

Combating fraud in Interreg V-A South Baltic 2014-2020

Manual

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1. Legal basis

The regulations in this Manual result in particular from EU and national legislation, inter alia from:

1. Treaty on the Functioning of the European Union (Chapter 6: Combatting Fraud), OJ C 83, 30.03.2010 (Article 325);
2. Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320, as amended), hereinafter referred to as the General Regulation;
3. Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal, hereinafter referred to as the ETC Regulation;
4. Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1, as amended), hereinafter referred to as the Financial Regulation;
5. Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union;
6. Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1);
7. Convention on the Protection of the European Communities' Financial Interests done at Brussels on 26 July 1995 (Journal of Laws of 2009, No 208, item 1603);

8. Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31.5.1999);
9. Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OCAF) (OJ L 136, 31.5.1999);
10. Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections 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);
11. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65), hereinafter referred to as the Public Procurement Directive;
12. European Commission's Guidance for Member States and Programme Authorities: Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures of 16 June 2014 (EGESIF_14-021-00-16/06/2014), hereinafter referred to as EC Guidance;
13. Guidelines for national anti-fraud strategies for European Structural and Investment Funds (ESIF);
14. Identifying conflicts of interests in public procurement procedures for structural actions. A practical guide for managers elaborated by a group of Member States' experts coordinated by OLAF's unit D2 – Fraud Prevention (the document was endorsed by the COCOLAF Fraud Prevention Group on 12 November 2013);
15. Detection of forged documents in the field of structural actions. A practical guide for managing authorities elaborated by a group of Member States' experts coordinated by OLAF's unit D2 – Fraud Prevention (the document was endorsed by the COCOLAF Fraud Prevention Group on 12 November 2013);
16. National anti-corruption policy regulations.

2. Glossary of terms and abbreviations

The abbreviations used in this Manual have the following meaning:

1. Beneficiary – for the needs of the Manual, this term covers both lead beneficiaries and project partners;
2. TCD – Territorial Cooperation Department at the Ministry of Investment and Economic Development of the Republic of Poland;
3. AA – the Audit Authority referred to in Article 25 of the ETC Regulation, whose function in the Programme is performed by the Department for Protection of EU Financial Interests at the Ministry of Finance of the Republic of Poland;
4. NA – National Authority of the Programme;
5. MA – Managing Authority of the Programme whose function is performed by the TCD;
6. EC – European Commission;
7. Controller – the controller referred to in Article 23(4) of ETC Regulation;
8. OLAF – European Anti-Fraud Office;
9. Programme – Interreg V-A South Baltic 2014-2020;
10. ICT system – the system referred to in Article 125(2)(d) of the General Regulation;
11. JS – the Joint Secretariat referred to in Article 23(2) of the ETC Regulation.

The terms used in this Manual have the following meaning:

1. Irregularity – pursuant to Article 2(36) of the General Regulation, any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union;
2. Fraud – pursuant to Article 1 of the Convention on the Protection of the European Communities' Financial Interests:

- a. in respect of expenditure, any intentional act or omission relating to:
 - i. the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,
 - ii. non-disclosure of information in violation of a specific obligation, with the same effect,
 - iii. the misapplication of such funds for purposes other than those for which they were originally granted;
- b. in respect of revenue, any intentional act or omission relating to:
 - i. the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,
 - ii. non-disclosure of information in violation of a specific obligation, with the same effect,
 - iii. misapplication of a legally obtained benefit, with the same effect.
- 3. Collusive bidding – an arrangement whose objective or effect lies in elimination, restriction, or breach of competition on a relevant market in any other way;
- 4. Conflict of interests – pursuant to Article 57(2) of the Financial Regulation, “a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person (...) is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.” In addition, pursuant to Article 24 of the Public Procurement Directive, the concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

5. Corruption – as there is no single definition of corruption in EU regulations, for the needs of this Manual the definition from the EC Guidance was adopted:
6. A broad definition of corruption used by the Commission is the abuse of (public) position for private gain. Corrupt payments facilitate many other types of fraud, such as false invoicing, phantom expenditure or failure to meet contract specifications. The most common form of corruption is corrupt payments or other advantages; a receiver (passive corruption) accepts a bribe from a giver (active corruption) in exchange for a favour.
7. Document forgery – consists in counterfeiting, altering or use of a forged document or official attestation of untruth as to a circumstance of legal significance by a public official or other person authorised to issue a document.
8. Law enforcement authorities – bodies sanctioned by national governments to enforce laws acting in accordance with detecting or investigation procedures and apprehend those who break them. Law enforcement authorities in Poland are:
 - Prosecutor’s Office
 - Police
 - Military Police
 - Central Anticorruption Bureau
 - Internal Security Agency
 - Border Guard
 - National Revenue Administration

3. Scope and purpose of the Manual

Pursuant to Article 125(4)(c) of the General Regulation, MA shall put in place effective and proportionate anti-fraud measures taking into account the risks identified. In addition, Article 72(h) of the General Regulation stipulates that the management and control systems shall provide for prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments. In the

light of the above, this Manual presents tips and recommendations as to actions to prevent, identify, and respond to suspicions of fraud in Programme and project implementation. The four most common types of fraud that affect absorption of EU funds to the greatest extent are: collusive bidding, conflict of interests, corruption, and document forgery. This is not an exhaustive list of fraud types as new practices and offences may emerge that fit the definition of a fraud.

This Manual is addressed at all institutions involved in Programme and project implementation, i.e. MA, other bodies responsible for establishing first level control system, JS and beneficiary institutions. The presented tips and recommendations do not impose new obligations on the institutions, they only highlight common tasks resulting from the law that must be performed by all national institutions. Without prejudice to this Manual, institutions may draft more detailed documents concerning risk analysis and assessment as well as corruption threat monitoring in the ETC project implementation process. Existing solutions can be supplemented with appointment of internal teams responsible for effective corruption risk management.

The main idea behind the Manual is to communicate that no types of fraud will be tolerated within and outside the implementation system. Therefore, particular emphasis is placed on the first part of the Manual that concerns fraud prevention, including creation of an adequate culture of ethics in institutions and operation of the internal control system. Subsequent parts of the Manual are devoted to fraud detection, correction, and prosecution.

This Manual is available at Programme websites and is valid throughout the Programme implementation period.

4. Anti-fraud cycle

EC Guidance recommends implementation of actions that serve fraud prevention that comply with the anti-fraud cycle. There are four key elements in the anti-fraud cycle: prevention, detection, correction and prosecution. Proportionate implementation of all the above elements could significantly reduce the fraud risk as well as provide adequate deterrence against fraud.

Fig. 1. Anti-fraud cycle.



Source: Own study on the basis of EC Guidance.

4.1. Prevention

The first cycle element is prevention. It consists in creating a clear and strong message from a given institution on inadmissibility of fraud that may happen during project implementation under the Programme. Particular role is played by the management of individual institutions in line with the rule that example must come ‘from the above.’ The example can be verbal, for instance in direct contacts or meetings within institutions, or more formalised, in the form of e-mails or information to institution staff on internal communication systems, such as the intranet.

The role of prevention is significant as it is easier to prevent negative phenomena than to take actions to mend undermined reputation afterwards. This is the only element in the entire cycle that does not start to run after fraud actually takes place, but before. Therefore it is a barrier against fraud and allows to avoid involvement of institution resources in subsequent cycle elements. To be noticeable, effective, and acceptable, preventive actions should be taken primarily in the sphere of shaping social awareness of the harmfulness of corruption.¹

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

¹ In Poland preventive actions include a.o. adoption of the *Government Anti-Corruption Plan for 2014-2019*.

Fig. 2. Prevention structure.



Source: Own study on the basis of EC Guidance.

4.1.1. Ethical culture

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

Ethical culture can be created through actions from the second circle on Fig. 2, i.e. policy, responsibilities, training and reporting mechanisms. There are also more general mechanisms that can considerably contribute to ethical culture development, such as mission statement, tone from the top, and code of conduct. They are characterised below.

Mission statement

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

Tone from the top

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

Code of conduct

Code of conduct (code of ethics) that all employees of institutions involved in Programme and project implementation must routinely declare adherence to. The code of conduct defines desirable patterns of behaviour of institution staff and is based on the following principles:

- Principle of the rule of law – stands for performance of duties with due diligence, in compliance with the EU and national law,
- Principle of accuracy – stands for diligent performance of duties to the best of one's knowledge and skills, based on correct findings, and using information solely for professional purposes and in line with its purpose,
- Principle of impartiality – stands for treatment of all applicants, beneficiaries, and other inquirers in a non-discriminatory manner, without prejudice on grounds of colour, sex, marital status, ethnic background, language, religion, sexual orientation, disability, reputation, or social rank,
- Principle of avoiding conflicts of interest - this means that no obligations arising from a family relationship, acquaintance or membership should be entered into, and no work or occupations which may be in contradiction with the public duties they should be undertaken. In the case of a conflict of interest between private matters and official business the employee has to withdraw from the activities that may raise suspicion of partiality or pursuit of self-interest,

- principle of professionalism - this means concern for systematic improvement of skills, full knowledge of EU and national legislation, ability of substantive and legal justification of the decisions taken and procedures adopted as well as for professional cooperation inside and outside the institution,
- principle of transparency - this means that the tasks are to be executed based on the procedures adopted while the stakeholder are informed about the procedure, subject to the protection of legally protected information,
- principle of responsibility - this means that the difficult solutions and responsibility for his/her conduct cannot be avoided, the experience and knowledge must be shared, and reliability of the institutions involved in the Programme implementation must be striven after.

The particular institutions may have more detailed Codes of Conduct and principles associated with corruption and fraud combatting. For example in the ministry for economic development (Ministry of Development and Infrastructure up to 16 November 2015) where the Programme MA has its seat, *Anticorruption Policy in the Ministry* was adopted by way of the regulation of the Director General of the Ministry of 21 September 2015. The document describes in particular how to prevent a conflict of interests, a procedure to be taken in the case of personal or financial benefit or gifts are offered, how to inform about the opportunities for corruption and what to do in the case of external reports of corruption, and defines the scope of staff responsibility. The document also defines the employee conduct in particular situations.

4.1.2. Policy, responsibilities, training, reporting mechanisms

Another important element of prevention consists of adequate allocating the responsibilities in the institutions involved in Programme and project implementation, organising training in and raising awareness of prevention and combatting the corruption and fraud.

Allocation of responsibilities

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

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

Allocation of tasks was laid down in the following documents:

1. Memorandum of Understanding - concluded between particular Member States. It embraces the provisions concerning, but not only, the institutional structure of the Programme, control system, IT system, personal data processing, irregularities, external controls and audits, recovery of funds, financial adjustments, risk management, complaints or operation sustainability.
2. In accordance with Article 23(2) of ETC Regulation, the MA sets up a JS and for this reason an Agreement on conferring the implementation of European Territorial Cooperation Programmes 2014–2020 to the Centre of European Projects was signed in order to establish and ensure functioning of the JS. One agreement for all ETC Programmes (concerning three Secretariats) has been drawn up and signed.
3. The Member States responsible for the control pursuant to Article 23 of ETC Regulation set up the institutions responsible for the control, for example by signing agreements, or otherwise, while stressing the separation from other implementing institutions. In Poland, the minister competent for regional development signed the Agreements on conferring the control activities to the particular Voivodship Offices in this respect. Among other things, pursuant to the a.m. agreements the scope of responsibility and obligations of the controllers is laid down.

Transparent conferring of the activities to the institutions lets them identify specific tasks at the level of the staff. In particular the EC's Guidance for Member States on Designation Procedure requires a separation of MA and CA functions to ensure that function separation is respected where applicable. Where the MA is project beneficiary, it is also necessary to

ensure that tasks and responsibilities delivered under MA functions and beneficiary function are separated.

At the institution level the staff who are involved, e.g. who participate in the call for proposals, should not combine this function with control tasks.

At the level of beneficiary the transparent allocation of tasks among the organisation personnel formally involved in the project work is an important aspect. A part-time employee should dedicate the time referred to in the employment contract to the work on the project. Time dedicated to the project work should be adequately registered and documented, while specifying the time devoted to the tasks within the framework of different budget lines.

Training and awareness-raising

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

The scope of training should generally include the methods of detecting the irregularities and frauds, reporting mechanisms and corruption addressing proceedings. The required training subjects may be updated where the risk self-assessment results show the emergence of new negative phenomena or corruption threats. Thus, they will comply with the current needs of the Programme.

The institutions should attempt to train as large number of employees as possible. As far as the use of the EU funds is concerned the corruption may practically occur at any stage ranging from the call for projects and selection through the implementation up to the control. Therefore, it is recommended to ensure that each member of the staff involved in the Programme and project implementation participate in the training. It is also recommended to adapt the training subjects to the current needs of the staff member and tasks allocated to the specific post. The institution's staff should also have access to the available documents issued by the bodies set up to detect corruption, e.g. in Poland, the

such documents and guides are available on the Central Anti-corruption Bureau (CBA) website.

Apart from the training, the current internal communication concerning ethics and corruption prevention also contributes to awareness-raising among the staff. It should be multi-level and multi-directional. It may be provided by means of any intranet systems, internal info portals, e-mail, discussion forums, electronic bulletins etc. It is recommended to use as many channels as possible to promote the desired attitudes and to educate the staff.

4.1.3. Internal control system

The internal control is of key importance for the prevention of irregularities. Besides, it is the only prevention measure that may minimise the chance for an opportunity for a fraud to emerge. Hence, it may contribute both to the protection of the system correctness and good reputation of the employee or beneficiary. This subsection describes the process of identification of the sensitive posts and procedures set up in this respect.

Aim and scope of internal control

According to the EC guidance the internal control system is the most efficient method to prevent potential fraud. The above has been confirmed by the Information Note on Fraud Indicators for ERDF, ESF and CF which shows 3 main elements may be cited as a reason for fraud, which are defined as “fraud triangle”. These include: opportunity (the motive alone is not sufficient, i.e. there must be an opportunity for a fraud), rationalization (justification of the fraud by rationalising it), motive/financial pressure (greed, human weaknesses). In the EC opinion breaking up this triangle is of key importance for prevention of fraud. Among the cited factors the institutions have the greatest impact on the occurrence or lack of an opportunity for fraud. This is why it is so important to have the internal control system in place to exclude any emergence of such opportunity. The examples of the system weaknesses which may give rise to such an opportunity include omissions associated with supervision and reviews, allocation of responsibilities, approval by the management, system controls. It must be also stressed that a person who finds an opportunity and is tempted is

supposedly in inconvenient and unpleasant situation². The internal control system addresses such situations and, therefore, it protects the employee against embarrassing situations and any suspicion.



In order to prevent such situations from occurring the internal control system of the MA includes the following:

1. Control inside the institution on an ongoing basis (verification of task implementation by the superiors, verification of the documentation on “four eye” principle basis),
2. Controls of projects, including technical assistance projects (both administrative and on-the-spot checks),
3. Cross-checks,
4. Separation of MA and CA functions, a.o.. by setting up an independent post for certification matters within the TCD,
5. Separation of MA and CA functions from the MA functions as a technical assistance beneficiary under the Programme,
6. Ongoing analysis of data collected in the IT system,
7. Identification of so-called sensitive posts and putting in place the control mechanisms in order to eliminate the inherent risks.

Sensitive posts

²International Anti-corruption Conference, Warsaw, 9 December 2010. Conference follow-up materials, Central Anti-corruption Bureau, Warsaw 2011, p. 110

When designing the management and control system for the Programme an analysis was carried out which identified the tasks in case of which the employees may be particularly sensitive to the factors with negative impact on the system operation. The factors include the risk of corrupt conduct and conflict of interests that may ultimately lead to financial fraud. The tasks involve in particular the employees who are direct contact with the beneficiaries as well as the employees whose improper performance of their duties may have adverse impact on the integrity and functioning of the Programme.

The identified sensitive tasks include the following:

1. Selection of projects for funding,
2. The process of concluding Subsidy Contracts, their modifications and termination thereof,
3. Verification of incurred expenditure,
4. On-the-spot check,
5. Recovery of funds from the beneficiary,
6. Certification of expenditure for EC,
7. IT system administration.

The posts which include some the a.m. tasks within the scope of all the allocated tasks should be considered sensitive.

Therefore, taking into account the risk of improper performance of the duties that may adversely affect the integrity and functioning of the Programme, appropriate control mechanisms will be in place at such posts, i.e.:

1. Signing of the relevant declarations of impartiality (if the process requires so),
2. Application of “four eyes” principle,
3. Verification and approval of the tasks and work results by the direct superior,
4. Suitable distribution of tasks,

5. Appropriate training to raise staff awareness in this area,

All programme institutions are recommended to identify the sensitive posts based on the a.m. criteria and to apply the suggested safeguards.

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

4.1.4. Fraud risks analysis

The preventive measures set up to protect against the potential fraud may reduce the risk of its occurrence but they will not eliminate it entirely. Therefore, the EC recommends a risk analysis to be carried out in order to identify the areas and activities that may subject to an increased risk. In order to make this process easier EC provided a fraud risk assessment tool which is enclosed with the EC Guidance as Annex 1. It should be stressed that this tool is intended to assess the probability of corrupt practices rather than to detect them, and, therefore, to make the Programme institutions prepared for their occurrence.

It has been assumed that the tool will be used by the self-assessment team set up by the MA.

Fraud risk assessment tool

Based on the previous financial perspectives EC elaborated a tool which encompasses specific fraud risks which may occur at 3 main stages of Programme implementation, e.g.:

1. Call for proposals,
2. Implementation of the projects by the beneficiaries, especially including the public procurement and labour costs,
3. Certification and payments

The a.m. list may be completed with the risks that are specific for the Programme based of the analysis of risks notified to MA by the institutions involved in the Programme implementation and committed to undertake risk analysis at their level.

In general, a full analysis will be carried out on annual basis. In justified cases when the risk level is very low and no case of financial fraud attempt was identified in the previous year, the MA may decide to carry out the fraud risk assessment every second year. When in the Programme circumstances arise that may bring about new risks and threats the self-assessment team may carry out an additional analysis in this respect.

The document created so will be used as a contribution to preparation of the MA Annual Control Plan for the subsequent financial year. It will include the identified risks, especially significant and critical risks, if any.

The methodology of risk analysis is based on 5 main steps:

1. Quantification of the risk of occurrence that a given fraud type would occur by assessing impact and likelihood (gross risk);
2. Assessment of the effectiveness of the current controls in place to mitigate the gross risk;
3. Assessment of the net risk after taking into account the effect of any current controls and their effectiveness i.e. the situation as it is at the current time (residual risk);
4. Assessment of the effect of the planned mitigating controls on the net (residual) risk;
5. Defining the target risk, i.e. the risk level which MA considers tolerable after all controls are in place and effective.

The responsibility for analysis preparation is borne by the self-assessment team. During the analysis process the team takes into account the audit and control reports (if drawn up in the period of time subject to the analysis), reported fraud and own control assessments. Besides, the team will be able to use the documents prepared for the purpose of, for example, management verifications, or other documents which may be helpful in analysis preparation. It is up to the self-assessment team members to identify the processes which need fraud risk assessment. At the same time, with the setting up of the a.m. team the mechanism has been put in place which potentially prevents arbitrary choices and fraud risk assessments in particular departments and institutions responsible for Programme implementation. JS will also contribute to the document. Involvement of the a.m. institution

is intended to prevent risk from being underestimated and omitting the risk areas, in particular in the light of modifications introduced along the Programme implementation process and particular project execution. The point is that the self-assessment team is to assess the risk associated with corruption while analysing the whole process that includes the particular activities. The analysis process will be documented so as to allow an overview of the analysis conclusions. In this context the team safeguards a reasonable and realistic risk cataloguing so that they are not too numerous and unspecified. The final version of the document will be submitted for approval to the TCD direction.

Self-assessment team

The task of self-assessment team consists in preparing the risk analysis in accordance with the EC Guidance. Composition of the team is of key importance for the execution of the a.m. task.

The risk analysis includes 3 main processes within the framework of the Programme implementation, i.e. call for proposals, execution of the projects, certification and payments, therefore, it is recommended that the scope of responsibilities of the members of the team includes the tasks associated with these processes. Thus, the team composition will provide for the broadest possible identification of risks which may emerge at the particular stages.

The team will be set up by the MA which also lays down the Rules for its operation and for the election of the team chairman. The team will be composed of at least 3 members. The team members are not entitled to additional remuneration for participation in the team work.

If necessary, the team may be extended to include a JS employee or a controller. Representatives of services that combat fraud or of other specialised bodies that have useful knowledge in this area can be invited to team meetings.

Working meetings of the team will be called by the chairperson within at least 5 days prior to the planned meeting. Before the meeting each member provides the chairperson with proposals on selected types of fraud risk if some risks were identified that have not been covered by the previous analysis and the member believes they should be covered by self-assessment and there are other issues that the team should work on.

The main task of the self-assessment team is to assess fraud risk on a periodical or ongoing basis. Self-assessment cannot be performed by external entities as it requires familiarity with the management and control system and knowledge of applicants and Programme beneficiaries.

The tasks of the self-assessment team also include:

1. Running a database of detected/notified cases fraud,
2. Identifying areas that should be covered by systemic control in individual institutions if such a need results from analyses,
3. Analysis of mechanisms for notifying fraud under the Programme and processes described in this Manual,
4. Preparing recommendations as to the subject and scope of training and other information actions,
5. Informing and assisting to institutional staff as to interpretation of Manual's provisions.

4.1.5. Preventing conflict of interests

Conflict of interests is highlighted by EC in the framework of the financial perspective 2014-2020 in Commission Decision C(2013) 9527 of 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement. The Decision provides for a financial correction of 100% in the case of a conflict of interests on the part of beneficiaries or the contracting authority. The above-mentioned correction concerns public procurement, but it reflects EC's approach to the issue, the more so as the correction has been established at the highest level without any possibility of reducing it. It should be noted, however, that conflict of interests itself does not constitute a violation, but failure to notify responsible persons and to remove those persons affected by the conflict of interests from performing their duties is considered a violation.

General information and definitions

The notion of the conflict of interests is not harmonised. Organisation for Economic Co-operation and Development (OECD) suggests the following definition³: “A ‘conflict of interest’ involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.”

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

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

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

Counteracting conflict of interests

Programme and project implementation may lead to various situations where a conflict of interests may occur, for instance during a call for proposals, recruitment of staff and experts, public procurement. Therefore it is recommended for institutions to counteract conflict of interests, in particular by discovering it.

It consists *inter alia* in:

³ OECD guidelines *Managing Conflict of Interest in the Public Service*, pp. 24-25.

1. Application of the 'four eyes' principle, which means that tasks are performed by at least two people,
2. Committing employees to immediately notify their superiors of:
 - a) Potential conflict of interests,
 - b) Suspicions or becoming aware of irregularities connected with spending funds under the Programme,
3. Submission of declarations on absence of a conflict of interests when performing their duties by institution personnel, if required by a process,
4. Submission of other declarations resulting from national law, for instance on the Polish side, submission of the declarations referred to in Article 17 of the Act – Public Procurement Law and exclusion from a public procurement procedure pursuant to the Act in the case of such circumstances,
5. Participation in trainings, meetings, conferences, working groups and reading documents or other materials to expand staff awareness of preventing conflict of interests and corruption,
6. Issuing a code of conduct that would apply to all aspects of staff work, of which considerable part consists in contacts with the public, funds or areas where it is essential to treat all entities equitably.

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

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

- Discussion of factual circumstances with the interested person to explain the situation, where applicable,

- Exclusion of the interested person from the contract award procedure regardless if he/she is an employee or an external expert,
- A change in the division of tasks and scope of responsibility of the personnel,
- Contract award procedure annulment.

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

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

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

The declaration should say:

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

The existence of a conflict of interests in itself does not necessarily violate the law. It is against the law to participate in a given procedure if a conflict of interests occurs. It is thus

essential to reveal any potential conflict of interests before a given procedure starts and decisions are issued, and to take adequate precautions.

5. Fraud detection

Prevention techniques are a kind of barrier to fraud and corruption, but they cannot ensure absolute certainty there will be none. Therefore, it is necessary to set up a management and control system as well as adequate mechanisms to support it in detecting fraud. Controllers should be sensitive to any symptoms of potential fraud. To obtain sufficient assurance, control team members should remain sceptical throughout the control and take into account the findings of controls by institutions from outside the implementation area, such as the Supreme Audit Office, Tax Offices, the domestic institution responsible for public procurement control or corruption detection. If during a risk assessment, control planning, or substantive analysis the controller concludes that the circumstances indicate fraud, adequate steps should be taken to safeguard financial interests of the EU and a Member State from unjustified expenditure.

5.1. Control system

According to EU regulations, the control system for structural funds and the Cohesion Fund envisages independent and complementary processes of control by institutions in the framework of the Programme implementation system and by AA audits, supported by a Group of Auditors.

Pursuant to Article 23(4) of the ETC Regulation, carrying out verifications in the Programme is the responsibility of individual Member States. They delegate authority to conduct the verifications, especially to the extent set out in Article 125(4)(a) of the General Regulation, to selected entities. They nonetheless remain responsible for performance of these tasks.

The control system referred to above has been set up in a way that allows detection and identification of irregularities at various project implementation stages. The main role belongs to the controller who verifies expenditure of beneficiaries. Verification consists in checking whether the co-financed products and services have been delivered, whether expenditure has actually been incurred, it is correct and it complies with applicable law,

detailed requirements of Programme documents, EU and domestic principles, and the co-financing agreement. During control, the controller also takes into account the findings of controls by institutions from outside the implementation area. The MA recommends to conduct controls in compliance with the 'four eyes' principle, i.e. by at least two people. In addition a controller must sign a declaration which says he/she is impartial towards the project and he/she will not disclose any information connected with the project that he/she acquires during the control.

The Programme follows joint control and audit rules that cover general procedures for controls under Article 23 of the ETC Regulation. The procedures define how to report irregularities detected in projects to the MA. The rules are binding for Member State controllers involved in the Programme. This way the MA remains in control of processes throughout the Programme. Creation of a joint framework of conduct and accompanying procedures also reduces the risk of irregularities.

Due to the fact that Member States are responsible for expenditure control in their territories, they verify correctness of the tasks they entrust to third parties. On the Polish side of support, systemic controls are carried out in this respect, in the controllers' headquarters and in the JS. These controls serve verification of correctness and efficiency of designed control mechanisms and risk analysis. During systemic controls also potential problems concerning the staff of the institutions responsible for Programme implementation are identified, such as staff turnover and insufficient training, especially of new employees, which increases the risk of corruption. Both controllers and the JS describe the process of reporting irregularities, taking corruption into account, in their internal procedures. Employees of the above-mentioned institutions must be familiar with these procedures and any possible amendments thereto.

The AA is located on the Polish side of support and conducts annual operation audits on the basis of which it estimates the error level in the operational Programme and assesses the management and control system in place. The AA passes the results of audits on to EC.

In addition, the MA and the NA share information on existence or suspicion of irregularities in a given partner Member State and on suspected fraud by a beneficiary with a registered seat in a given state, together with a proposal for remedial or corrective measures, on an

ongoing basis. Also notifications from law enforcement bodies, press reports, and notifications from private entities (also anonymous tip-offs) can serve as sources of information on irregularities.

The above system ensures that irregularities, which may occur at any implementation stage, are effectively detected. Thanks to expedient identification, remedial actions can be taken in due time.

The control process is thus transparent and minimises the risk that fraud remains undetected.

5.2. Control system supporting mechanisms

The management and control system that allows detecting irregularities at every Programme implementation stage is described in Section 5.1. Yet the institutional framework of the system should be complemented by additional control mechanisms to support the process. In particular, it is adequate attitude and knowledge of people who perform control tasks on potential fraud.

All people involved in Programme and project implementation may see potential signs of fraudulent activity and are obliged to take appropriate steps in response. Critical thinking is a desirable quality in this respect, especially on the part of the people who perform control tasks. It means that when performing tasks, including control preparation and conduct, one needs to have a healthy level of scepticism and take into account the risk that information obtained in relation to these tasks may be misleading or false. Fraud is intentional, which makes it more difficult to detect than other irregularities. Fraudsters do whatever they can to make sure they remain undetected. Therefore employees should be informed where to look for fraud indicators on an ongoing basis.

Fraud indicators (or red flags) are signs that fraudulent activity is taking place, when an immediate response is required to verify whether further action is required. The EC Guidance states that fraud indicators can also be specific to those activities frequently taking place in public procurement and labour costs.

If any red flags emerge during Programme implementation, it is recommended to disseminate information on that fact among the employees, for instance by e-mail. It can help other staff members see potential signs of fraud. It is important as fraud can take on various forms and it is necessary to be aware of its manifestations, e.g. vertical and horizontal collusive bidding and document falsification and forgery, as well as the methods of detecting fraud.

EC drafted and published documents that can help employees, especially those who control beneficiaries, in this respect, and recommends reading them:

1. COCOF 09/0003/00 of 18.2.2009 – Information Note on Fraud Indicators for ERDF, ESF and CF,
2. Identifying conflicts of interests in public procurement procedures for structural actions. A practical guide for managers elaborated by a group of Member States' experts coordinated by OLAF's unit D2 – Fraud Prevention,
3. Detection of forged documents in the field of structural actions. A practical guide for managing authorities elaborated by a group of Member States' experts coordinated by OLAF's unit D2 – Fraud Prevention.

Red flags from a given year will be taken into account during a fraud risk analysis.

5.3. Analysis of available data

EC believes that more and more advanced methods of collecting, keeping, and analysing data provide new opportunities in the area of combating fraud. At this stage, within the limits of applicable legislation of individual Member States and taking these limits into account, data analysis can significantly enrich the risk assessment process as data can be verified with the data of other organisations from the public or private sector (for instance tax authorities, government departments, creditworthiness evaluation bodies) and potentially high risk situations can be detected even before funding is granted.

In the light of the above, it is recommended to Programme institutions to use publicly available data collected in various IT systems of individual Member States (for example the National Court Register or commercial information databases in Poland) to detect fraud.

Taking personal data protection into account, it is possible to consider using data analysis to enrich the risk assessment process, verify data with other public and private sector organisations, and to detect potential high risk situations at every project implementation stage, even before the co-financing agreement is signed.

In addition, pursuant to Article 125(2)(d) of the General Regulation and ICT system has been set up in the Programme. It ensures electronic communication between the beneficiaries and the institutions. Information on co-financing agreements, verified requests for payment, and changes during project implementation will be fed to the system. The system has many functionalities, of which the most important element from the point of view of fraud detection is the SRHD reporting tool. It allows generating reports from information in the system. Depending on the needs, it will be possible to generate information required to be verified if potential fraud is detected.

Analysis of tender data in public contract award procedures in the context of collusive bidding identification is of particular importance. The minimum scope of data for assessment of potential collusive bidding risk should include:

1. Basic information about the project,
2. Tender data,
3. Details of the contractor,
4. Data concerning bids (successful bid, rejected and withdrawn bids),
5. Details of sub-contractor(s).

The above-mentioned analyses and verifications should take into account risk factors with corresponding indicators (with specific values), such as:

9. The price is similar to the estimated cost of the contract (for instance all bidders submit expensive bids or 'atypical' bids are submitted),
10. The number and coordination of bids,
11. Possibility of geographical market division,

12. Withdrawn and rejected bids, especially former competitors becoming sub-contractors, links and 'obvious connections' between the contracting authorities and contractors or bidders.

If the results of analysis give rise to red flag suspicions and the contract award procedure has not been investigated by competent bodies or services so far, these should be notified to the competent law enforcement authority.

6. Correction

Notification of the EC about suspected fraud

Pursuant to Article 122 of the General Regulation, Member States shall notify CE of irregularities, including suspected fraud, that exceed EUR 10,000 in contribution from the cohesion policy and shall keep it informed of significant progress in related administrative and legal proceedings.

In the light of the above, Member States inform the Commission on fraud on their own, but pursuant to the Memorandum of Understanding they are also obliged to provide such information to the MAs. Thus MAs and their fraud self-assessment team will be aware of emerging risks and thus they will be able to respond and update relevant preventive measures on an ongoing basis.

Irregularities should be monitored by Member States until resolution. Detection of irregularities (i.e. so-called preliminary administrative or court finding) entails a need to take corrective measures that consist in reduction of eligible expenditure in the application.

The MA introduced measures to prevent undue payment of funds into the management and control system. The measures envisage:

1. Exclusion of incorrect expenditure covered by explanatory proceedings at a given moment which may be however considered eligible in the future from the payment claim,
2. Possibility of suspending funding on the basis of the provisions of the Subsidy Contract.

Recovery of funds

If EU funds under the Programme are spent in a dishonest way, the MA and the CA will require beneficiaries to return undue payments. Pursuant to Article 27(2) of the ETC Regulation, the MA shall ensure that any amount paid as a result of an irregularity is recovered. This provision also concerns fraud. The beneficiaries must repay the funds with interest. Detailed procedures in this respect are set out in Programme documents.

7. Prosecution

The control system and accompanying mechanisms serve effective detection of irregularities, including fraud. Information on fraud can appear within the system and come from other sources, such as other institutions, the press, or so-called whistle blowers. This chapter describes all identified sources from which Programme institutions can derive information on emerging negative phenomena. It also sets out a procedure to be followed should such information surface.

7.1. Sources of information on fraud

Information on fraud can come from a number of sources that can be divided into three groups as follows:

1. Employees. Information from institution employees obtained during performance of official duties and controls, in particular administrative verifications and on-the-spot checks.
2. Institution or external body. Information can come from an institution or body, both participating and not participating in Programme implementation, such as:
 1. EC,
 2. OLAF,
 3. European Court of Auditors,
 4. Audit Authority,

5. National control institutions (for example on the Polish side of support: Supreme Audit Office, Office for Competition and Consumer Protection, Public Procurement Office, Regional Chamber of Audit),
 6. Competent EU and national law enforcement bodies,
 7. Other control institutions (for example on the Polish side of support: Tax Office, Customs Service, Voivodeship Inspectorate of Building Control/Poviat Inspectorate of Building Control).
3. Other sources. Information on fraud suspicion can be obtained from any entity anonymously, from a press report, or as another unconfirmed information. Information can come from so-called whistle blowers. It can also be derived from mass media by employees.

7.2. Procedure in the case of information on fraud suspicion from particular sources

According to Section 7.1, information on fraud can reach the institutions involved in Programme implementation from various sources. In the case of fraud suspicion and after its correct notification a Member State must transfer the case to a competent MS body for prosecution. Information about suspected fraud must be submitted to the AA, NA and MA. In the framework of this procedure it is important to ensure that the people who report fraud, so-called whistle blowers, are safe, i.e. they suffer no negative effects.

7.2.1. Information from employees

Due to the fact that fraud can occur at any project implementation stage, all employees should be sensitive to various kinds of signs of potential fraud during performance of their everyday duties.

Each time they learn something important that may prove fraud has taken place, all Programme institution employees must notify competent law enforcement authority of that fact.

If an employee suspects fraud, he/she can notify competent national law enforcement bodies of suspicion of an offence in one of the following ways:

Anonymous report (by phone with no personal data provided, for instance via a helpline or emergency line, in writing: without a signature or with an illegible signature)

This form is intended for people who have information on an offence or have knowledge that can contribute to detection of a forbidden act or its perpetrators, but wish to remain anonymous.

Letter sent or submitted to a competent body

Notification of an offence can be e-mailed, mailed, faxed, or submitted to a police unit (or another competent law enforcement body) in person.

Verbal report on offence

The person reporting an offence must visit a police unit (or another competent law enforcement body) in person. This form involves interrogation of the person making the report in the capacity of a witness.

Direct report to OLAF

In addition to notifying domestic law enforcement bodies, every citizen can directly inform OLAF of suspected fraud or another serious irregularity that may have potentially negative impact on financial interests of the European Union. Information should be as precise as possible and OLAF should also receive relevant documents.

In this context, the key role is played by liaison officers from national investigation services cooperating with OLAF in the Member States.

OLAF services can be contacted in all official languages of the European Union:

1. Via the electronic Fraud Notification System (FNS) available at: olaf.europa.eu;
2. By mail to: OLAF – European Anti-Fraud Office, European Commission, Rue de la Loi, 200, 1049 Bruxelles/Brussel, Belgique/België;
3. By e-mail to OLAF-FMB-SPE@ec.europa.eu.

Detailed information in this respect is available at: ec.europa.eu/anti_fraud.

7.2.2. Information from law enforcement bodies

All institutions within the Programme implementation system should actively seek information on all potential instances of fraud when using any available tools, they are also obliged to share information they may have on proceedings conducted by national law enforcement bodies.

Not all pieces of information provided by the above-mentioned institutions constitute suspicion of fraud. Therefore they should be analysed in detail for fraud.

In the case of suspicion of fraud, each institution should make sure it has all the information necessary to at least determine the potential impact of fraud on the project and take adequate steps to address the matter comprehensively.

In situations that require it, the Programme's CA must withhold certification and report fraud suspicion to EC.

All institutions in the Programme implementation system are obliged to provide the MA with information on pending proceedings immediately. MA management will use the information to set adequate 'tone from the top' signalling potential areas at risk of fraud. The information will also be important for the fraud risk self-assessment team when preparing subsequent risk analyses.

7.2.3. Information obtained from other sources

When becoming aware of a possibility of irregularities in a project implemented under the Programme (i.e. information from a third person or directly from the beneficiary), one must always analyse whether a given event may give rise to suspicions of fraud.

If there are grounds to believe an offence has been perpetrated, employees must notify law enforcement bodies.

If information has been submitted to the police as well, a competent body must be contacted to inquire about actions taken on the case.

If information on proceedings of law enforcement bodies is derived from the press, one must always request a competent body to confirm the data and possibly supplement them.

If press is the source of information on irregularities that may prove an instance of fraud, the competent institution must take the necessary steps in this regard.

Whistle blowers

When information from other sources is concerned, there is information provided by so-called whistle blowers. Whistle blowers are people who, acting in good faith and driven by care for public good, reveal irregularities such as potential fraud.⁴ Under the Programme, it may concern irregularities on the part of representatives of Programme institutions and entities involved in project implementation, for example beneficiaries.

To facilitate contact with the MAs and to protect the people who report irregularities, a mailbox has been set up where any reservations can be e-mailed:

nieprawidlowosci.EWT@miir.gov.pl. Information can be sent in Polish or English.

The MA will examine every notification in accordance with Programme procedures and with the law.

Every notification sent to the mailbox will be protected against unauthorised disclosure. Information in the notification that may reveal the identity of the person who sent the report will be protected at the stage of examination, during possible preventive measures, and in the future. It will be disclosed only to authorised officials and officers of competent services.

If the person who e-mails the notification wishes to remain anonymous, the report will be fully anonymised (personal details of the sender will be deleted from the notification, as well as other elements that could allow his/her identification) before passing it on for examination.

⁴ *Support for and Protection of Whistle Blowers* [accessed on 5 November 2015], available on-line at: batory.org.pl/programy_operacyjne/przeciw_korupcji.

In the case of notifications (mainly anonymous) that are incomplete and it is impossible to supplement information, there is a risk that such a report will not be examined for formal reasons.

Literature:

1. Detection of forged documents in the field of structural actions. A practical guide for managing authorities elaborated by a group of Member States' experts coordinated by OLAF's unit D2 – Fraud Prevention,
2. Identifying conflicts of interests in public procurement procedures for structural actions. A practical guide for managers elaborated by a group of Member States' experts coordinated by OLAF's unit D2 – Fraud Prevention,
3. Report from the Commission to the European Parliament and the Council. Protection of the European Union's financial interests – Fight against fraud,
4. Public procurement guidance for practitioners – on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds.

On the Polish side:

1. Anti-Corruption Tips for Officials, a document developed by the Central Anti-Corruption Bureau,
2. Anti-Corruption Manual for Officials, a document developed by the Central Anti-Corruption Bureau.