

# **Anti-Fraud Strategy**

## **of the European Labour Authority**

### **for 2021-2023**

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# 1.0 Background

The overall purpose of the Anti-Fraud Strategy (the 'Strategy') is to strengthen ELA's means of prevention, awareness raising, detection of fraud, and closer cooperation with the Anti-Fraud Office of the Commission (OLAF). The concept of fraud encompasses not only acts or omissions that infringe the EU financial interests but also misconduct that may not have a direct financial impact. Fraud covers a range of irregularities and illegal acts characterized by deception or misrepresentation, damaging interests of the EU.

The present Strategy builds on the methodology and guidance proposed by OLAF and sets out the Authority's commitment to achieve the overall objective of protecting the financial interest of the European Union and its reputation.

This Strategy is based on the principles of ethics and integrity, transparency, as well as on measures of fraud prevention, detection, investigation and correction.

## 1.1 General context

The EU budget is taxpayers' money that must be used only for implementing the policies approved by the EU legislature. Fraud involving EU funds has a particularly negative impact on the reputation of the EU institutions and the implementation of EU policies.

Under Article 317 of the Treaty on the Functioning of the European Union (TFEU) and Article 36 of the Financial Regulation applicable to the general budget of the Union (2018/1046), the Commission implements the EU budget, complying with sound financial management principles and applying effective and efficient internal control, which includes preventing, detecting, correcting, and following-up on fraud and other irregularities. Accordingly, Article 325(1) TFEU requires both the EU and the Member States to counter fraud and any other illegal activities affecting the financial interests of the EU.

In 2019, the Commission adopted its new Anti-Fraud Strategy that seeks to further improve the detection, sanctioning, and prevention of fraud and will support the Commission's ongoing efforts to continue reducing fraud against the EU budget.

In the framework of the Commission's Anti-Fraud Strategy and in line with the OLAF methodology<sup>1</sup>, ELA developed this very first Anti-Fraud Strategy for the period 2021-20221, which is to be adopted by the Management Board in 2021.

## 1.2 Agency specific context

The European Labour Authority (ELA) is an EU decentralised Agency with its mission to assist the Member States and the Commission in strengthening the access to information, to support compliance and cooperation between the Member States in the consistent, efficient and effective application and enforcement of the Union law related to labour mobility across the Union, and the coordination of social security systems within the Union, and to mediate and facilitate solutions in the case of disputes.

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<sup>1</sup> OLAF developed a methodology and guidance for the AFS for EU decentralised agencies (ARES(2013)2560341).

ELA was established by Regulation (EU) No 2019/1149 of the European Parliament and of the Council of 20 June 2019.

It needs to be stressed that ELA is in its start-up phase and will grow steadily in terms of budget and staff over the next years. It is expected to reach cruising speed in 2024. The aim is to gain financial autonomy by May 2021 and move to its seat location in Bratislava, Slovakia within 2021.

This Anti-Fraud Strategy is the very first for the Authority and will be valid for three years. With the Authority growing in budget and staff, and possible changes to its organisational structure, this Strategy will be updated or replaced in the course of its implementation or after its assessment at the end of the implementation period, if necessary.

## 2.0 Introduction

The overall purpose of the Anti-Fraud Strategy is to improve the prevention and detection of fraud, and the conditions for the investigation of fraud, and to achieve adequate reparation and deterrence, with proportionate and dissuasive sanctions and respecting due processes.

The Strategy aims to provide a framework for addressing the issue of fraud at the Authority for the next years. It defines the level of fraud-proofing which the Management Board of the Authority plans to achieve, sets the relevant objectives, and establishes the indicators that will allow a clear and objective assessment of the progress achieved.

The present Strategy shall 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 Strategy is in line with the priorities set by the Commission under the Common Approach on EU decentralised agencies, especially:

- Ensuring proper handling of the conflict of interests issue,
- Developing anti-fraud activities especially through prevention, detection, awareness raising, and closer cooperation with OLAF.

It also covers misbehaviour that may or may not have a direct impact on the EU's financial interests, such as some cases of forgery (in CVs for example), money laundering, concealment or destruction of material facts, or breaches of IT systems. Conflicts of interests that have intentionally not been declared, favouritism, and collusion also belong to the category of fraud.

### 2.1 Principles

Ethics, integrity, professionalism and transparency are key principles for EU institutions, bodies and agencies. ELA commits itself to ensuring that these principles are properly applied. The Management Board and all staff (including the Executive Director), seconded national experts, etc. as well as ELA's contractors must pursue the highest standards of honesty, propriety and integrity in the exercise of their duties. This also needs to be visible to the ELA stakeholders.

ELA does not tolerate any case of fraud, impropriety, or dishonesty and will report, without delay, any instance of suspected fraud and will transit any evidence to OLAF, which is exclusively competent to investigate those cases.

## 2.2 Definitions of irregularity and fraud

When referring to this Strategy, the term irregularity<sup>2</sup> means any infringement of provision of EU law resulting from an act or omission by a relevant actor which has, or would have, an effect of prejudicing the general budget of the EU by charging an unjustified item of expenditure. To classify an irregularity as fraud, it needs to be an **intentional act**.

For the purpose of this Strategy, the concept of fraud encompasses both internal and external misbehaviours and is defined<sup>3</sup> as any intentional act or omission relating to:

- use or presentation of false, incorrect or incomplete statements or documents having the effect of misappropriation or wrongful retention of funds from the general EU budget;
- non-disclosure of information in violation of a specific obligation, with the same effect;
- the misapplication of funds from the general EU budget for purposes other than those for which they were originally granted.

Together with covering the infringements of financial interests of the EU as defined by the Convention, this Strategy relies on the assumption that under the definition of fraud, all misbehaviours should be placed, which may not have a direct on the EU's financial interests but anyhow have a serious reputational impact and may be far more important than the financial damage itself.

The following non-exhaustive list of actions are to be considered as potential fraud (provided that they are intentional) in the context of this Strategy:

- **favouritism**: preference given to acquaintances, friends and family over strangers. When public officials demonstrate favouritism to distribute unfairly positions and resources, they are guilty of nepotism, depending on their relationship with the person who benefits.<sup>4</sup>
- **conflict of interests**: situation where the impartial and objective exercise of the functions of a financial actor or other person is compromised for family and/or emotional reasons, political or national affinity, economic interest or any other shared interest with a recipient.<sup>5</sup>
- **collusion**: agreement between two or more parties, sometimes illegal and therefore secretive, to limit open competition by deceiving, misleading, or defrauding others;
- **corruption**: abuse of entrusted power for private gains as it hurts everyone who depends on the integrity of people in a position of authority;
- **extortion, blackmail, bribery**: requesting or accepting money or valuables to influence the award of a contract;
- **double claiming of costs**: submitting the same items of expenditure to different funding sources separately in order to obtain financial support from all of them;

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<sup>2</sup> Article 1 (2) of Council Regulation 2988/95 on the protection of European Communities' financial interests, OJ L 312 of 23.12.95.

<sup>3</sup> Council Act of 26 July 1995 drawing up the Convention for the protection of the European Communities' financial interests, OJ No C 316 of 27.11.95, ('PIF Convention'), Article 1.

<sup>4</sup> Glossary of the U4 Anti-Corruption Resource Centre.

<sup>5</sup> Article 57 of the Financial Regulation.

- **overcharging** such as by forgery or alteration of documents, e.g. by knowingly generating false time sheets or invoices, by declaring fictitious contractors or employees or unjustified trips, or by using substandard materials;
- **non-compliance** with the provisions and/or legal requirements of contracts (e.g. non respect of the obligation to organize public procurement procedures or market consultations for subcontracted activities);
- **concealment of material assets**;

## 3.0 Fraud risk assessment

The Authority is in its start-up phase and will, once financially autonomous from the Commission, face challenges that distinguishes it from other EU agencies, which have well established structures, procedures and measures in place. ELA's establishment is solid and well advanced; still it faces risks that are particular to its current state of organisational maturity and the number and experience of staff. The aim is to build-up a system with sufficient preventive and detective measures, to develop investigative and corrective measures, and to create awareness for fraud throughout the Authority.

To assess its fraud risk, ELA's analysis is limited due to a lack of historical data. Being recently established, ELA also cannot yet rely on assessments by internal or external auditors. To determine the fraud risk for the Authority, the focus has been on the areas which are most relevant at this stage and pose a high risk, namely the areas of **recruitment, procurements and procedures**.

ELA will conduct a first risk assessment of its activities, which includes also the assessment of the fraud risk, in 2021. The fraud risk assessment will be performed on the basis of OLAF's "Methodology and guidance for anti-fraud strategies for EU decentralized agencies".

## 4.0 Means and resources

The Authority has at its disposal means and resources that are engaged in tackling fraud. The main resources are:

- **The Management Board** is responsible for the adoption of the Anti-Fraud Strategy<sup>6</sup>. The Management Board is also responsible for ensuring adequate follow-up to findings and recommendations stemming from the internal or external audit reports evaluations, as well as from investigations of OLAF;
- **The Executive Director** is responsible for the preparation and presentation of the Anti-Fraud Strategy<sup>7</sup> to the Management Board, as well as the development, endorsement and implementation of its Action Plan.

The Executive Director is also responsible for promoting an anti-fraud culture across the Authority, setting anti-fraud objectives and putting in place effective arrangements for combating fraud.

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<sup>6</sup> Art. 18 (e) of the ELA Regulation (EU) 2019/1149

<sup>7</sup> Art. 22.4 (h) of the ELA Regulation (EU) 2019/1149

- **All Heads of Unit** shall have as primary role to be controllers for the prevention and detection of fraud throughout the Authority and ensure that all suspected cases of potential fraud are immediately reported to the appropriate reporting channel;
- **Head of Procurement and Finance** is responsible for ensuring that financial and procurement processes/procedures incorporate strong measures to reduce the risk of fraud;
- **Internal Control and Audit** is responsible for identifying and preventing risks of breach of legal provisions and ethical behaviour rules. He/she coordinates the implementation of this Strategy, performs anti-fraud risk assessments (as a part of overall risk assessment), reports to the Executive Director on implementation of agreed actions, and acts as a contact point to OLAF for Strategy-related matters;
- **Human Resources, Procurement and Legal** contribute to promoting staff awareness on anti-fraud principles and ethical behaviour;
- **Staff members** must comply with ELA's anti-fraud principles and strategy, act in accordance with the principles of the Internal Control Framework, and report any reasonable concerns with regard to fraud either to the Heads of Unit and/or Executive Director, Management Board, and/or directly to OLAF, in accordance with the existing rules and practices.

## 5.0 Strategy

Taking into account the main risks identified for ELA in its start-up phase, the following objectives have been defined for the period 2021-2023:

1. **Create an anti-fraud culture within the organisation through targeted communication and training;**
2. **Support the effective prevention and detection of fraud risk through the development of procedures, guidelines or specific anti-fraud measures;**
3. **Handle potential fraud cases and their outcomes through the development of internal procedures for reporting.**

These objectives will be implemented through actions formulated in the attached Action Plan 2021-2023. When implementing the proposed actions, the ELA Executive Director will take into consideration the level of priority as well as the availability of resources.

### **Objective 1: Create an anti-fraud culture within the organisation through targeted communication and training**

This objective focuses on familiarising staff with fraud and its prevention, and to provide staff with the relevant knowledge and tools to apply fraud prevention and detection measures.

### **Objective 2: Support the effective prevention and detection of fraud risk through the development of procedures, guidelines or specific anti-fraud measures**

The purpose of this objective is to provide effective systems and guidance to the staff in tackling improprieties and their consistent application. ELA will also cooperate with, and learn from the experience of, other organisations, such as OLAF, the European Commission and other agencies in countering internal and/or external fraud.

**Objective 3: Handling of potential fraud cases and their outcomes through the development of internal procedures for reporting**

This objective aims at providing effective systems and guidance in handling alleged fraud cases and ensure proper documentation and reporting to the relevant actors. By developing and making these procedures available to staff, potential fraud cases are more likely to be reported and treated in line with the applicable rules. The Authority will ensure proper channels to and cooperation with OLAF.

These objectives and their respective actions aim at encompassing all stages of the anti-fraud cycle: prevention, detection, investigation, recovery and sanction.

Since its inception, ELA has already successfully developed a number of procedures and policies designed to mitigate identified risks, including major fraud risks, namely:

- Declarations of Conflict of Interest
- Decision on outside activities and assignments and on occupational activities after leaving the service
- Transparent recruitment and procurement procedures
- Internal Control Framework

## 6.0 Review and monitoring

The Executive Director of ELA, with the support of the ELA Internal Control and Audit staff member, will ensure that the Authority's approach to managing the risk of fraud is kept up-to-date considering best practices and legislative requirements.

The Anti-Fraud Strategy and its Action Plan will be reviewed every three years. Depending on the growing maturity of the Authority and the progress made with regards to the implementation of the Strategy during the first years, a revision of the Strategy might be needed before the end of the three year term.



## 7.0 Annex

### ACTION PLAN

This action plan, designed to implement the Anti-Fraud Strategy of the Authority, covers the period 2021-2023. The target dates are set according to the level of priority as well as availability of resources.

#### Objective 1: Create an anti-fraud culture within the organisation through targeted communication and training

Actions to be taken	Responsible	Deadline	Indicator
Provide a regular compulsory anti-fraud/ethics & integrity training/awareness session and share material with all staff members	HR	Each year	Training/awareness session delivered
Develop a specific ELA intranet page on the topic, providing information to staff on Ethics and Anti-fraud related matters	IC/Audit	31/12/2021	Dedicated intranet page developed and regularly updated
Prepare an annual report on the implementation of the strategy, addressed to the senior and middle managers	IC/Audit	Each year	Report submitted annually

#### Objective 2: Support the effective prevention and detection of fraud risk through the development of procedures, guidelines or specific anti-fraud measures

Actions to be taken	Responsible	Deadline	Indicator
Develop and carry out annual fraud risk assessment	IC/Audit	31/12/2022	Assessment performed Corporate risk exercise reported in the Consolidated Annual Activity Report
Insert anti-fraud clauses (suspension of payments, damages, etc.) in standard contracts agreements used for procurements, purchases, etc. and develop a complaint procedure for procurement	Finance	31/12/2021	Procedure in place Annual publication of list of contractors
Adopt and share with all staff a Whistleblowing guide	HR	31/12/2021	Adoption of the guidelines

Implement practical arrangements to ensure protection of whistle-blowers	IC/Audit	31/03/2023	Arrangements in place
Adopt and share with all staff a Code of good administrative behaviour	IC/Audit	31/03/2022	Adoption of code of behaviour
Develop an internal Administrative Instruction on registering and maintenance of exceptions and non-compliance events	IC/Audit	2022	Adoption of instructions
Develop an internal Administrative Instruction on the adoption of the Risk Register and an action plan for mitigating the risk identified in the Risk Register	IC/Audit	2022	Adoption of instructions
Develop an internal Administrative Instruction on Information Systems Security Policy	ICT	2022	Adoption of instructions
Adopt Management Board rules for the prevention and management of conflicts of interest in respect of Management Board members and independent experts, as well as the members of the Stakeholder Group and of the working groups and panels of the Authority, as well as of seconded national experts and other staff not employed by the Authority	IC/Audit	2022	Adoption of rules

**Objective 3: Handling of potential fraud cases and their outcomes through the development of internal procedures for reporting**

Actions to be taken	Responsible	Deadline	Indicator
Develop internal processes on how to report and tackle alleged fraud instances	IC/Audit	31/03/2022	Processes in place