



EUROPEAN
COURT
OF AUDITORS

Directorate of Audit Quality Control

Guideline

How to deal with suspected fraud

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Foreword

1. The purpose of this guideline is to provide guidance to auditors and other ECA officials on their responsibilities when they come across cases of suspected fraud, corruption or any other illegal activity (hereafter ‘suspected fraud’), either arising from audit work or in the form of denunciations from third parties. It reflects the European Union legislative framework, the requirements of auditing standards and the relevant ECA decisions.
2. Do not hesitate to contact the fraud team of the Directorate of Audit Quality Control (DQC) if you have any questions or require advice on the issues covered by this guideline. We also welcome suggestions to improve this guideline to eca-fraud@eca.europa.eu.

Introduction

Cases of suspected fraud arising from audit work

3. While detecting fraud is not a main focus of an audit, professional standards¹ require auditors to carry out specific fraud-related procedures for each audit engagement, in particular to:
 - (a) identify, assess and document the risk of material misstatement due to fraud, and discuss within the audit team;
 - (b) obtain sufficient appropriate evidence regarding the assessed risks, by designing and implementing appropriate responses; and
 - (c) document and respond appropriately to suspected fraud identified during the audit.

For the ECA this applies to all audits, whether compliance, financial or performance.

Cases of suspected fraud arising from denunciations

4. The term denunciation applies to unsolicited documents and information indicating the possibility of fraud, received from officials in the member states or third countries, or from the public. Denunciations can be addressed to our institution via letter or email, or provided by informants directly to ECA officials.

¹ ISA 240 “The auditor’s responsibilities relating to fraud in an audit of financial statements” and ISSAI 1240 practice note to ISA 240

Confidentiality

5. All information concerning cases of suspected fraud (whether arising from the ECA audit work or denunciations) is strictly confidential and therefore once it has been identified or received it must be handled on a need-to-know basis. This means the information should be communicated only to the ECA Members concerned, and to the ECA officials responsible for assessing and handling such information.
6. Whenever information on cases of suspected fraud is transferred, it should only be sent by email when encryption is available, otherwise it should be sent in paper in sealed envelopes and delivered by hand to the recipient (in accordance with DPO guidelines on handling confidential documents).
7. The identity of informants should be protected². In cases information on suspected fraud is provided directly to the audit team or ECA by a whistle-blower, it should be dealt with in accordance with ECA procedure on handling whistleblower data. The ECA Member responsible for relations with OLAF should specifically inform OLAF whether the information forwarded originates from a whistle-blower or an informant who has requested that his/her identity is not disclosed by the ECA, so that OLAF can take this into account. If OLAF asks the ECA to identify the person who provided the information, the ECA will do so only after having obtained his/her agreement.

Framework

8. The primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and its management³, which, in the context of the EU funded activities, comprises the:
 - European Commission (and other institutions and bodies);
 - National, regional and/or local authorities; and
 - Relevant economic operators (beneficiaries).

However, suspicions of fraud should neither be reported to the management of the audited entities, nor to those charged with their governance, but to the European Anti-Fraud Office (OLAF)⁴.

9. OLAF is the only EU body mandated to detect, investigate and stop fraud with EU funds. While it has an individual independent status in its investigative function, OLAF is also part of the European Commission, under

² Regulation (EC) 45/2001 on the protection of individuals with regard to processing of personal data by the Community institutions and bodies and on the free movement of such data

³ ISA 240, "The auditor's responsibilities relating to fraud in an audit of financial statements", para 4.

⁴ 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).

the responsibility of the budget and human resources Commissioner. OLAF is overseen by an independent supervisory committee.

10. OLAF fulfils its mission by:

- Carrying out independent investigations into fraud and corruption involving EU funds;
- Investigating serious misconduct by EU staff and members of the EU Institutions; and
- Supporting the Commission in developing the EU anti-fraud policy.

11. OLAF undertakes internal investigations, inside any EU institution or body established by, or on the basis of, the Treaties, and external investigations, 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 organisations⁴.

12. OLAF does not have the power to prosecute, but passes on the results of its investigations to the judicial authorities of the member state or third country concerned. If OLAF considers it to be more effective, it may decide not to investigate a case itself, but to directly forward it to the member state or third country for investigation by its relevant authorities.

Procedure

Cases of suspected fraud arising from audit work

13. ECA has the obligation to report any suspicions of fraud to OLAF according to ECA’s Decision 20-2017. The table below shows the procedure to be followed when such suspicions arises during audit work. All actions should be undertaken without undue delay.

Step	Who	Action
1	<i>Auditor/ Head of task</i>	<i>As soon as a suspicion of fraud arises, the auditor should, if possible, discuss with the head of task how best to address the issue, and attempt to obtain any relevant information without divulging his/her suspicion to the auditee.</i>
2	<i>Principal Manager/ Director</i>	<i>The Principal Manager or Director should examine the information to determine whether it should be considered for sending, via DQC, to OLAF, and if so, complete the table in the Annex 1 and provide it to the DQC with the supporting documentation. If the suspicion is rejected, this should be documented.</i>
3	<i>DQC</i>	<i>DQC will check the case and advise the ECA Member responsible for relations with OLAF whether it should be sent to OLAF, and if so prepare the relevant correspondence.</i>

4	<i>Member responsible for relations with OLAF</i>	<i>The ECA Member responsible for relations with OLAF will provide the Director-General of OLAF with the details of the suspected fraud, with a copy to the head of the national SAI for those cases arising from the ECA's audit work in member states.</i>
5	<i>DQC</i>	<i>DQC will provide a copy of the communication to OLAF to the Director responsible for the related audit area.</i>
6	<i>Audit Chambers and OLAF</i>	<i>Subsequent operational contacts should take place at the level of the ECA-OLAF services. The relevant ECA service should keep DQC informed about these contacts.</i>
7	<i>DQC</i>	<i>All relevant correspondence from OLAF addressed to the ECA Member responsible for relations with OLAF will be forwarded to the relevant audit chamber for information.</i>

14. Auditors are not responsible for proving that fraud has actually taken place, but just for reporting suspected fraud. Auditors should therefore not perform specific procedures to determine whether fraud has actually taken place, nor attempt to interview suspects or retain or remove original documents. Above all, they 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 should copy any relevant documentation available to them, and make a note of the circumstances in which the suspected fraud was uncovered.

15. When the information is received from an informant, unless the facts are clearly set out in say a covering letter, the ECA official 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 (including envelopes), must be sent to DQC with the documents themselves.

Cases of suspected fraud arising from denunciations

16. After initial processing by ECA-Info of the initial contact with the ECA, including providing a first reply to the complainant, DQC examines the denunciation and advises the ECA Member responsible for relations with OLAF whether it should be forwarded to OLAF, by assessing if:

- EU funds or its financial interests are concerned;
- There is sufficient information to justify transmission of the denunciation to OLAF; or
- If not, there is an alternative addressee (e.g. Commission DG) for the information.

When necessary, DQC will consult the audit chamber when making this assessment.

17. There are three main scenarios that can occur, each of which requires different action:

	Situation	Action
1)	<i>It is clear that EU funds are involved and there are clear indications of potential fraud, corruption or any other illegal activity.</i>	<ul style="list-style-type: none"> ✓ <i>The ECA Member responsible for relations with OLAF forwards a copy of the documents to the Director-General of OLAF, together with a completed version of the table in Annex 1.</i> ✓ <i>DQC informs the Director of the chamber responsible for the related audit area, as well as the complainant (unless anonymous), of the transfer.</i>
2)	<i>It is possible, but not clear, that EU funds are involved and/or potential fraud or corruption is involved.</i>	<ul style="list-style-type: none"> ✓ <i>DQC forwards to the Director of the chamber responsible for the audit area for analysis and feedback within four weeks. The audit chamber considers whether there is sufficient information to justify transmission to OLAF, or if not if it should be sent to an alternative addressee (eg. Commission DG).</i> ✓ <i>After receipt of the chamber's analysis, DQC takes the appropriate actions (e.g. arranging for the forwarding of the case to OLAF, communication with complainant) and informs the Director of the related chamber of this follow-up action.</i>
3)	<i>The complaint concerns allegations of irregularities, bad management etc. involving EU funds but does not concern suspected fraud.</i>	<ul style="list-style-type: none"> ✓ <i>DQC forwards the case to the Director of the chamber responsible for the audit area for information and to be taken into account for future risk analyses.</i> ✓ <i>If relevant, DQC forwards the complaint to the Commission DG concerned, and informs the complainant (unless anonymous).</i>

Documentation

18. All information and communication related to the suspected fraud should be documented on paper only, and kept suitably locked. This approach will be reviewed when the planned encrypted database for suspected fraud cases starts operation.

Reporting

19. Suspicions of fraud should be treated in the same way as normal errors in clearing letters, unless exceptional circumstances dictate otherwise. No reference to fraud should be made in the clearing letters. By analogy, suspicions of fraud should be treated as normal errors (without any reference to fraud) in the ECA's reports.

20. If reference needs to be made to the ECA's treatment of suspected fraud, the following generic text can be used: "When the ECA comes across cases of suspected fraud, these are sent to OLAF for analysis and possible investigation. We do not, for obvious reasons, comment on such cases".

Follow-up

21. OLAF will provide the ECA Member responsible for relations with OLAF with acknowledgement of receipt of each case, and, subsequently, information on changes in the investigative status of cases as they progress. DQC will forward it to the responsible ECA Director.
22. DQC will provide each chamber with an annual update of the status of open cases sent to OLAF, including available information on the outcome of cases closed within the year in question.
23. The ECA Member responsible for relations with OLAF will also prepare an annual report covering the cooperation with OLAF for consideration by the ECA's college as foreseen in the ECA's decision 20-2017.

Ongoing OLAF investigations

24. ECA's Decision 20-2017 requires the auditors, after notifying a case of suspected fraud identified during their audit work, to continue with the related audit task in accordance with the normal practice, unless this risks disrupting the OLAF investigation.
25. If auditors obtain information during the planning phase (through a denunciation or information received from the management authorities), indicating that fraud has taken place within the area/entity/beneficiary to be audited and that an investigation by OLAF is ongoing, the auditors should consider whether the audit should go ahead at this location if this risks disrupting the investigation.
26. Requests for information concerning possible ongoing or prior investigations should be made directly to the management authorities concerned, and only in exceptional circumstances, through DQC, to OLAF. The Member responsible for relations with OLAF may in these cases ask the Director-General of OLAF for more information to allow the auditors to assess the impact on the audit.
27. Notwithstanding the information received from OLAF regarding the existence of ongoing investigations, the ECA remains solely responsible for deciding on the subsequent actions required in the context of its work.

Sources of information

28. The Vademecum on irregularities and fraud, 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. More detailed information in relation to fraud can be found in ISSAI 1240/ISA 240.
29. This section is meant to assist the auditors in their risk assessment in relation to fraud, by providing them with some ideas as to possible sources of information, both internal and external.

30. Internal sources:

- Previous knowledge of the ECA audit field 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, suspected fraud or corruption in the past.
- The characteristics of cases of suspected fraud identified during previous audit work or through denunciations received, including the result of OLAF investigations into cases forwarded to them.
- Auditors with previous experience in the area.

31. External sources:

- Reports by the Commission and/or member states (e.g. yearly “Fight against fraud” report presented by the Commission in cooperation with the member states, DG risk assessments and risk registers, DG anti-fraud strategies, DG annual activity reports).
- The Commission’s information systems (e.g. early warning system in relation to legal entities in ABAC/SAP).
- Reports by the Commission’s IAS and by audit/control units in the operational DGs.
- Reports by OLAF (e.g. annual activity report, fraud risk analysis papers, examples of fraud cases rendered anonymous, results of investigations and other information from press releases available on their internet/intranet, the links can be found under DQC on ECA intranet).

32. The auditors can also acquire knowledge of the audited area/entity by making inquiries of management and others within (e.g. internal audit) and outside the entity to seek their view about the risks of fraud and how they are addressed, and whether they have knowledge of any actual, suspected or alleged fraud affecting the area/entity.

Annex 1 – table to be completed for cases of suspected fraud to be forwarded to OLAF

Source of information	
<input type="checkbox"/> fraud/corruption or any other illegal activity identified through a denunciation from a third party	
Complaint dated	<i>[date]</i>
Date received by ECA	<i>[date]</i>
Sent by	<i>[name of complainant, or 'Anonymous' if not given]</i>
Is the complainant a whistle-blower?	<i>[yes/no]</i>
Does the complainant want to remain anonymous?	<i>[yes/no]</i>
Method of sending	<i>[way the information was received, e.g. post, email or other, such as directly to an ECA auditor]</i>
<input type="checkbox"/> fraud/corruption or any other illegal activity, during ECA audit work	
Audit task	<i>[Reference, title and description of the audit procedure in question, DAS 2017 substantive transaction testing, and performance audit on...]</i>
Chamber and ECA reporting Member	<i>[Lead chamber for the task]</i>
Organisation /Body (-ies) involved	
Location of audit visit	
Auditor(s) involved	
Date of audit visit	
Other information	<i>[e.g. Commission or national authority staff accompanying the visit, other who might be aware of the circumstances of the case]</i>

EU income or spending area affected	
EU income or spending area and programme period	<i>[e.g. EU funds managed under programme X for spending period Y]</i>
Country	<i>[in which suspected fraud took place]</i>

Specific contract/ programme/ project or other identifier	
Other relevant references and dates	<i>[e.g. references and dates of call for proposals/call for tender]</i>
Description of the suspected fraud, corruption or illegal activity	
Act or activity giving rise to suspicion	<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	
Amounts involved (with explanation)	<i>[such as total claimed, national contribution, EU contribution, amount at risk, together with appropriate explanation]</i>
Any other pertinent information	

Contact persons at ECA	
In audit chamber	<i>[name, title, tel., email]</i>
In Directorate of Audit Quality Control	<i>[name, title, tel., email]</i>

List of enclosures: *[supply copies of all available documentation, clearly identifying the source and the location where the originals were found. When evidence was communicated orally, give full details of the interviews]*

Enclosure 1: *[description]*

Enclosure 2: *[description]*

etc