

Combating financial fraud

Manual

Warsaw, date: May 11, 2023

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1. The purpose and scope of the manual.

We have developed a manual, “Combating Financial Fraud,” to support actions that aim to prevent irregularities related to frauds and conflict of interests within the programme¹. Anti-fraud procedures are an important element in preventing the occurrence of irregular behaviour. The consequences of such behaviour can adversely affect the implementation of projects as well as the programme as a whole. Safeguarding the EU budget against the negative consequences of the occurrence of fraud is a requirement imposed by the European Commission on the institutions that implement the programmes. Each institution adopts its own procedures and anti-fraud measures appropriate to its role and situation. This manual therefore provides a set of comments and recommendations to consider when developing their own procedures and policies for preventing and combating fraud and conflict of interests.

The manual informs us:

- a. what is irregularity and fraud,
- b. what the most common forms of fraud are and how to detect them,
- c. what fraud prevention policies we have put in place for the programme, including in particular:
 - prevention of irregularities and fraud in public procurement,
 - implementation of anti-corruption procedures in the programme institutions,
 - avoidance of conflicts of interest,
- d. what are the sources of information on irregularities and fraud,
- e. How to deal with information received about possible fraud,
- f. how to report information on irregularities or fraud.

The manual is addressed to all institutions that implement the programme and carry out projects, i.e. the MA, the JS, the Regional Contact Points, the controllers and the beneficiaries. We encourage the staff of these institutions to familiarise themselves with the manual and to apply its principle adopted in the implementation of EU funds:

¹ Article 74 section 1 (b) and (c) of the General Regulation

ZERO TOLERANCE FOR FRAUD.

The information, guidance, comments and recommendations contained in the manual serve as a means for institutions to implement correct anti-fraud mechanisms and for the staff of these institutions to improve their knowledge of preventing and detecting irregularities.

The manual is published on the programme website and applies to the 2021-2027 programming period.

2. Glossary of abbreviations and terms

Abbreviations used in the manual:

1. **AA** – the audit authority, whose function in the programme is performed by the Department of Audit of Public Funds in the Ministry of Finance of the Republic of Poland,
2. **NA** – national authority,
3. **MA** – managing authority, whose function is performed by the minister in charge of regional development,
4. **EC** – European Commission,
5. **Controller** – the controller referred to in Article 46(3) of the Interreg Regulation,
6. **OLAF** – European Anti-Fraud Office,
7. **Programme** – Cross-border cooperation programmes: Interreg Programme Poland – Slovakia 2021-2027, Interreg Programme Poland – Saxony 2021-2027, Interreg Programme South Baltic 2021-2027 and Interreg Next Programme Poland – Ukraine 2021-2027,
8. **Financial Regulation** – Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018. on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014 and (EU) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ U. EU 2018. L193 of 30.07.2018, p. 1),
9. **Interreg Regulation** – Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions concerning the European territorial cooperation objective (Interreg) supported by the European Regional Development Fund and

external funding instruments (Official Journal of the EU L 231 of 30.06.2021). (OJ EU L 231, 30.06.2021)

10. **General Regulation** – Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021. laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Fair Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and the financial rules for these Funds and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Financial Support Facility for Border Management and Visa Policy (Official Journal of the EU 2021 L 231 of 30.06.2021, as amended), (OJ EU 2021. L 231 of 30.06.2021, as amended),
11. **CST2021** – a central data communication system in which data is recorded and stored electronically, in accordance with Article 72(1)(e) of the General Regulation,
12. **EU** – European Union,
13. **JS** – Joint Secretariat as referred to in Article 46(2) of the Interreg Regulation,
14. **EC Guidelines** – Guidance for Member States and programme implementing authorities 'Fraud risk assessment and effective and proportionate anti-fraud measures' (EGESIF_14-0021-00 16/06/2014),
15. **Guidance on conflicts of interest** – Commission notice "Guidance on avoiding and managing conflicts of interest under the Financial Regulation" (OJ. U. EU 2021. C121 of 9.04.2021).

Terms used in the manual:

1. **Beneficiary** – an entity or person who receives funding in a project; for the purposes of the manual, beneficiary is understood to mean lead partners, project partners and beneficiaries of Small Project Fund projects.
2. **Irregularity** – in accordance with Article 2(31) of the General Regulation – any infringement of a law which has or may have a harmful effect on the Union budget. This infringement may result from an act or omission by an entity or a person.
3. **Fraud** – any intentional act or omission that involves:

- the use or presentation of false, inaccurate or incomplete statements or documents which have as their object the misappropriation or wrongful retention of funds from the EU budget,
- non-disclosure of information in breach of a specific duty, for the same purpose,
- misuse of a legitimately obtained advantage for the same purpose,
- the misuse of EU budget funds for purposes other than those for which they were originally allocated.²

Irregularity is a broader concept than fraud. An irregularity is involved when an unlawful act/ omission is knowing and intentional.

In all Member States (except Denmark), fraud that harms the EU's financial interests is punishable as a criminal offence. It is also a criminal offence to incite and assist in the commission of fraud³.

The most common frauds to the detriment of the EU budget are: bid-rigging, conflict of interests, corruption, falsification of documents. Below is an explanation of these terms. We have devoted a separate chapter of the Manual to conflict of interests, as the EC places particular emphasis on the need to manage the risk of conflict of interests when implementing the EU budget.

4. **Collusive bidding** – is an agreement which has the object or effect of eliminating, restricting or otherwise distorting competition in the market.
5. **Conflict of interests** – a situation where an impartial and objective decision relating to the spending of EU funds is compromised due to the personal interest of the one making the decision⁴. Conflict of interests in public procurement procedures encompasses any situation where the impartiality and independence of the person who makes a decision in relation to a procedure is compromised because of a personal interest.⁵ A personal

² Article 1 of the Convention drawn up on the basis of Article K.3 of the Treaty on the protection of the European Communities' financial interests

³ [Directive \(EU\) 2017/1371 – criminal law protection of EU financial interests](#)

⁴ Article 61 of the Financial Regulation

⁵ Article 24 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, repealing Directive 2004/18/EC U. EU 2014. L 94 of 28.03.2014)

interest may include family considerations, emotional considerations, political sympathies or ties to any country, economic or any other interest.

For information on the prevention of conflicts of interest, see section 4.5.

6. **Corruption** – corruption is the promising, offering, giving, demanding, accepting by any person, directly or indirectly, any undue advantage, whether financial, personal or otherwise, to himself or any other person, or accepting the offer or promise of such an advantage in return for acting or failing to act in the exercise of a public function or in the course of business⁶ .

Corruption is a punishable offence under Polish criminal law (Articles 228, 229, 230, 231, 271, 296, 299, 302, 305 of the Penal Code, t. j. Dz. U. of 2022, item 11 38, as amended). In the programme partner countries, the relevant national legislation also applies.

For information on anti-corruption, see chapter 4.6.

7. **Forgery of documents** – the alteration, falsification, use of a forged document or official certification of untruths as to a circumstance of legal significance by a public official or other person authorised to issue a document.

For information on the prevention of document forgery, see section 4.7.

8. **Law enforcement authorities** – authorities that detect crimes and prosecute their perpetrators in the course of investigations and prosecutions. Law enforcement authorities in Poland are in particular:

- The prosecution,
- Police,
- Military Police,
- Central Anti-Corruption Bureau,
- Internal Security Agency,
- Border Guard,
- Customs and Fiscal Service.

⁶ Article 1(3a) of the Act of 9 June 2006 on the Central Anti-Corruption Bureau (Journal of Laws of 2022, item 1900)

In the programme partner countries, the investigative bodies are defined by national legislation.

3. Prevention of fraud

In the manual, we have described the activities that serve to prevent fraud in accordance with the so-called **anti-fraud cycle** . The cycle consists of four elements:

- **prevention,**
- **detection,**
- **correcting,**
- **communication of fraud.**

4. Prevention

The first element of the cycle is prevention. At its core is a clear and strong message from the institution of its disagreement with irregularities and wrongdoing. Prevention is important because it is easier to prevent negative phenomena than to repair a damaged reputation.

Prevention includes action in the areas of:

- **culture of ethics,**
- **policies, responsibilities, training, signal reporting mechanisms,**
- **internal control system,**
- **fraud risk analysis.**

The meaning and structure of these activities are illustrated in the diagram below, which we have developed on the basis of EC guidelines.



4.1. Culture of ethics

A culture of ethics is the basis for reducing the risk of any possible fraud. It relies on the development of desirable attitudes among employees in institutions.

The mechanisms that contribute to the development of a culture of ethics in the programme are:

- **mission,**
- **signal from above,**
- **code of conduct.**

Mission:

The mission is a guiding idea expressed in simple terms. In terms of the fight against programme fraud, as Managing Authority we have adopted the following mission statement:

We are committed to maintaining the highest legal and ethical standards and upholding the principles of integrity, objectivity, accountability and honesty by all participants involved in the programme.

We communicate our mission in programme documents, at programme meetings and through direct messages to programme and project bodies.

Signal from above:

The signal from above is a verbal or written communication from the highest level of all institutions that implement the programme and projects that the highest standards of ethics are expected from staff and beneficiaries. This message can be oral (e.g. during face-to-face contacts or meetings) and written (in electronic correspondence or in information posted on internal systems such as the intranet). At the same time, those in charge of the institution should respond to warning signals that may emerge with regard to fraud in the programme.

The benefits of involving the institution's managers are:

- minimising the risk of fraud,
- increase staff motivation to apply standards and regulations,

- building the image of an institution that is transparent, professional and at the service of citizens,
- spreading the word about the workers' steadfast stance against fraud,
- increase citizens' trust in the state.


Code of Conduct:

The Code of Conduct is a clear code of ethics to be followed by all employees of the institutions in the programme. The code of conduct indicates desirable patterns of behaviour and the application of the following principles:

- **Rule of law** – means performing duties with the utmost care and observing the law;
- **Principle of integrity** – means the conscientious performance of duties using knowledge and skills, based on correct findings, and the use of information solely for official purposes and in accordance with its intended use;
- **the principle of impartiality** – means the equal treatment of all applicants, beneficiaries and other interested parties without any prejudice, e.g. on grounds of colour, gender, age, marital status, ethnic origin, political beliefs, language, religion, sexual orientation, disability, reputation, material status or social standing;
- **the principle of avoiding conflict of interests** – means not accepting any obligation arising from kinship, acquaintance or affiliation which is incompatible with official duties. In the event of a conflict of interests, the person concerned is obliged to declare it to his/her superior and to abstain from any action that may give rise to suspicion of bias or self-interest;
- **the principle of professionalism** – which implies attention to the systematic improvement of professional qualifications, a good knowledge of EU and national legislation, the ability to justify decisions and conduct oneself in a substantive manner, as well as impeccable cooperation inside and outside the institution;
- **the principle of openness** – means carrying out tasks according to procedures and informing interested parties of the course of action, subject to the protection of legally protected information;

- **the principle of accountability** – this means a willingness to make difficult decisions and to take responsibility for one's own actions, to share one's own experience and knowledge, to seek to strengthen the credibility of the institution.

Individual institutions may have more specific codes of ethics that govern the fight against corruption and fraud.

 **RECOMMENDATION:** Incorporate in your institution the principles of a culture of ethics and code of conduct described in the manual.


4.2. Policies, responsibilities, training, mechanisms for reporting signals

4.2.1. Anti-corruption policy

In order to foster a culture of ethics in fraud prevention, it is important to adopt – within the programme institutions – an anti-corruption policy that includes, among other:

- preventive/anti-corruption procedures that guarantee the transparency of the activities of these institutions, including mechanisms to address cases of conflict of interests,
- description of the rules for handling information on possible fraud,
- mechanisms in place to prevent the misuse of public funds, including in the award of public contracts.

For example, in the Ministry responsible for regional development of the Republic of Poland, where the Programme MA is located, an Anti-Corruption Policy was adopted by Order of the Director General on 21 September 2020. The document describes, in particular, how to prevent conflicts of interest, how to deal with offers of financial or personal benefits and gifts, how to report corrupt situations, how to deal with external signals of wrongdoing, and the scope of employee responsibility.

 **RECOMMENDATION:** Consider putting in place conflict of interests and fraud prevention procedures at your institution that will regulate :

- the way in which employees behave in situations of risk of corruption,
- the type of irregularities to be reported,

- way of reporting,
- the person/authority to whom the irregularity should be reported,
- protection of personal data,
- whistleblower protection measures,
- the way in which applications will be examined,
- consequences for frauds,
- a declaration by staff members that they are aware of, and undertake to comply with, the rules, policies and procedures established within the institution.

4.2.2. Division of responsibilities

An important element of the culture of ethics adopted in the programme is the principle that the functions and tasks performed by the institutions and their staff are clearly defined and separated. In the process of spending European funds, each actor has clearly defined competences and each person knows his or her duties and responsibilities.

Division of tasks at programme level

We have consolidated the division of tasks of the institutions that implement the programme in the following documents:

1. Description of the Management and Control System – the document describes the competences of the various institutions implementing the programme: MA, NA, JS, controllers.
2. Programme Implementation Agreements, where provided for between individual Member States acting as MA and NA, or with third countries.
3. Agreement on the establishment of the JS – in accordance with Article 46(2) of the Interreg Regulation, we have set up programme JSs. We have concluded an Agreement to entrust the Centre for European Projects with tasks related to the implementation of the Interreg 2021-2027 programmes. We have concluded one Agreement to set up and ensure the functioning of the JS for four Interreg programmes.

4. Agreements on the delegation of first-level control – on the Polish side of the support, the minister responsible for regional development signed agreements on the delegation of control activities to individual voivodeship offices on the basis of Article 46 of the Interreg Regulation.

These documents regulate in detail the separation of functions of the various institutions, their tasks and responsibilities.


Division of tasks at institutional level

If an institution has more than one function, the separation of tasks related to these functions is particularly important to avoid conflicts of competence/interest.

Examples:

- If the MA performs at the same time the function of a beneficiary of the project, we ensure an appropriate separation of tasks in the organisational structure and in the scopes of responsibilities of the persons responsible for making decisions related to the MA function and the beneficiary function.
- If an employee of an institution decides on the selection of projects as a member or deputy member of the MC, he/she does not perform tasks related to the evaluation or control of projects.

In accordance with the guidelines on conflicts of interest, the implementing instructions of the MA, controllers, JS provide for the separation of functions of persons who perform tasks related to the implementation of the programme and impose an obligation on the employees of these institutions to make a declaration on avoidance of conflict of interests in the performance of their duties.

 **RECOMMENDATION:** Remember to maintain a clear division of tasks for staff formally involved in project activities. Consider making a declaration of interest (a.k.a. declaration of impartiality) mandatory as a tool to help manage the risk of conflict of interests.

Sensitive posts


These are positions related to tasks whose inadequate performance can have a negative impact on the functioning of the programme. Consequently, it may lead to the appearance of fraud. Improper performance of the duties of a sensitive position may include corrupt behaviour or the occurrence of a conflict of interests.

We have identified sensitive positions that are related to the performance of tasks in the following areas of programme implementation:

1. evaluation and selection of projects for funding,
2. concluding, annexing and terminating funding agreements,
3. expenditure verification,
4. carrying out controls,
5. recovery of funds from the beneficiary,
6. certification of expenditure to the EC,
7. administration of the ICT system,
8. selection of contractors in public procurement procedures by beneficiaries.

The controls we use in the programme to reduce the risk of fraud, including corruption and conflict of interests, include:

1. signing a declaration of impartiality if the process requires it,
2. applying the "two pairs of eyes" principle, i.e. ensuring that a process/document is accepted or approved by at least two people if the process requires it,
3. reviewing and approving tasks and work outputs by the supervisor,
4. division of tasks and separation of functions,
5. awareness-raising training for employees.

 **RECOMMENDATION:** Consider carrying out an analysis in the institution of the risks of fraud, especially corruption and conflict of interests in the various positions that are related to the implementation of the programme and projects. If you identify sensitive positions, control that adequate controls are in place in the procedures in the internal control system (see section 4.3 page 17).

4.2.3. Training and awareness-raising

Training is another important element of building a culture of ethics in the programme's institutions.

What is the role of training?

- They fulfil the role of building ethical awareness among employees.
- Prevent employees from narrowing or misdefining fraud phenomena, e.g. corruption = bribery or whistleblower =snitch, squealer.

Building ethical awareness includes the following activities:

- training staff on how to prevent the occurrence of fraud, including corruption and conflict of interests, how to respond when such incidents occur and how to apply solutions appropriate to the situation,
- making a catalogue of studies, publications, e-learning courses⁷ on fraud prevention available on the programme website,
- putting the subject of ethics and anti-fraud on the agenda of working group meetings, conferences organised for the institutions of the implementation system, training for project beneficiaries,
- analysing information on warning signs and disseminating information on cases of fraud in programmes co-financed by EU funds,
- constant exchange of information with other national and international programmes through available channels, e.g. IMS Signals, Interact and Tesim meetings, e-mail, internal information portals, electronic newsletters, etc.



RECOMMENDATIONS: Provide staff with training on:

- code of ethics,

⁷ For example, on the Polish side of the programme at <https://www.cba.gov.pl/pl/antykorupc/4700,Antykorupcja.html> there are publications available on the fight against fraud and corruption. On the website <https://szkolenia-antykorupcyjne.edu.pl/> there is an e-learning platform where you can receive free training on anti-corruption.

- undertaking activities that build ethical awareness,
- recognising signals of fraud,
- the treatment of suspected fraud.

👍 Enhance your knowledge of ethics and anti-fraud by:

- participation in training, meetings, workshops,
- analysis of fraud information,
- reading documents and publications.

4.2.4. Signal reporting mechanisms

In the programme, as an important part of the culture of ethics, we have implemented mechanisms for obtaining information on fraud and mechanisms for reporting signals. We have described these in Chapter 7.

4.3. Internal control system

In order to ensure the efficient management of European funds, we have implemented an internal control system in the programme. This system complies with EU law and national regulations in terms of:

- application of procedures for the organisation of such internal control systems,
- project selection,
- have appropriate measures in place to prevent, detect, mitigate and respond to fraud, including conflicts of interest,
- carry out controls and audits.

The internal control system is the rules, procedures and controls that we apply in the programme to manage risks efficiently and to ensure the effective achievement of objectives. The system is based on the clearly assigned tasks of the institution and the responsibilities of individual staff members.

The programme's internal control system includes the following controls:

1. day-to-day control within the institution (internal audit, supervision and verification of the implementation of tasks by superiors, verification of documents based on the "two pairs of eyes" principle),
2. project controls,
3. carrying out controls based on risk analyses,
4. the MA's system controls, which include an assessment of the quality of the work of the JS_s and controllers in Poland,
5. audits, which cover the implementation of the tasks of the MA, JS and controllers throughout the programme,
6. procedures for corrective action when deficiencies and irregularities are identified,
7. separation of functions in the institutions that implement the programme,
8. providing an audit trail, i.e. ensuring that every process of spending the EU budget is fully and correctly documented,
9. ongoing analysis of data collected in the ICT system,
10. identifying sensitive posts and putting in place controls to address the risks associated with them,
11. self-assessment of risks – both the risks of fraud against the EU budget and the risks related to programme implementation as part of the management control of the institutions that implement the programme,
12. monitoring the implementation of external audit findings in the programme,
13. a system for reporting and handling information on suspected fraud.

Examples of weaknesses in the internal control system that may favour the occurrence of fraud in the institution include deficiencies related to:

1. supervision and review,
2. separation of duties,
3. a multi-level document approval system, including management approval,
4. internal audit and system controls.

👍 **Recommendation:** Consider reviewing the functioning of your institution's internal control **system** and implementing control **mechanisms** if the listed deficiencies are identified.

4.4. Fraud risk analysis to the detriment of the EU budget

A key element of the internal control system is risk management. In order to strengthen the protection of the EU budget in the programme we carry out an analysis of the fraud risks that could involve damage to the EU budget.

Who carries out the risk analysis?

We have set up a risk self-assessment team to carry out the risk analysis. We may ask the NA and the JS for input into the risk analysis. Involving these institutions will help us to correctly identify and assess risks. This is important in view of the constant changes in the perspective of programme implementation and the implementation of individual projects. Changes may relate to external circumstances of a legislative, economic or political nature. For example, as a consequence of the COVID19 virus pandemic and Russia's aggression against Ukraine, there have been extraordinary risks of irregularities and fraud.

The team's responsibilities – in addition to the self-assessment of risks – include:

1. keeping a register of detected/reported fraud,
2. indicating areas that should be covered by a systemic audit, if such a need arises from the analyses,
3. review of mechanisms for reporting fraud,
4. making recommendations on the subject matter and scope of training and other information activities.

How often is a risk analysis carried out?

We carry out a risk analysis (a.k.a. a risk self-assessment), as a general rule, once a year. In justified cases, where the level of risk is very low and if we do not identify any cases of attempted fraud in a given year, we may carry out a risk analysis once every two years. If new risks emerge in the programme, we may carry out an analysis sooner than one year after the previous self-assessment.

Methodology

Risk analysis consists of:

1. identifying the risk of a particular type of fraud and determining the likelihood of that risk occurring and its impact on programme implementation,
2. identifying the programme's risk management instruments,
3. assessing the effectiveness of risk management instruments.

The team uses a self-assessment tool developed by the EC to analyse the risks. This is Annex 1 of the Commission's guidelines.

The self-assessment tool identifies the risk of fraud at all stages of programme implementation, i.e. at stages:

1. call for applications for funding,
2. implementation of projects by beneficiaries, including in particular the award of public procurement contracts,
3. reimbursement of expenses/payment of an advance,
4. procurement by the programme authorities (direct procurement).

In the risk analysis process, the self-assessment team considers in particular:

- reports on audits and external audits carried out during the period under review,
- results of own controls,
- reports of fraud,
- the results of the risk analysis provided by the programme institutions, which are obliged to carry out risk analysis at their level.

Once the risk analysis is completed, we communicate the findings and any recommendations from this analysis to the JS, NA and controllers so that the staff of these institutions are aware of the findings.

4.5. Addressing conflicts of interest

We strive to ensure that all decisions related to the implementation of the programme are taken in a transparent, objective and impartial manner, ensuring equal treatment of beneficiaries. However, situations may arise where an employee's impartiality and objectivity may be compromised by a conflict of interests.

What is a conflict of interests?

A conflict of interests exists where the impartial and objective exercise of the functions of a body or person authorised to act financially is compromised by any personal interest. This means that a conflict of interests will occur when a member of staff who makes a decision related to the disbursement of EU funds, or who participates in the preparation of that decision, has or may have a personal interest in the way the matter is handled. This could be family, emotional, political sympathies or links to any country or economic interest. A conflict arises not only when a member of staff acts in a personal interest in a matter, but also when there is a suspicion that the personal interest will outweigh the concern for the public interest (a so-called perceived conflict of interests).

Taking any action which may give rise to a conflict of interests to the detriment of the Union is prohibited⁸.

This prohibition:

- includes all those who are authorised to act financially in the implementation of the EU budget and those who, for example, decide on the selection of projects or contractors, prepare, sign or approve documents relating to expenditure (e.g. invoices, checklists or audit information),
- concerns preparatory activities, evaluation of grant applications, project selection, audit and control, and project implementation, e.g. for the selection of contractors in public procurement.

⚠ PLEASE NOTE: Conflict of interests should not be equated with corruption. Corruption usually requires an agreement between at least two partners and some kind of benefit. A conflict of interests arises when a person has the opportunity to put his or her private interest before his or her professional obligations. The person concerned does not necessarily benefit.


4.5. Prevention of conflicts of interest

Actions to prevent conflicts of interest include:

1. applying the "two pairs of eyes" principle,

⁸ Article 61 of the Financial Regulation

2. requiring employees to inform their immediate supervisor without delay of the possibility of a conflict of interests,
3. submitting of declarations of interest by members of the institution's staff in the performance of their duties, where the process so requires,
4. submitting other declarations resulting from national law, e.g. on the Polish side of the programme, it is obligatory to submit declarations referred to in Article 56 of the Public Procurement Law and to exclude persons with a conflict of interests from conducting the public procurement procedure,
5. ensuring separation of functions within the institution,
6. raising staff awareness of conflict of interests prevention by attending training courses, meetings, conferences, working groups or reading publications, documents or materials,
7. issuing a code of conduct that will apply to all aspects of work, especially in areas involving dealings with the public, financial resources or decision-making where fair treatment of all actors is essential.

 **RECOMMENDATION:** Review whether you have already introduced measures in your institution to prevent conflict of interests.

Declarations of interest

The mechanism for preventing conflicts of interest at each stage of programme implementation is the submission of declarations of interest (in other words: ~~declarations of~~ declarations of impartiality) by persons who perform tasks related to the disbursement of European funds.

Who submits the declaration of interest and when?

If there is a requirement in the institution to make a statement, it should be done immediately to protect the process and the person concerned.

We sign declarations of interest when we know the actors involved in a process e.g.:

- persons who evaluate a grant application submit a declaration before the evaluation begins,

- MC members submit a statement before the commencement of the committee meeting,
- the members of the boards of appeal which hear appeals by applicants against the results of project assessment shall submit statement before the beginning of the deliberations,
- the members of the tender committee in public contracts submit a statement after reading the list of those who have submitted a tender,
- the staff of the JSS, controllers, members of teams carrying out systemic controls, persons approving expenditure to the EC and auditors submit a declaration of impartiality towards beneficiaries affected by control tasks performed by these staff members.

Scope of the declaration of interests

The declaration of interest takes into account:

- definition of conflict of interests,
- reference to the requirements which apply to the person submitting the declaration with regard to conflicts of interest (e.g. code of conduct or ethics, rules of procedure),
- penalties for submitting a false declaration.

The person who submits the declaration declares:

- whether, to its knowledge, it has an apparent, potential or actual conflict of interests in relation to a particular process (e.g. a procurement procedure),
- whether there are circumstances that could place it in an apparent, potential or actual conflict of interests in the near future,
- that he or she undertakes to exclude from further action and to report immediately any potential conflict of interests should any circumstances arise which may lead to such a conclusion.

The existence of a conflict of interests is not in itself unlawful. It is against the law to take part in a process when there is a conflict of interests.



RECOMMENDATIONS:

- Disclose any potential conflict of interests before starting the process in question!
- Analyse the circumstances and decide whether there is indeed a conflict of interests!
- Take appropriate measures to prevent conflicts of interest!

Verification of declarations of interest

In the programme, we have introduced a mechanism for verifying declarations of interest and investigating the links between people and entities involved in the disbursement of European funds.

Who verifies declarations of interest submitted in the programme?

- The JS verifies declarations of interest of the MC members and external experts who evaluate the grant applications.
- The person who carries out the system control verifies declarations of interest of the members of the appeal committees which consider the appeals of the applicants against the results of the project evaluation.
- The person who carries out the system control or system audit verifies declarations of interest submitted by JS staff and controllers.
- The AA verifies declarations of interest of the members of the system control teams and the persons approving expenditure to the EC.
- When verifying expenditure related to a public contract, the controllers verify the declarations of interest submitted by the contracting authority's employees when awarding that contract.

We verify declarations on the basis of, among other things, available databases, registers (e.g. KRS), data collected in an ICT system.

On the Polish side of the programme, we use the SKANER application, a special functionality of the CST2021, to verify the links.


What are the consequences of declaring a conflict of interests?

The mere appearance of a conflict of interests does not constitute fraud. In contrast, it is an fraud to fail to notify a conflict of interests to a superior and not to exclude from performing their tasks the persons in relation to whom the conflict exists.

 **RECOMMENDATION:**

- If you identify a risk of a conflict of interests when performing tasks, inform your supervisor.
- The supervisor shall confirm in writing whether a conflict of interests actually exists.
- If there is a conflict of interests, the supervisor shall ensure that the person concerned excludes himself/herself from further action.

The institution entitled to verify the links will analyse – in the context of the law, the programme rules and the applicable procedure – the consequences of the identification of any conflict of interests that has not been declared.

 **NOTE:** The consequences of detecting an undeclared conflict of interests may be:

- annul the selection of the project for funding and re-submit it for evaluation if the procedures so require,
- cancellation of the public procurement procedure,
- cancellation of contracts/agreements,
- suspension of payments,
- imposing a financial correction,
- recovery of funds paid out,
- reporting the offence of making false statements.


Conflict of interests in public procurement

A conflict of interests in public procurement occurs when a person who acts on behalf of a contracting authority has, directly or indirectly, a personal interest that may compromise his


or her impartiality and independence in connection with a public procurement procedure.

This applies to persons who:


- participate in the conduct of the public procurement procedure,
- may affect the outcome of these proceedings.⁹

 **RECOMMENDATION:** To ensure equal treatment of economic operators and no distortion of competition during the public procurement procedure:

- prevent conflicts of interest,
- recognise conflicts of interest,
- implement measures to remove the conflict of interests and its consequences!

 **RECOMMENDATION:** When analysing what steps to take to effectively address conflicts of interest and their effects, consider:

- size of organisation,
- value of the project implemented,
- risk of exposure to a conflict of interests situation.

 **RECOMMENDATION:** Consider putting in place controls to regulate the management of conflicts of interest, e.g.:

- submitting a declaration of impartiality in the performance of their duties,
- providing training and other forms of awareness-raising for staff on conflicts of interest,
- rules for dealing with conflicts of interest,
- liability for intentional concealment of information or unethical conduct involving a conflict of interests.

⁹ Article 24 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, repealing Directive 2004/18/EC

The Polish Public Procurement Law imposes an obligation on the contracting authority to exclude from the public procurement procedure persons in respect of whom there are doubts as to their impartiality¹⁰.

⚠ NOTE: In projects co-financed from European funds, eligible expenditure must be incurred in compliance with the principles of fair competition, efficiency, openness, transparency and equal treatment of contractors. The controller shall verify the expenditure incurred for the implementation of the projects, including the correctness of awarding the public procurement contract. The controller shall consider an expenditure as ineligible if he/she finds links which raise doubts concerning compliance with the abovementioned rules and the beneficiary does not provide an explanation clearly confirming compliance with these rules.

Examples of the occurrence of conflicts of interest in project procurement:


- 1) A member of the tender committee finds that a company, on whose bodies his or her spouse (or other relative or affinity) sits, is competing for a public contract – there is a conflict of interests, the member of the tender committee should disengage from the committee and be replaced by another person.
- 2) The person who prepared the procurement in the transport department of the institution has moved to the procurement department and has been appointed to the tender committee – there is a conflict of interests, this person should disengage from the committee and be replaced by another person.
- 3) In a public contract organised in a small town, one bid was received from the only supplier of the services/goods in question in the area. The head of the contracting authority finds that the tender was submitted by a company on whose bodies his father-in-law (or other relative or affinity) sits. The manager excludes himself from the decision on the selection of the contractor. The tender committee shall certify in the documents that the procurement has been carried out in accordance with the requirements of the law and that the selection decision has not been affected by a conflict of interests.

¹⁰ article 56 in conjunction with Article 17 of the Public Procurement Law, Journal of Laws Article 56 in conjunction with Article 17 of the Public Procurement Law, Journal of Laws 2022, item 1710, as amended.

- 4) The contracting authority's manager announced the public contract and appointed a tender committee. He then submitted a bid in the procedure himself. The committee selected his bid as the most advantageous one. Subsequently, the head of the contracting authority, acting as contractor (natural person) for this contract, concluded a service contract with his institution. At the conclusion of the contract, the institution was represented by the manager's mother acting as a member of the supervisory board. The JS, in the course of verifying the expenditure, found a conflict of interests and declared all the expenditure related to this contract ineligible.

Combating conflicts of **interests** in public procurement

Each situation of occurrence or suspected conflict of interests should be analysed individually.

 **RECOMMENDATION:** If you have identified a conflict of interests, implement the following steps depending on the stage of the proceedings.

- Discuss the facts with the person affected by the conflict of interests to clarify the situation.
- Exclude a person with a conflict of interests from the procurement procedure, regardless of whether that person is an employee or an external expert. Exclude an employee or expert from the procedure not only where there is an actual conflict of interests, but also in any case where you have doubts about the impartiality of the person concerned. In exceptional cases, it may not be possible to exclude an employee or expert due to lack of staff resources. Then ensure that the procurement decision is transparent. Set limits on the employee's/expert's contribution to the proceedings and ensure that the final decision is objective and impartial and ensures equal treatment of contractors.
- Revise the division of duties and responsibilities of staff.
- Cancel the procurement procedure if you have identified a conflict of interests at the end of the procedure.

👍 **NOTE:** If a conflict of interests is found in public procurement, the EC orders a financial correction of 100%, i.e. at the highest level without the possibility of reducing this correction. This means that if an auditor, in the course of verifying the expenditure of a public procurement, finds a conflict of interests, the entire expenditure will be deemed ineligible.

4.6. Anti-corruption

Corruption occurs whenever someone uses his or her function or position to satisfy someone else's expectations and in return receives some undue advantage. This is particularly the case for public officials and those who make decisions related to the spending of public funds.

A pecuniary/material/financial benefit consists of things, benefits, property rights. It can be, for example, a donation, a release from debt, the conclusion of a favourable contract, the winning of a tender, the granting of a loan on favourable terms. These are goods whose value can be expressed in money.

A personal benefit, on the other hand, is intangible in nature, satisfying intangible needs. It can be, for example, a promotion or reduction of professional duties, a national decoration, admission to an internship or being sent on a foreign scholarship.

The most common corrupt activities:

- bribery (venality); there are two varieties of it in the criminal codes: passive – receiving an advantage and active – offering an advantage to someone,
- the use of budgetary resources and public assets for private purposes or personal gain,
- paid patronage,
- irregularities concerning the award of public contracts, the conclusion of contracts, the award of concessions or court decisions,
- evasion of tax or customs obligations,
- the deliberate unlawful disposal of state budget funds and assets that are public assets,

- favouritism.

 **RECOMMENDATION:**

- Learn about forms of corruption!
- Try to recognise the premises of corruption!
- Learn and apply the correct rules of behaviour in a corrupt situation!

 **RECOMMENDATIONS:**

- Consider introducing an anti-corruption policy that includes:
 - mechanisms for reporting irregularities and fraud,
 - procedures on how to deal with an employee when receiving a corrupt proposal,
 - rules for accepting gifts.
- Promote anti-corruption measures among your employees!
- Provide employees with ethics and anti-corruption training!
- Expand your knowledge of the fight against corruption!

4.7. Combating document forgery

Falsification of documents is the most common fraud against the EU budget, so the risk of this type of crime occurring in projects is very high. This risk is present at every stage of programme implementation. It may concern submitted documentation:

- when applying for grants,
- for payment claims,
- during the public procurement procedure and during the performance of the contract.

Therefore, all those who verify the documents submitted by applicants, beneficiaries or contractors pay particular attention to possible signs of falsification and know how to react to them.

Falsification of documents includes, but is not limited to:

- submitting of false declarations, e.g. that they are not in arrears with due taxes,

- submitting of false documents confirming the implementation of the project activity, e.g. a false list of participants in a training course,
- forging a signature on a document,
- document alteration, e.g. of numbers, figures or dates on an invoice.

👍 **RECOMMENDATIONS:**

- Take action to prevent and detect document forgery!
- Provide your staff with training on how to identify forged documents!
- Consider introducing **checklists** for documents verification and procedures for dealing with forgery.

👍 **RECOMMENDATIONS:**

- Know and apply the internal regulations that relate to documents control, including **controllists** and procedures for dealing with identified cases of unreliable or falsified documents!
- Increase your knowledge on the identification of forged documents by attending training courses, reading publications, e.g. the manual issued by OLAF on "Detecting forged documents – a practical guide for managing authorities"!

5. Fraud detection

Preventive techniques are a firewall against any fraud. However, they do not provide absolute assurance that fraud will not occur. That is why we have established a management and control system in the programme, as well as mechanisms to help detect fraud.

Such mechanisms include:

- system controls and project controls,
- operations and system audits,
- mechanisms to support the management and control system.

5.1. Controls

In the programme, we carry out the following controls:

- 1) system controls, which verify the correct implementation of the programme tasks entrusted;
- 2) project/expenditure control, which consist in verifying the compliance of expenditure with legal provisions, the programme, national and EU rules and the project co-financing agreement or decision, and include in particular:
 - a) verification of the payment claim submitted by the beneficiary,
 - b) on-the-spot controls at the project site or at the premises of the controlled entity,
 - c) controls on compliance with the rules on State aid and the application of the relevant procedures for the award of public contracts,
 - d) cross-controls to ensure that expenditure incurred in projects is not double-funded:
 - within a single programme,
 - from several different European Union funds or support instruments, or from the same fund under at least two programmes for which the managing authority is established in the territory of the Republic of Poland,
 - under the programme and another programme financed by the European Agricultural Fund for Rural Development, the European Maritime and Fisheries Fund or the European Maritime, Fisheries and Aquaculture Fund,
 - e) end-of-project controls, which consist of verifying the completeness of documents and ensuring an adequate audit trail as referred to in Article 69(6) of the General Regulation for the project implemented,
 - f) sustainability controls, which are designed to ensure that no substantial change affecting the nature of the project, its objectives or implementation conditions has taken place within 5 years of the final payment to the beneficiary that could lead to the original project being compromised.

5.1.1. Project controls

It is the responsibility of Member States to carry out controls under Article 46 of the Interreg Regulation in the programme. They may delegate the power to carry out controls to bodies of their choice. However, they remain responsible for carrying out these tasks.

On the Polish side of the programme, the minister responsible for regional development has entrusted the voivodeship offices with the controller's tasks.

Before starting the verification, the controller shall sign a declaration stating that he/she is impartial with respect to the project being verified and will not disclose any related information of which he/she becomes aware in connection with the verification activities.

During the course of a project audit, the auditor verifies that:

- goods and services co-financed by the projects have been delivered,
- expenditure was actually incurred,
- the expenditure and activities in the project are correct, i.e. comply with the law, the specific requirements of the programme documents, EU and national rules and the grant agreement.

In the verification process it is a good practice for the controller to:

- took into account the results of audits of institutions outside the implementation area,
- retained the 'two pairs of eyes' principle.

General principles on first level control

The programme has introduced common control rules for controllers under Article 46 of the Interreg Regulation. These rules apply to the controllers of the countries participating in the programme. In this way, we ensure a coherent approach and proper control processes throughout the programme. By creating a common framework and procedures, the risk of irregularities and fraud is reduced.

5.1.2. System controls

Member States are responsible for the control of expenditure on their territory. Where they have delegated control tasks to other bodies, they verify the correct execution of the delegated tasks during system audits.

On the Polish side of the support, we carry out system audits at the controllers and at the **JS**. During system audits, we control the correct application of procedures and the effectiveness of control mechanisms in these institutions. System audits also allow us to spot possible staffing problems. For example, high staff turnover or lack of training, especially of new staff, increase the risk of corruption.

The controllers and the JS describe the process for dealing with irregularities and fraud in their internal procedures. The staff of the aforementioned institutions are familiar with and apply these procedures.

5.2. Audit

AA is responsible for carrying out system audits and audits of operations to certify to the Commission that:

- the programme's management and control system functions effectively,
- the expenditure submitted to the Commission in the statement of expenditure is legal and regular. Based on the results of the audit work, the AA prepares and submits to the Commission an annual audit opinion and an annual audit report.

The AA summarises the findings of the audits and provide the EC with the annual audit opinion and the annual control report. In these documents AA summarizes the findings and describes:

- an analysis of possible errors/defects in the systems, together with proposed and implemented corrective actions,
- the results of audits of operations and the financial corrections applied by the programme authorities to any irregularities detected by the AA in these operations.

If the AA makes recommendations for improvements to the management and control system of the programme, the implementing authorities shall take corrective action without delay.

5.3. Mechanisms to support the control system

The mechanisms supporting the control system in the programme are:

- **exchange of information on fraud,**
- **qualified staff,**
- **warning signals or red flags,**
- **data analysis.**

5.3.1. Information exchange on fraud

MA and NA shall keep each other informed about:

- the occurrence or suspected occurrence of irregularities in the country concerned,
- suspicion of fraud by a beneficiary who is established on the territory,
- remedial or corrective measures that can be taken in a given situation.

Sources of information on irregularities and fraud can also be:

- notifications provided by law enforcement authorities,
- press release,
- notifications from private individuals, including anonymous notifications.

5.3.2. Qualified staff


The employees who carry out the control tasks have professional experience and are familiar with the control principles in the programme. In addition, they are characterised by **critical thinking**. This means that they maintain **a healthy scepticism** and take into account the risk that the information obtained may be misleading and untrue. Fraud is a deliberate act, which makes it more difficult to detect than irregularities. Individuals who commit fraud try their best to avoid detection. Controllers are therefore aware of where to look for warning signs of potential fraud and how to respond to them.

RECOMMENDATIONS:

- Be alert to signs of potentially fraudulent activity and respond immediately!
- Follow internal procedures for dealing with suspected or detected irregularities and fraud!
- Participate in ethics or anti-fraud training!
- Use the information you receive on the results of controls, audits and fraud risk analyses for control activities!

5.3.3. Warning signals

Warning signals, otherwise known as red flags, are circumstances that may indicate fraudulent behaviour. When such circumstances occur, it is necessary to react immediately and determine what further action should be taken. The indications of fraudulent behaviour can occur in particular in areas such as procurement or labour costing.


 **RECOMMENDATION:** If you come across a new warning signal during the implementation of the programme, inform the MA and disseminate the information to the staff of your institution, e.g. by e-mail. This will help point out to colleagues the possible symptoms of fraud.


Fraud can take many forms, so both knowledge of these forms and knowledge of how to detect them are needed.

The EC has prepared and made available publications that can help staff, particularly those dealing with controls, in this regard and recommends reading them:

1. COCOF 09/0003/00 of 18.2.2009. – Information Note on Fraud Indicators for ERDF, ESF and SF,
2. OLAF's practical guide on conflicts of interest 'Identifying Conflicts of Interest in Procurement Procedures for Structural Measures. A practical guide for managers produced by a group of Member State experts coordinated by OLAF Unit D.2 – Fraud Prevention A practical guide for managers', produced by a group of Member State experts coordinated by OLAF's Unit D.2 – Fraud Prevention (Identifying conflict of interests in public procurement procedures for structural actions. A practical guide for managers),
3. OLAF's practical guide to the detection of forged documents 'Detection of forged documents in the fields of structural actions. A Practical Guide for Managing Authorities. Detection of forged documents in the fields of structural actions. A practical guide for managing authorities).

We will take the warning signals that emerge in a given year into account in the fraud risk analysis process.

 **NOTE!** The most common red flags (warning signals) are included in the appendix to the manual.

 **RECOMMENDATION:** Familiarise yourself with the warning signals described in the appendix of the manual!

5.3.4. Data analysis

Increasingly sophisticated methods of data collection, storage and analysis offer new opportunities in the area of anti-fraud. Within the limits of the legislation of individual Member States and taking into account these limits, data analysis can:

- significantly enrich the risk assessment process,
- verify the information held against information from other public or private sector organisations (e.g. tax authorities, government departments, credit controlling bodies),
- detect potentially high-risk situations at every stage of project implementation and even before funding is granted.

👍 **RECOMMENDATION:** Use publicly available data collected in IT systems of individual Member States for fraud detection. For example, on the Polish side of support, these are the National Court Register, databases of business information or the SKANER application in CST2021.

The programme has set up **an ICT system, CST2021**¹¹. The system ensures that communication between beneficiaries and institutions takes place electronically. The programme institutions and beneficiaries enter information into the system about, among other things, applications for co-financing, contracts for co-financing, applications for payment or changes that occurred during project implementation. An important element of the system is the **SRHD reporting tool**. It enables the generation of reports from the information contained in the system. Depending on needs, it is possible to generate a summary of information necessary for verification in the case of suspected irregularities or fraud.

The system is equipped with a special tool for investigating links between people and entities: SKANER. This functionality makes it possible to generate a network of links of e.g. an examined beneficiary based on data on participation of this beneficiary in other Polish programmes, data collected in CST2021 and data extracted from the KRS.

¹¹ Article 125(2)(d) of the General Regulation

👍 **RECOMMENDATION:** To detect collusive tendering, analyse data on public procurement procedures. Minimum data for assessing possible collusion risks include:

- basic information about the project,
- tender data,
- data about the contractor,
- details of the bids (successful, unsuccessful and withdrawn),
- details of subcontractor(s).

👍 Consider risk factors such as:

- the coincidence of the price with the estimated contract cost (e.g. all bidders submit expensive bids or there are bids that can be regarded as 'abnormal'),
- number of bids submitted and coordination of bids,
- the possibility of geographic market segmentation,
- withdrawn and unsuccessful bids, in particular the involvement of original competitors in the form of subcontracting, links and 'obvious links' between contracting authorities and contractors or bidders.

👍 **If, as a result of your analysis, you suspect that fraud has occurred and the procurement procedure has not yet been subject to fraud screening, notify the relevant authorities and the MA!**

⚠️ **PLEASE NOTE:** Fraud against the EU budget in the programme includes:

- making decisions with a conflict of interests,
- corruption,
- tender collusion,
- money laundering,
- making false statements,
- falsification of documents,

- using project outputs for purposes other than those intended in the grant agreement to the detriment of the EU budget.

👍 Report any case of fraud to the relevant law enforcement authorities and notify the MA!

👍 RECOMMENDATIONS:

- Learn and apply the procedures for carrying out controls!
- Familiarise yourself with the warning signs!
- Maintain critical thinking and a healthy scepticism when assessing the correctness of EU spending!
- Use data from other institutions, publicly available registers, systems and tools to verify fraud! E.g. on the Polish side of support, tools such as SKANER are available.
- Expand your knowledge of ethics, anti-corruption, anti-fraud, read publications and participate in training courses!
- In case of suspicion of fraud, including the receipt of a signal of possible fraud, immediately notify the MA, the NA (if required by the procedure) and the relevant law enforcement authorities!

6. Correction and recovery of funds

6.1. Informing the EC of suspected fraud

Member States participating in the programme are required to inform the EC of irregularities detected, including suspicions of fraud, where the contribution from the cohesion policy funds concerned exceeds EUR 10 000, and of significant facts concerning the progress of investigations¹².

The programme Member States inform the EC on their own about irregularities and fraud and communicate this information to the MA. The fraud risk self-assessment team responds

¹² Article 69(12) of and Annex XII to the General Regulation

on an ongoing basis to the risks identified and updates the instruments that prevent irregularities and fraud in the programme.

Member States monitor irregularity proceedings until the case is closed. If the outcome of the case (i.e. the so-called preliminary administrative or judicial finding) is that an irregularity has occurred, we take corrective action, which involves reducing the eligible expenditure in the claim.

We have put in place measures in the management and control system to prevent undue disbursement of funds by:


1. the exclusion from the payment claim of irregular expenditure for which an enquiry is under way at the time and which may in future be considered as eligible expenditure,
2. the possibility of withholding funding under the provisions of the grant agreement.

6.2 Recovery

When EU funds in a programme are spent fraudulently, we will require beneficiaries to repay any undue payments. We have an obligation to ensure that any amounts found to be irregular or fraudulent are recovered from the beneficiary after they have already been paid to the beneficiary¹³. Beneficiaries will be required to repay such funds with interest. We have described detailed procedures for this in the programme documents.

7. Mechanisms for reporting information on irregularities and fraud

The control system and the mechanisms that support it are designed to effectively detect irregularities and fraud. All programme institutions take active steps to obtain information on potential fraud using all available tools. In this chapter, we describe the sources of information on fraud and the path to follow when such information comes to light.

 **NOTE:** On the programme's website, there is a tab called "Irregularities" in which we described the rules for:

- reporting information on suspected irregularities and fraud,
- handling of notifications received in the programme,
- whistleblower protection.

¹³ Article 52(1) of the Interreg Regulation


7.1. Sources of information on fraud

Information on potential fraud can come from the following sources.

- 1) **Staff.** Information from the institution's staff, obtained in the course of their official tasks and controls, in particular during verification of expenditure and on-the-spot controls.
- 2) **External institution or body.** Information from an institution or body, including but not limited to:
 - KE,
 - OLAF,
 - European Court of Auditors,
 - Audit Authority,
 - National control institutions (for example, on the Polish side of the support these are: Supreme Chamber of Control, Office of Competition and Consumer Protection, Public Procurement Office, Regional Chamber of Audit),
 - Community and national law enforcement agencies,
 - Other control institutions (for example, on the Polish side of the support these are: Tax Office, Customs Service, Construction Supervision Inspectorate).

On the Polish side of the programme, the National Prosecutor's Office provides us every six months with information on pending and completed cases related to projects financed from European funds. We analyse this data in detail with a view to the need to take action to protect the financial interests of the Union.

- 3) **Whistleblowers.** Information about potential fraud can come from individuals who report suspected irregularities in project or programme implementation.
- 4) **Other sources.** Information about suspected fraud can come from any person, entity or mass media.

 **PLEASE NOTE:** The right to complain against a breach of EU law (as well as national law implementing EU law) is universal and available to everyone.

7.1.1. Information from implementing authorities

As fraud can occur at any stage of a project, all staff of the institutions that implement the programme are alert to various signs of fraud in the performance of their duties.

Whenever information is received which may indicate the occurrence of fraud, irrespective of its source, all staff of the programme institutions shall inform the law enforcement authorities and forward the information to the MA/NA for information.



RECOMMENDATION:

- If you are an employee of the institution that implements the programme or of the beneficiary, notify your supervisor of the suspected fraud.
- If, due to the particular circumstances of the case, you do not wish to notify your supervisor and wish to remain anonymous, notify the suspected fraud to the MA/NA and the relevant law enforcement authorities – you may request anonymity.

7.1.2. Information from law enforcement agencies

The institutions that implement the programme communicate between themselves information on investigations by national law enforcement authorities when they receive such information. Not all such information is indicative of fraud. Therefore, all information is first thoroughly analysed.

If the institution, as a result of the analysis of the information that has received from the law enforcement agency, confirms the suspicion of fraud:

- takes steps to clarify the matter comprehensively,
- identifies the potential impact of fraud on project/programme implementation,
- notifies the MA/NA of the case.

In situations of suspected fraud in the programme, we withhold reimbursement of expenditure/payment of advances and report suspected fraud to the EC in accordance with procedures.

👍 **RECOMMENDATION:** If you have received information from law enforcement agencies about the possibility of fraud:

- analyse the case and identify its impact on project and programme implementation,
- communicate the case to the MA and, if required by the process, to the NA.

7.1.3. Information from whistleblowers

Whistleblowers are individuals who, in good faith and out of concern for the public good, expose irregularities and frauds. Signals from whistleblowers in a programme may concern the actions of representatives of programme institutions and entities that implement projects, e.g. beneficiaries. They may also concern other irregularities and frauds in programme or project implementation.

As noted earlier, the right to complain against breaches of EU law and national law implementing EU law is universal and available to everyone. Therefore, in the programme we make it possible for any person who suspects that a fraud has occurred to report it.

To make it easier for people who report suspected irregularities to get in touch with us and to ensure that they are protected, we have set up a mailbox where concerns can be raised: Nieprawidlowosci.EWT@mfi.pr.gov.pl. Information can be provided in Polish, Slovakian, German, Ukrainian or English.

We have introduced the following rules for dealing with applications:

- We will consider each application in accordance with the programme's procedures and the law.
- We will provide each person who reports a signal with an acknowledgement of the report, the follow-up action taken and the resolution of the case.
- We will protect any report that is delivered to the e-mail address provided against unauthorised disclosure. We will protect information that might enable a whistleblower to be identified during the investigation phase of a case, during possible follow-up activities and in the future. We will only share such information with authorised officials and officers of the relevant services.
- We will anonymise a report if the person who submitted it wishes to remain anonymous. This means that we will remove personal data and other characteristics

that would allow the whistleblower's identity to be identified from the report before it is possibly forwarded to the relevant services for investigation.

👍 **RECOMMENDATION:** If you suspect irregularities or fraud in the implementation of the programme or project, notify the MA and the relevant investigating authorities. Use the most convenient form.

⚠️ **PLEASE NOTE:** Applications (mainly anonymous) that are incomplete and there is no opportunity to supplement the information received will be left unprocessed for formal reasons.

👍 **RECOMMENDATION:** If you have received information from a whistleblower about the possibility of fraud, pass on the information to:

- the competent investigating authorities,
- MA and, if required by the process, NA.

Protection of whistleblowers

We have introduced whistleblower protection measures in the programme¹⁴. These protections mean that whistleblowers cannot suffer any negative consequences as a result of reporting fraud. According to an EU directive, any institution with 250 or more employees shall implement a whistleblower protection scheme. This means that the institution:

- establishes internal, confidential and secure channels for receiving whistleblower reports and informs its employees and business partners about them,
- designates the persons responsible for verifying the reported infringements,
- undertakes an investigation and provides feedback to the whistleblower, both on the acceptance of the report and on the action taken on it,
- promotes among employees a proper understanding of the whistleblower's role in protecting the public interest.

An effective whistleblower protection system ensures:

¹⁴ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers (OJ L 305, 26.11.2019). U. L 305, 26.11.2019)

- keeping the identity of the whistleblower confidential,
- protection against unauthorised access to the register of notifications and any information that relates to notifications,
- protecting the whistleblower from retaliation.

We protect whistleblowers from retaliation, such as:

- unjustified breach of the stability of the employment relationship (dismissal, suspension, enforced leave, demotion, reduction in salary or cancellation of allowances, change of duties),
- limiting opportunities for professional development (withholding promotions, exclusion from training, under-reporting of work performed),
- unjustified application of disciplinary measures,
- exerting pressure (intimidation, unequal treatment, insults or violence).

We have adopted the following principles for whistleblowing and whistleblower protection in the programme:

- We have established channels for submissions: written by snail mail and electronically to a specially created mailbox.
- We have appointed a person responsible for receiving calls and carrying out tasks related to the signal handling procedure.
- We register every application.
- We will inform the whistleblower of the acceptance of the report within 7 working days of receiving the report.
- We inform the whistleblower of the follow-up action taken and how the case was resolved within 30 working days of being informed of the resolution of the case or the completion of the investigation of the report.
- We ensure the whistleblower's anonymity if the whistleblower expresses a wish to remain anonymous.
- We secure the whistleblower's data and notification information from unauthorised access.

- We consider every application. We will close the application without resolution with an annotation in the register if we cannot establish additional information to clarify the case.


 **RECOMMENDATION:**

- If you employ 250 or more employees, introduce implementing whistleblower protection rules in line with the Directive.
- If you have fewer than 250 employees, consider implementing whistleblower protection rules in line with the Directive.

7.1.4. Information from other sources

You may receive information about the possibility of irregularities or fraud in a programme or project:

- from the beneficiary,
- from a third party,
- from the mass media,
- from other sources.

 **RECOMMENDATION:** If you have received - from any source - information about the possibility of fraud, analyse whether this information indicates that fraud is occurring. If you confirm that there are indications of fraud, pass on the information to:

- the competent investigating authorities,
- MA and, if required by the process, NA.

7.2. Transmission of information on suspected fraud

If you have detected fraud, suspect fraud or have received information about possible fraud, please refer the matter:

- to the competent national investigative body for investigation,
- for the attention of the MA and NA, if required by the procedures.

You can also inform OLAF, as any EU citizen has the right to notify OLAF of suspected fraud or irregularities with a potential negative impact on the EU's financial interests.

⚠️ **PLEASE NOTE:** When reporting suspected fraud, you have the option to choose the most convenient form of notification: e.g. electronic, anonymous.

👍 **RECOMMENDATION:** In the information you provide, try to describe the case as accurately as possible and include the documents you have about the case.

How to notify law enforcement?

- 1) **Anonymous reporting** (by telephone without personal details, e.g. to a hotline or emergency phone, in writing: without signature or with an illegible signature). This form is intended for people who have information about a crime or who have knowledge that may contribute to the detection of the criminal act itself or its perpetrators, while wishing to remain anonymous.
- 2) **By letter** sent to the authority or submitted at the authority's premises. You can send a crime notice by email, post, fax or bring it in person to the police unit (or other authorised law enforcement agency).
- 3) **Oral report** of an offence. Such a report will be accepted when the person reports to a police unit (or other authorised national law enforcement authority). This form allows the person who reports the suspected offence to be questioned as a witness.

⚠️ **EXAMPLE:** Information on reporting fraud in Poland:

- to the police or the public prosecutor's office – can be found at: <https://www.gov.pl/web/gov/zglos-przestepstwo>
- to the CBA – can be found at: <https://www.cba.gov.pl/pl/kontakt/zglos-korupcje/4705,Zglos-korupcje.html>

How to notify the MA?

- 1) **Electronically**, by e-mail notification to a specially created mailbox Nieprawidlowosci.EWT@mfipr.gov.pl,
- 2) **By post**, by letter to:
Department of Territorial Cooperation
Ministry of Funds and Regional Policy

ul. Wspólna 2/4

00-926 Warsaw

How to notify OLAF?

- 1) **By means of the electronic** Fraud Notification System (FNS) available on the website: <https://fns.olaf.europa.eu/>;
- 2) **By post**, by letter to OLAF:
European Anti-Fraud Office
European Commission
Rue de la Loi, 200
1049 Bruxelles/Brussel
Belgique/België;
- 3) **Electronically**, by email at OLAF-FMB-SPE@ec.europa.eu.

For more detailed information in this regard, please visit:

http://ec.europa.eu/anti_fraud/investigations/report-fraud/index_pl.htm.

⚠ PLEASE NOTE: You can contact OLAF in all the official languages of the European Union. Communicate as accurately as possible and attach the case documents in your possession.

8. Background documents

The regulations contained in the manual derive in particular from EU and national legislation, including:

1. Treaty on the Functioning of the European Union, Chapter 6 Anti-fraud, Article 325 (OJEU. (OJ EU 2012. C 324 of 26.10.2012);
2. Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers (OJ L 305, 26.11.2019); U. L 305, 26.11.2019);
3. Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on combating by means of criminal law fraud to the detriment of the financial interests of the Union (OJ L 198, 28.7.2017, p. 29);

4. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, repealing Directive 2004/18/EC (OJ 2014. U. EU 2014. L 94 of 28.03.2014);
5. Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021. laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Fair Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and the financial rules for these Funds and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Financial Support Facility for Border Management and Visa Policy (Official Journal of the EU 2021 L 231 of 30.06.2021, as amended); (OJ EU 2021. L 231 of 30.06.2021 as amended);
6. Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021. on specific provisions concerning the European territorial cooperation objective (Interreg) supported by the European Regional Development Fund and the external funding instruments (OJ. (OJ EU L 231 of 30.06.2021,);
7. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018. on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014 and (EU) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ EU 2018 L193, 30.07.2018); U. EU 2018. L193 of 30.07.2018);
8. Council Regulation (EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995, p. 1). (OJ UE z 1995 r. L 312 z 23.12.1995);
9. Convention drawn up in Brussels on 26 July 1995 on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995). U. EU 2009 No 208, item 1603);
10. Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office(OLAF) and repealing Regulation (EC) No 1073/1999 of the European

- Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ EU 2013 L 248, 18.09.2013); U. EU 2013. L 248 of 18.09.2013);
11. Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot controls and controls carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 1). U. EU 1996 L 292 of 15.11.1996);
 12. European Commission Guidelines for Member States and programme management bodies on fraud risk and effective and proportionate anti-fraud measures of 16.06.2014. (EGESIF_14-021-00-16/06/2014);
 13. Commission Notice 'Guidance on the avoidance and management of conflicts of interest under the Financial Regulation' (2021/C 121/01) (OJ EU 2021 C121, 9.04.2021); U. EU 2021. C121 of 9.04.2021);
 14. Guidelines for national anti-fraud strategies for European Structural and Investment Funds (ESIF) (Ref. Document approved by the COCOLAF Fraud Prevention Group on 12 November 2013.
 15. "Identifying Conflicts of Interest in Procurement Procedures for Structural Measures. A practical guide for managers produced by a group of Member State experts coordinated by OLAF Unit D.2 – Fraud Prevention";
 16. Document approved by the COCOLAF Fraud Prevention Group on 12 November 2013. "Detecting falsified documents in the field of structural actions. A practical guide for managing authorities produced by a group of Member State experts coordinated by Unit D.2 OLAF – Fraud Prevention;
 17. National legislation on anti-corruption policies.

The development of the manual also benefited from:

18. Results of controls and audits carried out in Interreg programmes in the 2014-2020 financial perspective;
19. Anti-corruption guidance for officials, a document produced by the Central Anti-Corruption Bureau;
20. http://cba.gov.pl/ftp/publikacje/Wskazowki_CBA.pdf Anti-Corruption Guide for Officials, a document produced by the Central Anti-Corruption Bureau;

21. Recommendations for anti-corruption proceedings in the award of public contracts 2015. https://cba.gov.pl/ftp/filmy/Rekomendacje_FINALNA_13112015_v3.pdf;
22. Anti-Corruption Guidelines for Public Administrations on Uniform Institutional Arrangements and Rules of Conduct for Officials and Persons of the PTEF Z 9.12.2020, https://cba.gov.pl/ftp/dokumenty_pdf/Wytyczne.pdf.

Elaborated:

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