



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Director-General

Brussels, 15 JUN 2012
SRD/01/MT/ej D(2012)

**NOTE FOR THE ATTENTION OF
ALL DG JUSTICE STAFF**

Subject: DG Justice Anti-fraud strategy

According to the Commission's Communication on the Commission Anti-Fraud Strategy¹ adopted on 24 June 2011, each Directorate-General has to prepare a service level anti-fraud strategy before the end of 2013.

In a period of economic crisis and budgetary constraints, it is particularly important to ensure sound financial management of the financial resources coming from the EU budget. For this reason I would like to urge you to read the attached anti-fraud strategy, especially carefully familiarise yourselves with procedure outlined in section 3.1 of the document "Fraud response plan" which outlines main steps that should be taken in case of suspicion of fraud.

It is also my intention to organise specific training session for DG Justice staff. It will probably take place of the summer break, once you have had time to read and assimilate the strategy.

The DG Justice anti-fraud strategy and a list of links to relevant websites and documents on fraud prevention and whistleblowing will be published on the DG's intranet.

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Enclosures: Anti-fraud strategy (including annexes)

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¹ COM(2011)376 final.



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DG JUSTICE ANTI-FRAUD STRATEGY

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1. BACKGROUND AND MAIN CONCEPTS

1.1. Context and background

On 24 June 2011 the **Commission adopted its new¹ Anti-Fraud Strategy²**. The Strategy's purpose is to update and modernise the way fraud against the EU budget is tackled within the Commission with the view to ensure that the EU budget is managed in line with the principles of sound financial management and the prevention of and fight against fraud. In a period of economic crisis and budgetary constraints, it is particularly important to ensure that these principles are adequately respected.

The Commission Anti-Fraud Strategy complements the fundamental policy orientations of the Commission presented in its recent Communications on **Europe 2020³** and in the **Budget Review⁴**. These Communications highlighted important objectives for the simplification and coherence of EU rules while, at the same time, maintaining high standards of accountability and oversight of financial risks⁵.

Furthermore, the Commission will have an opportunity to further reinforce anti-fraud approaches across different EU policies in the context of the new multi-annual financial framework (MFF 2014-2020). The new MFF will be supported by new specific legislative proposals for EU programmes which should include appropriate anti-fraud measures. The Commission is committed to the further enhancement of anti-fraud legislative provisions in a cost-effective and proportionate manner⁶.

The Commission's Anti-Fraud Strategy is accompanied by an internal Action Plan which provides a list of 51 specific actions to be implemented by different Commission Services, all of them by 2014 at the latest. One of the actions urges the Services to introduce Anti-fraud strategies at **Commission Service level** respecting and clarifying the different responsibilities of the various stakeholders⁷. This document is an answer to this call.

1.2. Protection of financial interests of the Union – legislative and regulatory framework

Article 325 of the Treaty on the functioning of the European Union (TFEU) requires the Commission and the Member States to counter fraud and any illegal activities affecting the

¹ The previous Commission anti-fraud strategy was adopted in 2000.

² COM(2011)376 final

³ COM(2010)2020.

⁴ COM(2010)700.

⁵ Introduction to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions (COM(2011)376 final).

⁶ Ibid.

⁷ Ibid.

financial interests of the Union. Preventing and detecting fraud is therefore a general obligation for all Commission Services in the framework of their daily activities involving the use of resources. DG JUSTICE has issued a joint communication with OLAF on an integrated policy to safeguard taxpayers' money, which outlines a number of actions to be taken (COM(2011)293 final). In particular, a draft proposal on the protecting of the Union's financial interest through criminal law is planned for adoption in June 2012.

The European Commission implements the EU budget in accordance with the principles of sound financial management (Article 317 TFEU). It is committed to ensure that the framework, the policies, the rules and the procedures in place enable the effective prevention and detection of fraud.

The Commission Services are responsible for the management of the operational and administrative resources allocated to them to implement EU policies or to contribute to the smooth functioning of EU institutions. The prevention and detection of fraud is therefore one of the objectives of the internal control process over the use of budget appropriations. In this respect, Commission Services are responsible for taking the necessary measures to safeguard assets and information, prevent or detect fraud and irregularities, ensure appropriate risk management and avoidance of conflict of interest (articles 28a (2) of the Financial Regulation⁸ and 22a of the Implementing Rules). Within the **direct management mode**, the Commission Services are responsible to prevent fraud, for the financial follow-up of fraud cases in their areas of responsibility, and where appropriate and in close cooperation with OLAF, for the adoption of mitigating measures to avoid the continuation of fraud or irregularities⁹ (also see art. 53a of the Financial Regulation).

Moreover, the **Stockholm Programme** providing a framework for EU action on the questions of citizenship, justice, security, asylum and immigration for the next five years¹⁰ calls on the EU and its Member States to increase their efforts to combat corruption and other forms of financial crime.

Finally, the Commission is bound to ensure due implementation of the relevant **international conventions** and standards relating to anti-fraud policies, with a particular focus on the UN Convention against Corruption (UNCAC), the Council of Europe instruments (GRECO) and the OECD and G20 standards and recommendations.¹¹

1.3. Irregularity and fraud - definitions; examples of suspicions of fraud

The concept of **irregularity** is defined in the Council Regulation on the protection of the European Communities financial interests¹² as "any infringement of a provision of Community

⁸ Council Regulation (EC, Euroatom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p.1).

⁹ Introduction to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions (COM(2011)376 final).

¹⁰ OJ 4.5.2010, C 115, p.1.

¹¹ See The Communication of the Commission 'Fighting Corruption in the EU' (COM(2011)308), p. 9-10.

¹² OJ L312, 23.12.1995

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".

Fraud covers internal and external misbehaviour. According to the 1995 Convention on the European Communities Financial Interests¹³, **fraud** is defined, in respect of 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 EU general budget or budgets managed by, or on behalf of, the EU, non-disclosure of information in violation of a specific obligation, with the same effect, or misapplication of such funds for purposes other than those for which they were originally granted. In respect of revenue, fraud is defined 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 illegal diminution of the resources of the EU or budgets managed by, or on behalf of, the EU, non-disclosure of information in violation of a specific obligation, with the same effect, or misapplication of a legally obtained benefit, with the same effect.

In principle **fraud** is only proven when the court of law says so. For the purpose of this document, detection of fraud and irregularities, refers to the detection of facts or highly suspicious circumstances that point at irregularities and therefore potential fraud which require transmission to OLAF with a view to have them investigated by OLAF¹⁴. It should be borne in mind that this strategy also covers fraud without any direct financial impact for the EU (for example selling of sensitive information by a civil servant).

2. FRAUD PREVENTION AND DETECTION

An effective anti-fraud strategy should encompass three mechanisms: a preventive, a detective and a dissuasive one. They are complementary and need to be used in synergy to maximise effectiveness. The present document does not include an exhaustive list of controls of the internal control system in place, but only controls and actions specifically aimed to combat fraud.

2.1. Fraud environment in DG Justice

DG Justice was created on 1 July 2010 following the split of the former DG Justice, Freedom and Security (JLS) into two Directorates-General, Justice and Home Affairs. DG Justice is a relatively small DG managing only 0,12% of the EU budget¹⁵. Significant number of DG Justice projects are small-size with beneficiaries coming mostly from public authorities and NGOs.

¹³ C 316 of 27.11.1995.

¹⁴ SEC(2011) 791, p. 9.

¹⁵ In 2012 DG Justice is supported by a budget of EUR 181 million in commitment appropriations (as adopted by the Budgetary Authority).

DG Justice follows the partially centralised financial circuit model with a counterweight which guarantees independence of financial verification and provides the management with the assurance through the central finances unit¹⁶ about financial conformity and gives a support to the units managing DG Justice programmes.

For these reasons, DG Justice expenditure is considered to be of a relatively low risk nature. Since the creations of DG Justice, there have not been any irregularities detected pointing to suspicion of fraud that would require being reported to OLAF.

2.2. Horizontal fraud prevention measures

2.2.1. Risk assessment

DG Justice recognises importance of risk assessment in effective fraud prevention and detection. When carrying out the annual risk assessment exercise, DG Justice analyses each risk from the point of view of potential risk of fraud ("fraud filter"). The DG Justice internal guide on risk assessment puts an emphasis on areas that could be affected by financial or non-financial fraud or irregularities as areas of potential risks.

Moreover, DG Justice follows a risk management "bottom-up" approach, which allows every entity in the DG to identify and report potential risks. Based on this, the Director General of DG Justice defines list of risks to be included in the risk register. The annual risk assessment exercise in DG Justice is coordinated by the Unit Budget, control and ex post audits within the Shared Resource Directorate (SRD.01). DG Justice created also a dedicated Risk Management Task Force which is responsible for the annual collection and compilation of potential risk within all Directorates.

Risks identified as being critical are regularly monitored. The DG Justice risk assessment exercise is carried in full compliance with the DG BUDG guidance on risk management.

2.2.2. Ethics and fraud awareness

An important part of the DG Justice HR work programme¹⁷ is dedicated to enhancing ethical awareness and financial management. A number of customised internal training sessions covering ethics and anti-fraud is at DG Justice staff's and managers' disposal (for details please consult the Intranet or contact the SRD training team). Persons interested in following ethics and anti-fraud training are also invited to consult SYSLOG training catalogue as well as websites of other DGs, such as OLAF, INFSO, which provide on interesting range of training possibilities in this area.

DG Justice developed a dedicated website on ethics including information on roles and responsibilities regarding ethical conduct such as whistleblowing, centrally developed ethics training, links to various ethical guidance as well as contact details of ethics correspondents. DG Justice has its own "Code of Professional Conduct" containing easy to use quick guides,

¹⁶ The counterweight is provided through the provision of ex-ante verification located in the Shared Resource Directorate.

¹⁷ Please see: http://myhomejustresourcenet.jls.cec.eu.int/Workinghere/HRFactsFigures/Documents/JUSTICE-2011-2012_HR_Programme-FINAL.pdf

targeted on several activities. The ethics officers regularly publish articles on ethics related matters in the DG Justice newsletter.

Finally DG Justice's intention is to promote and follow-up closely development of anti-fraud measures within its traditional agencies¹⁸.

2.2.3. *Red flags*

Red flags are relevant patterns, practices and specific forms of activity that could signal irregularities or fraud. Some examples of red flags are presented below¹⁹. A more comprehensive list of red flags is presented in annex 3 of this anti-fraud strategy. This list is purely illustrative and not exhaustive as it is not possible to foresee all circumstances that can indicate fraudulent behaviours. It should be born in mind however that identification of any of the red flags does not immediately have to mean that fraud exists as the same indicator can also be associated with a nonfraudulent transaction²⁰. A red flag is a warning that something might not be right and should lead one to take a closer look. If the result of such assessment points out to a possible fraud scenario, the procedure described in section 3.2. should apply.

¹⁸ Communication to the Commission: Commission internal action plan for the implementation of the Commission Anti-Fraud Strategy (SEC (2011)787).

¹⁹ The examples of red flags presented in this document are based on the information note Ares(2011)1145186 - 26/10/2011, issued by the SIAC on 26 October 2011.

²⁰ L. Vona "The fraud audit", John Wiley&Sons, 2011, p. 58.



Red flags - examples

Specific for grant management:

- unexplained favourable treatment of an applicant by a programme (project) employee over a period of time;
- same evaluators for same applicants over a period of time;
- repeated contracts with same applicants;
- requests for amendments soon after grant agreement (or after award decision) signed or after award decision notified;
- grants from other similar EU programmes;

Specific for public procurement:

- apparent connections between bidders, e.g. common addresses, phone numbers etc;
- contracting employees appear to conduct side business;
- bids for particular items appear to be unreasonably low;
- a qualified bidder disqualified for questionable reasons;

Specific for labour charges and consultancy services:

- sudden, significant shifts in charging;
- professional staff required to work a significant amount of unpaid overtime on a variety of projects-both direct and indirect;
- significant differences between proposed and actual unit costs or quantities with no corresponding changes in work scope or job requirements;
- employees' skills do not match the skill requirements as specified for their labour category or the contract requirements;
- undocumented or not readily-justifiable changes to contracts, increasing their value to the contractor.

2.3. Allocation of roles and responsibilities for fraud prevention and detection

2.3.1. General staff obligations

Articles 22a and 22b of the Staff Regulations require any member of staff who becomes aware of possible illegal activities, including fraud or corruption, or any conduct which constitutes a serious failure to comply with the statutory obligations (e.g. financial irregularities, discrimination, malpractice, harassment, bullying, etc.) to report these facts.

Moreover article 60(6) of the Financial Regulation requires all members of staff involved in financial management and control of transactions to inform the authorities and bodies designated by the applicable legislation (namely OLAF²¹), in the event of receiving from their superiors any instructions that are irregular or contrary to the principle of sound financial

²¹ Article 72 of the Implementing Rules for the Financial Regulation defines bodies responsible in matters of fraud as "bodies designated by the Staff Regulations and the decisions of the Community institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests". Accordingly, article 7(1) of Council Regulation (EC) No 1073/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) states that "1. the institutions,(...) shall forward to the Office without delay any information relating to possible cases of fraud or corruption or any other illegal activity(...)".

management or the professional rules they are required to observe or in the event of illegal activity, fraud or corruption which may harm the interests of the EU.

Additionally article 65(2) of the Financial Regulation complements these obligations with the reference to personal liability of officials in the event of illegal activity, fraud or corruption which may harm the interests of the EU.

Information on the procedure to follow by DG Justice officials in case of suspicion of fraud is presented in section 3.2. of this document. However, whenever the information to be reported is internal, *i.e.* concerns the Institutions and their official(s) themselves, the “whistleblowing” rules apply (see annex 2).

2.3.2. Specific obligations

2.3.2.1. Coordination role of the Shared Resource Directorate (SRD)

The Head of Budget, control and ex post audits unit (SRD.01) is the contact person for relations with OLAF and a follow-up officer for whistleblowing issues. This unit maintains a register of cases examined by OLAF and a record of all contacts with OLAF.

A copy of all correspondence from OLAF or addressed to OLAF must be sent to unit "Budget, control and ex-post audits". On the other hand, unit SRD.01 will disseminate the information it receives about the case to the units/ directorates which should have access to it, including the SIAC. This applies to all communications, apart from whistleblowing cases.

In a specific case of a notification of potential fraud SRD.01 drafts a note from the DG to OLAF (see section 3.1.).

2.3.2.2. All units

All units in DG Justice are obliged to report on any suspicions of fraud (please refer to section 3.1 for the procedure) and to implement relevant findings resulting from the OLAF final report conclusions, in particular related to recovery of irregular and defrauded amounts.

Should a suspicion of fraud arise, the responsible Authorising Officer by Sub-delegation shall appoint a contact person at appropriate level in the Unit dealing with the programme in question. The name of this contact point should be communicated to Unit Budget, control and ex-post audits (SRD.01). The contact person at Unit level shall:

- liaise with Unit SRD.01 informing SRD.01 about the progress of the case;
- be responsible for ensuring follow-up of OLAF final case reports.

In the area of direct management specifically, grants and contracts are managed and controlled directly by the Commission, Heads of units and project managers are the best placed persons to detect fraud related to programme management. Personnel can also learn about fraud and irregularities from, e.g., press, results of audits, risk management exercises, other services (e.g. SIAC, IAS, and Court of Auditors), complaints sent by employees or partners of beneficiaries or anonymous complaints from outsiders.

2.3.2.3. Other fraud preventing and detecting system elements

For the actions implemented under the direct management mode, the assurance of the AOD is based on the capacity of the control system to detect significant and/or repetitive deficiencies. This control system is composed of different building blocks: supervision and verification of operations by the programme management unit, the ex-ante control by the Budget and Control Unit, the Internal Procurement Committee (JPC), the ex-post audits for grants and the audits from the Shared Internal Audit Capability, the Internal Audit Service and Court of Auditors. These blocks play also an essential role in fraud prevention and detection.

Ex-ante operational verification

The operational verification involves checking the political and operational interest of the action, opportunity of the expenditure, legality and regularity of the underlying financial operation, notably its conformity with the financing decision and legal commitment, as well as its conformity with the principles of sound financial management (the so- called "conforme aux fait"). The operational verification in DG Justice is centralised in the programme management unit A4.

Ex-ante financial verification

The ex-ante financial verification of financial transactions is performed by the ex-ante sector of the central Budget, control and ex-post audit unit (Unit SRD.01). The unit acts as a counterweight in the financial circuit by contributing to the assurance on the legality and regularity of financial transactions. It verifies and gives ex ante visa to each financial transaction, including calls for tenders and procurement. As such, SRD.01 contributes to the implementation of the four eye principle, and in addition, ensures that transactions are checked by an entity which is independent from the AOS and has no direct contact with beneficiaries or contractors. The only exception is first payment of prefinancing. As this is regarded as a low-risk transaction, a completely centralised circuit within the programme management unit of DG Justice applies, with verification and authorisation of the payment being combined in a single operation performed by the authorising officer.

The ex-ante sector of SRD.01 also gives advice on the steps of the process leading to financial transactions (tenders and proposals, award decisions, etc...).

On the basis of checklists, the verifiers check that all necessary control procedures have been performed, and that the financial rules and procedures, which are in themselves a safeguard against fraud, have been respected. Atypical files (in the sense that they would require further background information to ensure clear understanding) have to be accompanied by a note to the file. When a transaction looks suspicious to the financial verifier, questions are addressed to the programme management unit, Justice.A4.

By its function, notably its verification of rules and procedures, the ex ante sector contributes to the prevention and detection of fraud, both external and within the institution.

DG Justice Procurement Committee (JPC)

In the area of procurement, an advisory DG Justice Procurement Committee has been created. Chaired by a director, it meets monthly and gives its opinion on all open and restricted

procedures above the thresholds of the public procurement directive (currently € 133.000) and on negotiated procedures whose value exceeds 60 000 euro.

The role of the JPC is to check whether the units have correctly followed public procurement procedures. It does not intervene on the substance of contracts. When verifying procedures leading to the award of contracts, it verifies in particular the choice of the correct procedure, the evaluation and its justification. Thereby, it also contributes to the prevention and detection of fraud in the area of public procurement.

Ex-post audits

In the area of grant management, the post-payment process also includes corrective anti-fraud control elements, notably the ex-post controls which could be carried out.

Indeed, the primary objective of the ex-post audit function within DG Justice is to verify that the financial and other contractual obligations of the beneficiary have been fulfilled. As such, all information given, from the information supplied in the initial call for proposals to expenses claim made in fulfilling the action, is subject to ex-post controls in order to verify its validity and correctness. Within DG Justice, ex-post controls require an “audit” at the site of the beneficiary itself, always performed by a team of two auditors, drawn from SRD.01

The ex-post audit sector follows a detection strategy with the objective of detecting the maximum of anomalies. To select the transactions to be audited, a risk analysis is performed, which pays particular attention to recurrent beneficiaries, highest grant values, difficulties during closure procedures, etc. This results in the creation of an annual work programme which is approved by the Director General of DG Justice. In addition, the annual work programme is supplemented by requests from the Authorizing Officers by sub-delegation, to allow for targeted controls of a beneficiary under suspicion of irregularities.

The auditors are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud. However, when obtaining reasonable assurance, DG Justice's auditors maintain an attitude of professional scepticism. They give valuable concrete expertise on the situation on the spot. As a consequence, if the findings of an ex-post audit report include presumption of fraud, the procedure described in 3.2. should be followed.

As a consequence, ex-post audits carried out often lead to recovery orders or offsetting against future payments. They may also lead to the termination of ongoing project participations of beneficiaries with irregular cost claims or the exclusion of beneficiaries from future projects in case of irregularities or professional misconduct.

In addition, DG Justice auditors systematically encode in the ABAC audit tool the audits they are planning to perform and update their status when they are on-going or finalised. This ensures exchange of information with the auditors of other DGs. As well, when there is a suspicion of fraud following an audit mission on-the-spot, measures described under section 3.3 of this document are applied.

In parallel, it is part of the audit procedure to check the following before any audit is carried out:

- check if the beneficiary benefited or currently benefits from any other grant from another DG;
- check if any other DGs carried out an ex-post control (via ABAC audit tool)
- check if the beneficiary (and possibly the partners) appears in the EWS.

Commission's auditors (Shared Internal Audit Capability, Internal Audit Service) and the Court of Auditors

– Shared Internal Audit Capability (SIAC)

The SIAC provides independent, objective assurance by evaluating and making recommendations for improving the effectiveness of the governance and risk management processes and of the internal control system. The SIAC helps the Director General to verify that the internal procedures comply with the rules laid down and that economy and value for money in the use of resources is ensured. Based on the results of the audits the SIAC carries out during the year, it provides the directors general with an annual opinion on whether the internal control system in place provides reasonable assurance regarding the objectives set for the processes audited.

In 2010 and 2011 the SIAC carried out a consultancy engagement on fraud with the aim of raising level of fraud awareness in the DG. The consultancy engagement report²² provides a record of the reference material and a long list of red flags (see Annex 3, also available on the SRD intranet).

– Internal Audit Service (IAS)

Through its work, the Internal Audit Service contributes to providing assurance on the management of finance and resources to assess their effectiveness and efficiency, and with a view to bringing about continuous improvement in the Commission, decentralised and executive agencies and other EU bodies receiving contributions from the EU budget.

– European Court of Auditors (ECA)

The Court contributes to fraud and irregularity prevention and detection through its audit activity in which it assesses the collection and spending of EU funds. The Court promotes accountability and transparency by assisting the European Parliament and Council in overseeing the implementation of the EU budget, particularly during the discharge procedure, and brings added value to EU financial management through its reports and opinions.

3. FRAUD RESPONSE PLAN: PROCEDURE TO FOLLOW IN CASE OF SUSPICION OF FRAUD

3.1. Detection and notification of fraud

Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which gives rise to a presumption of the existence of possible illegal activity, including fraud or corruption detrimental to the interests of the Communities, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials, shall without delay inform either his immediate superior, who should then inform unit Budget, control and ex-post audits (SRD.01) or his Director-General

²² SIAC JON/MTP D(2010)11830.

or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) directly.

Important: In order to transfer any information about suspicion of fraud to OLAF, there is no need to have a proof of fraud; it is enough to have sufficiently serious doubts or suspicions that fraud exists.

Once the information on suspicion of fraud is transferred to unit SRD.01, its gravity shall be evaluated. In the case that the fraud suspicion is judged as not serious enough to justify further actions the file is closed. Otherwise, unit SRD.01 shall prepare a note²³ to refer the matter to the Director General of OLAF, to be signed by the Director General of DG Justice. Copies of all the available evidence should be attached to the note.

It is imperative to bear in mind that in case of suspicion of fraud DG Justice **must not conduct any internal investigation but to refer the file to OLAF as a matter of urgency.**

Please note that correspondence with OLAF on suspicions of fraud and irregularities shall be processed in ARES as "handling restricted", subcategory: "limited" (without specifying any expiry date). In principle all the documents to be sent to OLAF shall be attached in ARES. If the Director General decided that the information contained in the documents is too sensitive, the paper files shall only be circulated, leaving in ARES only the number of the cover note. The category EU restricted shall only be used when the document fulfills the conditions as specified in annex I to Security Notice 02²⁴.

The note on suspicion of fraud to be sent to the Director General of OLAF should contain:

- information on how the suspicion of fraud came to the DG's attention (e.g. during an ex-post audit, information from an outsider etc);
- name of programmes and calls for proposals/calls for tender;
- name and contact information of the suspected beneficiaries;
- the amount of the grant/tender and the amount and timing of payments;
- reasons for suspicion of fraud;
- amounts at stake;
- the name of the Head of unit SRD.01 for the contact point for the file.

As annexes, the note should contain:

- If the case is complex: a chronology of relevant facts;
- In all cases, copies of relevant documents (e.g. grant agreement, final audit report, major e-mail exchanges, etc.).

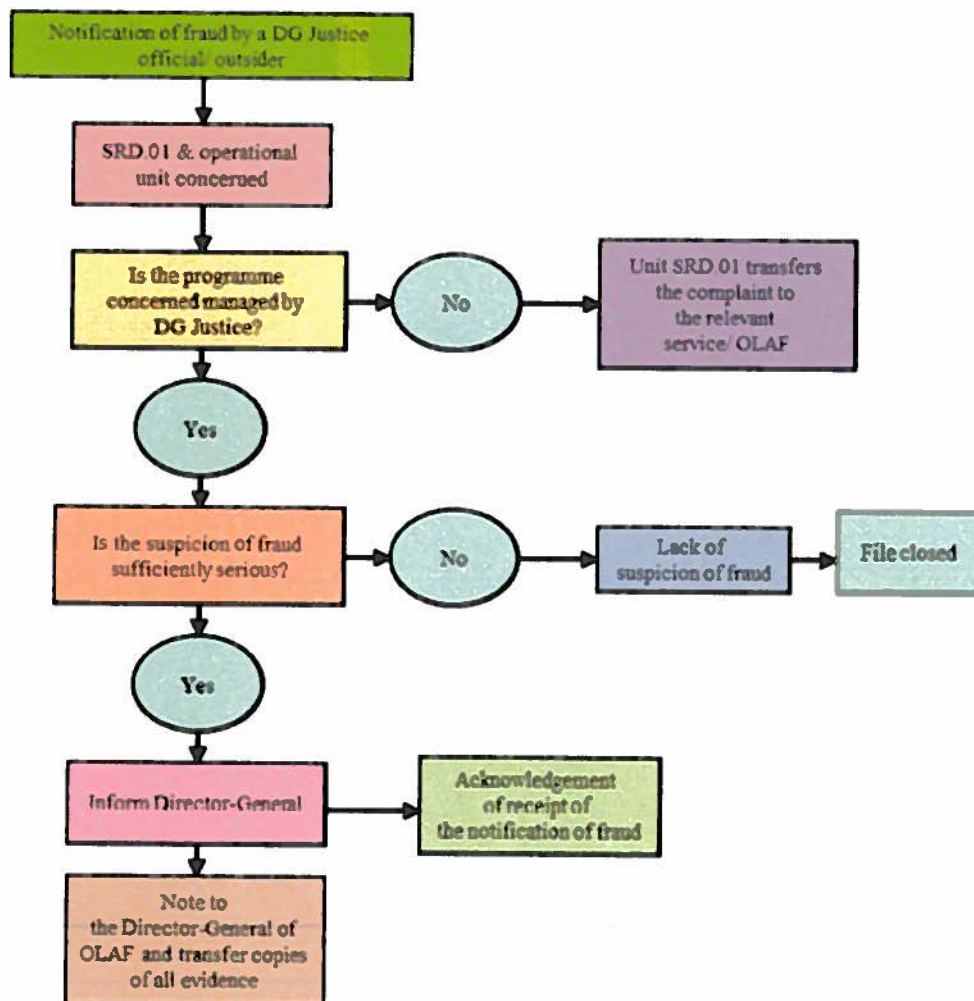
²³ If the file concerns external fraud related to one of the programmes managed by DG Justice, the note referring the file to OLAF should be prepared in cooperation with the DG Justice unit managing the programme in question.

²⁴ http://www.cc.cec/security/docs/security_notices/sn_2_restraint_ue_rev_07_en.pdf

Should it appear that the suspicion of fraud does not concern DG Justice activity, the file should be immediately forwarded to the relevant service of the Commission by the SRD.01. In case of difficulties of identifying the relevant service, all the information received should be forwarded directly to OLAF.

If the suspicion of fraud concerning DG Justice activity was provided by an outsider to the Commission, an acknowledgement of receipt shall be sent informing the sender about the follow up of the case taken by the relevant services.

NB: If a suspicion of fraud concerns internal irregularities, personnel working for the European Institutions, or for any other reason the recipient of the information fears to refer the case to his superiors, he/she should follow the whistleblowing procedure (annex 2)²⁵.



Flowchart 1: Procedure to follow in case of suspicion of fraud

²⁵ OLAF's website- section on reporting on fraud: http://ec.europa.eu/anti_fraud/investigations/report-fraud/index_en.htm

3.2. Follow-up measures in case of suspicion of fraud

Once information about suspicion of fraud has been sent to OLAF, DG Justice may consider taking certain additional measures to ensure adequate protection of the European Union financial interest, such as:

- Reporting the beneficiary concerned in the Early Warning System (EWS)*;
- Identification of calls, contracts likely to be affected by the suspicion of fraud where the suspected beneficiary acts as a coordinator or partner; identification of amounts already paid and the ones that still remain to be paid;
- Identification of contract clauses that can be used to apply more stringent conditions, i.e. supporting documents for payments, on-the spot controls, audits, etc;
- Enforced controls of eligibility of costs and supporting documents for payments;
- Requests for mid-term reports or additional supporting documents;
- Request for bank guarantees for grants to be awarded;
- Stopping or limiting pre-financing payments;
- Suspension of payments*;
- Exclusion for grave professional misconduct;
- Monitoring visits*;
- External audits*;
- Termination of grant agreement²⁶;
- Recovery of unduly paid funds;
- Imposing sanctions in the framework of grant agreement or Financial Regulation.

*** However it should be borne in mind that taking any of these measures (especially measures vis-à-vis third parties, e.g. reporting the beneficiary concerned in the Early Warning System (EWS), monitoring visits, external audits, suspension of payments, etc.) shall not take place without consultation with OLAF as it could compromise its investigation.**

In case of selection of a beneficiary suspected of fraud in another evaluation procedure, the decision to award a grant stays with the competent Authorising Officer (AO) who should adequately assess the risks of misuse of EU funds in the light of all circumstances of the case.

²⁶ Where termination is decided, the decision must be based on the provisions of the contract/agreement allowing for termination where such a critical situation arises (e.g. bankruptcy). Exclusion decision is not a legal ground for terminating an ongoing contract.

3.2.1. *Reporting in the EWS (for direct management) - internal procedure on EWS²⁷*

The Early Warning System (EWS) is a system of warning signs incorporated in the LEF (Legal Entity File). One of the purposes of these warnings is to inform the various services of the Commission and the executive agencies that the third parties concerned by those warnings and with whom the Commission has or is likely to have financial relations are suspected of having committed fraud or serious administrative errors (W1, W2 and W3b warning categories; for a summary table of the different warning categories, see BUDGWEB, http://www.cc.cec/budg/i/earlywarn/imp-110-030_ews_en.html), and to incite them to take the appropriate measures provided in the Community legislation to protect the financial interest of the Union. The EWS thus concerns only cases of fraud outside the institution.

In practice, it is the Accounting Officer of the Commission who manages the Early Warning System, overseeing the technical system, and he shall enter, modify or remove EWS warnings, but it falls to the Authorising Officer by Delegation or Subdelegation responsible to request the activation of such warnings.

According to the EWS decision, the following situations require the AOD or AOS to act:

- suspicion of fraud: “The AOD responsible shall request the activation of a **W1c warning** where investigations of the Court of Auditors, his Internal Audit Capability (IAC) or any other audit or investigation made under his responsibility or brought to his attention give sufficient reason to believe that final findings of serious administrative errors or fraud are likely to be recorded in relation to third parties, especially those who are benefiting or have benefited from Community funds under his responsibility”;

- misrepresentation in supplying information in the framework of a procurement or grant award procedure: “The AOD responsible shall request the activation of a **W1d warning** where he excludes a candidate, tenderer or an applicant from the award of a contract or grant in a given procedure in accordance with points (a) or (b) of Article 94 of the Financial Regulation”;

- findings of fraud: “The AOD responsible shall request the activation of a **W2b warning** where the European Court of Auditors, his IAC or any other audit or investigation made under his responsibility or brought to his attention have issued written findings of serious administrative errors or fraud in relation to third parties, especially those who are benefiting or have benefited from Community funds under his responsibility”;

- judicial proceedings for fraud: “The AOD responsible shall request the activation of a **W3b warning** where third parties, especially those who are benefiting or have benefited from Community funds under his responsibility, are known to be the subject of judicial proceedings for serious administrative errors or fraud.”

A W1 warning is entered for information purposes only and may only result in reinforced monitoring (expires after 6 months from the moment of the activation), whereas a W2 or W3

²⁷ It should be noted that following the European Ombudsman's call (January 2012) to improve the Commission's Early Warning System, this internal procedure will need to be revised. This will be done once DG BUDG instructions are available.

warning results in a preventive suspension of payment orders, which have to be confirmed by motivated note to the Accounting Officer.

In all cases, the procedure is initiated as soon as possible after the facts are known by unit SRD.01 (Ilona Löser and Mieke de Swert of SRD.01 are EWS officers). The form is signed by the Director General. The standard form to be used can be downloaded on Budgweb (http://www.cc.cec/budg/i/earlywarn/imp-110-040_howto_en.html). If an administrative or judicial procedure concludes that there are not sufficient grounds to establish the existence of fraud, the AOD responsible shall request the des-activation of the warning, following the same procedure.

Where a transaction concerns an entity flagged in the EWS, the file should be accompanied by a note explaining monitoring measures put in place to protect the financial interests of the Union.

3.3. Confidentiality rules

DG Justice personnel shall stay prudent about revealing any information on cases of irregularities and suspicions of fraud or OLAF investigation. Under no circumstance shall this be revealed to media or to the suspected beneficiary without an agreement of OLAF and the responsible unit in DG Justice.

4. WORKING ARRANGEMENTS BETWEEN DG JUSTICE AND OLAF

OLAF and DG Justice working arrangements are stipulated in part 4 of the anti-fraud strategy as well as in Memorandum of Understanding signed between the services.

4.1. Olaf's mission and role

The mission of OLAF is to protect the financial interests of the European Union and to combat fraud, corruption and any other illegal activities and to investigate serious facts linked to the performance of professional activities which may constitute a breach of obligations of Commission staff likely to lead to disciplinary and, in appropriate cases, criminal proceedings (comment see Art 2(1) Commission decision establishing OLAF²⁸).

4.1.1. *OLAF's investigative role*

Two types of OLAF investigations can be distinguished: **external investigations** (relating to economic operators) and **internal investigations** (relating to staff of EU Institutions).

If a complaint establishes sufficiently serious suspicions of fraud, OLAF may open, in line with its investigation priorities, an investigation. When carrying out its investigations, OLAF enjoys a right of access to the premises of economic operators and of the Institutions.

A report is drawn up at the conclusion of each investigation conducted by the Office. It may be accompanied by recommendations of the Director-General of OLAF on the action that should be taken.

²⁸ COM(1999) 269 final.

For external investigations the report may be sent to the competent authorities of the Member States. Such reports are drawn up taking into account of the procedural requirements laid down in the national law of the Member States so that they constitute admissible evidence in administrative or judicial proceedings. For internal investigations, the report is sent to the Institution concerned, which takes disciplinary or legal actions. OLAF shall also forward to the judicial authorities of the Member State concerned information obtained during internal investigations into matters liable to result in criminal proceedings²⁹.

4.1.2. OLAF's role in fraud prevention and creation of the Fraud Prevention and Detection network (FPDnet)

One of OLAF's primary tasks is to prepare legislative and regulatory initiatives with the objective of fraud prevention in the Commission. In line with action 15 of the Action Plan accompanying the CAFS, one of OLAF's initiatives corresponding to this task is the creation set up of the interservices Fraud Prevention and Detection Network (FPDnet) which was also foreseen by action 2.2.4 in the Action Plan annexed to the Commission's Anti-Fraud Strategy. The Network's role is to provide a centre of expertise, support, advice and exchange of best practices and OLAF's fraud risk assessments as well as relevant information from Member States, non-EU countries and international organisations, which OLAF holds. FPDnet shall also help develop and regularly update the sectoral strategies adopted by Commission Services. DG JUST is represented in the FPDnet by SRD.01.

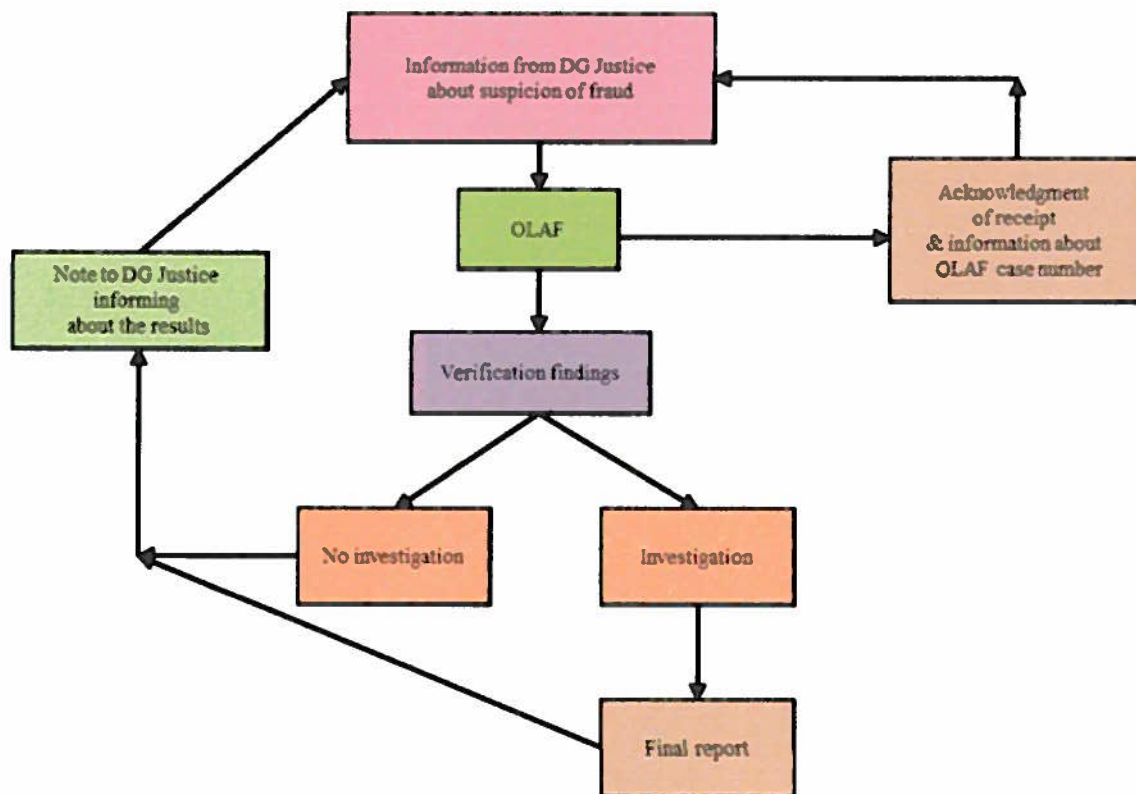
4.2. OLAF and DG Justice relations

4.2.1. Exchange of information and mutual assistance in fraud investigations

Any official or other member of staff of DG Justice may be required, as part of his or her duties, to manage a situation in which OLAF must be contacted or where OLAF has contacted the DG. The Head of unit Budget, control and ex-post audits should be in copy of such correspondence. All the exchanges with OLAF about irregularities, fraud and on-going investigations should be archived.

The procedure to follow in case of information on suspicion of fraud transferred by DG Justice to OLAF is presented in the diagram below. In such cases, both DGs should ensure regular exchanges of information. The contact point for OLAF in DG Justice is the Head of unit Budget, control and ex-post audits (SRD.01) who coordinates appropriate dissemination of information on the results of OLAF investigations within DG Justice.

²⁹ Article 10 (2) of the 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).



Flowchart 2: Procedure to follow in case of information on suspicion of fraud from DG Justice and OLAF

4.3. Actions to be taken when a final report has been received by DG Justice from OLAF

On the closure of an investigation carried out by OLAF, a report is drawn under the authority of the Director General. The report specifies the findings of the investigation, the established facts, and, if applicable, a recommendation regarding the amounts to be recovered or prevented from being unduly paid. It shall be accompanied by OLAF's recommendations on the actions to be taken by the AOD.

If the final report is accompanied by recommendations for financial or administrative measures to be taken, a separate phase begins under responsibility of the Authorising Officer by Delegation (AOD)³⁰. OLAF recommendations are not legally binding. The AOD is exclusively responsible for the follow-up of the recommendations of OLAF investigations transmitted with OLAF's final report. However, the AOD should inform OLAF on his/her assessment of the recommendations and the measures he/she intends to take in good time. In absence of reaction from the AOD, OLAF may report on this fact to the OLAF Supervisory Committee³¹.

³⁰ Guidance on the use of OLAF final reports by Commission services for recovery procedures and other measures in the direct expenditure and external aid sector (Ares(2012)127096).

³¹ Article 11(7) of the Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25.05.1999.

4.4. Financial and administrative follow-up by DG Justice

As a result of the investigation, OLAF may conclude that serious irregularities/ fraud have been executed, and consequently recommend to DG Justice to proceed with recovery of the amount corresponding to the financial damage to the EU budget. The OLAF Case Management System file number (OF/YEAR/xxxx) shall be then indicated in the ABAC recovery context. After the termination of the recovery process, the relevant DG Justice unit should transmit the relevant information via SRD.01 to OLAF (DG BUDG in copy) in order to allow OLAF to close the case.

Although OLAF will have, in principle, given the entity concerned the opportunity to express its views during the course of the investigation for the purpose of the investigation in line with OLAF's instructions, the AOD shall also open a contradictory procedure pursuant to the Financial Regulation before taking any measures (recovery, penalties) concerning the entity concerned. The AOD may refer to the relevant facts established by OLAF and develop his/her legal appreciation.

DG Justice may decide to take other measure to protect the financial interest of the EU (see list in section 3.3).

Administrative and/or financial penalties may be taken without prejudice to any action taken at national level. If OLAF forwards relevant findings to national authorities for criminal proceedings, the AOD shall not await their outcome before taking administrative or recovery action. OLAF will inform DG Justice about the final outcome of a criminal case on request whenever possible³².

The role of unit SRD.01 in the financial/administrative follow-up procedure is to assist the units as regards any queries it may have and ensure that OLAF is informed of the financial follow-up actions taken by DG Justice.

5. MONITORING AND REVIEW OF THE ANTI-FRAUD STRATEGY

From 2012 Annual Activity Report (AAR) on, DG Justice will regularly report on implementation of this anti-fraud strategy and the annexed action plan in its AARs.

DG Justice will carry out reviews of the Anti-fraud Strategy and the Action plan every two years. In the same time the list of red flags annexed to the document shall be reviewed. Without prejudice to the above, the strategy shall be reviewed following any major organisational changes in DG Justice.

It should be noted that this Strategy will be updated once the new guidance from OLAF and DG BUDG on fraud risk assessment are available.

ANNEXES

³² Guidance on the use of OLAF final reports by Commission services for recovery procedures and other measures in the direct expenditure and external aid sector (Ares(2012)127096).

- (1) Action plan for the implementation of the DG Justice anti-fraud strategy**
- (2) Internal whistleblowing procedure (Ares(2011)626977 - 10/06/2011)**
- (3) Red flags (Ares(2011)1145186)**

No	Action plan for DG Justice fraud prevention and detection strategy- to be implemented until 30.06.2015	Who	When
1.	<p>Fraud context in the annual risk assessment exercise Within the annual risk management exercise focus should be on the activities and areas considered to be the most risky, in particular which could be affected by financial and non financial fraud/ irregularity. In the preparation of the exercise, cases reported to OLAF, ex-post audit findings on suspected fraud should be looked at.</p>	SRD.01	Annually, in the preparation of the annual risk management exercise
2.	<p>Annual audit plan - external audit sector Selection of fraud risk-based audits as a basis of the external audit plan.</p>	SRD.01	Annually, in the preparation of the external audit work programme
3.	<p>Strategic Audit Plan of the Shared Internal Audit Capability When establishing the Strategic Audit Plan and its annual updates, take into account ex-post audit findings on suspected fraud and cases reported to OLAF.</p>	SIAC	Annually, in the preparation of the SIAC audit plan
4.	<p>Awareness raising in the area of anti-fraud and ethics Actions will be continued to raise staff awareness about ethical behaviour and good conduct and anti-fraud measures in place.</p>	SRD1&2	Annually in the preparation of the training programme
5.	<p>Update of internal procedure on EWS Once the Commission procedure on the Early warning System is updated (following the European Ombudsman's call), DG Justice will customise it to its internal environment.</p>	SRD.01	Once the Commission guidance on the EWS are available
6.	<p>Enhance cooperation with OLAF Regularly follow the FPDnet meetings, sign the Memorandum of Understanding with OLAF and encourage bilateral meetings with OLAF on the ongoing cases examined by the Office.</p>	SRD.01	Annually; for signature of the MoU with OLAF: 31.12.2012
7.	<p>Effective monitoring of implementation of the anti-fraud strategy and action plan Implementation of the DG's anti-fraud actions will be monitored and reported on in the Annual Activity Reports</p>	SRD.01	Annually from the 2012 AAR
8.	<p>Maintenance of the register of cases transmitted to OLAF Maintain and regularly update and the register of cases transmitted to OLAF. Once a year the register should be closed-checked with OLAF in order to ensure its completeness.</p>	SRD.01	Continuous
9.	<p>Promote anti-fraud measures within DG Justice agencies DG Justice will promote and follow-up closely anti-fraud measures in the agencies. In particular, once OLAF's methodology and guidance for anti-fraud strategies for EU agencies are available, an information note will be sent informing the agencies about their obligations.</p>	SRD.01&agencies'desks	31.12.2014
10.	<p>Revision of anti-fraud strategy and red flags Anti-fraud strategy and the list of red flags should be revised and completed every second year and following any major structural change of the DG.</p>	SRD.01	Every second year and following major structural changes to the DG structure