

EMFF OP 2014-2020

Anti-Fraud Policy & Response Plan



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1. INTRODUCTION

The Managing Authority (MA) for the EMFF OP 2014-2020 is committed to maintain high legal, ethical and moral standards, to adhere to the principles of integrity, objectivity and honesty and wishes to be seen as **opposed to fraud and corruption** in the way that it conducts its business. All members of staff are expected to share this commitment. The objective of this policy is to promote a culture which deters fraudulent activity and to facilitate the prevention and detection of fraud and the development of 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.

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. Conflict of interests exists 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.

This document aims to set out the policy of the Department of the Agriculture, Food and the Marine (the Managing Authority) in the context of preventing and dealing with fraud and loss within the Department, other Departments or State Bodies including bodies in receipt of funding from the Department. The policy applies to all employees involved in the implementation of schemes/ work programmes under the EMFF OP 2014-2020. It provides staff with information and guidelines on their duties and responsibilities in connection with suspected cases of fraud and relevant offences. It will be reviewed on a regular basis and revised as necessary. Staff will be notified of any revisions.

This Anti-Fraud Policy aims to provide a framework for promoting the Managing Authority's policies and measures to prevent and detect fraud. It provides guidelines for staff on their roles and responsibilities in relation to preventing, dealing with and reporting fraud. It also takes into account the obligations employees of the Department have under Section 19 of the Criminal Justice Act 2011.

By so doing, it is hoped to ensure a culture across the EMFF bodies which raises the awareness of the risks and consequences of fraud by:

- Identifying areas where the risk of fraud exists
- Detecting fraud which has already occurred
- Taking firm action against the perpetrators and
- Designing systems to prevent the occurrence of fraud in all its forms.

This policy should be considered in conjunction with the Civil Service Code of Standards and Behaviour (2004), the Ethics in Public Office Acts, the Department's Policy under the Protected Disclosures Act 2014, Section 19 of the Criminal Justice Act 2011 and all National and European Union obligations and requirements. It is essential that all staff should be aware of the possibility of fraud and be conscious of their individual duties and responsibilities in preventing fraud.

This policy also deals with instances where fraud is detected that might not directly impact this Department but might be relevant to another Department or State Body or An Garda Síochána in the context of Section 19 of the Criminal Justice Act 2011.

In view of the wide and diverse range of operations, payments and beneficiaries under the EMFF's many schemes and agencies, it is possible that fraud, including false declarations, may arise from persons, groups or bodies outside of the Managing Authority or from within the Managing Authority itself.

Fraud is an ever-present threat, has many forms and is always damaging, both in terms of financial loss and reputational damage. Fraud is not only illegal; it also creates a very real threat to the resources available to the Managing Authority and the Government as a whole.

It is the policy of the Managing Authority/Intermediate Bodies to:

- Administer, monitor and manage all of its operations and payment processing in such a way that the possibility of fraud is significantly reduced and, where possible, completely eliminated.
- Investigate and deal with in an open, fair and transparent manner, all cases of suspected fraud.
- Pursue the recovery of any public funds lost through fraud.
- Pursue prosecution of the perpetrators and notify the Garda Síochána where appropriate.
- Disciplinary action will be taken against employees involved in fraud and action may also be taken against managers/supervisors whose negligence through lack of supervision and control may have facilitated the occurrence of fraud.

2. DEFINITION OF FRAUD

Most fraud starts off as an irregularity and transpires to be fraud or suspected fraud following investigation, but not all irregularities are fraud. Due process must be followed when investigating all irregularities before they can be identified as fraud or suspected fraud. Irregularities can arise due to human error and where procedures are not correctly followed. They can be once-off events or systemic. A systemic irregularity is a recurrent error due to serious failings in management and control systems that are designed to ensure correct accounting and compliance with rules and regulations.

Fraud generally means making deceitful misrepresentation of facts in order to commit or conceal a crime. It also usually involves the obtaining of money, goods or services to which a person is not entitled. False and/or forged documents are often used in these types of activities.

Examples of offences concerning fraudulent activities are set out Criminal Justice (Theft and Fraud Offences) Act 2001 (2001 Act). Some examples are as follows:

- Forgery consists of a person making a false instrument with the intention that it shall be used to induce another person to accept it as genuine and, by reason of so accepting it, to do some act, or to make some omission, to the prejudice of that person or any other person.
- False accounting arises where a person dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another:
 - a) destroys, defaces, conceals or falsifies any account or any document made or required for any accounting purpose,

- b) fails to make or complete any account or any such document, or
- c) In furnishing information for any purpose produces or makes use of any account, or any such document, which to his or her knowledge is or may be misleading, false or deceptive in a material particular.

At European Union level, fraud is defined as:

“any intentional act or omission” relating to

- the use or presentation of false, incorrect or incomplete statements or documents
- nondisclosure of information in violation of a specific obligation
- misapplication of Community funds for purposes other than those for which they were granted, which has the effect of misappropriating or wrongfully retaining Community funds or the illegal diminution of Community own resources (revenue).

Council Act of 26 July 1995 drawing up the Convention on the Protection of the European Communities' Financial interests, Article 1 states:

“For the purposes of this Convention, fraud affecting the European Communities' financial interests shall consist of: (a) in respect of expenditure, 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 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...*”

Part 6 of the 2001 Act sets out that the following activities will lead to an indictable offence arising:

“Fraud affecting European Communities' financial interests

42.—A person who—

- a) commits in whole or in part any fraud affecting the European Communities' financial interests,
- b) participates in, instigates or attempts any such fraud, or
- c) obtains the benefit of, or derives any pecuniary advantage from, any such fraud, is guilty of an offence and is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.”

A relevant offence for the purposes of section 19 of the 2011 Act is defined as follows:

“3. — (1) In this Act a relevant offence means—

- a) an arrestable offence under a provision of an enactment, or at common law, specified in Schedule 1,
- b) an arrestable offence under a provision of an enactment, or at common law, specified in an order made under subsection (2),
- c) an offence consisting of aiding, abetting, counselling or procuring the commission of an offence specified in Schedule 1 or in an order made under subsection (2), or
- d) an offence consisting of conspiring to commit, or inciting the commission of, an offence specified in Schedule 1”

The Minister can add to this list by specifying in regulations additional offences which are considered to be relevant offences.

Types of fraud

Fraud occurs in a variety of ways. Inevitably it involves the misappropriation of funds or assets or an attempt to do so. Typical examples of fraud include:

- cheque, electronic payment, credit card frauds and counterfeit currency frauds
- unsolicited invoices paid for by an organisation
- fictitious applications for grants, funding or expenses
- presentation of forged or falsified documents/declarations
- computer fraud.

This list is indicative only and is not exhaustive.

3. CONTROLS AND THE PREVENTION OF FRAUD

There are many ways in which the Department can and does act to prevent fraud or other relevant offences. This includes supervision, audits and inspections carried out by MA staff. Staff should be aware of the potential for fraud, and work to ensure that controls are in place to guard against this possibility.

When designing new schemes, staff should take fraud prevention into consideration. All schemes should be designed not just to meet the requirements of legislation, be it National or European, but also to include checks and controls that prevent fraud.

There are times when the Managing Authority is required to expedite the payment process for various reasons and it is important for staff to recognise the risks this could pose, while at the same time responding positively to crisis situations either for individuals or the many groups, bodies and organisations with which the Managing Authority deals.

Schemes and programmes operated by the Managing Authority/Intermediate Bodies should have controls built into them and staff designing new schemes and measures should liaise with the Internal Audit Unit and Managing Authority for advice in relation to these controls.

Good practice requires that all staff have their work monitored and checked by supervisors and that the work of implementing bodies is organised in such a way that no one individual has responsibility for all aspects of a transaction or measure, i.e. from checking eligibility, recommending payments, authorising and making payments, to reconciling final accounts. While these checks may sometimes mean that payments or other services to our clients are not provided as speedily as we might like, they are essential to protect the funds allocated to the Department by taxpayers (both Irish and European).

3.1 Procedures

All schemes and measures operated under the EMFF OP 2014-2020 should have procedures manuals and audit trails which set out the necessary controls and checks to be implemented by staff. These manuals and audit trails should be reviewed and updated on a regular basis. The controls and checks indicated in the procedures must be applied as set out in the manuals.

Staff should ensure that they adequately record the control checks they carry out.

Senior and line managers should check the work of their staff regularly to ensure that control checks are carried out and evidence of such checks should also be recorded on file.

4. THE MANAGING AUTHORITIES RESPONSIBILITIES

The MA's main responsibilities in relation to fraud are:

- Ensuring it has suitable policies and practices in place to safeguard itself against fraud and theft
- Ensuring that it communicates its policy on fraud to all employees in a formal policy statement
- Developing and maintaining effective controls, practices and skills to prevent and detect fraud
- Undertaking prompt and detailed investigations if a suspicion of fraud arises
- Ensuring that investigating officers are adequately trained and resourced to complete investigations in a timely manner
- Taking appropriate legal and/or disciplinary action against perpetrators of fraud – such action to have regard for any Garda investigation or action being pursued
- Recovering funds that have been fraudulently obtained.

In the formulation of policy, legislation and related guidance, and in the design of working systems, the MA will ensure that:

- the prevention of loss and fraud is taken into account
- the risk of fraud is assessed when schemes or processes are being designed and when changes are being considered
- measures to prevent fraud are designed and implemented
- on-going monitoring and checks on internal controls are conducted to identify and rectify any potential weaknesses

The MA will regularly review its policies, legislation and related guidance to ensure that appropriate measures for combating fraud are maintained.

5. RESPONSIBILITIES OF MA & INTERMEDIATE BODY STAFF

Every member of staff has a duty to ensure that public funds are safeguarded, whether they are involved with cash or payments systems, receipts, stocks or dealing with contractors or suppliers. Staff also have responsibilities under Section 19 of the Criminal Justice Act 2011. As stewards of public funds, staff must have, and be seen to have, high standards of personal integrity.

Staff should:

- Alert their line manager where they believe the opportunity for fraud exists or where they have identified weaknesses in the system of internal controls
- Report details immediately to their line manager, or next most senior person, if they suspect that a fraud has been committed or see any suspicious acts or events
- Where information is obtained which an official believes is of material assistance regarding the prevention or assisting in the prosecution of a person for a relevant offence, the official should discuss it with their line manager who should inform their Assistant Secretary/CEO who, in turn, should consider if this information should be notified to An Garda Síochána.
- Assist in any investigations by making available all relevant information and by co-operating in interviews

- Not accept any gifts, hospitality or benefits of any kind from a third party, or any outside interest that might reasonably be seen to influence the discharge of their duties. Staff should immediately inform their line manager of such instances, or where any potential or actual conflict of interest arises, and must comply with the guidance set out in the Civil Service Code of Standards and Behaviour in this regard.

Staff reporting where they believe the opportunity for fraud exists or where they have identified weaknesses in the system of internal controls should be aware that the Protected Disclosures Act 2014 is intended to provide a robust statutory framework to protect workers who raise concerns regarding potential wrongdoing (whistleblowers) that has come to their attention in the workplace.

5.1 Responsibilities of Management

The day to day responsibility for the prevention and detection of fraud rests with line managers who are responsible for:

- Assessing the types of risk involved in the operations for which they are responsible
- Ensuring that adequate systems of internal control are implemented and reported upon within their areas of responsibility, taking into account the scale of the risk in the particular business area
- Ensuring that controls and procedures are understood by their staff
- Ensuring that controls are being complied with, including testing the controls and maintaining a record of all such tests
- Satisfying themselves that their systems continue to operate effectively
- Providing assurances on their internal control systems to Senior Management
- Raising fraud awareness among staff and clients (e.g. through awareness seminars, producing fraud reports, highlighting cases of fraud etc.) and
- Generally ensuring that the opportunities for staff, clients or others to commit fraud are minimised.

5.2 Establishing and maintaining effective controls

It is *necessary* that:

- There is rotation of staff, particularly in key posts
- There is a separation of duties so that complete control of a key function does not rest with one individual
- There are adequate systems of internal control generally and adequate supervision of staff.

It is desirable that, where possible, backlogs are not allowed to accumulate.

5.3 Personal conduct of staff

Line managers should ensure that staff under their control are aware of and understand:

- The content of the Civil Service Code of Standards and Behaviour (2004) and the Ethics in Public Office Acts
- The rules relating to confidentiality of information and the Official Secrets Act
- That fraudulent behaviour is wrong, and that there are serious consequences for involvement in fraudulent activity
- The indicators of fraud relating to their business area
- Their obligations under Section 19 of the Criminal Justice Act 2011.

6. RESPONSIBILITIES OF CERTIFYING AUTHORITY

While it is the responsibility of the Managing Authority/Intermediate Bodies to ensure schemes and programmes operated under the EMFF OP 2014-2020 have controls built into them, the Certifying Authority, who have a key responsibility in safeguarding public funds through its financial management and accounting functions, should provide advice, when sought, in relation to these controls.

7. RESPONSIBILITIES OF AUDIT AUTHORITY

While management has primary responsibility for preventing and detecting fraud, Audit Authority is responsible for:

- Providing independent assurance on the adequacy of arrangements for managing the risk of fraud, and ensuring that the Managing Authority promotes an anti-fraud culture
- Assisting in the deterrence and prevention of fraud by examining and evaluating the effectiveness of controls commensurate with the extent of the potential exposure/risk in the various segments of the EMFF OP 2014-2020 operations and making recommendations for improvement where necessary
- Ensuring during audits, that management has reviewed its risk exposures and identified the possibility of fraud as a business risk where appropriate and that control systems are continually reviewed and strengthened as necessary
- Assisting management where requested and as appropriate in conducting fraud investigations.

8. DEALING WITH FRAUD – EMFF OP 2014-2020 FRAUD RESPONSE PLAN

8.1 Reporting fraud

As previously stated, it is the policy of the Managing Authority to:

- Administer, monitor and manage all of its operations, payment processing, grant schemes and programmes in such a way that the possibility of fraud is significantly reduced and, where possible, completely eliminated
- Investigate and deal with all cases of suspected fraud in an open, fair and transparent manner
- Endeavour to recover any money or property lost through fraud
- Pass on information which might be relevant to An Garda Síochána in relation to other relevant offences and pursue prosecutions in cases of fraud.

The following are some guidelines for management and staff on what they should do if they suspect a fraud is occurring or has occurred in regard to any of the EMFF OP 2014-2020's activities or within their area of work.

8.2 Senior Management

The role of senior management, both collectively and individually, in fraud prevention is crucial. Collectively, the senior management of the Managing Authority must ensure adequate awareness of the need for financial control and fraud prevention throughout the business culture of the EMFF OP 2014-2020.

Specifically, Principal Officers are required to:

- Ensure that this fraud policy is reviewed periodically to ensure it complies with best practice
- Ensure that the financial controls and fraud prevention measures for all operations, measures and schemes etc. in their areas of responsibility, are reviewed on a regular basis
- Consider areas for possible inclusion in the Internal Audit annual audit plan based on this review
- Examine the need to rotate staff at all levels particularly in areas with a potential for fraud
- Ensure that the Divisional risk register is updated with any risks relating to fraud with appropriate mitigation strategies
- Ensure that all their line managers are aware of the possibility of fraud, and are trained to deal with fraud should it occur
- Ensure all staff are aware of this and other relevant policies

On becoming aware of, or receiving a report of fraud or suspected fraud, Principal Officers are required to:

- Review the available information/evidence, inform the Garda Síochána where fraud is suspected or pass on information to the Garda Síochána regarding other relevant offences
- Deal with media enquiries and the provision of information in relation to specific incidents
- Report annually on the implementation of controls measures in their area of responsibility to the Assistant Secretary.

8.3 Line Managers/Supervisory Staff

In addition to the general responsibilities of line managers and supervisors outlined above, line managers have additional responsibilities when a member of staff alerts them to a possible fraud as follows:

1. Preserve any evidence including documentation, computer files and logs etc. and move them to a secure location if necessary,
2. Carry out a preliminary assessment of the suspected fraud and act quickly to prevent or minimise any losses
3. Place a copy of the written report (acknowledged by the officer who made the initial report) on file
4. Report the suspected fraud to the relevant Principal Officer who should engage with the Finance Officer, Head of Internal Audit and Personnel Officer.
5. Meet with the supervisor of the officer who made the initial report and, if appropriate, the officer himself / herself, to discuss what course of action to take. Inform individuals who make a report of the steps taken to address the matter and the outcome of the case

While it is important to act quickly in cases of suspected fraud to preserve evidence etc., it is also important to understand the consequences of making false accusations and that everyone is innocent until proven guilty.

In normal circumstances the responsibility for calling in the Garda Síochána in cases of suspected fraud rests with the relevant Assistant Secretary. The Garda Síochána will require written statements, lists of witnesses and evidence to conduct a successful investigation.

All original documents and records, computer records/logs, computer equipment and any other physical evidence must be located and removed to a secure location. All such material must be handled in such a way that it is admissible as evidence in court. If possible, all evidence should be

labelled and placed in clear plastic bags in order to avoid damage by removing fingerprints etc. A record should be kept of who handled it and how and where it was stored.

It should be noted that this document does not contain a composite set of instructions on the steps to take in the preservation of physical evidence for the purpose of a prosecution. The advice of persons with experience in compiling and handling evidence, and the rules of evidence, such as the The Managing Authority's Legal Advisor or a solicitor from the Attorney General's Office should be sought at the earliest opportunity. Staff involved will also require and receive Garda assistance in handling papers and computers where a prosecution is contemplated.

In tandem with any Garda investigation that may take place in the event of a report of suspected fraud, the Secretary General may appoint a Departmental Fraud Investigation team to conduct an investigation. Any member of staff who undertakes a Departmental Fraud Investigation will be adequately trained in the matter. Investigators should have full access to all staff, records and premises in order to carry out investigations.

External investigators/auditors may also be appointed, if deemed appropriate, by the Managing Authority to investigate cases of suspected fraud.

8.4 Individual officers

While key responsibility for fraud prevention rests with line management, it is the duty of each officer to report any case of suspected fraud to a supervisory officer and to assist in any subsequent investigation. If the initial report was not in writing, a written report should be submitted.

An officer should not:

- Confront or interview suspects (this is a specialised area and will have implications in any subsequent legal proceedings), or
- Contact the Garda Síochána, as this is a matter for Assistant Secretaries to initiate.

If for any reason it is not possible or appropriate to inform your supervisory officer, then you must contact the Finance Officer, Head of Internal Audit and the Personnel Officer, who have been designated by the Secretary General as the appropriate officials in such cases.

The process as set out in this policy of reporting instances where fraud is detected or suspected or where an employee has information in relation to a relevant offence within the meaning of section 19 of the Criminal Justice Act 2011, places the onus on the Assistant Secretary to whom the matter has been reported, to refer the matter to the Gardaí. In the unlikely event of it arising that an employee is charged with withholding information under section 19, that person could rely on this procedure as a defence "of reasonable excuse" under that section for not doing so directly.

An employee reporting a matter under this policy may also invoke the protection of the Protected Disclosures Act.

PENALTIES AND IMPLICATIONS FOR THOSE FOUND GUILTY OF FRAUD

The Managing Authority will take legal advice, with a view to prosecution in relation to any individual who is believed to have acted fraudulently in relation to EMFF OP 2014-2020 activities and operations.

It is the Managing Authority's policy to prosecute cases of fraud, and those found guilty of fraud by the Courts may receive a prison sentence, be fined, or both. Any member of staff found guilty of a criminal act will be considered to have committed a serious disciplinary offence and is likely to be

dismissed from their post on the grounds of gross misconduct. Where supervisory negligence is found to be a contributory factor, disciplinary action may also be initiated against those managers/supervisors responsible.

9. REPORTING FRAUD TO THE COMPTROLLER AND AUDITOR GENERAL

The Managing Authority is required to immediately report any cases of attempted, suspected or proven fraud to the Office of the Comptroller and Auditor General (C&AG).