



Annex to EBA DC XXX

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# EBA Anti-Fraud Strategy

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# Introduction

## Overview

The EBA's Anti-Fraud Strategy (hereinafter "the Strategy") is intended to serve as a management tool for the EBA to ensure progress and transparency as regards the protection of the EU financial interests, compliance with EU ethical values and therefore the protection of the EU and EBA's reputation.

The EBA adopted its first ever Anti-Fraud Strategy for the period 2015-2017. It was conceived in terms of the threat faced by the EBA, established via a threat assessment and informed by best practice. Based on the findings of the assessment, four objectives were developed, each of them designed to target the full range of drivers and facilitators that might otherwise instigate or support the commission of an act of fraud. Its overall aim was to minimise the volume of incidents and reduce the scale of the damage (i.e. limit the financial loss or reputational harm).

Similar to the 2015-2017 Anti-Fraud Strategy, the overall objective of the Strategy remains the improvement of prevention, detection and the conditions for investigations of fraud, to achieve adequate reparation and deterrence.

The Strategy also intends to tackle fraud that is not directly targeting EU funds including money laundering, concealment or destruction of material facts, as well as fraud without any direct financial impact, e.g. acting not objectively because of existing conflicts of interest, the selling of sensitive information or confidential data, etc.

Given the breadth of the objectives in the previous strategy, yet their continued relevance for the EBA, this new Strategy perpetuates the same objectives, namely:

- **Prevent:** implement measures to mitigate the likelihood of a fraud occurring, including strengthening of controls and deterrence - influencing the will to perpetrate fraud and the ability to rationalise it as anything other than a transgression of trust;
- **Detect and investigate:** targeted and effective detection and investigations of fraud;
- **Recover, mitigate and respond:** recovery of finance and lost property, efforts to limit operational and reputational harm stemming from a fraud and impose proportionate and dissuasive sanctions against staff members who have committed an act of fraud; and
- **Exploit:** use lessons learnt to strengthen the strategy and communicate the consequences of actual cases of fraud.

The Strategy also takes into accounts the 2019 Commission's amendment of the Anti-Fraud Strategy (hereinafter "the CAFS"), which contains two main objectives, notably: a) to equip the

Commission with a stronger analytical capability for purposes of prevention and detection and with a more centralised system of oversight for its anti-fraud action, and b) to improve anti-fraud cooperation and workflows across the board.

While the EBA's competences and scope of action in respect of the EU's budget is rather limited compared to the Commission's, the Strategy intends to align, where possible and relevant, its objectives and Action Plan to the CAFS. The Strategy is accompanied by an Action Plan with detailed activities and actions to give effect to the objectives set out in the Strategy.

## Results of the 2015-2017 Anti-Fraud Strategy

The Implementation Plan of the first EBA Anti-Fraud Strategy contained several actions under each of the four main objectives.

Under the objective **Prevention**, several training sessions have been delivered to all EBA staff. These were organised in the context of the ethics training for staff. Staff were trained about fraud in general, the EBA's strategy and policy, how to report fraud, the whistleblowing policy, etc. Shorter versions of this training were delivered to newcomers.

Under the objective **Action**, several processes have been developed. They are reflected and detailed in the Anti-Fraud Policy. A process has been designed to internally report fraud. A fraud-risk assessment has been designed, and three assessment exercises have been conducted between 2016 and 2018. Furthermore, the Management Board adopted a whistleblowing policy in April 2017; that policy was replaced in September 2018 with a new version following the model developed by the European Commission for EU agencies.

Under the objective **Recovering, Mitigating and Responding**, a process describing the actions to take to recover and impose sanctions has been envisaged in the Anti-Fraud Policy.

No fraud investigation has taken place at the EBA since the adoption of the strategy in 2015 and, in this respect, no learned lessons could be communicated to staff under the objective **Exploiting**.

The review of the strategy, an action under the same objective, is largely implemented by the results of the three fraud-risk assessment exercises conducted in that period.

## Fraud-risk assessment

The fraud-risk assessment has been one of the main activities carried out in the context of the 2015-2017 Anti-Fraud Strategy. It has helped assess a large number of areas within the EBA to detect and identify fraud risks. The methodology used relied on the identification of the severity and likelihood of each scenario assessed, and has evolved such that the existing controls and mitigating actions are now part of the actual assessment itself. The whole of the EBA has participated in these exercises, with groups of staff representing the different areas of activity assessed. A member of the Anti-Fraud Team has always been present during such assessments.

The fraud risk at EBA has remained low-to-medium in the three assessments performed. The number and nature of the scenarios carrying a significant or material fraud risk has changed and, over time, has decreased from 13 (2016) and 11 (2017) to 8 (2018). This is mostly the result of the measures taken to address the risks identified paired with an increased level of risk awareness.

A number of risks have been considered material in the assessment conducted in 2018. These relate to obtaining a personal benefit, either financial or else (e.g. a promise of career opportunities for oneself or relatives) by:

- Providing a preferential treatment to certain parties/stakeholders.
- Providing information to stakeholders/government affairs consultants and similar organisations.
- Leaking information on financial institutions, and/or providing confidential information held by the EBA to third parties with an interest in such information/data.
- Communicating stress test results in an irregular way to financial institutions, media outlets, a particular journalist or a competent authority prior to their official publication.
- Giving access to data via IT systems to external parties.
- Making wrong statements on ethics and conflicts of interest-related declarations.
- Withholding relevant information with regard to allowances (e.g. expatriation allowance).

## Definition

The definition of fraud is taken from Article 1 of the Convention on the protection of the European Communities' financial interests<sup>1</sup>, in which fraud consists of:

(a) In respect of expenditure, any intentional act or act or omission

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

(b) In respect of revenue, any intentional 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

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<sup>1</sup> Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests, OJ C 316, 27.11.1995, p. 48–57.

- the general budget of the European Union or budgets managed by, or on behalf of, the European Union
- non-disclosure of information in violation of a specific obligation, with the same effect misapplication of a legally obtained benefit, with the same effect.

## Implementation

The Strategy sets out the main objectives that the EBA will need to continue to pursue over the coming years to combat fraud along with capability development elements required to strengthen the EBA's approach to combating fraud. The Strategy is accompanied with an Action Plan outlining the main activities and actions that will be implemented to give effect to those objectives.

## Strategy Review

The Strategy will be reviewed when new developments at EBA or EU level so require. In any case, the Strategy should be reviewed not more than five years after its adoption. A formal exercise will be conducted following an assessment exercise and incorporating lessons learnt over the previous period.

## Roles and Responsibilities

The following roles and responsibilities are relevant for the implementation of the Strategy:

- **Executive Director:**
  - Leadership and Strategic Guidance.
  - Involvement in whistleblowing procedures in line with the EBA's Whistleblowing Policy.
- **Anti-Fraud Team**
  - Providing advice and assurance in terms of the Internal Control Standards and implementation of the Strategy.
  - Contact point for informants, providing support and advice.
  - Implementation of the Action Plan.
  - Reporting to the Executive Director.
  - EBA's single point of contact for OLAF (except for reporting of suspicious fraud by staff).
  - Supporting internal inquiries and, where required, OLAF investigations into frauds.
  - Preparing communication and training material for the EBA.

- **Legal Unit:**
  - Provision of legal advice on investigations by OLAF.
  - Provision of legal advice on administrative inquiries and/or disciplinary proceeding conducted in accordance with the Staff Regulations.
  - Provision of legal advice on general matters related to anti-fraud.
- **HR Team:**
  - Provision of advice on human resources issues during investigations by OLAF.
  - Provision of advice on human resources issues relating to sanctions administrative inquiries and/or disciplinary proceeding conducted in accordance with the Staff Regulations.
  - Ensure anti-fraud principles feature during recruitment processes.
- **All EBA Staff:**
  - Contribution to Fraud Risk Assessments.
  - Informing on concerns related to fraudulent behaviour.

## THE THREAT

The Strategy must be proportionate and tailored to the probable threat faced by the EBA. It must also be realistic in terms of ambition based on capacity and capability.

### **Current Counter Fraud Capability and Capacity**

Given its limited resources focused on core business tasks, EBA's efforts combatting fraud should focus on proper implementation and operation of the rules and standards for financial management and management of human resources (i.e. Internal Control Standards, the EBA founding Regulation, the EBA Financial Regulation, Staff Regulations and its implementing provisions). In addition, the EBA has implemented a formal risk management process. Both the fraud risk process and the risk management process should seek synergies and find common areas on which to leverage the EBA's efforts to stem or mitigate the realisation of risks.

Furthermore, the current ethical framework provide a comprehensive baseline to detect and combat fraud.<sup>2</sup> The actions taken to implement such a framework guarantee a well-trained and informed workforce. The Strategy can benefit from this existing framework, which is complementary and helps to address the risks of fraud without any direct financial impact, e.g. conflicts of interest, etc.

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<sup>2</sup> Including, amongst other, the Decision of the Management Board on prevention of fraud, corruption and any illegal activity detrimental to the Union's interests, the Ethics Guidelines, the EBA's Policy on Conflict of Interest for both staff and non-staff, the Code of Administrative Behaviour and Professional Secrecy.

## Threat Areas

Based on the assessment of fraud risks conducted in the EBA between 2016 and 2018, and the general threat of fraud to its budget and operations, the EBA considers four primary areas of risk:

- **Misappropriation and theft of EU funds and resources.** This area includes stealing directly from the budget assigned to the EBA (e.g. through false expense claims) and theft of EBA property.
- **Abuse of position in return for promise of favour.** Staff with access to information that can be of interest to external parties/stakeholders (e.g. as a result of policy development, or as a result of market analysis and analysis of data of financial institutions such as stress test exercises) can be tempted to give access to such information in return of a favour, be it of a financial or non-financial (e.g. the promise of employment for self or a relative) nature. That behaviour is a potential source of fraud.
- **Leaking of sensitive information.** This is connected to the previous area. The release of secure information that the EBA handles could harm the EBA's reputation and undermine its ability to conduct certain functions as well as potentially have an adverse effect on the market.
- **IT breaches.** Despite considering this threat as an area of fraud, it is handled within the EBA's specific information security measures and not within the anti-fraud strategy.

## Common Characteristics

Common to all frauds are the following elements: a motivated offender, an opportunity and capability to exploit it and a moral judgement or lack thereof<sup>3</sup>. Figure I illustrates the relationship between these factors and the main drivers impacting on them in the EBA. Each is discussed in more detail in the following paragraphs.

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<sup>3</sup> Informed by Cressy, 1950 'Fraud Triangle'

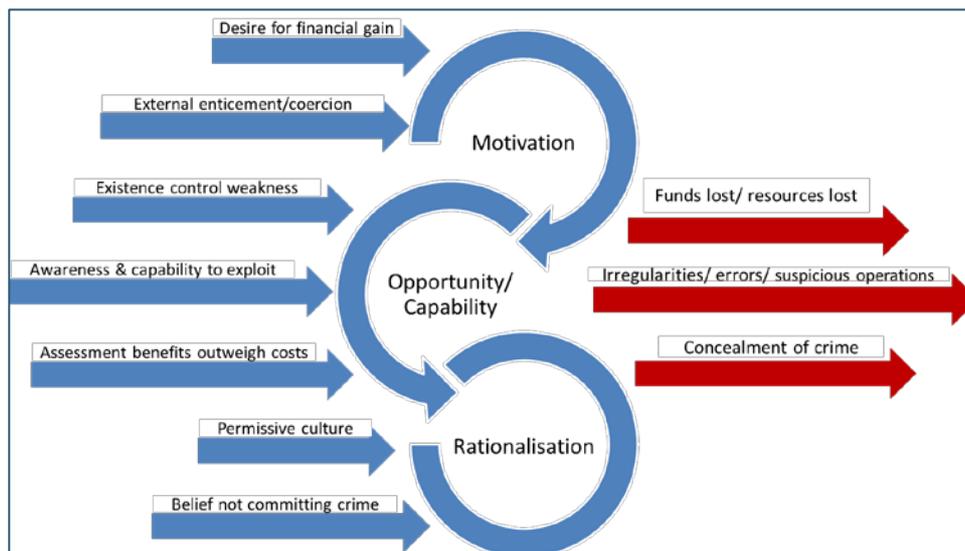


Figure 1: drivers and outcomes in the commission of a fraud

- **Motivation**

Any fraud within the EBA is assumed to be largely driven by the prospect of personal gain (financial or otherwise) for the offender and/or the enticement/coercion by inappropriate contacts leading to a conflict of interest. Enticement will involve the promise of personal gain including money, but can also include the promise of friendship, approval, or future employment. Coercion will be threat-based and, in the EBA’s context, it could involve blackmail or undermining the future prospects of an individual.

- **Opportunity and capability**

Opportunity is rooted in control weaknesses based on the lack of formal procedures, or standards and regulation not being followed and/or not being enforced (no oversight on sensitive processes). Capability to exploit any existing control weakness encompasses both elements of having the knowledge, skills and experience and the perception that the benefits will outweigh the costs (i.e. getting caught).

- **Rationalisation**

Evidence suggests that offenders in a professional setting will deny that their commission of a fraud constitutes a crime or even a transgression of trust, but is instead driven by a special circumstance or simply compensation for bad working conditions. Rationalisation is facilitated by a permissive organisational, unit or team culture, allowed to fester where there is limited oversight and expectations and values are not sufficiently explicit to staff.

## OBJECTIVE I: PREVENT

### Definition

The EBA's aim within **Prevent** is to minimise the instances and scale of frauds perpetrated against the EBA. This can be described as:

- Denying potential offenders the opportunities to commit fraud through robust systems and processes; and
- Minimising the propensity to offend via a strong, effective ethical framework and anti-fraud culture.

### Areas of Action

For the EBA to achieve this objective, all three elements (motivation, opportunity/ capability and rationalisation) must be challenged:

- To limit the **motivation** to offend, the EBA will focus on potential conflicts of interest resulting from a staff member's economic interests and from the potential of external enticement/coercion to sell or distribute sensitive and confidential information. This will be supported by maintaining an overview of staff interests obtained via the declaration of interests on an annual basis and on an ad hoc basis when for example a staff member is involved in a procurement or recruitment process. A risk-based assessment of these interests could result in limiting a staff member's role and/or access to data and information, together with a proper, robust EBA-wide system to manage such information. Training is equally important as a means to communicate the EBA's expectations on staff behaviour and the consequences of committing fraud and breaching staff duties under the Staff Regulations.
- **Opportunity** will be minimised with robust systems and processes, staff appropriately trained to work with them and oversight on their functioning. Control weaknesses must be identified via annual fraud risk assessments as well as the use of feedback from auditors. Areas of risk will continue to be analysed and assessed, identifying existing controls and mitigating actions as part of that assessment. This will be carried out by the relevant areas in conjunction with the Anti-Fraud Team. Where risks are identified as material or significant, solutions will be sought by all relevant parties to prevent or minimise the occurrence of said risk. The level of oversight and the rigour with which processes must be conducted will be proportionate to the specific fraud risk related to each.
- Efforts to tackle **capability** will focus on deterrence. The EBA will target the decision-making process of potential offenders. It must be clear to all that the costs will outweigh any benefits of fraudulent activity. This will include EBA-wide communication of anti-fraud efforts and the consequences of getting caught. Engagement with staff and provision of

information elements of the Detection and Investigation and Exploit objectives will facilitate this approach.

It is anticipated that the type of potential offender within the EBA would have to rationalise any act of fraud. This may offer a key point of intervention where the EBA can leverage social dynamics within units and departments and across the EBA to encourage anti-fraud attitudes. Via staff engagement and leadership from the management, the EBA can help establish behavioural norms and a culture that is hostile to fraud. The efforts to create a culture where fraud or the temptation to commit fraud is not accepted will be heightened.

## OBJECTIVE II: DETECT AND INVESTIGATE

### Definition

The EBA will continue to monitor and be prepared to facilitate investigations against suspicious activity by OLAF. On this basis, the EBA will implement and review periodically measures to:

- Detect irregularities, errors and suspicious operations; and
- Facilitate investigations by OLAF.

### Areas of Action

The EBA's Detect effort must be proportionate and targeted, which can be facilitated by the fraud risk assessments carried out under the Prevent element of the strategy. The development of robust systems and processes will provide the opportunity to strengthen the monitoring of their functioning.

The EBA will establish 'red flags', i.e. warning indicators that can be monitored on an ongoing basis. Additional information captured from these enhancements will need to be recorded and analysed centrally, this could be incorporated into the EBA's current risk management process.

A key element to Detect is to encourage and support informants. The ethical dimension of Prevent goes some way to create a climate where informants could be encouraged to come forward. The EBA will maintain, and review to ensure that they remain relevant and fit for purpose, the established channels through which staff can report any concerns about fraudulent behaviour. A whistleblowing policy has been adopted in the context of the 2015-2017 Anti-Fraud Strategy. For the Strategy, it is essential to guarantee that such policy remains fit for purpose and that addresses the needs of the EBA and its staff. A policy review exercise should be part of the efforts to achieve this objective.

In addition, activities to train and inform staff of the expectations under the Strategy, and their protection should they inform of an irregularity, are also of utmost importance.

In order to conduct investigations of alleged fraud, OLAF is the only body with the competence and the capabilities to do so. This means that the focus of the Investigate objective will be maintaining contact with OLAF and the provision of support in terms of managing information and allowing access to the facility and staff during investigations. Notwithstanding the investigations by OLAF, the EBA must be prepared to run its own administrative inquiries. A strong framework for administrative inquiries is therefore necessary.

## OBJECTIVE III: RECOVER, MITIGATE AND RESPOND

### Definition

Following the successful conclusion of an investigation, be it either an OLAF investigation or an EBA administrative inquiry, the EBA must be in a position to limit the potential harms to its budget and operations and punish the offender. The EBA must therefore maintain and be prepared to use:

- an ability to compel offenders to return stolen property and money;
- a risk management process capable of limiting the harms of fraud events; and
- effective, proportionate and legally viable sanctions to censure staff deemed to have not met the expectations on them as an EBA staff member by a disciplinary board.

### **Areas of Action**

The EBA must ensure that it is prepared to use the powers as set out in Article (69.2) of the EBA Regulation to recover lost finance and property. It will also seek to leverage the sanctions available to the EBA to encourage staff members in support of this objective.

The EBA's existing risk management process, consisting of the fraud risk assessment exercise, whistleblowing arrangements and internal control standards, allows for monitoring and responding to threats resulting from fraud (as opposed to threat of fraud). Where weaknesses of the risk management processes would be identified, the EBA would strive to further improve the processes and controls in place. The EBA must ensure that it is prepared to respond appropriately, effectively and in a timely fashion to mitigate any harms resulting from a fraud event.

The provisions for responding in terms of financial sanctions and/or administrative penalties are to be implemented by the EBA in the form of a disciplinary policy. In line with Article 86 of the Staff Regulations, any failure by an official or former official to comply with his/her obligations under the Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action. The EBA will exercise the full powers as set out in Annex IX to the Staff Regulations and, in line with Article 10, 'the severity of the disciplinary penalties imposed shall be commensurate with the seriousness of the misconduct'. To determine the seriousness of the misconduct and to decide upon the disciplinary penalty to be imposed, the EBA will take into account the criteria listed in that Article. In the most extreme cases, criminal proceedings will be sought. In all cases, the EBA is committed to follow the rules for disciplinary procedures as set out under the Staff Regulations.

## **OBJECTIVE IV: EXPLOIT**

### **Definition**

Exploit has two key elements:

- **learning lessons from detected and investigated occurrences of fraud; and**
- **detering future frauds through the communication of the outcome of disciplinary proceedings.**

### **Areas of Action**

The EBA will be able to enrich its threat assessment of fraud risk and strengthen its systems and processes by incorporating the lessons learnt from detected cases of fraud. The evidence built up in order to run administrative proceedings/OLAF cases will be reviewed following the conclusion of every case. Key personnel will be engaged in terms of the conclusions and consequences to form recommendations in terms of new/developing risks and improvement measures.

To maximise the deterrence effect of the EBA/OLAF counter fraud efforts, the outcome of disciplinary cases and the resultant sanctions will be published to make the risks and consequences of fraudulent behaviour very real for all staff. This is a key element of the Strategy. Both communication and training actions will be needed to exploit more effectively such lessons. It features under Exploit and not Punish because the intended outcome is not to add to the sanctions already decided upon in a disciplinary board, but for all staff to be clear on the consequences of fraudulent activity.