

BODIES ENTRUSTED WITH THE  
MANAGEMENT, COORDINATION AND CONTROL OF European and Other FUNDS

# Anti-Fraud Strategy

V1.3 dated May 2023



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HISTORY OF CHANGES		
Version	Publication Date	Change
1.1	4 November 2022	Changes were required in relation to the latest EU legislation including those concerning the European Public Prosecutors Officer, the Recovery and Resilience Facility (RRF), the Revised Common Provisions Regulations, sectoral EU Funds-specific Regulations as well as the Public Administration Act (Cap 595) and the Protection of the Whistleblower Act (Chapter 527 of the Laws of Malta. This is not an exhaustive list of laws and changes.
1.2	9 February 2023	Minor clarifications concerning the EEA Norway Funds.
1.3	April 2023	Clarifications of the scope and applicability, risks associated with specific funds such as the RRF, references to the National Risk Assessment, clarifications on the criminal code, references to the Public Finance Management Act (Cap. 601), Legal Notice 378 of 202, in section 1; several revisions in relation to section 4.1 on Prevention / deterrence; reference to the RRF and identification of fraud risk priorities in section 4.2; additional clarification in section 5 on lessons learned; additional Annex on Multi-tiered approach towards Control Implementation.

## 1. Introduction

### 1.1 Scope

This document sets out the Anti-Fraud Strategy (hereafter called AFS) covering funds falling under the responsibility of the Ministry responsible for EU Funds.<sup>1</sup> It outlines the approach of the competent authorities, implementing bodies and beneficiaries to tackle fraud and corruption in line with the provisions of the EU regulatory framework and National rules.

The AFS describes the principles it is based upon and provides the strategy and main anti-fraud objectives and actions to be pursued by the competent authorities in relation to the whole anti-fraud cycle comprising fraud prevention, detection and investigation, as well as corrective measures.

As regards judicial follow-up of fraud and corruption cases, OLAF as well as the national programme authorities will continue to refer cases to competent national Courts under applicable national criminal law. This document updates the Strategy adopted in September 2016 and is being revised on a regular basis depending on the needs and future developments. By way of example, measures are in pipeline at EU level, including a proposal for a new Directive on Combating Corruption. An EU Anti-Corruption Strategy is also being formulated.

**Disclaimer: This Strategy provides guidance of an explanatory and illustrative nature and is intended to assist all those involved in the implementation of EU and other Funds. Relevant national and European Union legislation take precedence over the content of these documents and should always be consulted.**

### 1.2 Application

The competent authorities will not tolerate fraud or corruption by anyone. Hence, this anti-fraud strategy applies to all staff and stakeholders involved in the ongoing programmes and those who come into contact with the competent authorities and or anyone involved in the implementation of the above EU funds programmes.

The application and scope must also be seen along the provisions concerning the anti-fraud cycle in section 3 of this Strategy, whereby the role and methodology to be followed by the managing authority /coordinating body and implementing body / beneficiaries are set out in relation to the stages of Prevention / Deterrence, and Detection and Reporting. The specific roles of the Internal Audit and Investigations Department (IAID), the investigation (Malta Police Force) and the prosecution (Attorney General) are delineated in section 4.3. The Managing Authority / Coordinating Body has a role in the recovery and sanctioning stage wherever administrative and/or criminal proceedings are required. Any irregularities within certain parameters shall be reported to the European Anti-Fraud Office (OLAF) in line with the established procedure.

## 2. Legal Framework

### 2.1 EU framework

Articles 310 and 325 of the Treaty on the Functioning of the European Union (TFEU) require the EU and the Member States to counter fraud and any illegal activities affecting the financial interests of the Union. The Member States shall take the same measures to counter fraud affecting the financial interests of the EU as they take to counter fraud affecting their own financial interests.

Article 317 of TFEU states that the principle of sound financial management is to be applied in the use of the EU budget by Member States in cooperation with the Commission. Articles 30 to 33 of the Financial

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<sup>1</sup> This also includes EEA and Norwegian Funds as well as other Funds.

Regulation applicable to the general budget of the EU clarify the principle of sound financial management. It entails adherence to the principles of economy, efficiency and effectiveness and implementation of effective and efficient internal control.

Article 63 of the Financial Regulation gives Member States the primary responsibility, in the framework of shared management, for preventing, detecting and correcting irregularities and fraud. In this respect the Member States have to build strong management and control systems, in order to ensure sound financial management, transparency and non-discrimination. They must also impose effective, dissuasive and proportionate penalties on recipients, where provided for by EU or national law.

Regulation (EC, Euratom) No 2988/1995 of 18 December 1995 provides for the definition of irregularity and makes common provisions for the administrative measures and penalties that should apply.

Regulation (EC, Euratom) No 2185/1996 of 11 November 1996 relates to on-the-spot checks and inspections carried out by the Commission in Member States. It provides for cooperation and coordination between the Commission and Member States. The Convention on the protection of the European Communities' financial interests of 26 July 1995 (the PIF Convention) provides a definition of fraud.

The Common Provisions Regulation (Article 74(1)(c)) obliges Member States to 'have effective and proportionate anti-fraud measures and procedures in place, taking into account the risks identified'.

Additional obligations upon Member States may apply in terms of fund specific Regulations taking into account the specificities of the respective EU instrument as in the case of the Recovery and Resilience Facility Regulation (RRF). Amongst the specificities of this EU instrument, the RRF, is a performance-based instrument under which financing is not linked to costs and is granted to Member States and disbursed in instalments upon the satisfactory fulfilment of a set of milestones and targets. Measures (reforms and investments) supported by the RRF can receive additional support by other EU funds. Article 9 of the RRF Regulation stipulates that "Support under the Facility shall be additional to the support provided under other Union programmes and instruments. Reforms and investment projects may receive support from other Union programmes and instruments provided that such support does not cover the same cost". This is also reflected in Article 22 on the protection of financial interests of the Union and in the provisions of other EU programmes with respect to actions co-financed through those programmes (e.g. funds covered by the Common Provisions Regulation, Digital Europe, Horizon or CEF).<sup>2</sup>

New EU instruments also come with novel terminology depending on the specific nature of the instruments. For example, while the CPR refers to the notion of Managing bodies and authorities, and beneficiaries, the RRF refers to the Coordinating body (the Ministry Responsible for the management and control of EU Funds), implementing bodies (the institution involved in the execution of each reform and investment), contractors and final recipients of EU Funds. Therefore, some terms in this Strategy may be used interchangeably.

Since the Strategy adopted in 2016, there were two significant additions to EU anti-fraud specific legislation adopted in 2017. These are:

- (i) the PIF Directive which sets stricter common standards for Member States' criminal laws to protect the EU's financial interests; and
- (ii) the Regulation that established the European Public Prosecutor's Office (EPPO), by way of enhanced cooperation. EPPO became operational in 2021.

Finally, the framework for an integrated policy of criminal and administrative investigations includes Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December

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<sup>2</sup> The costs of the totality of the measures under the Recovery and Resilience Plans (RRPs) are estimated *ex ante*, and payments are not subject to controls of the actual costs of the measures. As a consequence, the concept of eligible costs incurred is not applicable. There is no direct link between the payments from RRF to the Member State and the costs incurred by the Member State, and there is no assignment of costs to individual milestones and targets. In contrast, double funding under other Union programmes is generally a cost-based concept that considers that the same expenditure should not be covered by reimbursement under other Union funds.

2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations. The amendments to the OLAF Regulation allow OLAF to cooperate closely with the EPPO and to carry out its own investigations more effectively. Smooth and strong cooperation between the EPPO, OLAF, Eurojust, Europol and the Member States is essential for ensuring that the scope of investigations is comprehensive and that the new institutional design for the fight against fraud is fully effective.

## 2.2 National framework

On a national level, in 2008, Malta adopted a National Anti-Fraud and Corruption Strategy (NAFCS), which was revised in May 2021. The NAFCS aims to continue providing a normative, institutional and operational framework, for the effective and efficient fight against fraud and corruption in Malta, reflecting local requirements, EU, and other international obligations. The main thrusts of the strategy are prevention, deterrence, detection, investigation, and prosecution of fraud and corruption, whilst encouraging and facilitating transparency and accountability. The update of the strategy was revised following consultation with all members of the Co-ordinating Committee setup in terms of the Internal Audit and Financial Investigations Act, (Chapter 461 of the Laws of Malta). The action plan annexed to the NAFCS carries forward the work of the 2008 Strategy, and is intended to outline the specific actions. The Co-ordinating Committee is responsible to agree on the implementing body within the time frames.

Amongst the Tasks included in the NAFCS Action Plan is a National Risk Assessment (NRA), the results of which were published in December 2022.<sup>3</sup> Further information is contained in Section 4.1.

The Criminal Code (Chapter 9 of the Laws of Malta) provides for corruption such as international bribery offences, private sector bribery and trading in influence are in line with the OECD Criminal Law Convention on Corruption. The definition of public officials is sufficiently broad, including public servants with delegated powers. Malta amended its Criminal Code in the areas of fraud and corruption. In particular, the amendments were implemented through (i) Act No III of 2002, (ii) Act IX of 2003 and (iii) Act VI of 2007. Through Act XVIII of 7th April 2020, a new sub-article has also been added in the Maltese Criminal Code which transposes the provisions of the PIF Directive.

The Public Finance Management Act (Cap. 601 of the Laws of Malta), as relevant subsidiary legislation provides for the regulation, management, and accountability of public funds and resources, and the control and auditing thereof.

The Public Administration Act (Cap. 595 of the Laws of Malta) was enacted into law in 2019. The Public Administration Act does not only cover the Public Service; it also includes provisions regulating the wider public sector.

The Public Administration Act contains a code of ethics applicable public employees whereas the Freedom of Information Act aims to promote transparency and accountability in government. Article 4(1) of the Public Administration Act provides that "in the carrying out of their functions or duties public employees shall uphold and promote the following values (a) integrity, (b) respect, (c) loyalty, (d) trust, (e) quality, (f) accountability, (g) impartiality and (h) non-discrimination." According to Article 4(2) of this Act, failure to act in accordance with the said values is a ground for disciplinary proceedings. It is pertinent to recall that the Public Service Management Code (PSMC), was given the status of a public service Directive, which binds public officers and is enforceable in terms of Article 15(2) of the Public Administration Act (Chapter 595 of the Laws of Malta). This measure which was implemented through Amending Directive No 1-1, means that public officers who fail to comply with the PSMC become liable to disciplinary proceedings.

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<sup>3</sup> <https://iaid.gov.mt/en/Documents/Co-ordinating%20Committee/National%20Risk%20Assessment%20-%20Republic%20of%20Malta.pdf>

Article 4(4) of the Public Administration Act provides for identification in the Sixth Schedule of the Act of those posts within the public administration that, due to the nature of their role and responsibilities, are considered to be high risk posts, including EU Fund managers as well as officers, executives and managers responsible for procurement. Directive 15 on the ‘Governing Policy for integrity promotion, awareness and assessment for public employees’, issued in terms of the Public Administration Act, was adopted on 20 April 2021. The Directive introduced and made mandatory, the Integrity and Ethics Awareness Learning Programme (IEAL). Directive 15 issued pursuant to Article 4(3) of the Public Administration Act applies to:

- those public employees in posts within the Public Administration that are listed in the Sixth Schedule of the Public Administration Act and therefore covers officers involved in the management, coordination and control of EU Funds;
- prospective candidates for Senior Management Positions (Category A - Headship Positions Scales 1-5).

This Integrity Awareness Programme is intended to achieve the following aims:

- To up-scale the integrity standards for government officials by consciously subjecting them to a development programme that enhances their awareness and related pitfalls in relation to up-keeping ethical standards through their decision responses, especially in dilemmatic circumstances.
- To make public employees more knowledgeable and aware of their responsibilities of their actions and decisions in ethically problematic situations.
- To enhance a spirit of integrity standards in the day-to-day activities and mark the public sector as an exemplar of positive risk management.
- To provide an opportunity for development and growth amongst public employees.

The programme includes a mandatory integrity maturity assessment that is repeated every two years.

The Integrity Awareness Programme, has been integrated in the 5-year Strategy for the Public Service “Achieving a Service of Excellence” launched in November 2021. The Strategy provides for an initiative called ‘Leadership Upskilling Programme’, which will address the current skills gap as well as the identification of succession planning and preparation for future leaders. The Programme, which will replace the existing Management Toolkit, will include an Integrity Assessment amongst other things, as well as refresher sources in subsequent years. The Programme will become mandatory for all positions appointed through Senior Advisory Appointments Committee (SAAC) and will be open to all prospective leadership candidates (these include for example, Director Generals, Directors and Assistant Directors). The Owner of this initiative is the IPS supported by the Employees Support Programme (ESOP) (P&SD).

The Strategy reiterated that Employees as per Schedule 6 of the Public Administration Act are subject to integrity testing. The Strategy sets out a yearly ‘Employee integrity testing (Success rate) of 80% for the years 2022-2026.

Malta also has put into force its whistle-blowing legislation through the enactment of the Protection of the Whistleblower Act (Chapter 527 of the Laws of Malta). This Act may be described as revolutionary in the protection it affords to whistle-blowers under Maltese law as it protects an employee who makes a protected disclosure about an improper practice committed by his employer from detrimental action. The employee/employer relationship implies duties of loyalty and confidentiality – hence the need for protecting the employee who discloses information about his employer. Hence, whistle-blowing is a very effective internal tool for detecting and rectifying wrongdoing being done within the organization.

Following the publication on 1st October 2020 of the Legal Notice 378 of 2020 – Prosecution of Offences (Transitory Provisions) Regulations, 2020, the Attorney General Office took over the decision to prosecute, and the conduct of prosecutions of corruption offences and of serious cases of fraud (fraud that exceeds €50,000 in damages).

### 3. Guiding Principles of the Anti-Fraud Strategy

As part of the Commission's enhanced action to protect the EU Budget by means of its revamped Anti-Fraud Strategy, principles and standards were identified as a guidance to Member States in establishing their own anti-fraud procedures. These include:

1. zero tolerance for fraud;
2. fight against fraud as an integral part of internal control;
3. cost-effectiveness of controls;
4. professional integrity and competence of staff;
5. transparency on how EU funds are used;
6. fraud prevention, notably fraud-proofing of spending programmes;
7. effective investigation capacity and timely exchange of information;
8. swift correction (including recovery of defrauded funds and judicial/administrative sanctions);
9. good cooperation between internal and external players, in particular between the EU and national authorities responsible, and among the departments of all EU institutions and bodies concerned;
10. effective internal and external communication on the fight against fraud.

In line with the Commission's guidance, this strategy has been drafted to address the main fraud risks in a targeted manner, keeping in mind that, apart from baseline requirements, the overall benefit of any additional anti-fraud measures should exceed their overall costs (the principle of proportionality), taking also into account the high reputational cost linked to fraud and corruption.

The core guiding principles of this Strategy as listed below build upon the Commission's guidance as well as well-established cooperation with all EU stakeholders, including OLAF. These focus on:

#### 3.1 Ethics

The competent authorities are committed to observe the highest standards of ethical behaviour and integrity. The staff must comply with these standards and is adequately trained both on the risks of fraud and the need to fight it. The staff is also committed to work in line with the respective Organisational Value Set – hence the values of integrity and accountability, service, efficiency and effectiveness. The staff values professional performance, professional scepticism, and believes in achieving goals with due integrity, transparent honesty, diligent probity and personal accountability; the staff proudly commits to work together as a collaborative team in order to provide a service of excellence to customers who are equally treated with courtesy, fairness and equity. Moreover, it is aspired by the staff to continuously improve on efficient and effective delivery in a spirit of respect, harmony and humility.

#### 3.2 Enhanced transparency

This is an important tool in the fight against fraud. The relevant information on the use of EU funds should so far as possible be available in a format which can be audited, compared and analysed for anti-fraud purposes, subject to the relevant data protection rules.

### 3.3 Fraud prevention

The design of spending programmes is the first stage of effective fraud prevention. A clear delineation between funding programmes and operations at design stage is essential in ensuring that a coherent approach is adopted across programmes. As a preventative measure, an analysis of the potential for exposure to fraud will be included in feasibility studies and impact assessments, wherever relevant. At the implementation stage of the programmes, cost-effective and risk-based monitoring and control mechanisms should ensure proper mitigation of the risk of fraud.

### 3.4 Effective investigation capacity

Adequate tools and incentives are important for the effective detection and investigation of fraud. Whenever fraud is suspected, whistleblowers, witnesses and informants have easy, secure and fast procedures for reporting fraud in compliance with the regulations.

### 3.5 Sanctions

Justice must be achieved with due process and in reasonable time. The established procedures provide for enhanced standards of due process using mechanisms that enable swift and independent action.

### 3.6 Good cooperation between internal and external actors

In particular, good cooperation between the EU and national authorities responsible, and between the Services of all the institutions concerned, is a prerequisite for efficiently combating fraud. The Commission takes into account the important role of its implementation partners, notably within shared management systems.



## 4. The anti-fraud cycle

This objectives of this Strategy is to describe the specific initiatives, responsibilities and actions that will ascertain the putting in place of an appropriate anti-fraud framework.

**Prevention / deterrence → Detection and Reporting → Investigation and Prosecution → Recovery and Sanctioning**

### 4.1 Prevention / deterrence

Responsible institutions:

**First level:** Beneficiaries / Implementing Bodies / Line Ministries.

**Second Level:** Competent authority for management and control within the Ministry responsible for management and control of EU Funds.

**Overarching National Level:**

- **Internal Audit function:** In accordance with the [Internal Audit and Financial Investigations Act \(Cap. 461\)](#) and the [National Antifraud and Corruption Strategy](#) one of the functions of the Internal Audit and Investigations Division is an internal audit function within “any department of Government or any entity falling under the supervision of Permanent Secretaries, for the purpose of assisting them in the effective discharge of their duties.”
- **Coordinating Committee** set up according to Section 23 of the Internal Audit and Financial Investigations Act (Cap. 461 of the laws of Malta), chaired by the Director General IAID, with a remit to co-ordinate the activities of, and to facilitate the exchange of information between, different entities charged with the protection and safeguarding of public funds.
- **External Audit function:** The functions and powers of the Auditor General and the role of the National Audit Office (NAO) are defined by Section 108 of the Constitution of Malta and the Auditor General and National Audit Office Act (Cap. 396 of the Laws of Malta). The Constitution and the Act empower the Auditor General to audit the accounts of all Departments and Offices of the Government of Malta, and of such public authorities or other bodies administering, holding, or using funds belonging directly or indirectly to the Government of Malta. The Act extends this mandate further to include the Performance audit of Central Government Departments and Offices and other public sector entities, as well as the audit of the operations of companies or other entities in which the Government of Malta owns not less than 51 per cent of the shares.

The competent authorities and bodies recognise that fraud and corruption are costly, in terms of investigative costs, financial losses and reputational risk. The prevention of fraud is therefore an essential component of the respective organisation’s administration of the programmes. The competent authorities and bodies encourage all staff / beneficiaries to put in place an effective internal control system with the aim of deterring potential fraudsters and also of maximising the commitment of staff to combat fraud.

At a national level, the NAFCS Action Plan requires a National Risk Assessment (NRA). The results of the first NRA were published in December 2022.<sup>4</sup> The results of the NRA are based on the risk assessments undertaken in 2022 by the members of the Co-ordinating Committee, set up in terms of Article 23 of the Internal Audit and Financial Investigations (IAFI) Act (Cap. 461 of the Laws of Malta). The aim of the NRA is to:

<sup>4</sup> <https://iaid.gov.mt/en/Documents/Co-ordinating%20Committee/National%20Risk%20Assessment%20-%20Republic%20of%20Malta.pdf>

- 1) Maintain an effective risk-based regime to combat fraud and corruption;
- 2) Prioritise and allocate public resources to mitigate risks effectively;
- 3) Assist national authorities in (1) assessing the adequacy of their controls (2) identify uncovered risk areas and (3) strengthening their controls where necessary; and
- 4) Increase awareness of fraud and corruption risks among the general public.

The following are some of the potential fraud and corruption inherent risks identified in the NRA:

- Risk that the procurement process is not in line with the standing regulations;
- A government employee intentionally effects an improper payment to a third party;
- Disclosure of sensitive information to third parties;
- Unlawful use of the government information systems;
- The failure of declaring of a direct or indirect conflict of interest by an employee; and
- Active and passive corruption.

The plan is that the National Risk Assessment will be reviewed and updated if the need be on a biennial basis.

Over and above the NRA, the competent bodies and authorities are to maintain a comprehensive risk assessment taking into account relevant fraud risk indicators in turn taking into account any relevant specific characteristics of the EU instrument/s, and identify where applicable potential and proportionate additional controls. Moreover, competent bodies and authorities are to ensure on-the-spot checks (including physical on-the-spot checks) based on the outcome of the risk assessment, if necessary. Taking into account the relative risk assessment/s, all stakeholders, including beneficiaries / implementing bodies / Line Ministries and competent bodies and authorities (hereinafter referred-to as respective bodies and authorities) should ensure the following:

- Raise awareness through formal training of all staff complement involved in the management of EU funds about preventative and detective control measures as well as the specific roles and responsibilities of all stakeholders and reporting mechanisms. No individuals — regardless of their position within the organisation — should be provided an exemption from receiving an initial orientation and ongoing anti-fraud education. Like any educational efforts, frequent exposure to anti-fraud topics is the key to ensuring employees learn and apply the information provided. Formal fraud awareness training should be an ongoing process that begins from early stages of employment. Employees should also participate in refresher training to help keep the programme alive and engrained in their minds. Additionally, all employees should sign a statement acknowledging their understanding of and commitment to the programme.
- The respective bodies and authorities will also put in place effective separation of duties, particularly with respect to financial and control units and rotate staff (when possible). It will promote an ethical culture among staff to act honestly and with integrity to safeguard all national and Community resources. While the scope of this Strategy extends to all respective staff and stakeholders as per section 1.2 of this Strategy, it is important that this Strategy is disseminated to all respective staff, underlining the respective responsibilities in terms of anti-fraud measures.
- The respective bodies and authorities are to ensure effective implementation of proportionate measures to effectively avoid conflict of interests. To this end, the competent bodies and authorities will ensure that staff involved in the management, coordination and implementation of EU funds is aware of possible conflict of interest or fraudulent behaviour

at every stage of implementation. Due attention must be given to any red flags that are indicators of possible fraud or corruption. The quality and quantity of the checks performed on declarations on absence of Conflict of Interest must be structured and clear, understanding that this can be organized on a risk-basis. Data-mining tools such as Arachne are to be used to check the veracity of Absence of Conflict of Interest Declarations signed by staff in management of EU instruments and other funds as applicable and by members of the evaluation boards, including external evaluators.

- The respective bodies and authorities are to ensure prevention and mitigation of double funding through proportionate measures, which may include:
  - the development of a map of intersections of possible overlap of projects for the risk prevention and mitigation of double funding;<sup>5</sup> and
  - a systemic checklist for assessing possible double funding in the projects being implemented.
- The respective bodies and authorities are to maintain a written procedure setting out the step-by-step process of collection and verification of beneficiary owner data.
- The respective bodies and authorities will encourage staff to report any case of suspected fraud concerning EU funds to the responsible authority, either through their respective hierarchy or directly if necessary.
- The respective bodies and authorities will conduct regular verifications, including physical on-the-spot checks, ensuring that staff in charge is aware of European Commission and national guidance on fraud indicators.
- The respective bodies and authorities are to participate in the implementation of the external communication strategy regarding fraud-awareness raising, required in the National Anti-Fraud and Corruption Strategy, as necessary. Messages should be designed to achieve maximum deterrent effect on fraudsters, use relevant media to ensure potential fraudster are aware of these messages.

## 4.2 Detection and reporting

Responsible institutions:

Effectively, there are three levels of oversight within the national system:

- **First level oversight:** Executed by the Beneficiaries / Implementing Bodies / Line Ministries which, as set out by the national legislative framework, have responsibility for the accountable, proper, transparent and effective management of projects designed, implemented and executed within their Ministries. Ministries and beneficiaries will pay attention to, amongst others, the main fraud and corruption risks identified by the respective risk assessment/s. These include the occurrence of unlawful use of resources and information, the occurrence of procurement processes not in line with standing regulations, the intentional

<sup>5</sup> Article 191 (Principle of non-cumulative award and prohibition of double funding) of the Financial Regulation (Regulation (EU, Euratom) 2018/1046).

Moreover, in accordance with Article 28 of the RRF Regulation, the Member State shall foster synergies and ensure effective coordination between the recovery and resilience facility established by the RRF Regulation and other Union programmes and instruments, and in particular with measures financed by the Union funds in a manner commensurate to its responsibilities. Pursuant to Article 9 of the RRF Regulation, the Member State shall ensure that no double funding takes place.

act of effecting improper payment/s to third parties, the disclosure of sensitive information to third parties, failure to declare a direct or indirect conflict of interest by an employee and active/passive corruption.

Beneficiaries / Implementing Bodies / Line Ministries understand the need for timely interventions that weed out the involvement of conflicted persons on official boards involved with the design, award, implementation of procurement processes which are co-financed through EU funds and the processing of payments which fall within projects co-financed by EU funds.

- **Second level oversight:** Executed by the competent authority or body for management and control within the Ministry responsible for management and control of EU Funds. One of the primary tasks of the competent Authority or body is to undertake management verification checks on expenditure through documentary verifications and on-the-spot checks, including physical checks. The competent authority carries out sample checks on the Ultimate beneficiary Owner (UBO) verifications checks carried out at the first level oversight. Similarly, the competent authority or body undertakes random checks to ascertain that the Declaration of Impartiality & Confidentiality is signed by the Tender Evaluation Committee (TEC) Members and properly documented in file. Furthermore, the Competent authority or body ensures that the beneficiary has an updated CV of the TEC members; Tender drafters; and Tender originator form in file. The CV of these officials is checked, on a random basis, vis-à-vis the bids received and a cross check is undertaken between the addresses of the bidders and the address listed in the CV. Checks are also carried out in relation to double / complementary funding
- **Third level oversight:** Exercised on the basis of a sample such oversight is executed by the Financial Control Unit within the Ministry responsible for the Management and Control of EU Funds in relation to the checks carried out by the competent authority for management and control. By way of example, the procedure for the identification of a sample of contracts will be subjected to further checks on the contracts' ultimate beneficiary owners (UBOs).

The body (at any of the levels mentioned above) that identifies or reports an irregularity or suspects fraud should inform in writing the Internal Audit and Investigations Department in line with Article 16 of the Internal Audit and Financial Investigations Act (Chapter 461 of the Laws of Malta), which states that 'If an entity has reason to suspect any irregularity and, or a suspected case of fraud of public funds, it shall refer the matter forthwith to the Director (of IAID), and shall supply to the Director all information in his possession relating thereto'.

The Internal Audit and Investigations Department is also vested with the role of Audit Authority.

Well implemented, robust control systems can considerably reduce the risk of fraud but cannot completely eliminate it from occurring or remaining undetected.

The four most important tools of the professionally sceptic individual include:

- Listening carefully;
- Seeing (the real thing);
- Intuition;
- Mindset and perspective (looking and assessing something from different angles, including that of the 'fraudster').

Training is key to developing these tools.

As for formal tools, the European Commission has been formally notified by the respective Maltese authorities of the commitment to use ARACHNE tool to detect risky operations and will adopt any other appropriate IT tool if necessary. Through such IT systems, any risks identified in relation to the Beneficiaries, the interventions or the contractors in terms of fraud and double funding will be assessed further.

Awareness will continue to be raised in relation to existing national, EU and interanational databases, data mining tools and risk-scoring tools, not least through the complementary use of Open Source Intelligence Tools (OSINT).<sup>6</sup>

In line with Article 74(1)(c) of the Common Provisions Regulation, the competent authorities are to ‘put in place effective and proportionate anti-fraud measures taking into account the risks identified’ while Article 74((1)(d) provides that the competent authorities shall prevent, detect and correct irregularities. Similarly, Article 22(1) of the RRF Regulation, provides that Member States shall provide effective and efficient internal control system (ICS). This will be based on a thorough fraud risk assessment by making use of a fraud risk assessment tool provided by the European Commission (where applicable) which covers the likelihood and impact of specific and commonly recognised fraud risks, focusing on these three key processes:

- Selection of beneficiaries;
- Implementation of projects by beneficiaries, focusing on public procurement; and staff costs; and
- Certification of expenditure by the competent authorities and payments.

In terms of Fraud Risk Assessment, the following are the priorities being actioned:

- Avoidance, Detection and Mitigation / Management of Conflict of Interest Situations;
- Selection of Officers working in the Managements of EU-funded projects across Line Ministries;
- Timely Implementation of Checks/ Safeguards meant to Avoid Conflict of Interest situations;
- Dissemination of Benefits / Awareness of Whistle-blowing Protection;
- Emphasis of Public Service Management Code Rules on Part-time / Ancillary Employment. (Though these are very commendable, the general direction of the EU Commission still refers to the first three above)

The fraud risk assessment exercise is to be undertaken periodically or whenever a significant alteration to the management and control system is made and/or when fraud is suspected. This exercise enables the MA to provide risk responses which are proportionate to the risks identified to its specific situations.

However, although a well-targeted assessment of fraud risks is a requirement it cannot completely eliminate the risk of fraud from occurring or remaining undetected. Additional mitigating controls are therefore called for and these are discussed further in this section.

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<sup>6</sup> E.g. [EDES](#), [IDEA](#), [VEIS](#).

The methodology to be used is illustrated below:



For each of the specific risks, the overall objective is to assess the ‘gross’ risk of particular fraud scenarios occurring, and then to identify and assess the effectiveness of controls already in place to mitigate against these fraud risks either from occurring or ensuring that they do not remain undetected. The result will be a ‘net’ current risk which should lead to an internal action plan to be put in place when the residual risk is significant or critical in order to improve controls and further reduce the exposure of the Member State to negative consequences (i.e. putting in place any additional effective and proportionate anti-fraud measures, as necessary).

**Once a risk is identified, the competent authorities desk officers together with the Project Leader will formulate a process listing all the mitigating controls in place to address the risk. Once the risks reduced to an acceptable level, the competent authorities shall communicate the action taken with current / potential beneficiaries and update the risk mitigation plan.**

**However, if the risk is still considered high and fraud is hence suspected, the procedure below highlights the authority levels, responsibilities for action and reporting lines established:**

When any relevant authority or beneficiary, or their members of staff, suspects that fraud has occurred, they must notify their immediate superior. If it is inappropriate to raise the matter with the immediate superior, the concern should be raised with the Head of the beneficiary organisation / ministry / responsible authority. The official with whom the report was filed must immediately relay the message to the Head of the responsible authority.

Timeliness plays a crucial role when addressing suspected cases of fraud. Consequently, when identifying cases of potential fraud, an officer’s immediate action is to alert his / her direct superior verbally. The case, which is treated with confidentiality (subject to legal obligations), is followed up by a written report so that the relevant authorities can be informed and requested to investigate further.

The body reporting the suspected fraud must act with caution in dubious situations which might lead to fraudulent transactions. In case of detection of possible forged documents, the Treasury is advised to temporarily stop all payments addressed to the supplier / contractor in question.

The body identifying / reporting the irregularity / suspected fraud should inform in writing the Permanent Secretary and / or Head of the beneficiary organisation, and the Internal Audit and Investigations Department in terms of Article 16 of the Internal Audit and Financial Investigations Act (Chapter 461 of the Laws of Malta), which states that ‘If an entity has reason to suspect any irregularity and, or a suspected case of fraud of public funds, it shall refer the matter forthwith to the Director (of IAID), and shall supply to the Director all information in his possession relating thereto’.

Fraud may also be reported through the channels established by way of the Whistleblower Act (Chapter 527 of the Laws of Malta). A Government official has been appointed from the level of Assistant Director or above within every Government Ministry to serve as a Whistleblowing Officer detailed to receive reports. Furthermore, another high ranking Civil Servant from within the Cabinet Office at the Auberge of Castille has been entrusted with the responsibility of serving as External Whistleblowing Officer who will receive all the reports according to the law.

A whistle-blower should file a report ‘in good faith’, and he/she would be protected from any disciplinary actions against him/her. The Whistleblowing can be exercised on facts which happened both before and after the law entered into force. This legislation will give full protection to all those who are honest, and guarantees safety and reassurance against any retribution. At the same time, it also serves as an incentive to all those who did any wrongdoing to reveal their actions. Information in relation to whistle-blower contact points is available on the dedicated webpage.<sup>7</sup> Additional guidelines issued by the Ministry responsible for the Management and Control of EU funds are accessible through the link in the footnote.<sup>8</sup>

### 4.3 Investigation and Prosecution

Responsible institutions:

- Referral of case which is of the nature of a criminal offence for investigation / prosecution: Internal Audit and Investigations Department.
- **Investigation:** Malta Police Force
- **Prosecution:** Office of the Attorney General

In terms of Article 18 of the Internal Audit and Financial Investigations Act, ‘whenever, and as soon as the Director firmly establishes the existence of suspected cases of irregularities and, or suspected cases of fraud concerning the responsibilities of the auditee under review, the Director shall, if he is of the opinion that the irregularity, if proved, would constitute a criminal offence immediately inform the Attorney General’.

The Attorney General will evaluate the case in question and determine whether:

- To forward the case to the Malta Police for criminal investigation; or
- Terminate proceedings of the case at that juncture.

The Commissioner of Police forwards to the body reporting the case a copy of the report of the investigation including any court action to be taken by the Police.

<sup>7</sup> <https://justice.gov.mt/en/justice/whistleblower/Pages/contact.aspx>

<sup>8</sup> <https://fondi.eu/wp-content/uploads/2023/01/Whistle-Blower-Act.pdf>

Where the investigation report concludes that no criminal proceedings are required (i.e. it is prima facie confirmed that the suspicion of fraud is not correct) the competent authorities shall advise Treasury to proceed with payment of pending invoices.

Moreover, the EPPO became operational in 2021. The EPPO is the EU's first independent and decentralised prosecution office. It has the power to investigate and bring to judgement crimes against the EU budget, such as, fraud, corruption, or serious cross-border VAT fraud.

## 4.4 Recovery and sanctioning

### Responsible Institutions

- **Sanctioning:** Courts of law
- **Recovery:** Competent Authorities responsible for the management and control of EU Funds
- **Reporting to OLAF through AFCOS:** Internal Audit and Investigations Department

Where the investigation report concludes that criminal proceedings are required (i.e. it is confirmed that the suspicion of fraud is factual) the competent authorities recommend the withdrawal of any suspicious payments from certification already carried out. This is to be considered as a proportionate and dissuasive sanction to tackling fraud in an appropriate manner.

Any irregularities shall be reported to the European Anti-Fraud Office (OLAF) in line with the established procedure<sup>9</sup>.

## 5. Learning Lessons, Knowledge Sharing and Improvement

Should any fraud related to the respective funds and instruments be unveiled, the competent bodies and authorities are encouraged to analyse potential weaknesses in their control system and implement necessary improvements (lesson learnt procedures).

The competent authorities, where appropriate, will share case studies of lessons learnt and best practice with staff and present / future potential beneficiaries. In addition, regular best practice might also be discussed / reviewed at meetings of the Data Intelligence Network, which is a forum within the competent authorities where audit knowledge is shared. If fraud has been suspected during the year, the Audit Authority will include a reference thereto in its Annual Control Report, where applicable.

## 6. Conclusion

The Anti-Fraud Strategy is a key element to further improve budget efficiency, from cradle to grave, from the very beginning of the chain till the final Beneficiary. The Anti-Fraud Strategy fits into a comprehensive approach to tackle fraud and corruption, and complements recent initiatives launched by the Commission to include appropriate anti-fraud measures across the different EU funding programmes.

The responsibility of the Member States as outlined in Article 74 of the Commission Provisions Regulation to 'put in place effective and proportionate anti-fraud measures taking into account the risks identified' and 'prevent, detect and correct irregularities' are amongst the most important obligations. The competent authorities are committed to lead by example throughout the full cycle of the programming period in ensuring that EU money reaches the right beneficiaries and is spent on purposes for which it is intended. In achieving this objective, the competent authorities shall strive to make the best use of the tools currently available, as well as other tools which may be made available during the programming period.

<sup>9</sup> Irregularities will be reported by the Internal Audit and Investigations Department in view of the Department's role of the Anti-Fraud Co-ordinating Service (AFCOS) Malta.