a result of the irregularities detected following the above procedures/actions, MA will launch correction measures. The detected irregularities may be:

- individual random errors in a specific beneficiary or project or Programme body using technical assistance;
- systemic or known errors at country level;
- systemic or known errors at Programme level.

The MA shall be notified without delay of any irregularity detected by the other concerned bodies/actors. After the irregularity has been confirmed the MA will inform the JMC, which will take the appropriate decisions as needed.

If a **random error** has been detected during the verifications carried within the request for payments, the MA will reduce the amount of EU contribution to be paid to the project. Moreover, after the irregularity

has been detected and confirmed by the MA, this will carry out an assessment of its impact in terms of EU contribution to the project/TA and it will decide on the procedure to be used (off-setting or recovery of the due amount) as stated by the Programme Recovery Procedure approved by the JMC on December 17th 2019.

If the irregularities are classified as « **systemic** » or as « **known** » errors for a specific country and if the MA or the AA believe that they could affect other beneficiaries, the MA will inform the NA of the concerned country in order to decide together:

- the appropriate corrective measures to be taken, including financial correction, flat rate corrections etc. on the basis of the nature and gravity of the irregularity, as the case may be;
- the amount of EU contribution affected by the irregularity for all the beneficiaries of the concerned country and the implementation of the necessary corrective measures;
- the information to be notified to all the concerned parties at Programme and/or national level in order to prevent the same irregularity for the future;
- the information of the EC and other EU bodies, as the case may be.

The JMC will be informed in the event of contagious cases concerning the implementation of the corrective measures.

If the irregularities are classified as “systemic” or as “known” errors at Programme level by the MA or the AA, the MA will inform the JMC in order to jointly decide on:

- the appropriate corrective measures, including financial corrections/flat rate corrections (as the case may be), on the basis of the nature and gravity of the irregularity;
- the amount of EU contribution affected by the irregularity for all the beneficiaries of the concerned country and the implementation of the necessary corrective measures;
- the information to be notified to all the concerned parties at Programme and/or national level in order to prevent the same irregularity for the future;
- the information of the EC and other EU bodies, as the case may be.

If the irregularities are classified by the MA or the AA as “systemic” or as “known” errors both at county and at Programme level, beside the reduction of the EU contribution and the recovery of funds, the MA and the NA will:

- proceed with a revision of the Programme documents and to clarify the applicable eligibility rules through the publication on the Programme website of informative notes;
- revise the DMCS, as the case may be, and in particular the rules concerning the prevention of these types of irregularities;
- inform the all the concerned parties at programme and/or national level, including the AA, Group of Auditors, the JTS about the modified procedures;
- inform the project beneficiaries and the project auditors about the modifications/update of the procedures through informative notes, training events etc.
- notify the modification to the EC.

In any case, when applying a financial correction or a recovery procedure, a cross-examination with the concerned parties (project beneficiaries, programme bodies etc.) shall always be guaranteed.

If a systemic error has been detected, this implies the need for further investigation on its extent and the quantification of its impact. This means that the MA and/or the AA, supported by the concerned National Authority/ies, will need to assess all the operations potentially affected by this systemic error. Moreover, the definition of systemic error and the measures to be undertaken must be well known by all the managing and control bodies.

Once a case of irregularities has been detected, the MA, in accordance with the provisions settled in the Grant Contract, may adopt financial corrections, cancelling all or part of the ENI and - taking into account the nature and gravity of the irregularities and the financial loss - shall apply a proportionate financial correction.

In case of suspected fraud, fraud or corruption, detected by the MA and/or reported by any competent body, the MA may terminate the Contract and proceed with the recovery of undue payments.

Furthermore, the MA and NA must submit the case to the competent national authority for investigation and sanction and inform OLAF accordingly. The implementation of such sanctions, and the visibility of these, are a key deterrent to potential fraudsters and so the MA should be vigorous in pursuing such outcomes.

In order to optimise coordination, cooperation and workflows for the fight against fraud, in particular among Managing Authority and National Authorities, has been set up a flow chart that shows the sequential steps of the irregularities reporting process and the bodies and subjects involved.

## 5.2 Recovery of funds

If EU funds under the Programme are spent in a dishonest way, the MA will require beneficiaries to return undue payments. Pursuant to Article 74 of the Implementing Regulation, the MA is responsible for pursuing the recovery of amounts unduly paid. This provision also concerns fraud. The authorising officer is in charge of estimating the amounts to be recovered, issuing recovery orders and debit notes and, where applicable, waiving the debt. The accounting officer is responsible for recovering amounts established as being receivable, as well as recording the recovered amounts in the accounting system. Detailed procedures in this respect are set out in the Programme Recovery Procedure approved by the JMC on December 17th 2019 (See DMCS paragraph 4.2.7 “Procedure for the recovery of unduly spent amounts and arrangements for keeping a debtors ledger”).

## ANNEX I - FRAUD INDICATORS OR RED FLAGS

### PUBLIC PROCUREMENT

#### 1. Corruption – bribes and kickbacks

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

#### 2. Undisclosed conflict of interest

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

#### 3. Collusive bidding

- winning bid is too high compared to cost estimates, published price lists, similar works or services or industry averages and fair market prices,
- persistent high prices by all bidders,
- bid prices drop when new bidder enters the competition,
- rotation of winning bidders by region, job, type of work,
- losing bidders hired as subcontractors,
- unusual bid patterns (e.g. the bids are exact percentage apart, winning bid just under threshold of acceptable prices, exactly at budget price, too high, too close, too far apart, round numbers, incomplete, etc),
- apparent connections between bidders (e.g. common addresses, personnel, phone numbers etc.),
- contractor includes subcontractors in its bid which are competing for the main contract,
- qualified contractors fail to bid and become subcontractors or low bidder withdraws and

becomes a subcontractor,

- certain companies always bid against each other, others never do;
- losing bidders cannot be located in the internet, business directories, have no address etc (in other words they are fictive),
- correspondence or other indications that contractors exchange pricing information, divide territories, or otherwise enter informal agreements,
- collusive bidding has been found in the following sectors and is also relevant for structural funds: asphalt paving, building construction, dredging, electrical equipment, roofing, waste disposal;

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

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

#### **5. Rigged specifications**

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

#### **6. Leaking big data**

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

#### **7. Manipulation of bids**

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

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

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

#### **9. Split purchases**

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

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

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

#### **11. Cost mischarging**

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

#### **12. Defective pricing**

- contractor refuses, delays or is unable to provide supporting documents for costs,
- contractor provides inadequate or incomplete documentation,
- out-of-date pricing information,
- apparent high prices compared to similar contracts, price lists or industry averages;

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

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

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

- invoiced goods or services cannot be located in inventory or accounted for,
- no acknowledgment of receipt for invoiced goods or services,
- questionable or no purchase order for invoiced goods or services,
- contractor's records do not reflect that the work was done or that the necessary costs were incurred,
- invoice prices, amounts, item descriptions or terms exceed or do not match contract items, purchase order, receiving records, inventory or usage records,
- multiple invoices with the same amount, invoice number, date etc,
- sub-contracts in cascade,
- cash payments,
- payments to off-shore companies;

### **15. Phantom service providers**

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

### **16. Product substitution**

- unusual or generic packaging: packaging, colours or design different than the norm,
- discrepancy between expected appearance and actual appearance,
- product identification numbers differ from published or catalogue numbers or numbering system,
- above average number of test or operation failures, early replacements, or high maintenance or repair costs,
- compliance certificates signed by unqualified or non-certified person,
- significant difference between estimated and actual costs for materials,

- contactor is behind schedule but quickly catches up,
- unusual or obliterated serial numbers; serial numbers are not consistent with legitimate manufacturer's numbering system,
- invoice or inventory item numbers or descriptions do not match purchase order terms;

## LABOUR CHARGES AND CONSULTANCY SERVICES FRAUD

### **17. Incurred labour cost**

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

### **18. Uncompensated overtime**

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

### **19. Consulting/professional service**

- no formal signed agreements or contracts; however, large sums paid for "services rendered" based on invoices with few specifics,
- formal agreements or contracts exist but are vague as to services to be rendered, and no other documented support, such as detailed invoices, trip reports or studies, exists to justify the expenses,
- services paid for were used to improperly obtain, distribute or use information or data protected by law or regulation,

- services paid for were intended to improperly influence the content of a solicitation, the evaluation of a proposal or quotation, the selection of sources for contract award or the negotiation of a contract, modification or claim. It does not matter whether the award is by the prime contractor or any tier subcontractor,
- services paid for were obtained or performed in some way that violated a statute or regulation prohibiting improper business practices or conflict of interest;

## **20. Labour categories**

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

## ANNEX II – REPORTING IRREGULARITIES AND FRAUD

ANNEX II: REPORTING IRREGULARITIES AND FRAUD													
ACTIVITY	PARTICIPATING COUNTRY		Commission services, OLAF, European Court of Auditor	Anonymous	Auditors	JTS	OAU	BENEFICIARY	EC	OLAF	ADA-GoA	MA	NOTES
	Body responsible to report to EU OLAF	NA											
Irregularity report	Responsible to report	NA	EU Authorities	whistleblowing	Auditor	JTS	Operation and Authorising Unit				ADA GOA		
Examination of supporting documents in order to confirm the irregularity							Operation and Authorising Unit						
Communication on findings and irregularities							Operation and Authorising Unit	Lead beneficiary					
Information on irregularities Report on irregularities - Annual report							Operation and Authorising Unit					MA	
Communication (IRQ2) on irregularities involving amounts > EUR 10,000 and which have been the subject of a primary administrative or judicial finding report								EC	IMS				When: no later than two months following the end of the quarter in which the primary finding
Corrections measures (financial corrections/Recovery procedure)							Operation and Authorising Unit	Lead beneficiary					
Communication to National Authorities if the irregularity seems to be intentional (see also the list of types of irregularity to be described as 'suspected fraud')		NA					Operation and Authorising Unit						When: immediately and without delay after the first communication of the irregularity
The competent authority at national level investigates in order to ascertain the fraud		NA/Competent authority											
Starting of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour		NA/Competent authority											
Communication (IRQ3) of suspected fraud	Responsible to report	NA					Operation and Authorising Unit	EC	IMS				When: NA informs OAU immediately and without delay NA/body responsible to report shall notify no later than two months following the end of the quarter in which the communication of the NA is received
Report on irregularities - Annual report							Operation and Authorising Unit					MA	
Corrections measures (suspension of payments)							Operation and Authorising Unit	Lead beneficiary					
The competent authority at national level adopts the final decision on whether an irregularity actually constitutes fraud		NA Competent authority											
Communication (IRQ5) of established fraud	Responsible to report	NA					Operation and Authorising Unit	EC	IMS				When: NA informs OAU immediately and without delay NA/body responsible to report shall notify no later than two months following the end of the quarter in which the communication of the NA is received
Report on irregularities - Annual report							Operation and Authorising Unit					MA	
Corrections measures (Administrative penalties, financial deductions, terminations of the contract, recovery procedure)							Operation and Authorising Unit	Lead beneficiary					