

EBA/DC/2015/120

29 April 2015

Decision of the European Banking Authority adopting the Anti-Fraud Strategy 2015-2017

The Management Board

Having regard to: Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), (hereinafter “EBA”) and in particular Article 66 thereof;

Having regard to: The Ethics Guidelines (EBA DC 064) for staff of the EBA, the EBA’s Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff (EBA DC103) and the EBA’s Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Staff and other Contractual Parties (EBA DC104);

Having regard to: The Staff Regulations of Officials of the European Communities and Conditions of Employment of Other Servants of the European Communities¹;

Whereas:

- (1) On 24 June 2011 the European Commission adopted its new Anti-Fraud Strategy (CAFS)². The action plan accompanying the CAFS states that, in line with antifraud strategies at Commission and DG level, the European Anti-Fraud Office (“OLAF”) will provide a methodology and guidance for anti-fraud strategies for EU agencies and other entities;
- (2) OLAF’s Methodology and guidance for anti-fraud strategies for EU decentralised agencies³ proposes for the management boards of new agencies to adopt an anti-fraud strategy which

¹ Staff Regulations and conditions of employment replaced the Staff Regulations of officials and the conditions of employment of other servants of the European Economic Community and the European Atomic Energy Community laid down by Council Regulations No 31 (EEC) and No 11 (EAEC) of 18.12.1961 (OJ 45, 14.6.1962 - Special Edition 1959-62, November 1972), as last amended

² Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions and the Court of Auditors on the Commission anti-fraud strategy, COM(2011)376 final, 24.6.2011, available at http://ec.europa.eu/anti_fraud/documents/preventing-fraud-documents/ec_antifraud_strategy_en.pdf

³ European Anti-Fraud Office, Methodology and guidance for anti-fraud strategies for EU decentralised agencies, Ref. Ares(2013)3560341, 25.11.2013

is proportionate to their fraud risks, having due regard to the costs and benefits of the measures to be implemented;

- (3) The Authority is committed to take strong measures to address and mitigate any fraud, corruption and other illegal activity affecting the financial interests of the European Union. To that end, a number of tools and control systems have been introduced with the aim to create an Authority environment that discourages any fraudulent behavior;
- (4) In order to pro-actively continue to reinforce a strong anti-fraud culture and actively encourage fraud prevention dedicated actions designed to the specifics of the Authority's activities, the Authority has developed an Anti-Fraud Strategy for the period 2015-2017, having due regard to the costs and benefits of the measures to be implemented;

Has decided as follows:

To adopt the Anti-Fraud Strategy for the period 2015-2017, as annexed to this Decision.

This decision shall take effect on 1 May 2015.

Adam Farkas
Executive Director

For the Management Board

Annex to EBA/DC/2015/120

EBA Anti-Fraud Strategy 2015-2017

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Foreword by the Executive Director

Dear Colleagues,

The overall objective of the EBA's anti-fraud strategy is to improve the prevention and detection of fraud, and achieve adequate reparation and deterrence with proportionate and dissuasive sanctions, whilst respecting due process.

Fraud can have damaging and wide ranging consequences; the strategy is being applied in order to aim at protecting the reputation, credibility and standing of the Authority.

The anti-fraud strategy will contribute to the protection of the EU's financial policies, and will contribute to maintaining high standards and coherence of EU rules while, at the same time, maintaining high standards of accountability and oversight of financial and other risks.

The integrity of the EBA lies with each and every staff member. Communication can help deter and prevent fraud and irregularities by raising awareness and promoting debate amongst staff. The Authority needs to demonstrate the highest standards of probity and transparency.

I augur that this strategy, along with associated policies and procedures, will assist our Authority's staff in achieving the required high standards that are expected from an EU body.

Adam Farkas

Introduction

Overview

The EBA's Anti-Fraud Strategy is intended to serve as a management tool for the Authority 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 reputation. The overall objective of the strategy being to improve prevention, detection and the conditions for investigations of fraud, to achieve adequate reparation and deterrence, especially by developing close cooperation and synergies amongst the 3 ESAs.

Definition

Following the Commission Anti-Fraud Strategy 2011 (CAFS)¹, definition of fraud is taken from Article 1 of the Convention on the protection of the European Communities' financial interests, 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 Communities or budgets managed by, or on behalf of, the European Communities
- non-disclosure of information in violation of a specific obligation, with the same effect
- the misapplication of such funds for purposes other than those for which they were originally granted;

(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

¹ Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee, the Committee of the Regions and the Court of Auditors on the Commission anti-fraud strategy, COM(2011)376; Communication to the Commission : Commission internal action plan for the implementations of the Commission anti-fraud strategy, SEC(2011)787.

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

The strategy is also intended to tackle fraud that is not directly targeting EU funds including money laundering, concealment or destruction of material facts and conflicts of interest.

Summary

This strategy has been conceived off in terms of the threat faced by the Authority, established via a threat assessment and is informed by best practice. Based on the findings of the assessment, four objectives have been developed. Each is designed to target the full range of drivers and facilitators that might otherwise instigate or support the commission of an act of fraud. The strategy has the aim of: **minimising the volume of incidents and reducing the scale of the damage (limit the financial loss or reputational harm)**, which is achieved by the following objectives:

- **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 level of effort invested into each objective will be proportionate to its impact on reducing instances/scale of fraud and on the feasibility of that impact being achieved in the EBA context. Prevent will therefore receive the greatest level of the EBA's attention.

Implementation

This strategy encompasses both actions required to combat fraud along with capability development elements required to strengthen the EBA's approach to combatting fraud. The strategy will be implemented via an implementation plan, the outcome of which will feed into a revision of the strategy, scheduled for Q4 2017.

Strategy Development

The strategy was developed in the final quarter of 2014 following engagement with stakeholders across the Authority, identifying and learning from best practice and developing the conceptual framework. Key elements of the implementation project will be capability enhancement including more detailed threat assessments, which will feed into future anti-fraud strategies.

Strategy Review

This strategy will be reviewed on a triennial basis. A formal exercise will be conducted following an updated threat assessment exercise and incorporating lessons learnt over the previous 3 years.

Roles and Responsibilities

The following has been established:

- **Executive Director:**
 - Leadership, Strategic Guidance and Communication.
 - Project Executive of Implementation Project.
- **Management Meeting:**
 - Approving and directing action to mitigate and prevent frauds from being perpetrated.
- **Ethics Officer**
 - Providing advice and assurance in terms of the Internal Control Standards and implementation of the Anti-Fraud Strategy.
 - Contact point for informants, providing support and advice.
 - Running of the Anti-fraud activities.
 - Project Management of Implementation Project.

- Contact point for informants, providing support and advice.
- Aggregating data and providing report to Management Meetings on fraud 'red flags'.
- Single point of contact for OLAF.
- Supporting internal and OLAF investigations into frauds.
- Preparing communication material for the Authority.
- **Legal Unit:**
 - Provision of legal advice on investigations.
 - Provision of legal advice on sanctions.
- **HR Team:**
 - Provision of advice on human resources issues during investigations.
 - Provision of advice on human resources issues relating to sanctions.
 - Ensure anti-fraud principles feature during recruitment campaigns.
- **All EBA Staff:**
 - Contribution to Threat Assessments.
 - Informing on concerns related to fraudulent behaviour.

THE THREAT

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

Current Counter Fraud Capability and Capacity

A small authority with limited resources focused on core business tasks, the EBA's efforts combatting fraud predominantly focus on proper implementation and operation of the rules and standards for financial management and management of human resources (Internal Control Standards, the EBA Regulation, the EBA Financial Regulation, Staff Regulations and its implementing provisions). The EBA has implemented a formal risk management process, which will complement the anti-fraud effort via risk reporting and management decision-making on mitigation activities. The ultimate responsibility for risk management at the corporate level is the Management Meeting (MM) that is chaired by the Chairperson, with a membership including the

Heads of Departments and Heads of Units. This is the forum where the most critical risks are discussed and corrective action is directed.

Progress has been made with the establishment of an ethical framework, with the following already in place: Decision of the Management Board on prevention of fraud, corruption and any illegal activity detrimental to the Union's interests, Ethics Rules², the EBA's Policy on Conflict of Interest, the Code of Administrative Behaviour and Professional Secrecy. Furthermore, through the annual Declaration of Interests all staff members have provided information on previous employment, membership of management bodies and professional organisations and any economic interests that should be taken into account when assessing the risk of a conflict of interest.

Threat Areas

Based on the initial assessment of the threat of fraud to its budget and operations, the EBA considers 4 primary areas of risk:

- **misappropriation and theft of EU funds and resources** – stealing directly from the budget assigned to the EBA (e.g. through false expense claims) and theft of EBA property, with current controls, the threat is considered to be relatively low;
- **abuse of position in return for promise of favour** – areas such as HR and Procurement, where EBA staff engage with external actors (potential new recruits and product/service providers) is a potential source of threat (conflict of interest, nepotism/favouritism); furthermore, as a supervising authority that through its regulation and analysis can have real impact on the standing and profit of financial institutions, staff in the core business may be subject to enticements from industry actors to not meet expectations of professionalism and objectivity;
- **leaking of sensitive information** – the EBA handles secure information that if released would harm the Authority and undermine its ability to conduct certain functions as well as potentially have an adverse effect on the market; and

² Including: Clearance to Deal in Financial Instruments, Declaration Regarding Gainful Appointment of Spouse or Partner, Application to Accept a Gift or Favour, Internal Procedure for Handling Gifts, Application for Authorisation of Outside Activity, Application for Authorisation – Publication and Declaration for Candidature for Public Office.

- **IT breaches** – although this threat is categorised under fraud, it is envisaged to be addressed by the EBA’s specific information security measures and not within the anti-fraud strategy.

Common Characteristics

Common to all frauds are the elements a motivated offender, an opportunity and capability to exploit it and a moral judgement or lack thereof³. Figure 1 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.

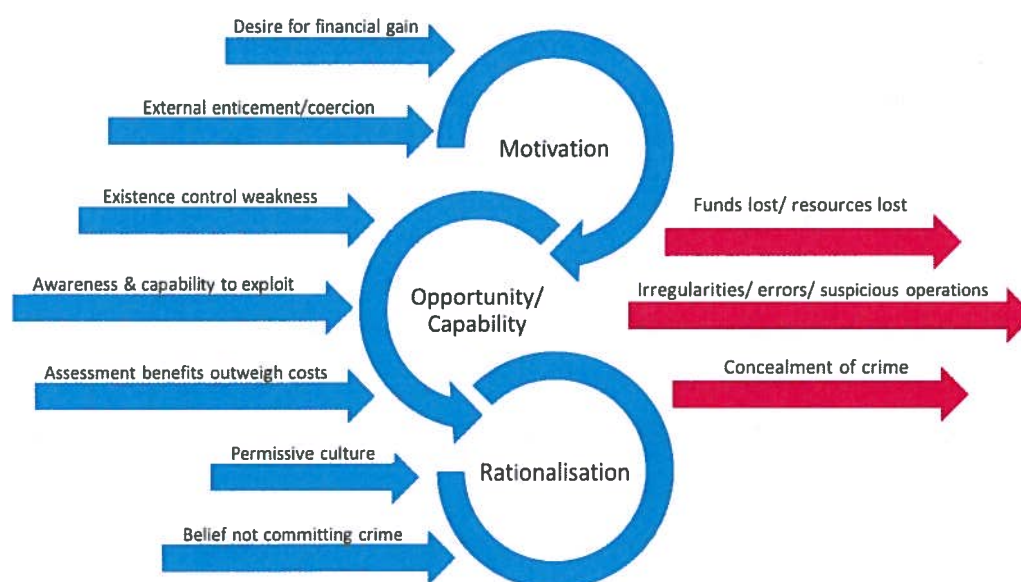


Figure 1: drivers and outcomes in the commission of a fraud

Motivation - any fraud within the EBA is assumed to largely be 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 context could involve blackmail or undermining the future prospects of an individual.

³ Informed by Cressy, 1950 'Fraud Triangle'

Opportunity and capability - opportunity is rooted in control weaknesses based on formal procedures not being in place (standards and regulation not being followed), not being enforced (no oversight on sensitive processes) and not being followed (poor awareness/training of staff). 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 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 borne of 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 Authority, this can be described as:

- **denying potential offenders the opportunities to commit fraud through resilient systems and processes; and**
- **minimising the propensity to offend via a strong, Authority wide ethical framework and anti-fraud culture.**

Areas of Action

For the EBA to achieve its Prevent 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, a staff member's economic interests and from the potential of external enticement/coercion. 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 campaign. A risk based assessment of these interests could potentially result in limiting a staff member's role and/or access to data based on and proportionate to any identified threats.

Opportunity will be minimised with resilient systems and processes, staff appropriately trained to work with them and oversight on their functioning. Control weaknesses must be identified via annual threat assessments and the use of feedback from auditors. Areas of threat will be analysed and in consultation with the relevant areas and external expert support (OLAF) solutions will be developed. The level of oversight and the rigour with which processes must be conducted will be proportionate to the specific fraud risk related to each.

Effort to tackle **capability** will focus on deterrence and 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 authority wide communication of anti-fraud efforts and on 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 Authority to encourage anti-fraud attitudes. Via staff engagement and leadership from the management on a shared code of ethics, the EBA can help establish behavioural norms and a culture that is hostile to fraud. A particular focus will be to develop a shared discourse that fraud is a transgression of trust and unacceptable at the EBA.

Indicators

- No negative audit findings regarding the EBA's adherence to standards and regulation.
- Number of risks that have been identified in priority process (e.g. procurement) that have been addressed with mitigating measures.

OBJECTIVE II: DETECT AND INVESTIGATE

Definition

The EBA must continually monitor and be prepared to facilitate investigations against suspicious activity, the EBA will therefore implement measures to:

- **detect irregularities, errors and suspicious operations; in order to**
- **facilitate investigations by OLAF.**

Areas of Action

The EBA's Detect effort must be proportionate and targeted, which can be facilitated by the risk assessments carried out under the Prevent element of the strategy. The development of resilient systems and process under Prevent will also provide the opportunity to strengthen monitoring of their functioning. The EBA will engage with internal and external experts to establish 'red flags', 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 will be encouraging and supporting to informants. The ethical dimension of Prevent will go some way to create a climate where informants could be encouraged to come forward. The EBA will implement channels through which staff can report any concerns about fraudulent behaviour. To ensure openness and honesty, it will be important to ensure staff feel confident that their concerns will be dealt with appropriately. The EBA will also need to ensure any informant is supported and protected from any negative consequences of coming forward.

The EBA will not be able to maintain its own investigative capability above that required to carry out regular administrative enquiries and must therefore rely on OLAF. 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. The EBA must still be prepared to run its own administrative inquiries in lieu of an OLAF investigation (if does not meet any evidence/scale threshold for OLAF involvement).

Indicators

- Established set of red flags.
- Implemented capability to collect, analyse and report on red flags.
- The EBA responsiveness to OLAF requests for information.

OBJECTIVE III: RECOVER, MITIGATE AND RESPOND

Definition

Following the successful conclusion of an investigation, 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 a 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 Authority to encourage staff members in support of this objective.

The EBA will enhance the already existing risk management process to allow for monitoring and responding to threats resulting from fraud (as opposed to threat of fraud). The EBA must ensure that existing bodies (Management Meeting) are prepared to respond appropriately, effectively and in a timely fashion to mitigate any harms resulting from a fraud event. This may include initiation response measures to limit the reputational harm following the leaking of a sensitive document.

The provision for responding in terms of sanctions financial and/or administrative penalties is to be implemented by the EBA. In line with Staff Regulations Article 86 the case of an investigation finding the staff member in question will be liable to proportionate disciplinary action. The EBA will exercise the full powers as set out in the Staff Regulations Annex IX 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 described under 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.

Indicators

- Proportion of property/finance lost via identified cases of fraud that is reclaimed.
- Proportion of fraud related harms raised at the Management Meeting where mitigation measures are applied.
- Proportionate sanctions applied in any investigated case of fraud following the outcome of a disciplinary board.

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 published⁴ to make the risks and consequences of fraudulent behaviour very real for all staff. This is a key element of the strategy. 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.

⁴ In line with data protection rules.

Indicators

- Number of fraud cases where lessons learnt has been identified.
- Number of improvements to existing processes that have been implemented based on recorded lessons learnt.