



## AUDIT GUIDELINE ON FRAUD

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## FOREWORD

The purpose of this guideline is to provide guidance to auditors in the context of irregularities, fraud, corruption and any other illegal activities.

It reflects the European Union legislative framework, the requirements of the ISSAI standards and the relevant Court decisions and thus represents the current position of the Court on the topic.

It should be noted that this guideline does not cover the ethical requirements and obligations for staff working in the Court (particularly under Article 22a and 22b of the Staff Regulations).

**Section 1** gives a brief introduction to some key definitions and explanations regarding fraud, corruption and other illegal activities

**Section 2** describes the responsibilities regarding fraud and corruption

**Section 3** is a detailed guide for auditors on how to deal with fraud and corruption in their day-to-day work and also provides step-by-step guidance on how to deal with suspected fraud cases discovered in the course of our audits

**Section 4** provides guidance on how information received from third parties (denunciations) should be processed and taken into account in the Chambers' audit work

### KEY MESSAGES

#### Responsibilities:

While fraud is not the main focus of an audit, the auditing standards do require auditors to carry out specific fraud-related procedures. The main objectives of the auditor are:

- (a) To identify and assess the risk of material misstatement due to fraud;
- (b) To obtain sufficient appropriate audit evidence regarding the assessed risk, through designing and implementing appropriate responses and;
- (c) To respond appropriately to fraud or suspected fraud identified during the audit.

Although ISSAI 1240 and ISA 240 only focus on the accounts aspects, the Treaty requires the Court to provide a statement of assurance both on the reliability of the accounts and on the legality and regularity of the underlying transactions. The Treaty, besides, requires the Court to examine whether the financial management has been sound. Hence, when in this guideline it is referred to "material misstatement", this should apply to the reliability of accounts, legality and regularity and sound financial management audits.

#### Confidentiality and "need to know"

All information concerning cases of fraud and corruption (whether arising from denunciations or from the Court's audit work) must be handled on a strict "need to know basis": that is to say that the information should be communicated only to the Court Members concerned and to those members of the Court's staff for whom it is absolutely essential in order for them to carry out their duties. Also, information and documentation relating to a case of suspected fraud should be handled with particular care and confidentiality.

#### Protection of informants

Information concerning cases of fraud is:

- Usually obtained from informants through denunciations (unrelated to ongoing audits);
- At some occasions, obtained from informants in the course of an audit.

Auditors should take particular care in treating this information and ensure the protection of the identity of these informants. This is in particular important for whistle-blowers.

#### **Whom to contact**

For further details or explanations, please contact the CEAD-A DIRECTORATE.  
If you feel that the information provided in this document could be improved, please do not hesitate to pass on your suggestions.

## SECTION 1: DEFINITIONS AND EXPLANATIONS

### Introduction

This section provides some key definitions and explanations about fraud, corruption and other related concepts. Auditors need to know what fraud and corruption are and about the existence of other concepts such as abuse and illegal activity. In addition, it is important to know the distinction between fraud and irregularities and between suspected fraud and proven fraud.

### What is an irregularity?<sup>1</sup>

“Irregularity shall mean any infringement of a provision of Community law resulting from

- ✓ an act or omission by an economic operator<sup>2</sup> 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.”

### What is an error?<sup>3</sup>

ISA 240 defines an error as being an “Unintentional misstatement in financial statements including the omission of an amount or disclosure”.

### What is fraud?<sup>4</sup>

“Fraud affecting the European Union’s financial interests shall consist of:

- (a) in respect of **expenditure**, 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 Union or budgets managed by, or on behalf of, the European Union,
  - ✓ 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) in respect of **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 Union or budgets managed by, or on behalf of, the European Union,
  - ✓ non-disclosure of information in violation of a specific obligation, with the same effect,
  - ✓ mis-application of a legally obtained benefit, with the same effect.”

<sup>1</sup> Irregularity, as applied in Community law, is defined in Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests.

<sup>2</sup> Economic operator: The natural or legal person and the other entities on which national law confers legal capacities.

<sup>3</sup> See the UK and Ireland version of the ISA 240, “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements” para 5.

<sup>4</sup> Fraud, as applied in Community law, is defined in Article 1 of Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities’ financial interests.

**What is the difference between fraud and irregularity/error**

The key distinguishing factor between fraud and irregularity/error is whether the underlying action that results in the misstatement of the financial statements is intentional or unintentional. While irregularities or errors are unintentional, frauds are irregularities/errors which have been committed intentionally.

**What is corruption?<sup>5</sup>**

Corruption is defined as:

***I. Passive corruption***

“For the purposes of this Convention, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute passive corruption.”

***II. Active corruption***

“For the purposes of this Convention, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute active corruption.”

Throughout the rest of this document, corruption is considered as a sub-category of fraud.

**What is an illegal activity?**

While the term “illegal activity” is used in the legislation establishing the European Anti-Fraud Office (OLAF), no legal definition exists. It follows from the ordinary meaning that illegal activity means an activity forbidden by law.

**What is abuse?<sup>6</sup>**

“Behaviour that is deficient or improper when compared with behaviour that a prudent person would consider reasonable and necessary business practice given the facts and circumstances.

Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement. Abuse is a departure from the concept of propriety, which relates to the general principles of sound public sector financial management and conduct of public sector officials.”

**What is the difference between suspected and proven fraud?**

Fraud and corruption are legal terms which are applied to certain facts which have been confirmed by a Court of law. Auditors should therefore apply the term suspected fraud or suspected corruption to any set of circumstances which suggest fraudulent activity or corruption but have not yet been confirmed by the responsible national judicial authorities.

<sup>5</sup> Corruption, as applied in Community law, is defined in Articles 2 and 3 of, the Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on the European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union.

<sup>6</sup> See ISSAI 1240, practice note to ISA 240, “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements”, para P6.

## THE FRAUD TRIANGLE



### Why do people commit fraud?<sup>7</sup>

Three common factors can normally be identified when fraud occurs (the “fraud triangle”). First, perpetrators of fraud need an incentive or pressure to engage in misconduct. Second, there must be an opportunity to commit fraud, and third, perpetrators are able to rationalize or justify their actions. For example:

- ✓ Incentive or pressure to commit fraud may exist when management is under pressure, from sources outside or inside the entity, to achieve an expected (and perhaps unrealistic) earnings target or financial outcome. Similarly, individuals may have an incentive to misappropriate assets, for example, because the individuals are living beyond their means.

In the public sector, employees are often under pressure to deliver high quality services with limited resources and to meet budget expectations. This may result in incentives to overstate revenues and understate expenditures.

- ✓ A perceived opportunity to commit fraud may exist when an individual believes internal control can be overridden, for example, because the individual is in a position of trust or has knowledge of specific deficiencies in internal control.

In the public sector, a lack of sufficient qualified personnel may result in deficiencies in internal control, creating the opportunity for fraud.

- ✓ Individuals may be able to rationalize committing a fraudulent act. Some individuals possess an attitude, character or set of ethical values that allow them knowingly and intentionally to commit a dishonest act.

Generally lower salary levels in the public sector compared to the private sector may lead employees to believe that they can justify misuse of funds.

<sup>7</sup> See ISA 240, “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements”, para A1 and ISSAI 1240 practice note para P5.

## SECTION 2: RESPONSIBILITIES

### Primary responsibility lies within the governance of the entity and management

The primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and management<sup>8</sup>. It is important that management, with the oversight of those charged with governance, place a strong emphasis on fraud prevention, which may reduce opportunities for fraud to take place, and fraud deterrence, which could persuade individuals not to commit fraud because of the likelihood of detection and punishment.

In the context of the EU funded activities, the term “management” is used to mean :

- ✓ The European Commission (and other institutions and bodies),
- ✓ The national, regional and/or local authorities and
- ✓ The relevant economic operators

### Auditors responsibilities

While fraud is not the main focus of an audit, the auditing standards do require auditors to carry out specific fraud-related procedures. Indeed, an auditor conducting an audit in accordance with ISAs is responsible for obtaining reasonable assurance that the financial statements as a whole are free from material misstatement, whether caused by fraud or error. Thus the auditor must have a reasonable basis for expecting that his work will detect material fraud. Although ISSAI 1240 and ISA 240 only focus on the accounts aspects, the Treaty<sup>9</sup> requires the Court to provide a statement of assurance both on the reliability of the accounts and on the legality and regularity of the underlying transactions. The Treaty, besides, requires the Court to examine whether the financial management has been sound. Hence, when in this guideline it is referred to “material misstatement”, this should apply to the reliability of accounts, legality and regularity and sound financial management audits.

The objectives of the auditor<sup>10</sup> are:

- (a) To identify and assess the risk of material misstatement due to fraud;
- (b) To obtain sufficient appropriate audit evidence regarding the assessed risk, through designing and implementing appropriate responses and;
- (c) To respond appropriately to fraud or suspected fraud identified during the audit.

The auditor should also<sup>11</sup>:

- (d) Maintain professional scepticism throughout the audit;
- (e) Discuss with the audit team the susceptibility of the entity to fraud, including how fraud might occur;
- (f) Document the auditor’s consideration of fraud.

<sup>8</sup> See ISA 240, “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements”, para 4.

<sup>9</sup> See consolidated version of the Treaty on the functioning of the European Union – Article 287.

<sup>10</sup> See ISA 240, “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements”, para 10.

<sup>11</sup> See ISA 240, “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements”, paras 12-14, 15, 44-47 and ISSAI 1240 practice note para 7-9 and para 10.

The auditor however needs to be aware that<sup>12</sup>:

- ✓ The risk of not detecting a material misstatement resulting from fraud is higher than the risk of not detecting a material misstatement resulting from error because fraud may involve sophisticated and carefully organized schemes designed to conceal it, such as forgery, deliberate failure to record transactions, or intentional misrepresentations made to the auditor. Such attempts at concealment may be even more difficult to detect when accompanied by collusion, which may cause the auditor to believe in false audit evidence;
- ✓ The risk of the auditor not detecting a material misstatement resulting from management fraud is greater than for employee fraud, because management is frequently in a position to directly or indirectly manipulate accounting records, present fraudulent financial information or override procedures designed to prevent similar frauds by other employees.

### **OLAF's role**

The European Anti-Fraud Office, OLAF (l'Office européen de lutte antifraude), was established by Commission Decision (1999/352/EC, ECSC, Euratom of 28 April 1999, OJ L 136/20) and is the core component of the fight against fraud.

The mission of OLAF is threefold:

- (a) It protects the financial interests of the European Union by combating fraud, corruption and any other illegal activities;
- (b) It protects the reputation of the EU Institutions by investigating serious misconduct by their members and staff that could result in disciplinary or criminal proceedings;
- (c) It supports the European Commission in the development and implementation of fraud prevention and detection policies.

OLAF is empowered to conduct in full independence:

- (a) internal investigations. i.e. inside any EU institution or body established by, or on the basis of, the Treaties.
- (b) external investigations. i.e. at national level, wherever the EU budget, budgets of institutions, bodies, offices and agencies and the budgets managed and monitored by them are at stake. For this purpose, OLAF may conduct on-the-spot checks and inspections on the premises of economic operators, in close cooperation with the competent Member State, third-country authorities and international organisations.

<sup>12</sup> See ISA 240, "The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements", paras 6-7.

## SECTION 3: HOW SHOULD AUDITORS DEAL WITH FRAUD IN THEIR DAY-TO-DAY WORK?

**Overview** The FCAM and PAM lay down all the necessary steps that need to be followed and all the work that needs to be carried out during the different phases of an audit task (i.e. planning, execution and reporting). This section concentrates on any particularities that need to be considered on the risks resulting from fraud and on the impact at the planning and execution phases. It also provides step-by-step guidance on how to deal with suspected fraud cases discovered in the course of our audits.

ISSAI 1240 and ISA 240 have been used as a basis to draft this guidance. The structure and content of sections (a), (b) and (c) have however been changed to be usable in the context of the Court. Indeed, due to the nature of Statement of Assurance and performance audits, the audit planning phase is often two-fold: the auditors firstly gather and analyse general information (concerning the area to be audited) during the PS/APM elaboration, and then collect more specific information (concerning the entity or beneficiaries to be audited) during the mission preparation phase.

### Overview of Fraud Detection Process during the audit

#### (a) Planning phase (PS/APM and preparation of mission): Identification and assessing significant risks due to fraud

1. Obtaining the information needed to identify fraud risks;
2. Discussing how and where the area/entity might be susceptible to fraud;
3. Identifying and assessing potential fraud risks (and eventually spotting – if any - high fraud risk areas).



#### (b) Planning phase (PS/APM and preparation of mission): Obtaining sufficient appropriate audit evidence regarding identified fraud risks, through designing appropriate procedures

1. Design further audit procedures whose nature, timing and extent are responsive to the assessed risks;
2. Consider the assignment and supervision of the audit personnel;
3. Incorporate an element of unpredictability in the selection of the nature, extent and timing of audit procedures to be performed;
4. Adapt the audit programmes.



#### (c) Execution phase (during audit visit): Obtaining sufficient appropriate audit evidence regarding identified fraud risks, through implementing appropriate procedures

1. Perform further audit procedures whose nature, timing and extent are responsive to the assessed risks;
2. Critically assessing the findings to see whether they could be indicative of fraud and evaluating the implications for the audit.



#### (d) Execution phase (after audit visit): Responding appropriately to instances of suspected fraud during the audits

1. Communicating on fraud within the Court: the “need to know” principle;
2. Particular care should be taken in protecting the identity of informants and in particular whistle-blowers;
3. Auditors are not responsible for “proving” fraud, this is OLAF’s task;
4. Suspicions of fraud should be passed over without undue delay to concerned parties and in particular to OLAF;
5. Suspicions of fraud should be treated as normal errors in SPFs and in the Court’s Reports;
6. Auditors should avoid interfering in OLAF’s investigations.

## (a) Planning phase - Identification and assessing significant risks due to fraud

### 1. Obtaining the information needed to identify fraud risks

*What sources of information could be used?*

As laid down in the FCAM and PAM<sup>13</sup>, the auditor should in the planning phase gain an understanding of the audited entity and its environment (including the entity's internal control) by carrying out risk assessment procedures consisting in analyses, inspections, observations and inquiries. This information gathering should also include the collection of fraud-related information.

Sources of internal and external information may be:

#### Internal:

- ✓ Previous knowledge of the audit field in the Court including any available information on the legal framework, activities, organisation/systems in place that have proven to be prone to a high risk of irregularities, fraud and corruption in the past;
- ✓ Results of previous Court's exercises to identify risk areas prone to fraud and corruption;
- ✓ Previous cases of fraud which arose during the audit work and were communicated to OLAF<sup>14</sup>;
- ✓ Denunciations received by the Court<sup>15</sup>;
- ✓ Annual cooperation report between the Court and OLAF.

#### External:

- ✓ Reports by the Commission and/or Member States (e.g. yearly "Fight against fraud Annual Report" presented by the Commission in cooperation with the Member States, DGs' risk assessments and risk registers, DGs' "anti-fraud strategies" which should be in place in all DGs' since the end of 2013);
- ✓ Reports by the Commission's IAS and by audit/control units in the operational DGs;
- ✓ Reports by OLAF (e.g. OLAF's yearly annual activity report, OLAF's fraud risk analyses available on OLAF's internet/intranet);
- ✓ Reports by parliamentary and/or regional authorities;
- ✓ Reports by national and/or regional audit authorities;
- ✓ etc.

It is important that the auditor's knowledge of the audited area/entity is supplemented by making inquiries of management (i.e. COM and other bodies/ national, regional, local authorities, recipient undertakings or entities) and of others within (e.g. internal audit section, other staff within the entity) and outside the entity (e.g. those

<sup>13</sup> FCAM part 1 – Planning – 2.3.1, PAM 3.2.3.

<sup>14</sup> Directors may wish to reflect on how to put in place appropriate arrangements, finding the best balance between the fact that on the one hand information on cases of fraud needs to be made available to some staff - for instance for risk assessment purposes - but that on the other hand, the number of people dealing with a case of suspected fraud should be kept to a strict minimum (see part (d)1 and **Section 4-2**) and the "need to know"/confidentiality principle).

<sup>15</sup> See footnote 14.

charged with governance) to seek their view about the risks of fraud and how they are addressed.

The auditors should also obtain information through the management authorities as to whether they have knowledge of any actual, suspected or alleged fraud affecting the area/entity<sup>16</sup>.

It is unlikely, due to the nature of Statement of Assurance and performance audits, that auditors can obtain all the fraud-related information and address inquiries to all levels of management involved in the audited subject already during PS or APM phase. The sample of Member States/ transactions to be audited is indeed often only drawn after the APM has been adopted. The exercise aiming at gathering fraud-related information should thus be continued during:

- ✓ The planning phase of missions (e.g. when asking for documents in advance of the mission, auditors should consider asking the management authorities to include on a case by case basis any fraud-related information/documentation related to the project to be audited, auditors should also check the early warning system flag of the legal entities in the Commission's accounting system) and/or;
- ✓ During the missions themselves (e.g. during the introductory meetings or meetings with other staff).

As a general rule however, the sooner auditors are informed of any actual, suspected or alleged fraud affecting the area/entity, the better as explained in the next paragraph.

*Information on fraud affecting area/entity/beneficiary obtained during the planning phase*

If the auditors obtain information, during the planning phase (through a prior denunciation or information received from the management authorities), indicating that fraud has taken or is taking place within the area/entity/beneficiary to be audited and that an investigation by OLAF is taking place, the auditors should consider whether a mission to that location should take place. Court [Decision 35-2014](#) requires that auditors avoid disrupting OLAF investigations. CEAD-A should be consulted for advice and if in exceptional cases OLAF has to be contacted, this should go through CEAD-A. Notwithstanding the information received from OLAF regarding the existence of ongoing investigations, the Court remains solely responsible for deciding on the subsequent actions required in the context of the Court's audit.

## **2. Discussing how and where the area/entity might be susceptible to fraud**

Based on the information gathered in accordance with point 1 above, the audit team should meet to discuss the background to the audit, to assess the general environment of the area/entity to be audited and to share ideas on how and where the area/entity might be susceptible to fraud. It may be relevant to include auditors outside the audit team/unit in these discussions (i.e. other auditors working on performance audit/Statement of Assurance tasks related to the same area<sup>17</sup>). This discussion should:

<sup>16</sup> Requests for information concerning possible ongoing or prior investigations should be made directly to the management authorities and only in exceptional circumstances to OLAF through CEAD-A. Indeed, as stated in [Section 2](#), "the primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and management". This will also help in avoiding issues of confidentiality that direct requests to OLAF could generate.

<sup>17</sup> See ISSAI 1240 practice note to ISA 240, "The auditor's responsibilities Relating to Fraud in an Audit of Financial Statements", para P10.

- ✓ Occur with a questioning mind setting aside any beliefs that the audit team might have that management are honest.
- ✓ Include consideration of known external and internal factors which might affect the area/programme and might create an incentive, provide opportunity or indicate a culture that increases the risk of fraud occurring.

For Statement of Assurance audits, it is recommended that this exercise takes place during the APM elaboration phase; for performance audits this may occur during the preliminary study or APM phase.

There may however be a need to have another discussion among the audit team when more specific information concerning the entities/beneficiaries to be visited becomes available during the mission preparation phase.

### **3. Identifying and assessing potential fraud risks (and eventually spotting – if any - high fraud risk areas)**

The FCAM and the PAM<sup>18</sup> require the auditor to make a risk assessment for each audit task at the planning stage where the auditor should focus on those inherent and control risks that have an impact upon the audit objectives. Fraud is an element of both inherent and control risk.

Based on the information gathered from the above process (see parts 1. and 2.), auditors should be able to evaluate whether the information obtained from the risk assessment procedures indicates that one or more fraud risk factors are present. See in [Appendix 1](#) examples of fraud risk factors. Fraud risk factors are events or conditions that may indicate an incentive or pressure to commit fraud or provide an opportunity to commit fraud. However, they do not necessarily indicate the existence of fraud.

Auditors should thus be able to:

- (a) Identify potential fraud risks<sup>19</sup>.
- (b) Assess whether the area/entity's programs and controls related to the identified fraud risks have been properly designed and implemented.
- (c) Eventually identify (if any) high fraud risk areas (e.g. procurement process).

The auditor's professional scepticism is particularly important when considering the fraud risks.

The auditors should document their work<sup>20</sup> related to the identification and assessment of the fraud risks (incl. the discussion among the audit team and the decisions made) into specific working papers. They should also make a reference in the APM to any identified high fraud risks.

<sup>18</sup> FCAM part 1 – Planning – 2.3.1, PAM 3.2.3.

<sup>19</sup> Thus we have a two stage process: firstly, the auditor identifies the fraud risk factors which could be relevant for the specific audit concerned; secondly, the auditor considers how any fraud arising from these risk factors would present themselves.

<sup>20</sup> The most sensitive documentation (in particular information concerning informants who want to have their identity protected) should be documented on paper and locked away in closed cupboards until practical arrangements are put in place in ASSYST 2.

**(b) Planning phase - Obtaining sufficient appropriate audit evidence regarding identified fraud risks, through designing appropriate procedures**

**1. Design further audit procedures whose nature, timing and extent are responsive to the assessed risks**

The auditor shall determine an appropriate response to the identified risks of material misstatements due to fraud. This includes designing audit procedures whose nature, timing and extent are responsive to the assessed risks.

In the context of the Statement of Assurance, auditors could for instance, after having assessed an area of high fraud risk during the APM elaboration phase, consider:

- including a specific stratum on the topic or;
- to carry out additional audit work or emphasize the work on the topic (for instance during the audit of systems) if time allows;
- increasing the overall sample size.

This should be done in compliance with the current Statement of Assurance methodology.

For performance audits, the significant fraud risk could turn out be a key risk based on which the audit questions and scope are elaborated.

If it is during the mission preparation phase that specific fraud risks appear, auditors could consider carrying out additional audit work (if time allows).

In practical terms, it may vary and auditors will always have to consider the time constraints and prioritization.

**2. Consider the assignment and supervision of the audit personnel**

Auditors should also consider the assignment and supervision of the audit personnel e.g. the auditor may respond to identified high risks of fraud by assigning more experienced individuals to the audit or additional specialists or increasing the level of supervision.

**3. Incorporate an element of unpredictability in the selection of the nature, extent and timing of audit procedures to be performed**

Auditors could also incorporate an element of unpredictability in the selection of the nature, extent and timing of audit procedures to be performed e.g. auditors may have to change the nature of the auditing procedures to obtain more reliable or additional corroborative evidence, or have to increase the sample sizes or performing analytical procedures at a more detailed level. This also implies that some “spare” time should be set aside for these unpredictable events.

**4. Adapt the audit programmes**

Once auditors have identified specific or high fraud risks as a result of the risk assessment, auditors should adapt the audit programmes in the following way:

- ✓ First of all, auditors should be able to identify red flags in a particular or specific high risk area. Red flags are indicators pointing to possible fraud. CEAD-A considers these red flags to be particularly useful. Examples of red flags developed by OLAF for some sectors (e.g. shared management, external actions, European Fisheries Fund) are available on their intranet

website<sup>21</sup>. These red flags should be embedded into the relevant audit programmes.

Example of fraud indicator / red flag to be included in the AP:

Are there any apparent changes to time sheets? (RED FLAG) (*scheme description: A contractor can commit fraud by intentionally charging costs which are not allowable or reasonable, or which cannot be allocated, directly or indirectly, to a contract. Labour costs are more susceptible to mischarging than material costs because employee labour can in theory be charged to any contract. Labour costs can be manipulated by altering time sheets.*)

- ✓ It is also recommended that auditors include a specific question in each of their audit programmes requesting the auditor to confirm that he/she has considered whether the findings could be fraud.

All the responses to the risks of fraud and the linkage of the audit procedures (nature, timing and extent) with the assessed risks of fraud should be documented by the auditors.

<sup>21</sup> Link to OLAF's Intranet: <http://myintracomm.ec.testa.eu/serv/en/fraud-prevention/ToolBox/Pages/RedFlags.aspx>. Please contact CEAD-A if you encounter any problem with this link.

**(c) Execution phase - Obtaining sufficient appropriate audit evidence regarding identified fraud risks, through implementing appropriate procedures**

**1. Perform further audit procedures whose nature, timing and extent are responsive to the assessed risks**

The auditor shall, during the execution phase of the audit (audit visits), implement the audit procedures whose nature, timing and extent are responsive to the assessed risks i.e. the audit procedures referred to in part (b).

**2. Critically assess the findings to see whether they could be indicative of fraud and evaluate the implications for the audit**

The auditor shall critically assess the findings to see whether they could be indicative of fraud and evaluate the implications for the audit.

*Critical assessment of the findings to see whether it could be indicative of fraud*

When the auditor identifies a finding (error), the auditor should consider whether such finding may be indicative of fraud. A prerequisite for fraud is that the activity impacts the general budget of the European Union (i.e. the error should either result in a loss of EU revenue or in excessive expenditure).

To assess whether normal errors are likely to be fraudulent, the following key elements should be considered:

- ✓ Are there indications of 1) use or presentation of false, incorrect or incomplete statements or documents, 2) non-disclosure of information in violation of a specific obligation, 3) misapplication of funds for purposes other than those for which they were originally granted;
- ✓ Are there indications that the error was made “intentionally”;
- ✓ Are there indications that someone relied upon the incorrect information provided and acted upon it;
- ✓ Did the auditor find numerous errors at one specific auditee; or is the error significant (e.g. for Statement of Assurance errors > 40%);
- ✓ The error may not be an isolated occurrence;
- ✓ Does the suspicion arise from a “red flag” (i.e. fraud indicator);
- ✓ Did the information gathered during the risk assessment phase reveal any specific fraud risks in the programme or at beneficiary/entity level.

If one or two elements are present, the auditors are welcome to have a discussion with CEAD-A staff to receive further guidance. If three elements are fulfilled, the suspicion of fraud should be considered as serious and communicated according to the rules set out below in part (d) 4. In all matters:

- Assessing findings remains a question of professional judgement.
- The rule is that auditors should rather communicate too much than too little.

*Evaluation of the  
implications for the audit*

Examples of fraud cases rendered anonymous compiled by OLAF are available on their intranet website<sup>22</sup>.

If the audit work indicates the possible existence of fraud, the auditor should consider the implications of the suspicion on:

- ✓ All areas of the audit (e.g. on the accounts, on the results of examinations of legality and regularity), as an instance of fraud is unlikely to be an isolated occurrence.
- ✓ The need to adapt the initial risk assessment and its resulting impact on the nature, timing and extent of audit procedures required to respond to the updated risks.

The result of these audit procedures should be documented<sup>23</sup> in the working papers.

<sup>22</sup> Link to OLAF's Intranet: <http://myintracomm.ec.testa.eu/serv/en/fraud-prevention/ToolBox/Pages/Compendia.aspx>  
Please contact CEAD-A if you encounter any problem with this link.

<sup>23</sup> The most sensitive documentation (in particular information concerning informants who want to have their identity protected) should be documented on paper and locked away in closed cupboards until practical arrangements are put in place in ASSYST 2.

**(d) Execution phase - Responding appropriately to instances of suspected fraud during the audits**

**1. Communicating on fraud within the Court: the “need to know” principle**

Within the Court, all information concerning cases of fraud must be handled on a strict “need to know basis”: that is to say that the information should be communicated only to the Court Members concerned and to those members of the Court’s staff for whom it is absolutely essential in order for them to carry out their duties (including those who need to know about cases of fraud for risk assessment purposes). Chambers should therefore as a general rule keep the number of people dealing with a case of suspected fraud to a strict minimum<sup>24</sup>.

Also, information and documentation relating to a case of suspected fraud should be handled with particular care and confidentiality. Emails about suspected frauds should always be encrypted and the number of persons receiving copies should be strictly limited.

**2. Particular care should be taken in protecting the identity of informants and in particular whistle-blowers**

At some occasions, the information concerning cases of fraud has, in the course of an audit, been obtained from an informant (i.e. a whistle-blower or any other informant) – see also **Section 4.3**. Auditors should take particular care in treating the information and ensure the protection of the identity of these informants. This is in particular important for whistle-blowers.

**3. Auditors are not responsible for “proving” fraud, this is OLAF’s task**

Auditors are not responsible for proving fraud, but just for reporting cases of suspected fraud. It is indeed the investigator’s i.e. OLAF’s task to prove whether the suspicion of fraud is well-founded. Auditors should therefore not implement typical “investigation” activities i.e. perform extended procedures to determine whether fraud has actually occurred. In particular, auditors should not attempt to interview suspects or accuse anyone, retain or remove original documents and should take no risks with their personal safety. Nevertheless, without requesting additional documentation that is not strictly necessary to achieve the original audit objectives, the auditors may discretely copy any relevant documentation that is available to them and should make a note of the circumstances in which the fraud was uncovered or suspected.

**4. Suspicions of fraud should be passed over without undue delay to concerned parties and in particular to OLAF**

If a suspicion of fraudulent activity arises during the audit, the matter should, as soon as possible, be communicated to concerned parties<sup>25</sup>.

*Communicating with management and those charged with governance*

The auditing standards require that, if a suspicion of fraudulent activity arises during the audit:

- ✓ The auditor notifies the appropriate levels of management on a timely basis, unless they may be implicated, as this management has primary responsibility for the prevention and detection of

<sup>24</sup> Directors may wish to reflect on how to put in place appropriate arrangements, finding the best balance between the fact that on the one hand information on cases of fraud needs to be made available to some staff - for instance for risk assessment purposes (see part (a)1) - but that on the other hand, the number of people dealing with a case of suspected fraud should be kept to a strict minimum.

<sup>25</sup> See ISA 240, “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements”, paras 40-43.

fraud (see [Section 2](#)).

- ✓ Where appropriate, the auditor should also notify those charged with governance<sup>26</sup>.

In the Court's circumstances, suspicions of fraudulent activities should not be reported to the management of the audited entities neither to those charged with governance, but only be communicated to the European Commission ("management") designated specialist service i.e. OLAF (see also next paragraph). Indeed:

- ✓ Unlike other organizations, the Court does not always have a "client" relationship with its auditees;
- ✓ It would almost be impossible for auditors to assess whether management is implicated in the suspected fraudulent activity.

#### *Communicating with OLAF*

The Court has the obligation to report without undue delay any suspicions of fraud to OLAF according to Court [Decision 35-2014](#), laying down the "internal procedures for cooperation between OLAF and ECA concerning audit related matters and information received from third parties (denunciations) forwarded by the Court" (see [Appendix 2](#)).

The procedure to be followed as soon as a suspicion of fraud arises and the associated letter (in the form of a checklist) to be completed are provided in [Appendix 3](#) and [Appendix 4](#).

When deciding whether the information should be forwarded to OLAF, the Director of CEAD-A takes into account the provisions of the Treaties and of Regulation (EU, Euratom) n° 883/2013, the need to protect the identity of informants and any wishes that they may express. In particular, the Court should specifically inform OLAF whether the information forwarded originates from an informant who has requested that his/her identity is not disclosed by the Court, so that OLAF can take this into account.

For the cases transmitted to OLAF, it is the responsibility of OLAF to inform the Court as soon as possible, if OLAF has opened an investigation.

CEAD-A will obtain from OLAF:

- An acknowledgement of receipt of the information transmitted by the Court;
- Information if OLAF has opened an investigation;
- Information on any further changes to the investigative status of the cases forwarded by the Court and;
- An annual updating of the status of open cases sent to OLAF, including available information on the outcome of cases closed within the year in question.

CEAD-A will inform the responsible ECA Director.

<sup>26</sup> See ISA 240, "The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements", paras 40-42.

The information obtained from OLAF will also provide input to a yearly report in which the Member in charge of relations with OLAF reports to the Court on the operation of the cooperation arrangements with OLAF during the previous year.

*Communicating with the national SAI*

CEAD-A will, as laid down in Court's [Decision 35-2014](#), send a copy of the cases arising from the Court's audit work to the Head of the EU national SAI concerned for information (with a copy to the Court's Member of the Member State concerned), specifying that the case has been transmitted to OLAF.

**5. Suspicions of fraud should be treated as normal errors in SPFs and in the Court's Reports**

Quicker transmission of cases between the Court and OLAF's services should allow the Court to better consider how cases should be treated in Statements of Preliminary Findings. However, the rule remains that suspicions of fraud should be treated as normal errors in SPFs, unless exceptional circumstances dictate otherwise. No reference to fraud should be made in the SPFs.

By analogy, suspicions of fraud should be treated as normal errors (without any reference to fraud) in the Court's reports, unless exceptional circumstances dictate otherwise.

Chambers may, at some occasions, wish to include the following generic sentence in their reports (or use it during their press conferences): "On the rare occasions that the Court comes across cases of suspected fraud, these are sent to the European Anti-Fraud Office, OLAF, for analysis and possible investigation. We do not, for obvious reasons, comment on any such cases".

All communications about fraud made to management, CEAD-A, OLAF etc. should be included in the audit documentation<sup>27</sup>.

**6. Auditors should avoid interfering in OLAF's investigations**

Court [Decision 35-2014](#) requires that auditors avoid disrupting OLAF investigations. This implies that:

- ✓ Quicker transmission of cases to OLAF will allow the Court to get rapid feedback from OLAF as to whether it is opening an investigation. During the period between the case being sent to OLAF and the receipt of OLAF's reply, auditors should neither carry out additional work nor request further documentation from the auditee relating to the case forwarded to OLAF. Also, consideration should be given to putting on hold any further audit visits which had been planned before the suspicion was uncovered. When OLAF's reply arrives two scenarios can occur:
  - 1) OLAF decided to launch an investigation in which case auditors should consider if a further audit visit might risk disrupting the investigation; or
  - 2) OLAF decided to close the case in which case the auditors can continue with their audit.
- ✓ Notwithstanding the information received from OLAF regarding the existence of ongoing investigations, the Court remains solely responsible for deciding on the subsequent actions required in the context of the Court's audit.

<sup>27</sup> The most sensitive documentation (in particular information concerning informants who want to have their identity protected) should be documented on paper and locked away in closed cupboards until practical arrangements are put in place in ASSYST 2.

## SECTION 4: HOW SHOULD LETTERS OF DENUNCIATIONS BE PROCESSED AND TAKEN INTO ACCOUNT IN THE CHAMBER'S AUDIT WORK?

### 1. Receipt of denunciations and transmission to CEAD-A

Letters of denunciation apply to all documents and information received in connection with cases of possible fraud, corruption or any other illegal activity, regardless of the manner in which the information is communicated to the Court (e.g. documents received by the Court's services without a covering letter, e-mails, information received orally etc).

Unless the facts are obvious (contained, for example, in a covering letter sent to the Court), the member of staff who receives the documents/information must make a precise record of the circumstances in which they were obtained (date, time, location, informant's identity and contact details, witnesses present, nature and form of the information, list of documents received, etc.).

This note, along with any other accompanying papers (e.g. envelopes), must be sent to CEAD-A with the documents themselves. It is imperative that all denunciations be processed without delay.

### 2. Communicating within the Court: the "need to know" basis principle

As for suspicions of fraud arising from the Court's audit work (see [Section 3](#)), it is important that denunciations are handled on a strict "need to know basis" and that the Chambers keep the number of people dealing with a case of suspected fraud to a strict minimum<sup>28</sup>.

The information and documentation relating to a case of suspected fraud should be handled with particular care and confidentiality. Emails about suspected frauds should always be encrypted and the number of persons receiving copies should be strictly limited.

### 3. Particular care should be taken in protecting the identity of informants and in particular whistle-blowers

Auditors should take particular care in treating the information received from informants through denunciations and ensure the protection of the identity of these informants. This is in particular important for whistle-blowers.

### 4. Examination by CEAD-A with the support of audit Chambers

After receipt of the denunciation, CEAD-A undertakes a preliminary examination of the documents received.

The main aims of this examination are to determine:

- (a) Whether the denunciation should be forwarded to OLAF<sup>29</sup>. When necessary, CEAD-A will consult the audit Chamber concerned when making this decision.
- (b) Which audit Chamber(s) the denunciation concerns.

When deciding whether the documents and information should be forwarded to OLAF, the Director of CEAD-A takes into account the provisions of the Treaties and of Regulation 883/2013, the need to

<sup>28</sup> Directors may wish to reflect on how to put in place appropriate arrangements, finding the best balance between the fact that on the one hand information on cases of fraud needs to be made available to some staff - for instance for risk assessment purposes (see [Section 3](#) part (a)1) - but that on the other hand, the number of people dealing with a case of suspected fraud should be kept to a strict minimum.

<sup>29</sup> The Court has the obligation to report any suspicions of fraud to OLAF according to Court [Decision 35-2014](#), laying down internal procedures for cooperation between OLAF and ECA concerning audit related matters and information received from third parties (denunciations) forwarded by the Court (see [Appendix 2](#)).

protect the identity of informants and any wishes that they may express. In particular, the Court should specifically inform OLAF whether the information forwarded originates from an informant who has requested that his/her identity is not disclosed by the Court, so that OLAF can take this into account.

CEAD-A starts by carrying out a preliminary assessment of the denunciation to determine whether it concerns EU funds and whether there are clear indications of fraud, corruption or any other illegal activity. CEAD-A also tries to determine which audit Chamber(s) is/are concerned.

**Four scenarios can occur:**

	Outcome of CEAD-A's assessment	Action
1)	EU funds are involved and there are clear indications of fraud, corruption or any other illegal activity.	<ul style="list-style-type: none"> <li>✓ The Member in charge of relations with OLAF directly forwards, without undue delay, a copy of the documents to the Director General of OLAF using the letter (in the form of a checklist) provided in <a href="#">Appendix 5</a>. The method of transmission to OLAF will take account of the need for security and confidentiality.</li> <li>✓ CEAD-A informs the Director of the Chamber responsible for the audit area in question of the communication to OLAF as well as the complainant (unless the complaint is anonymous).</li> </ul>
2)	There are doubts as to whether EU funds and/or potential fraud or corruption is involved.	<ul style="list-style-type: none"> <li>✓ CEAD-A forwards the case to the competent audit Chamber (i.e. Director of the Chamber responsible for the audit area in question) for <u>analysis</u><sup>30</sup> and requesting feedback to CEAD-A within six weeks. If the Chamber considers that there is sufficient information to justify transmission to OLAF, the Chamber should also directly complete the letter (in the form of a checklist) provided in <a href="#">Appendix 5</a>.</li> <li>✓ After receipt of the Chamber's analysis, CEAD-A takes the appropriate actions (e.g. forwarding of the case to OLAF, communication with complainant) and informs the Director of the Chamber responsible for the audit area in question of the follow-up actions carried out.</li> </ul>
3)	The complaint concerns allegations of irregularities, bad management etc. and EU funds but not fraud.	<ul style="list-style-type: none"> <li>✓ CEAD-A forwards the case to the competent audit Chamber (i.e. Director of the audit Chamber responsible for the audit area in question) for information.</li> <li>✓ CEAD-A takes the appropriate follow actions (e.g. communication with complainant).</li> </ul>
4)	The complaint is not serious/irrelevant, does not seem to concern EU funds and/or no responsible audit Chamber can be identified.	<ul style="list-style-type: none"> <li>✓ CEAD-A forwards the case to the Presidency (DOP), who takes the appropriate follow-up actions (without informing any audit Chamber).</li> </ul>

<sup>30</sup> This request for analysis to the Chamber traditionally consists of 3 questions:

- Do you consider from examining the denunciation that European Funds are concerned by the alleged fraud?
- The allegation of fraud should be considered as:
  - o serious/not serious
  - o there is sufficient information to justify transmission to OLAF (i.e. indication of fraud, corruption or other illegal activity affecting the financial interests of the Union)
  - o there is not sufficient information to justify transmission to OLAF (but the case should be taken into account in the Court's audit work)
  - o it is outside the Court's area of responsibility
- If there is an alternative addressee for the complaint (e.g. Commission DG).

CEAD-A will request from OLAF:

- An acknowledgement of receipt of the information transmitted by the Court;
- Information if OLAF has opened an investigation;
- Information on any further changes to the investigative status of the cases forwarded by the Court and;
- An annual updating of the status of open cases sent to OLAF, including available information on the outcome of cases closed within the year in question.

CEAD-A will inform the responsible ECA Director.

The information obtained from OLAF will also provide input to a yearly report in which the Member in charge of relations with OLAF reports to the Court on the operation of the cooperation arrangements with OLAF during the previous year.

## **5. Use of denunciations by Chambers**

As stated in **Section 3**, the audit Chamber should take denunciations into account in the following way in the context of their audit work:

- ✓ The audit Chambers might wish to use the information within the planning stage of the audit (e.g. risk assessment procedures).
- ✓ Units should take all necessary measures to ensure that investigations by OLAF concerning denunciations can proceed without undue disruption by the Court's services. In practical terms this means that if Units are aware of a particular denunciation concerning the area to be audited, they should consider whether a mission to that location should take place. CEAD-A should be consulted for advice and if in exceptional cases OLAF has to be contacted, this should go through CEAD-A. Notwithstanding the information received from OLAF regarding the existence of ongoing investigations, the Court remains solely responsible for deciding on the subsequent actions required in the context of the Court's audit.

## Appendix 1 - Examples of fraud risk factors in the public sector environment

(source: ISSAI 1240, Practice note to ISA 240, Appendix 1)

### **Risk Factors Relating to Misstatements Arising from Fraudulent Financial Reporting**

Risk factors that relate to misstatements arising from fraudulent financial reporting are classified according to the three conditions generally present when fraud exists: incentives/pressures, opportunities, and attitudes/rationalization. The following are examples of risk factors relating to misstatements arising from fraudulent financial reporting.

#### **Incentives/Pressures**

Financial instability or threats by political, economic, budget, or entity operating conditions, such as (or as indicated by):

- ✓ Weak budgetary controls;
- ✓ Privatizations;
- ✓ New programs;
- ✓ Major changes to existing programs;
- ✓ New financing sources;
- ✓ New legislation and regulations or directives;
- ✓ Political decisions such as relocation of operations;
- ✓ Programs without sufficient allocated resources and funding;
- ✓ Procurement of goods and services in certain industries such as defense;
- ✓ Outsourcing of government activities;
- ✓ Operations subject to special investigations;
- ✓ Changes in political leadership;
- ✓ Public and private partnerships.

Excessive pressure exists for management to meet the requirements or expectations of third parties or those charged with governance due to the following:

- ✓ Increased public expectations;
- ✓ Higher than normal expectations to meet budget;
- ✓ Reduction in budgets without corresponding reduction in service delivery expectations.

#### **Opportunities**

The nature of the public sector environment provides opportunities to engage in fraudulent financial reporting that can arise from the following:

- ✓ Closed environment with strong political network and ties;
- ✓ Hierarchical and bureaucratic organization structures and the resulting culture of loyalty and obedience created by strong and well defined chains of command;
- ✓ Circuitous fund transfers among agencies making it difficult to follow the "money trail" which tends to conceal the nature of actual fund disposition;
- ✓ Officials in high ranking positions who may take the opportunity to misuse their authority;
- ✓ Potential for private sector directorship after completion of a term of office e.g. as a result of awarding tenders;
- ✓ Tolerance of errors in financial information.

The monitoring of management is not effective as a result of the following:

- ✓ Strong political motives, ties, and loyalties;
- ✓ Unstable political environment.

There is a complex or unstable organizational structure, as evidenced by the following:

- ✓ Large number of locations with government activities, for example municipalities in remote areas.

Internal control components are deficient as a result of the following:

- ✓ Difficult recruitment environment and/or lack of sufficient qualified personnel;
- ✓ Lack of sophisticated IT-software and platforms designed for public sector specific needs;
- ✓ Fragmented and non-integrated IT-infrastructure.

### **Attitudes/Rationalizations**

- ✓ Generally lower salary levels in the public sector as compared to the private sector may give employees reason to justify fraudulent financial reporting, especially if incentives such as bonus payments are involved;
- ✓ Disregard for implications of government breaches, which in the private sector might involve implications such as fines, dismissal or imprisonment.

### **Risk Factors Arising from Misstatements Arising from Misappropriation of Assets**

Some of the risk factors related to misstatements arising from fraudulent financial reporting also may be present when misstatements arising from misappropriation of assets occur. For example, non-effective monitoring of management and weaknesses in internal control may be present when misstatements due to either fraudulent financial reporting or misappropriation of assets exist. The following are examples of risk factors related to misstatements arising from misappropriation of assets.

### **Incentives/Pressures**

Adverse relationships between the entity and employees with access to cash or other assets susceptible to theft may motivate those employees to misappropriate such assets. For example, adverse relationships may be created by the following:

- ✓ Rigid public sector compensation structures that are seen to be inconsistent with expectations;
- ✓ Rewarding seniority instead of performance.

Unique aspects of the public sector procurement/tender-process, such as:

- ✓ Politically sensitive contracts;
- ✓ Competition created by high volume/ high value contracts might create risks for payment of bribes and kick-backs;
- ✓ Contracts with related parties;
- ✓ Risky nature of certain government activities, e.g. weapons, natural resources etc.

Misuse of power and authority:

- ✓ Bribes when making decisions on sensitive areas such as decisions on grants or applications for work or residence permits, or for citizenship.

### **Opportunities**

Certain characteristics or circumstances may increase the susceptibility of assets to misappropriation. For example, opportunities to misappropriate assets increase when there are the following:

- ✓ Mismatch between actual value and recorded value of heritage assets;
- ✓ Shortcomings of the cash basis of accounting, such as:
  - Non-recording of certain assets;
  - Inadequate ownership details for assets such as land and buildings;
  - Ability to manipulate the period for recording of transactions;
  - Uncontrolled or unstructured move from cash basis to accrual basis accounting.

**Attitudes/Rationalizations**

- ✓ Public sector officials make no distinction between personal and government transactions, e.g. misuse of government credit cards;
- ✓ The belief by certain public sector officials that their level of authority justifies a lifestyle similar to private sector executives, when their agreed terms of compensation are not sufficient for such a lifestyle;
- ✓ Tolerance of unacceptable behaviour in situations where it may be difficult to dismiss or replace employees.

**Appendix 2 – Court Decision 35-2014, laying down the “internal procedures for cooperation between OLAF and ECA concerning audit related matters and information received from third parties (denunciations) forwarded by the Court”**



EUROPEAN  
COURT  
OF AUDITORS

**Decision No 35-2014 laying down internal procedures for cooperation between the European Anti-Fraud Office and the European Court of Auditors (the Court) concerning audit related matters and information received from third parties (denunciations) forwarded by the Court**

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**THE EUROPEAN COURT OF AUDITORS**

- HAVING REGARD TO the Treaty of the European Union, and in particular Article 4 §3 and having regard to the Treaty on the Functioning of the European Union, and in particular Articles 287 and 325 thereof,
- WHEREAS by its Decision of 28 April 1999<sup>1</sup>, the Commission established within its own departments a European Anti-Fraud Office ("OLAF");
- WHEREAS OLAF's responsibilities were set out in greater detail in Regulation (EU, EURATOM) No 883/2013<sup>2</sup> concerning investigations conducted by the European Anti-Fraud Office (OLAF).

**HAS DECIDED:**

**Article 1 - Field of application**

This Decision shall apply to:

- Any case of suspicion of fraud, corruption or any other illegal activity arising from the Court's audit work affecting the financial interests of the Union and;
- Any information received from third parties (denunciation) affecting the financial interests of the Union concerning allegations of fraud, corruption or any other illegal activity and;
- Any requests for information or documentation from OLAF relating to the Court's audit work.

It shall apply without prejudice to the provisions of Articles 22a and 22b of the Staff Regulations.

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<sup>1</sup> OJ L 136, 31.5.1999, p. 20.

<sup>2</sup> OJ L 248, 18.09.2013, p. 16

**Article 2 – Suspicions of fraud, corruption or any other illegal activity arising from the Court’s audit work**

*Article 2.a): Communication with OLAF on cases arising from the Court’s audit work*

When, in the course of an audit, a suspicion of fraud, corruption or any other illegal activity arises, the Member in charge of relations with OLAF shall (in cooperation with the reporting Member), without undue delay, have a standard letter drawn up – a template for which can be found in the Court’s audit guideline on fraud – and communicate this to the Director General of OLAF.

The letter shall contain a request that OLAF:

- Acknowledges receipt of the information transmitted by the Court.
- Informs the Court as soon as possible if it has opened an investigation.
- Informs the Court of any further changes made to the investigative status of the case forwarded by the Court.

Where the information forwarded by the Court has, in the course of an audit, been obtained from an informant, the Court should protect his/her identity. This is in particular important for whistle-blowers. Hence, in relevant cases, the Court should specifically inform OLAF whether the information forwarded originates from an informant who has requested that his/her identity is not disclosed by the Court, so that OLAF can take this into account.

Once initial contact has been formally made with OLAF, operational contacts shall, if necessary, continue at the level of the Court/OLAF services. These contacts shall focus on potential clarification to the information provided.

In addition, the Member in charge of relations with OLAF shall request from OLAF an annual updating of the status of open cases sent to OLAF, including available information on the outcome of cases closed within the year in question.

*Article 2.b): Confidentiality of information forwarded to OLAF pertaining to cases having arisen from the Court’s audit work*

The information forwarded to OLAF pursuant to Article 2a above shall not be communicated by the Court to the Union institution, body, office or agency concerned but be treated as normal errors (without any reference to fraud) in the relevant statements of preliminary findings, unless exceptional circumstances dictate otherwise.

*Article 2.c): Informing EU SAI’s about suspicions of fraud in the Member States*

When, as a result of audit work in the Member States, information concerning a suspicion of fraud, corruption or any other illegal activity is submitted to OLAF, a standard letter based on the specimen contained in Appendix 1 shall be sent by the Member in charge of relations with OLAF to the Head of the National Audit Institution concerned (with a copy to the Court’s Member of the Member State concerned).

**Article 3 – Suspicions of fraud, corruption or any other illegal activity received from third parties (denunciations)**

Where third parties send unsolicited information to the Court containing allegations of fraud, corruption or any other illegal activity affecting the financial interests of the Union, the Member in charge of relations with OLAF (if necessary in consultation with the Director of the chamber responsible for the audit area in question) shall, when relevant and without undue delay, forward the information, accompanied by a standard letter – a template for which can be found in the Court’s audit guideline on fraud – to the Director General of OLAF.

The letter shall contain a request that OLAF:

- Acknowledges receipt of the information transmitted by the Court.
- Informs the Court as soon as possible if it has opened an investigation.
- Informs the Court of any further changes made to the investigative status of the case forwarded by the Court.

By default, the Court should protect the identity of all informants. This is in particular important for whistle-blowers.

Hence, in relevant cases, the Court should specifically inform OLAF whether the information forwarded originates from an informant who has requested that his/her identity is not disclosed by the Court, so that OLAF can take this into account.

In addition, the Member in charge of relations with OLAF shall request from OLAF an annual updating of the status of open cases sent to OLAF, including available information on the outcome of cases closed within the year in question.

**Article 4 - Requests by OLAF for information**

Whenever OLAF addresses to the Court requests for information or documentation relating to the Court’s audit work, but outside the information transmitted by the Court in accordance with Article 2 and 3, the Member in charge of relations with OLAF shall ensure that any relevant material available at the Court is sent to the Director General of OLAF without undue delay. Any available information will be identified in consultation with the Director of the chamber responsible for the audit area related to OLAF’s request.

**Article 5 - Avoidance of disruption of any OLAF investigation**

The Court should avoid disrupting any OLAF investigation in progress. Therefore:

- After a case arising from the Court’s audit work has been notified to OLAF, the Court shall continue its audit in accordance with its responsibilities and on condition that it does not disrupt any investigation that may be in progress.
- If the Court is aware, through a prior denunciation or information received from the managing authorities, of a possible OLAF investigation concerning an area to be audited, the Member in charge of relations with OLAF may request information from OLAF in order to take this into account.

Notwithstanding the information received from OLAF regarding the existence of ongoing investigations, the Court remains solely responsible for deciding on the subsequent actions required in the context of the Court's audit.

**Article 6 – Annual reporting to the Court**

The Member in charge of relations with OLAF shall every year report to the Court on the cooperation with OLAF during the previous year<sup>3</sup>.

**Article 7 – Assistance to the Member in charge of relations with OLAF**

In carrying out the tasks described in Articles 2 to 6, the Member in charge of relations with OLAF will be assisted by the CEAD-A Directorate which shall act as the point of contact for the other services of the Court.

**Article 8 – Entry into force**

This Decision cancels and replaces Decision 97-2004 of 16 December 2004. It shall enter into force on 1st December 2014.

Detailed Court guidelines will be issued to supplement the present Decision within the Court and ensure full compliance with International Standards of Supreme Audit Institutions.

Luxembourg, 20 November 2014

For the Court of Auditors



Vitor CALDEIRA  
President

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<sup>3</sup> DEC 39/96 modified by DEC 39/1/96



## Appendix 1

### STANDARD LETTER FROM THE MEMBER IN CHARGE OF RELATIONS WITH OLAF TO THE EU SAI

STRICTLY CONFIDENTIAL

**Subject** Case transmitted to OLAF concerning instance of suspected fraud, corruption or any other illegal activity

Dear [Mr/Mrs ...],

Please find enclosed a copy of a confidential letter transmitted to OLAF on [...] concerning an instance of suspected fraud. The relevant case was noted by the Court during [...] and concerned EU funds under [...].

According to the cooperation agreement between the Court and OLAF instances of suspected fraud, corruption or any other illegal activity detected during the Court's audit work, must be transmitted to OLAF.

Yours sincerely,

(s) Member of the Court in charge of relations with OLAF

Cc: Mr/Mrs [...], Liaison Officer of EU SAI  
Mr/Mrs [...], Member of the European Court of Auditors of the Member State concerned

**Appendix 3 – Procedure to be followed by Units to communicate a case of suspected fraud or corruption to OLAF**

Step	Who	Action	Done
1	Auditor	As soon as a suspicion of fraud arises, the auditor should discretely attempt to obtain as much information as possible without divulging his/her suspicion.	
2	Auditor	The auditor should not hesitate to contact a more experienced colleague if he/she feels he/she needs further advice or a second opinion on how to judge the situation.	
3	Head of Unit	After the audit visit (if applicable), the Head of Unit (or superior) should confirm the suspicion of fraud or reject it. If the suspicion is rejected, this should be documented.	
4	Unit	After confirmation of the suspicion by the Head of Unit, the responsible Unit should (in cooperation with the reporting Member) complete a letter in the form of a checklist (see <a href="#">Appendix 4</a> ) <sup>31</sup> and forward it to the CEAD-A Directorate.	
5	CEAD-A	The CEAD-A Directorate will, if necessary in liaison with the Head of Unit, decide whether the suspicion of fraud seems relevant to be sent to OLAF.	
6	CEAD-A	If so, CEAD-A will recommend the Member in charge of relations with OLAF to forward the completed checklist under his mandate to the Director of OLAF.	
7	CEAD-A	CEAD-A will provide a copy of the communication to OLAF to the responsible Director.	
8	Units and OLAF	Once initial contact has been formally made with OLAF by CEAD-A, operational contacts should – <u>if necessary</u> - continue at the level of the ECA/OLAF services. These contacts should focus on clarifying the information which has been passed over to OLAF, but should not generate additional audit work. The relevant ECA service should keep CEAD-A informed of these contacts and consult with CEAD-A if any problems arise.	

<sup>31</sup> This checklist aims at providing a brief description of the suspected fraud and to make references to the information that the auditor was able to copy while being on-the-spot.

**Appendix 4 – Letter (in the form of a checklist) to be completed by Units for cases of suspicions of fraud/corruption arising from the audit work**



**NOTE FOR THE ATTENTION OF  
MR GIOVANNI KESSLER, DIRECTOR GENERAL OF OLAF**

**Case XX/XXXX** *[to be filled in by CEAD-A]* (Please include this number in all correspondence)

**Subject:** Transmission of information related to a possible fraud or corruption or any other illegal activity detrimental to the EU financial interests – arising from the Court’s audit work

<b>I hereby inform you about suspicions of:</b>
<input type="checkbox"/> fraud/corruption or any other illegal activity committed by an external party <i>[specify: grant beneficiary, contractor, tenderer, importer, exporter, authority implementing EU funds, ...]</i> and arising from the Court’s audit work

<b>The facts came to our attention:</b>
<input type="checkbox"/> in the framework of an audit carried out by ... <i>[name of the Court's auditor and his/her unit]</i> on ... <i>[date]</i>
<b>AND (only complete this part if applicable)</b>
<input type="checkbox"/> through an informant <i>[specify the relations between the informant and the suspected entities/persons]</i> who <input type="checkbox"/> is a whistle-blower <sup>32</sup>

<b>The suspicion concerns:</b>	
Audit type	<i>[e.g. DAS 2013 substantive transaction testing, performance audit on ...]</i>
EU funds	<i>[e.g. EU funds managed within the programme ..., for years...]</i>
Country	<i>[indicate country]</i>
Management mode	<i>[e.g. centralised, shared, decentralised, jointly with international organisations]</i>
Identification of the contract/programme/project	<i>[indicate contract/programme/project]</i>
References and dates of call for proposals/call for tender	<i>[indicate references and dates of call for proposals/call for tender]</i>

<sup>32</sup> Court’s [Decision 35-2014](#) requires the Court to specifically inform OLAF whether the information forwarded originates from an informant who has requested that his/her identity is not disclosed by the Court, so that OLAF can take this into account.

<b>Description of the suspected fraud, corruption or illegal activity:</b>	
Topic	<i>[e.g. Artificially created conditions to obtain aid and inflated cost of equipment purchased]</i>
Name and contact information of the suspected entities/persons	<i>[indicate the name and contact information of the suspected entities/persons]</i>
Amounts involved	<i>[provide information such as e.g. Total claimed, national contribution, EU contribution, budgeted public financing]</i>
Manner in which the suspected fraud, corruption or illegal activity was committed	<i>[explain the suspected fraud scheme]</i>

<b>Contact persons in Unit:</b>	
Ms/Mr	<i>[Name ... - title ... - tel. ...- email...]</i>
Ms/Mr	<i>[Name ... - title ... - tel. ...- email...]</i>

I would be grateful if you could assess this information and inform me:

- That you have received the information.
- As soon as possible if OLAF has opened an investigation.
- Of further changes to the investigative status of the case forwarded by the Court.

Please find enclosed documents relevant for the allegations.

Yours sincerely,

*[Signature of the Member in charge of relations with OLAF]*

Cc: Head of Unit OLAF/D.3

List of enclosures *[please indicate, where relevant, how documents have been obtained (e.g. received from ... during an audit)]*

1)

2)

**Appendix 5 – Checklist to be completed by Units for cases of suspicions of fraud/corruption arising from denunciations**



**NOTE FOR THE ATTENTION OF  
MR GIOVANNI KESSLER, DIRECTOR GENERAL OF OLAF**

**Case XX/XXXX** *[to be filled in by CEAD-A]* (Please include this number in all correspondence)

**Subject:** Transmission of information related to a possible fraud or corruption or any other illegal activity detrimental to the EU financial interests – arising from denunciations

<b>I hereby inform you about suspicions of:</b>
<input type="checkbox"/> fraud/corruption or any other illegal activity committed by an external party <i>[specify: grant beneficiary, contractor, tenderer, importer, exporter, authority implementing EU funds, ...]</i> and arising from denunciations

<b>The facts came to our attention:</b>
<input type="checkbox"/> through a complaint/letter sent by ... <i>[name of entity, person, ...]</i> on ... <i>[date]</i> .
<b>AND (only complete this part if applicable)</b>
<input type="checkbox"/> through an informant <i>[specify the relations between the informant and the suspected entities/persons]</i> who is a whistle-blower <sup>33</sup>

<b>The suspicion concerns:</b>	
EU funds	<i>[e.g. EU funds managed within the programme ..., for years...]</i>
Country	<i>[indicate country]</i>
Identification of the contract/programme/project	<i>[indicate contract/programme/project]</i>

<b>Description of the suspected fraud, corruption or illegal activity:</b>	
Topic	<i>[e.g. Artificially created conditions to obtain aid and inflated cost of equipment purchased]</i>

<sup>33</sup> Court's [Decision 35-2014](#) requires the Court to specifically inform OLAF whether the information forwarded originates from an informant who has requested that his/her identity is not disclosed by the Court, so that OLAF can take this into account.

I would be grateful if you could assess this information and inform me:

- That you have received the information.
- As soon as possible if OLAF has opened an investigation.
- Of further changes to the investigative status of the case forwarded by the Court.

Please find enclosed documents relevant for the allegations.

Yours sincerely,

*[Signature of the Member in charge of relations with OLAF]*

Cc: Head of Unit OLAF/D.3

List of enclosures *[please indicate, where relevant, how documents have been obtained (e.g. received by letter)]*

1)

2)