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Programme for Employability, Inclusion and Learning (PEIL) 2014-2020

ANTI-FRAUD AND CONFLICT OF INTEREST POLICY

Introduction

The ESF Authorities in Ireland (the Managing Authority (MA), Certifying Authority (CA) and Audit Authority (AA)) for the 2014-2020 ESF PEIL are committed to maintaining high legal, ethical and moral standards, to adhere to the principles of integrity, objectivity and honesty and wish to be seen as being **opposed to fraud and corruption** in the way that they conducts their business. All members of staff are expected to share this commitment. The objectives of this policy are to promote a culture which deters fraudulent activity, to facilitate the prevention and detection of fraud, to develop procedures which will aid in the investigation of fraud and related offences and which will ensure that such cases are dealt with timely and appropriately. This policy also outlines principles relating to the identifying, managing and monitoring of conflicts of interest in the expenditure of funding under the PEIL.

The term fraud is commonly used to describe a wide range of misconducts including theft, corruption, embezzlement, bribery, forgery, misrepresentation, collusion, money laundering and concealment of material facts. It often involves the use of deception to make a personal gain for oneself, a connected person or a third party, or a loss for another – intention is the key element that distinguishes fraud from irregularity. Fraud does not just have a potential financial impact, but it can cause damage to the reputation of an organisation responsible for managing funds effectively and efficiently. This is of particular importance for a public organisation responsible for the management of EU funds. Corruption is the abuse of power for private gain. **Conflicts of interests** exist where the impartial and objective exercise of the official functions of a person are compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with e.g. an applicant for or a recipient of EU funds.

Responsibilities

Within the ESF MA, the Head of the Verification and Compliance Team is responsible for:

- Undertaking a regular review, with the help of a risk assessment team, of the fraud risk;
- Establishing an effective anti-fraud policy and fraud response plan;
- Ensuring fraud awareness of staff and training; and
- Ensuring that investigations are referred promptly to competent investigation bodies when they occur.

Process owners within the MA are responsible for the day-to-day management of fraud risks and action plans, as set out in the fraud risk assessment and particularly for:

- Ensuring that an adequate system of internal control exists within their area of responsibility;
- Preventing and detecting fraud;
- Ensuring due diligence and implementing precautionary actions in any case of suspicion of fraud, and
- Taking corrective measures, including any administrative penalties, as relevant.

The CA has a system which records and stores reliable information on each operation, having received detailed information from the MA on the procedures and verifications carried out in relation to expenditure declared.

The AA has a responsibility to act in accordance within professional standards[1] in assessing the risk of fraud and the adequacy of the control framework in place.

Reporting Fraud

The Protected Disclosures Act, 2014 requires every public body to establish and maintain procedures for dealing with protected disclosures. The Department of Education and Skills' procedures on protected disclosure reporting in the workplace include guidance notes, checklists and an investigation manual. The MA uses the established reporting channels set out in the Department's procedures for reporting fraud or potential fraud.

The Department's procedures also include the process for handling an external protected disclosure. Where deemed appropriate the level of the ESF cascade where the fraud or potential fraud is suspected will take responsibility to progress the allegation and instigate criminal proceedings (e.g. through An Garda Síochána).

All cases of identified fraud must be notified to the MA Verification and Compliance team and the Activity's IB/Beneficiary (where there is no IB) within 5 working days of the initial date of detection. In all other instances, the MA and the Activity's IB/Beneficiary (where there is no IB) will be immediately informed when reasonable grounds to suspect fraud have been established.

All cases of identified fraud or suspected fraud which have, or the potential to have, an impact on EU funding are communicated to OLAF and, where there is a financial element to the fraudulent activity (irregular expenditure), this is recorded on OLAF's Irregularity Management System (IMS) within the reporting period specified in the regulations. The MA Verification and Compliance team notify the CA for input to IMS.

All reports will be dealt with in strict confidence and in accordance with the Protected Disclosures Act, 2014. Staff reporting irregularities or suspected frauds are protected from reprisals.

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[1] International Standards for the Professional Practice of Practice of Internal Auditing, International Standards on Auditing

Anti-fraud measures

The ESF authorities in Ireland have put in place proportionate anti-fraud measures based on a thorough fraud risk assessment. In particular, they will use IT tools to detect risky operations (such as ARACHNE) and ensure that staff are aware of fraud risks and receive anti-fraud training. They carry out a vigorous and prompt review into all cases of suspected and actual fraud which have occurred with a view to improving the internal management and control system where necessary. The review feeds into the subsequent update of the fraud risk self-assessment. It is objective and self-critical, resulting in clear conclusions about perceived weaknesses and lessons learned, with clear actions, responsible individuals and deadlines.

Conflicts of Interest

In the context of ESF, conflicts of interest can arise in a number of scenarios, specifically in relation to (i) decisions on the allocation of funding by the PMC, MA, CA and IBs and (ii) procurement for ESF co-financed services. Conflicts of interest in the spending and management of the EU's budget are defined as existing:

"*where the impartial and objective exercise of the functions of a financial actor or other person … is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient*."

While conflicts of interest are not necessarily criminal offences such as theft or fraud they can potentially, if not identified and managed appropriately, reach this criminal threshold.

Identifying conflicts of interest

In the context of the ESF, examples of conflicts of interest can arise when an individual or organisation:

- is providing recommendations on funding decisions while also working, or consulting, for grant recipients (PMC; Beneficiary);
- is responsible for making funding decisions while also being a grant recipient or for monitoring compliance by grant recipients to which they may be linked (IB; Beneficiary); or
- is responsible for awarding contracts to organisations to which they may be linked (procurement at any level in the Cascade or by grant recipients).

Potential Consequences

The consequences of failing to manage a conflict of interest in the expenditure of ESF co-financing can potentially lead to the application of a financial sanction. Where a conflict of interest is identified in public procurement and is not properly managed and monitored this could lead to the possible application of a financial sanction to grant recipients (see irregularity no. 21 in the Commission guidance on the application of flat rate corrections for instances of non-compliance with EC procurement Directives (Commission Decision (C) 2013 9527)):

"*When a conflict of interest has been established by a competent judicial or administrative body*[2]*, either from the part of the beneficiary of the contribution paid by the Union or the contracting authority*."

The suggested level of correction for this irregularity is 100%.

It is therefore essential that all stakeholders fully understand how to identify, manage and monitor conflicts of interest.

Managing Conflicts of Interest

Procedures are in place for the disclosure of situations of conflict of interests by staff[3] in the ESF authorities.

The revised *Code of Practice for the Governance of State Bodies* published by the Department of Public Expenditure and Reform in 2016 applies to the wider public sector bodies involved in the ESF Cascade.

Where activities are operated by projects rather than directly by the Beneficiary, the Beneficiary has a funding or grant agreement in place with the project and the grants are subject to DPER Circular 13/2014 which outlines the public financial management principles, procedures, and additional reporting requirements to be followed in the management of grant funding provided from public money. The overall principle is that there should be transparency and accountability in the management of public money, in line with economy, efficiency and effectiveness.

The PMC Rules of Procedures, incorporates the Code of Conduct, which sets out the standards of behaviour expected of PMC members and members of any sub-committees and working groups. The specific requirements regarding confidentiality, conflicts of interest, impartiality and independence are applicable to all members.

Summary

The ESF authorities in Ireland have a zero tolerance policy to fraud and corruption, and have a robust control system that is designed to prevent and detect, as far as is practicable, acts of fraud and correct their impact, should they occur. Similarly all conflicts of interest must be effectively managed.

It is the responsibility of all in the ESF Cascade and grant recipients to ensure that they comply with the requirements set out above and any obligations under EU or domestic legislation.

[2] "Administrative body" includes the national Audit Authorities for the ERDF and/or ESF.

[3] Ethics in Public Office Acts 1995 and 2001 and guidelines on compliance with the provisions of the Ethics in Public Office Acts 1995 and 2001.