

# ANTI FRAUD STRATEGY

INTERREG ATLANTIC AREA PROGRAMME 2014-2020

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## 1. DOCUMENT IDENTIFICATION

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## 2. INTRODUCTION

Since corruption and fraud have been receiving increasing public and political attention, namely in the context of the management of the European Structural and Investment Funds (ESIF), more attention and resources on effective and balanced anti-fraud measures have been demanded to be implemented by the authorities in charge of the programmes during the 2014-2020 period. The Treaty on the Functioning of the European Union (articles 310 to 325) defines that member states (MS) shall ensure sound financial management to implement efficient management and control and audit systems, protecting the European Union (EU)'s financial interests. In accordance, article 59 (2) (b) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 establishes the responsibility of the MS to implement all necessary actions, including legislative, regulatory and administrative measures, to protect the financial interests of the Union, fighting fraud by preventing, detecting and correcting.

Hence, in compliance with article 125 (4) (c) of Regulation (UE) No 1303/2013 of the European Parliament and of the Council of 17 December 2013, the managing authority (MA) and the MS participating in the programme must set in place effective and balanced anti-fraud measures, taking into account the identified risks and the two territorial levels, transnational and national. As article 72 (h) establishes, one of the general principles of the management and control systems is guaranteeing the prevention, detection and correction of irregularities, including fraud, and the recovery of sums unduly paid jointly with any interest on late payments.

The MA of the Interreg Atlantic Area Programme 2014-2020 (AA) develops and implements an anti-fraud strategy in order to better operationalize these mandatory responsibilities, having in mind that, as emphasized by Cendrowski et al. (2007, p. 41),<sup>1</sup> "breaking the fraud triangle" – opportunity, rationalization, financial pressure - is the key to prevent fraud, being opportunity the dimension mostly directly influenced by control systems (COCOF 09/0003/00-EN, 18/02/2009). This strategy aims to promote a culture of prevention, detection and correction through discouragement, based on: (i) the principle of 'zero tolerance' for the practice of illegal acts and situations of fraud; (ii) principles of ethical culture to be employed by all the members of the involved entities.

In accordance to the corresponding competences of the involved bodies (MA, certifying authority (CA), national authorities, national controllers), anti-fraud measures are developed

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<sup>1</sup> Cendrowski, H; Martin, J. P. and L. W. Petro (2007), *The Handbook of Fraud Deterrence*, John Wiley & Sons, Inc.: New Jersey, Canada.

building on a risk assessment exercise carried out regularly by the MA, CA and joint secretariat (JS) as well as by the relevant national control bodies. The strategy is in accordance with the European Commission (EC) guideline “Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures” (EGESIF\_14-0021-00 of 16/06/2014), also taking into account the work developed by Interact, implementing measures for fighting fraud at the transnational and national levels and to better address the type and extent of the detected risks, along the following crucial actions:

- Prevention;
- Detection and reporting;
- Correction and prosecution.

These implemented measures are also identified in the Description of MA/CA functions and procedures, under section 2.1.4 Description of the procedures for ensuring effective and proportionate anti-fraud measures taking account of the risks identified, including reference to the risk assessment carried out (Article 125(4)(c) of Regulation (EU) No 1303/2013).

Moreover, the present document must be understood in line with the following norms and regulations.

1. Reference to the regulations:

- The Treaty on the Functioning of the European Union (TFEU);
- Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests;
- 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 European Union;
- 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);
- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the FEDER, FSE, FC, FEADER and FEAMP (the Common Provisions Regulation, CPR);
- Commission Delegated Regulation (EU) 2015/1970 of 8 July 2015 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund;
- Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013;
- *Decreto-Lei* No. 137/2014 of 12 September, management of the European Structural and Investment Funds (ESIF) for 2014-2020;
- *Decreto-Lei* No. 159/2014 of 27 October, general rules for Operational Programmes under ESIF for 2014-2020 (with due adaptations).

## 2. Guidance of the European Commission (EC) – main documents:

- Guidance on Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures (EGESIF\_14-0021-00, de 16/06/2014): provides assistance and recommendation to managing authorities for the implementation of Article 125(4) (c) CPR;
- Annexes to the Guidance on anti-fraud providing tools to implement anti-fraud measures,
  - Annex 1: Fraud risk assessment tool (MA);
  - Annex 2: List of recommended mitigating controls (MA);
  - Annex 3: Template for an anti-fraud policy statement (MA);
  - Annex 4: Checklist for AA's verification of anti-fraud measures (AA)
- Information Note on Fraud Indicators for ERDF, ESF and CF (COCOF 09/0003/00-EN, de 18/02/2009);
- Guidance note on main tasks and responsibilities of an Anti-Fraud Coordination Service (AFCOS) (Ref. ARES (2013) 3403880, de 04/11/2013).

### 3. IRREGULARITY AND FRAUD – ASSOCIATED CONCEPTS

In accordance with the Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995, “**irregularity**” corresponds to a wide concept that covers intentional and non-intentional actions run by economic operators. The above mentioned regulation, in its general principles, defines “irregularity” – article 1(2) – as *“any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.”*

In what concerns “**fraud**”, the Convention on the protection of the European Communities’ financial interests, drawn up on the basis of article K.3 of the Treaty on the European Union, defines “fraud”, in what concerns expenditure, as any intentional act or omission relating to:

- *“the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets maintained managed by, or on behalf of, the European Communities;*
- *non-disclosure of information in violation of a specific obligation, with the same effect;*
- *the misapplication of such funds for purposes other than those for which they were originally granted.”*

Hence, it is the intentionality trait that distinguishes “fraud” from the more encompassing term of “irregularity”.

In line with the Regulation (EC) No. 1681/94, MS are required, since 2006, when reporting irregularities to the EC, to identify whether these irregularities are associated with “**suspected**

**fraud**", which is defined as "an irregularity giving rise to the initiation of administrative and/or judicial proceedings at national level in order to establish the presence of intentional behaviour, such as fraud" (article 2(a) of the same Regulation). Article 4(2) establishes that MS must keep the EC informed on the beginning, close or abandonment of any procedures/proceedings for imposing administrative measures, administrative penalties or criminal penalties regarding reported irregularities, as well as the result of those procedures/proceedings. When penalties have been imposed to irregularities, MS shall also indicate their nature (administrative or criminal), whether penalties result from a breach of Union or national law and the associated details, and whether fraud was established.

According to the "Information Note on Fraud Indicators for ERFD, ESF and CF (COCOF 09/0003/00-EN of 18 February 2009), **fraud**, which must be tailored to the particular context and environment in which an organisation operates, may be categorized into the following **three broad categories**:<sup>2</sup>

1. Intentional manipulation of financial statements such as inappropriately reported revenues;
2. Misappropriation of tangible and intangible assets;
3. Corruption behaviours (*e.g.*, bribery, bid rigging, undisclosed conflict of interest, embezzlement).

**Corruption**, understood under the broad definition used by the EC, corresponds to the abuse of (public) position for private gain. The most common form of corruption is corrupt payments or other advantages; a recipient (passive corruption) takes a bribe from a giver (active corruption) in exchange for a favour.

Also important is the systematization of related concepts such as "risk" and "risk assessment". In the context of Interreg programmes, risk corresponds to a potential source of errors or irregularities and can be ranked as low, medium and high. Risk assessment relates to the estimation of quantitative or qualitative risk related to an actual situation. Quantification of risk assessment frequently demands two calculations: (i) the probability that a harmful situation occurs; (ii) the extent of potential loss should the situation takes place.

#### **4. SELF-ASSESSMENT OF FRAUD RISKS**

The MA shall ensure the prevention, detection and correction of risks of fraud and corruption by implementing an encompassing risk analysis. For an adequate and efficient risk management process, allowing the identification, assessment, treatment and monitoring of operational risks, the MA follows procedures based on three sequential levels:

- (i) recognition of potential risks;
- (ii) assessment of the level of risk;
- (iii) monitoring and evaluation.

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<sup>2</sup> For more details, please consult The Information Note on Fraud Indicators for ERDF, ESF and CF that identifies, in Annex 1, common and recurrent fraud schemes and the relevant fraud indicators (red flags) on contract and public procurement fraud, and in Annex 2, common and recurrent fraud schemes and the relevant fraud indicators (red flags) on labour charges and consultancy services fraud.

The EC developed a set of anti-fraud tools in order to support programmes in implementing an anti-fraud policy, which includes the fraud risk self-assessment tool (Excel table), and is adopted by the MA. This tool was constructed over three main processes which are assumed as being relatively more vulnerable to the risk of fraud:

1. selection of applications;
2. execution and verification of operations (with a specific emphasis on public procurement issues);
3. validation of expenditures and payments.

It is important to note that this tool also encompasses the assessment of the fraud risk in relation to any public procurement procedure directly implemented by the MA, for example within the technical assistance framework.

Moreover, since it is a dynamic tool, it allows the MA to integrate other potential identified risks which also demand an assessment of risk fraud. This tool is attached to the present document in Annex 1.

The MA promotes an annual meeting to assess the risk of fraud and define the action plan that may be necessary. Once the existing controls have been identified, the risk has been quantified and the action plan is drawn up - including all measures to be implemented within the management and control system to mitigate existing risks, as well as the identification of the responsible parties and deadlines for implementation -, the monitoring procedure is implemented. This monitoring entails a rigorous validation check to verify the conformity between the planned controls and their application, ensuring that adequate control mechanisms are in place and that procedures are understood and followed at all relevant levels.

Hence, the following methodology, based on the EC guideline "Guidance for Member States and Programme Authorities on Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures", is adopted:

- i) risk quantification (Gross Risk);
- ii) assessment of the effectiveness of the current controls over the Gross Risk;
- iii) after the effects of current controls, assessment of the Net Risk;
- iv) assessment of the effect of the planned mitigating controls over the Net Risk (included in the action plan);
- v) defining the target risk.

Since intrinsic risks are programme-specific, depending on the programme area, the programme rules and the professional judgment of people implementing the risk assessment, additional appropriate measures are considered, being useful to consult with different level of controls, including the representatives of each MS participating in the Programme, the national correspondents (NC), MA/JS and audit authorities. As stressed in the Information Note on Fraud Indicators for ERDF, ESF and CF, the main responsibility for fraud prevention lays on

management, an effective fraud prevention may depend on a combination of management and auditing efforts, by reducing significantly the opportunity dimension in the fraud triangle.

This risk assessment shall be carried out by a team consisting of representatives of the MA and the JS. In particular, this team is composed by the following elements: MA executive representative, JS director and a JS technician. The NC, as representatives of the MS participating in the Programme, shall actively collaborate with this team. This cooperation is done in compliance with the TFEU, which demands that MS fight against fraud and any illegal activities detrimental to the Union's financial interests, recommending the adoption of the same measures that are implemented to combat fraud affecting national financial interests. Hence, NC have their own responsibilities within the management framework of fraud risk by actively collaborating with the MA on fraud risk assessments by providing all relevant information and implementing the measures of risk mitigation that may be adopted by the MA.

All the MS participating in the Programme – France, Ireland, Portugal, Spain and the United Kingdom - use the fraud risk assessment methodology and tool, annex to the EC's "Guidance for Member States and Program Authorities on fraud risk assessment and effective and proportionate anti-fraud measures". There is a serious declared committed from all the MS to preserve high legal, ethical and moral standards, to obey to the principles of integrity, objectivity and honesty and to be seen as opposed to fraud and corruption, with all staff members expected to share this commitment. MS use tools to detect risky operations and ensures that staff is aware of fraud risks and receives anti-fraud training.

Three fraud risk levels are identified based on the probability of their occurrence: high risk; moderate risk and low risk. Strong internal control, with appropriate supervision and evaluation and segregation of functions is the main mechanism for deterring fraud. Hence, for each level, specific control measures are defined and the agents responsible for their implementation are identified. The MA and the MS are aware of the responsibilities to report irregularities and suspected fraud under the regulations in force.

The first fraud risk self-assessment occurs within 6 months after the MA designation, followed by an evaluation of the implemented procedures which will be analyzed by the MA and, if necessary, revised. This exercise will be repeated annually, although it may be repeated at a lower frequency, in circumstances that may suggest it, such as normative or organizational changes, the occurrence of novel circumstances or the detection of weak points in deterring fraud.

The results of the self-assessment are detailed in a specific implementation report, indicating, for each type of specific risk assessed, what is the net risk obtained and whether or not the implementation of an action plan is needed. Where an action plan is necessary, the additional controls envisaged will also be presented. The action plans will be subject to regular monitoring and evaluation at the end of each semester, by means of an implementation report, which will include the assessment results. The reports and their possible revisions are analysed and approved by the MA.

The conclusions will be considered in the three main processes of selection of applications, execution and verification of operations, and validation of expenditures and payments.



## 5. MEASURES AGAINST FRAUD

Each program will incorporate effective and proportionate anti-fraud measures into its systems, taking into account the results of the self-assessment. In addition to the additional controls for each of the specific risks identified in the self-assessment, each program will adopt minimum standards in its anti-fraud measures, in line with the proposals of the Commission's guidance note.

As above mentioned, there are key elements in the anti-fraud cycle: prevention, detection and reporting, correction and prosecution.

In the next table general measures are identified to fight against fraud:

Discouragement	Prevention	Detection	Correction
Restrict Opportunity	Reinforcement of the management and control system Risk management	Controls/Audit Procedures for complaints Fraud detection support tools Irregularities and conflicts of interest	Communication of irregularities and suspected fraud to the competent authorities Procedures for withdrawal and recovery of irregular amounts
Monitor and decrease pressure	Human resources policy	Internal audit Monitoring of human resources policy	Penalty measures
Restraining the rationalization capacity	Promotion of a culture of ethics: Code of Conduct Training in anti-fraud policy and conduct	Monitoring and follow-up of the Code of Conduct	Penalty measures Disclosure of anti-fraud strategy results

### Prevention

The key method of fraud prevention, according to the EC guidance note, is the implementation of strong internal control systems that reduce the probability of fraud. Likewise, the implementation of principles of a culture of ethics, the sharing of responsibilities and the training and awareness activities are considered essential.

To formalise and communicate the official statement regarding fraud and corruption, which is of zero tolerance for the practice of illicit acts and fraud events, the MA signs a Declaration to be published on the website of the Programme. This statement is based on the model provided in the EC guidance note and contains strategies for developing an anti-fraud culture, sharing responsibilities, the mechanisms for notification of suspected fraud and cooperation between the various actors.

The purpose of the statement signed by the MA is to define the vision, mission and values endorsed by the MA. The statement defines a set of ethical values and principles that support

the best pursuit of the public interest. This document may be revised following a possible modification in the Programme or management and organizational changes.

The Atlantic Area Programme has a Code of Conduct which is disseminated and used by the JS, and is recommended to be applicable to the controllers and the beneficiaries. NC should also adopt the Code of Conduct or commit to their own Statement.

The Code of Conduct takes into account the ethical principles underlying the provision of public service. This code is clear as to the expected ethical level of the staff as well as the principles to be respected, and covers, in particular, the following elements:

- independence: explanation and responsibility for the staff actions;
- conflict of interests: explanation, requirements and procedures for their declaration;
- gifts and hospitality policy: explanation and responsibility for compliance by the involved actors;
- confidential information: explanation and responsibilities by the involved actors;
- requirements for notification of suspected fraud.

A clear division of responsibilities will be made in order to ensure that all stakeholders fully understand their responsibilities and obligations. In this sense, if necessary, specific complementary training actions will be developed.

Measures for fraud deterring are set in place at the Programme level, undertaking a wide range of fraud risks and covering the phases of the Programme and the project lifecycle.

Wide-ranging measures for fraud deterrence established at the level of the MA, JS and NC comprise the following:

- enforcement of the "*Carta de Missão*" at the level of the MA;
- enforcement of the "*Código de Conduta e de Ética*" at the level of the JS;
- establishing of a clear definition of responsibilities and obligations for all external collaborators and actors (NC, beneficiaries) and segregation of functions within the framework of the management and control systems;
- NC are committed to preserve high legal, ethical and moral standards, to obey to the principles of integrity, objectivity and honesty and fight against fraud and corruption, promoting a culture which deters fraudulent behaviour and enables fraud prevention and detection;
- Each MS participating in the Programme develops procedures which will aid in the investigation of fraud and related offences and which will guarantee that such situations are dealt with timely and appropriately;
- general and specific training on ethics and integrity for the MA, the JS and NC;
- procedures for reporting irregularities, including fraud, by employees;
- attachment of a statement concerning fight against fraud in the Programme website;

- attachment of a statement concerning fight against fraud in the letter transmitting the subsidy contract offered to lead partners of approved projects;
- inclusion in the annual meetings of the Interreg CE network of national controllers of an agenda point concerning fraud prevention and detection.

The MA disseminates any change in the above mentioned ethic and integrity policies to the JS and to the NC. This dissemination of procedures takes place through targeted email communication to all staff members as well as within periodic staff meetings.

Formal training and awareness-raising shall be included as necessary. The MA aims at providing, as advised by the EC guideline “Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures”, training to the staff in order to (i) raise awareness of the MA's anti-fraud culture; (ii) help the staff in identifying and answering to suspected fraud. Both formal training on anti-fraud policy, roles and responsibilities and reporting mechanisms and awareness-raising through less formal actions (*e.g.*, newsletters, intranet sites or enclosure as a regular agenda point for group meetings) are foreseen.

More exact measures for fraud prevention along the project lifecycle are presented in detail in the “Interreg CE fraud risk assessment tool” (Annex 1) which supports the risk assessment exercise. Additional information on fraud prevention measures set at national level are included in the descriptions of the national control systems of each MS participating in the Programme.

### **Detection and reporting**

As previously discussed, the best defence against potential fraud situations is an efficient and accurately managed internal control system, where controls focus on effectively mitigating the risks that have been identified. In the AA Management and Control System, support instruments are established to detect irregularities and cases of suspected fraud. The measures established at the Programme level for the detection of fraud tackle a comprehensive range of fraud risks which encompass all phases of the Programme and project lifecycle. In particular, risk assessment results will be considered so that the areas of highest risk are included in the controls and audits. Moreover, in controls and audits the received complaints concerning potential fraud will be considered.

In order to identify irregularities and situations of risk of fraud the MA must:

- analyse the results of the assessment of fraud risk and ensure that the areas with higher risks are included in controls and audits;
- clearly present the self-assessment process, making possible a clear review of the gathered results;
- approve the reports and their possible revisions by the President and the Representative Vowel in order to reinforce the supervision of the anti-fraud strategy;
- ensure that audit reports, fraud reports and control self-assessments were taken into account during the risk assessment process;
- implement crossing of databases in cases of suspected fraud;

- use a specific tool to identify fraud risk situations, conflict of interest or irregularity, as well as to monitor the information provided by such tool, so that red flags and indicators of fraud are analysed;<sup>3</sup>
- elaborate and screen a list of fraud situations to identify cases featured by suspicions of high risk of fraud;
- increase the awareness of the staff to fraud situations;
- embrace an appropriate human resources policy and monitor them in particular through internal audits;
- provide to the assessment team knowledge and experience about fraud risks and associated answers, the design and operating effectiveness of controls, and risk assessments;
- allocate enough time and resources to the assessment exercise;
- monitoring and follow-up of the Code of Conduct;
- adopt mechanisms to facilitate the reporting of acts constituting fraud or corruption, and guarantee the confidentiality of the identity of those who have made the complaint and establish the channel that should be given to the complaints received in each case;<sup>4</sup>
- consider all the complaints presented to national entities, for example the “*Curador do Beneficiário*”, addressing directly actions or omissions of the government bodies as described in article 63º of the *Decreto-Lei* No. 137/2014.<sup>5</sup>

The measures for fraud detection are extensively presented in the “CE\_fraud\_risk\_assessment\_tool” (Annex 1), encompassing specific control measures for fraud detection established at the transnational (MA, CA and JS) and national (national responsible institutions/bodies, national controllers) levels for tackling specific fraud risks recognized in compliance with the EC guideline “Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures”.

The persons responsible for supervising the activities must be accustomed with the indicators that can detect fraud cases, namely the list of warning indicators for the most common and recurrent fraud mechanisms provided in the COCOF 09/0003/00. The following EC documents are also relevant: “OLAF Compendium of Anonymised Cases - Structural Actions”, “OLAF practical guide on conflict of interest” and “OLAF practical guide on forged documents”.

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<sup>3</sup> The Portuguese Agency for Cohesion and Development (AD&C), in the framework of Portugal 2020, develops a tool to identify suitability of agents named as “*Base Única de Promotores*”, which the MA intends to use.

<sup>4</sup> In the Management and Control System Description, subsection 2.2.3.16, the procedures of the MA about the scope, rules and procedures for the purpose of examining complaints are described. In the main page of the website of the Programme there is a specific tab for Electronic Complaints.

<sup>5</sup> In all the MS participating in the Programme there is a channel for registering anti-fraud complaints. For example, in Portugal, where the MA is located, complaints can be made in the *Portal do Ministério Público – Departamento Central de Investigação e Acção Penal* (DCIAP), where there is a registration form for acts of corruption and fraud; in addition to the aforementioned website, citizens may register complaints related to the European Structural and Investment Funds in the websites of the Programmes, or in the website of “*Curador do Beneficiário*”. Complaints can also be submitted by letter or e-mail addressed to the Board of Directors of AD&C (agencia@adcoesao.pt).

In addition, other tools based on crossing of databases can be used in order to identify projects vulnerable to risk of fraud, conflicts of interests and irregularities. The guidance note of the EC recommends the use of the ARACHNE tool, developed by the Commission, which is a tool adapted to the management of EU Funds that has received the favourable opinion of the European Data Protection Supervisor in what regards compliance with Regulation (EU) No 45/2001.

When ARACHNE is not used, other mechanisms such as controls based on information exchanges with other authorities and analyses of the set of operations under review are employed. The MA, as mentioned in footnote 3, intends to use the database provided by AD&C - *Base Única de Promotores* - in order to detect red flags and fraud indicators. Ireland uses the ARACHNE and other IT databases; Spain, France and the United Kingdom refer to other mechanisms such as checks by exchanging information with other authorities or mathematical and algorithmic analyses of the set of operations under review.

Similarly, as a mechanism to improve fraud detection, it will be possible to assess, under the coordination of the national authorities responsible for preventing and combating fraud,<sup>6</sup> the adoption of mechanisms to facilitate the reporting of acts constituting fraud or corruption ensuring the confidentiality of the identity of those who had made the complaint, in order to avoid any retaliations they might suffer, and to establish the procedures to be undertaken after receiving the complaints.

### **Correction and prosecution**

In the Management and Control System Description the procedures for the registration and correction of irregularities, including fraud, and for notifying them to the EC are presented in detail (e.g., 2.4.1, 2.4.2, 3.3.1, 3.3.2 and 3.3.3).

In what concerns fraud or suspected fraud, a distinction should be made between the procedure for reporting irregularities to the EC (OLAF) in order to comply with article 122 of Regulation (EU) No. 1303/2013 and the procedure to be carried out for investigating and, where appropriate, punish irregularities proven to be fraud as defined in article 1 of the Council Regulation (EC, Euratom) No 2988/95.

It should be pointed out that the categorization as suspected fraud of a given irregularity and the subsequent legal (or, if applicable, administrative) procedure to decide whether such irregularity constituted fraud and, in this case, impose the corresponding penalty, are independent of the procedure for the recovery of corresponding funds. The last procedure must be applied regardless of whether or not the irregularity constitutes fraud and whether it is initially categorized as “suspected fraud” since it applies to any irregularity.<sup>7</sup>

In irregularities, suspected fraud and cases of fraud, the following actions are adopted by the MA/JS:

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<sup>6</sup> In Portugal the *Conselho de Prevenção da Corrupção*.

<sup>7</sup> According to article 4(1) of the Council Regulation (EC, Euratom), “As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage: by an obligation to pay or repay the amounts due or wrongly received; by the total or partial loss of the security provided in support of the request for an advantage granted or at the time of the receipt of an advance.”

- registration of suspected fraud in a specific database of errors;
- amounts concerned with cases of suspected fraud are removed from the accounts and from any payment application as detailed in sections 2.4.1, 2.4.2 and 3.3 from the MA and CA Description of Management and Control System;
- payments to the concerned beneficiary are suspended until the case has been clarified and, if applicable, undue paid-out funds are withdrawn or recovered;
- registration of irregularities and fraud in the information system – Controls and Audits, in the Debt Accounting System whenever a payment was done;
- formal communication, in written, to the MA, CA and Audit Authority<sup>8</sup> on the suspected fraud;<sup>9</sup>
- formal communication, in written, to the monitoring committee (MC) and the member of the Group of Auditors representative of the MS where the suspicion of fraud occurred who, in turn, inform the competent national authorities for investigation and sanctions (including anti-corruption authorities where relevant);
- the concerned MS reports to the OLAF *via* the Irregularities Management System (IMS);
- the MA has reporting mechanisms to ensure sufficient coordination on anti-fraud matters with the audit authority and competent investigative authorities in the MS, including anti-corruption authorities and informs the EC in the context of the management declaration and annual summary report (see section 2.2.3.13 in the Management and Control System Description).

It is important to note that, according to the relevant Regulations (identified in section 2), one of the issues on which the authority that has detected an irregularity must decide is whether it should be classified as “mere irregularity”, “suspected fraud” or “confirmed fraud” (see section 3). Subsequently, whenever an authority detects an irregularity, and irrespective of any other action (*e.g.* recovery of the undue payments), it must analyse whether that irregularity may be considered within the definition of “fraud” established in article 1(1)(a) of the Council Regulation (EC, Euratom) No 2988/95: a crucial determinant is whether or not there was intentionality in the irregularity. If so, that authority must categorize the detected irregularity as “suspected fraud” and notify the EC (OLAF) through the IMS application and under the procedure for communicating irregularities as detailed in the Regulations before cited.

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<sup>8</sup> The audit authority (AA), Inspeção Geral das Finanças (IGF), is the Portuguese AFCOS entity. In situations of suspected fraud the relevant anti-corruption authorities are informed *e.g.* *Ministério Público, Tribunal de Contas, IGF, Autoridade Tributária e Aduaneira*.

<sup>9</sup> The relevant Regulations, above mentioned in this document, consider that one of the issues on which the authority that has detected an irregularity must be decide is whether it should be classified as “mere irregularity”, as “suspected fraud” or as “confirmed fraud” (see Section 3). Subsequently, whenever an authority detects an irregularity, and irrespective of any other action (*e.g.* recovery of the undue payments), that authority shall analyse whether that irregularity may be considered within the definition of “fraud” established in article 1(1)(a) of the Council Regulation (EC, Euratom) No 2988/95: a crucial determinant is whether or not there was intentionality in the irregularity in question. If so, that authority must categorize the detected irregularity as “suspected fraud” and notify the EC (OLAF) through the IMS application and under the procedure for communicating irregularities as detailed in the Regulations before cited.

At the same time, and as it is clear from the concept of “suspected fraud”, the notification must be made to the competent entities for the corresponding administrative or legal procedure. This notification triggers the investigation into the irregularity on which there are suspicions of fraud in order to be decided whether or not it is effectively constitutive of fraud. In this domain there are procedures for investigation and, where appropriate, irregularities are categorized as fraud and subject to punishment.

The categorization of an irregularity as “suspected fraud” by the authority responsible for its detection does not imply responsibility for the final categorization nor for the imputation of criminal or administrative infraction proceedings against the responsible for the irregularity. In fact, the final decision as to whether or not such irregularity constitutes fraud (and, therefore, whether or not it matches a “confirmed fraud”) is allocated to the legal (or, where appropriate, administrative) body that is competent to deal with and decide the procedure at national level. This body determines, precisely, whether fraud has occurred and, where appropriate, establishes the consequences of that determination.

In what concerns the procedure for investigation and, as the case may be, penalties for irregularities that could constitute fraud, the Council Regulation (EC, Euratom) No 2988/95 not only establishes in article 1(1) that, in order to protect the financial interests of the EC, general rules are adopted related to homogenous checks and administrative measures and penalties concerning irregularities, but also states, in its article 2, that MS are obliged to adopt *“the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.”*

After the report to the national level, the national authorities competent for investigation and sanctions (including anti-corruption authorities where relevant) start the necessary administrative or judicial proceedings in compliance with national legislation on the matter. Moreover, whenever a fraud investigation confirms the occurrence of fraud, the MA, CA and JS review all the procedures and controls associated to the fraud in order to identify weaknesses and implement learned lessons. This action will trigger a new fraud risk assessment, as previously described.

IGF, as the AFCOS entity in Portugal, defines the coordination procedures with the different entities responsible for the management and control of EU funds in what concerns the report of irregularities, cases of suspected fraud, coordination and implementation of the Anti-Fraud Strategy, always respecting the principle of segregation of functions.

The results associated to the implementation of the MA Anti-Fraud Strategy must be released, internally and externally, namely to the beneficiaries or potential beneficiaries.

In annex to the main document of the Anti-Fraud Strategy is the EC Fraud Risk Assessment Tool (Annex 1) and the document made available by AD&C, *Estratégia Antifraude e Avaliação do Risco de Fraude*, N.º 04/AD&C/2015 of 23 April 2015.

The presented Anti-Fraud Strategy is approved by the MA of the Interreg Atlantic Area Programme 2014-2020 and comes into force in the approval day.

**Annex 1: EC Fraud Risk Assessment Tool**

[http://ec.europa.eu/regional\\_policy/sources/docgener/informat/2014/guidance\\_fraud\\_risk\\_assessment\\_annex1.pdf](http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_fraud_risk_assessment_annex1.pdf)

**Annex 2: AD&C, *Estratégia Antifraude e Avaliação do Risco de Fraude*, N.º 04/AD&C/2015 of 23 April 2015.**

[http://poise.portugal2020.pt/documents/10180/11008/Norma\\_04\\_2015\\_ADC.pdf/bc4bdc59-737d-478d-8585-fb35788d906f](http://poise.portugal2020.pt/documents/10180/11008/Norma_04_2015_ADC.pdf/bc4bdc59-737d-478d-8585-fb35788d906f)