

DECISION AB n° 13/2014
OF THE ADMINISTRATIVE BOARD
OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS

of 18 December 2014

**adopting the Anti-Fraud Strategy of the Agency for the Cooperation of Energy
Regulators for the period 2015-2017**

THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹ and, in particular, Article 13(4) thereof,

HAVING REGARD to Decision AB No 10/2012 of 20 June 2012 on the adoption of Internal Control Standards (hereinafter referred to as 'ICS'), and in particular Internal Control Standard No 2: Ethical and Organisational Values,

WHEREAS:

- (1) ICS 2 requires that staff is made aware of the necessity to avoid conflicts of interest and the procedure to manage such situations should they arise, the rules regarding whistleblowing and the procedure to report fraud and irregularities. A solid and targeted antifraud strategy shall be organised at the Agency level.
- (2) The European Parliament, the Council of the EU and the European Commission issued on 19 July 2012 a Joint Statement on decentralised agencies². On 18 December 2012, the Commission subsequently presented a Roadmap on the follow-up to the Common Approach on EU decentralised agencies³, which sets out the Commission's main objectives for the implementation and describes how the Commission intends to pursue the implementation of the Common Approach.
- (3) On 24 June 2011 the Commission adopted its new Anti-Fraud Strategy (CAFS)⁴. Action 19(b) of the action plan accompanying the CAFS states that, in line with anti-fraud strategies at Commission and DG level, OLAF will provide a methodology and guidance for anti-fraud strategies for EU agencies and other entities.
- (4) OLAF's Methodology and guidance for anti-fraud strategies for EU decentralised agencies⁵, which was communicated on 25 November 2013 to the Agency, proposes for the management boards of new agencies to adopt an anti-fraud strategy which is proportionate to their fraud risks, having due regard to the costs and benefits of the measures to be implemented.

¹ OJ L211, 14.8.2009, p.1

² http://ec.europa.eu/commission_2010-2014/sefcovic/documents/120719_agencies_joint_statement_en.pdf

³ [http://europa.eu/agencies/documents/2012-12-](http://europa.eu/agencies/documents/2012-12-18_roadmap_on_the_follow_up_to_the_common_approach_on_eu_decentralised_agencies_en.pdf)

[18_roadmap_on_the_follow_up_to_the_common_approach_on_eu_decentralised_agencies_en.pdf](http://europa.eu/agencies/documents/2012-12-18_roadmap_on_the_follow_up_to_the_common_approach_on_eu_decentralised_agencies_en.pdf)

⁴ COM(2011) 376.

⁵ Ref. Ares(2013)3560341 - 25/11/2013

- (5) The Agency 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 Agency environment that discourages any fraudulent behaviour.
- (6) In order to pro-actively continue to reinforce a strong anti-fraud culture and actively encourage fraud prevention through awareness-raising activities, training courses and dedicated actions designed to the specifics of the Agency's activities, the Agency 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 ADOPTED THIS DECISION:

Article 1

The Anti-Fraud Strategy for the period 2015-2017, as annexed to this Decision, is adopted.

The Director of the Agency is delegated to adopt further measures which are necessary to implement the Action Plan of the Anti-Fraud Strategy for the period 2015-2017.

Article 2

This Decision shall enter into force on the date following that of its adoption and shall apply as of 1 January 2015. The Decision shall be communicated to the staff, published on the intranet and the webpage of the Agency.

Done at Ljubljana on 18 December 2014.

For the Administrative Board:

SIGNED

Razvan Eugen Nicolescu
Chairman of the Administrative Board

Agency for the Cooperation of Energy Regulators

Anti-Fraud Strategy

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1. INTRODUCTION AND MAIN CONCEPTS

1.1. Introduction

Fraud is hidden by nature and therefore its extent is not well known. The impact of a fraud is generally huge in financial terms but even more in reputational terms. Despite the implementation of an effective internal control system, fraud can never equal zero notably due to cost-benefit considerations. Nevertheless, through better awareness and specific guidance, the general risk management processes can better respond to fraud risks.

In the context of the discharge procedures, the European Parliament and the European Court of Auditors have repeatedly called for better protection of the EU financial interests against fraud and irregularities.

On 24 June 2011, the Commission adopted its new Anti-fraud Strategy (CAFS)⁶, with the overall objective to improve prevention, detection and the conditions for investigations of fraud, to achieve adequate reparation and deterrence, especially by developing close cooperation and synergies and promoting the standards set out in the CAFS within the EU agencies and bodies.

The Agency for the Cooperation of Energy Regulators (hereafter ‘the Agency’) 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, and has developed the present Anti-fraud Strategy within the broader context of the CAFS, and in line with OLAF’s⁷ proposed methodology and guidance. The strategy is built on key objectives and actions tailored to the Agency’s specific environment and will be analysed at the end of the implementation period, in light of the acquired experience and the development of the organisation.

1.2. Definition of fraud and purpose of the anti-fraud strategy

According to the definition used by OLAF, fraud is an **intentional deceit** and affects **the EU’s financial interests**. Fraud differs from ‘irregularity’, which is an act which does not comply with EU rules and which has a potentially negative impact on EU financial interests, but which may be the result of genuine errors committed by beneficiaries claiming funds or by the authorities responsible for making payments.

The present strategy shall serve as a management tool for the Agency to ensure progress and transparency as regards the protection of the EU’s financial interests, compliance with EU ethical values and therefore the protection of the EU’s reputation. It takes into account the priorities set by the Commission within the framework of the Common Approach on EU decentralised agencies⁸, especially by developing anti-fraud activities through prevention, detection, awareness-raising and closer cooperation with OLAF.

⁶ COM(2011)376 final;

⁷ Ares(2013)3560341;

⁸ Joint statement of the EP, the Council and the EC on decentralized agencies; July 2012.

The prevention and detection of fraud is one of the objectives of internal control and therefore responsibility of every staff member, as stipulated in the Financial Regulation. In this context, the development of anti-fraud culture at the Agency is considered of great importance.

The strategy will be valid for the period 2015-2017. It will be subject to regular reviews and updates in the course of its implementation, whenever necessary, in order to keep in pace with any developments in the legal and financial framework.

2. THE AGENCY'S OPERATIONAL ENVIRONMENT

The mission of the Agency for the Cooperation of Energy Regulators, as defined in Regulation (EC) No 713/2009⁹, is to assist the National Regulatory Authorities for energy (NRAs) in exercising, at EU level, the regulatory tasks performed in the EU Member States and, where necessary, to coordinate their actions, particularly on cross-border issues or on issues which, whilst national, have a wider impact. The Agency was therefore established to fill the regulatory gap at EU level (beyond and across national borders) and to contribute towards the effective functioning of the Internal Energy Market in electricity and natural gas.

The Regulation on wholesale energy market integrity and transparency (REMIT)¹⁰ which established rules prohibiting abusive practices affecting wholesale energy markets, extended the Agency's responsibilities to the monitoring (at EU level) of wholesale energy markets in close collaboration with national regulatory authorities.

The Regulation on Guidelines for trans-European energy infrastructure (TEN-E Regulation)¹¹, which lays down guidelines for the timely development of priority energy infrastructure in specified corridors and areas, expanded the Agency's responsibilities in the energy network planning area, by involving the Agency in the process for the selection of Projects of Common Interest and their regulatory treatment.

The Agency currently has more than 70 staff members¹² and an annual budget estimated at €10.8 million in 2014, financed by the Commission for 100 % of its revenues¹³. The budget is in majority implemented through public procurements and/or direct payments. The Agency does not manage grants.

The Agency applies the internal control policy promoted by the Commission especially through the Internal Control Standards.

The Agency's internal structure comprises four Departments (Electricity, Gas, Market Monitoring and Administration) and the Director's Office. Staff members are obliged to respect all relevant provisions laid down in the Treaty on the Functioning of the European Union (TFEU), the Staff Regulations and the Conditions of Employment of Other Servants (CEOS).

Working Groups (WG) and Task Forces are established in order to support the Agency in the planning, implementation and decision-making in key areas of operation. Rules on the

⁹ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

¹⁰ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

¹¹ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009.

¹² Including TAs, CAs, SNEs, Interims and Trainees.

¹³ Numbers as at 2014.

functioning of the Working Groups have been adopted with the aim to ensure conformity with the existing rules and provisions on confidentiality and integrity, and to legally align the provisions governing the Working Groups and Task Forces with those governing the functioning of the Agency.

The present anti-fraud strategy sets out the Agency's commitment to preventing, detecting and deterring fraud or other irregularity and taking appropriate actions in the event of their occurrence. The strategy focuses on developing a strong anti-fraud culture and actively encourages prevention through awareness-raising activities, training courses and dedicated actions designed to the specifics of the Agency's activities.

3. THE AGENCY'S RISK ENVIRONMENT AND ANTI-FRAUD MEASURES

In order to ensure proactive approach towards fraud risk management, the Agency has introduced a number of tools and control systems to reduce potential fraud risks and to create an Agency environment that discourages any fraudulent behaviour. Some key tools include:

Annual risk assessment

A thorough risk assessment exercise is conducted on an annual basis as part of the Annual Work Programme drafting process. Risk assessment is performed in line with applicable provisions and guidelines of the European Commission and aims to ensure improved performance, compliance with existing regulations and relevant rules, reliability of information and safeguarding assets and information.

To that end, any identified critical risks, potentially including also fraud risks, are clearly documented in the Agency's Risk Register, addressed in a timely manner and followed up in the Annual Activity Report.

Management of Conflict of Interest

The Staff Regulations, and specifically Article 11 (2), provide that officials, temporary agents, contractual agents and special advisors shall not accept any favor, gift or payment from sources outside of the institution without the permission of the Appointing Authority. In order to avoid such risks, constituting potential conflict of interest, the Agency applies the European Commission **Guidelines on Gifts and Hospitality for the staff members**¹⁴.

In order to facilitate the prevention and management of conflict of interest, the Agency has developed a **Policy for the prevention and management of conflicts of interest**. The policy addresses potential conflict of interest issues both of the Agency's staff, Boards and Working Groups.

Whistleblowing

In order to detect and investigate any serious concerns about fraud, corruption or other serious wrongdoing, and to take appropriate actions to protect its assets, integrity and reputation, the Agency's Administrative Board¹⁵ has adopted internal rules on whistleblowing.

The rules aim to encourage staff to report concerns, while providing assurance for their own position, which will facilitate the detection of any potential or actual instances of fraud,

¹⁴ Communication from Vice-President Šefčovič to the Commission on Guidelines on Gifts and Hospitality for the staff members SEC(2012) 167, 7.03.2012

¹⁵ Decision AB 14-2014

corruption and serious irregularities. The guidelines further strengthen the Agency's overall policy towards ethics and professional conduct.

Policy and procedure for management of sensitive functions

Sensitive functions are those where there is a potential risk that the jobholders deliberately use their decision-making power or influence with a view to gain personal advantage (financial or non-financial). Such behaviour would have significant negative impact over the Agency and is therefore subject to careful management, with the aim to reduce or control to an acceptable level the risk of misuse of powers.

To ensure this, in 2012 the Director adopted the **Policy and procedure for management of sensitive functions** with the overall purpose to define sensitive functions and introduce relevant mitigating controls in order to prevent irregularities, fraud and corruption. The policy ensures that the Agency's sensitive functions are clearly defined, recorded and kept up to date and that the risks, associated with these functions, are assessed and managed through mitigating controls and specific ex-post controls.

Ethics and integrity

The Agency has taken appropriate measures to foster its mission and values throughout the organisation. A welcome pack, including a code of good administrative behaviour, is distributed to all newly recruited staff. The Agency's Manual provides guidance on all administrative and organisational issues, including on ethical matters.

The Agency has further translated these rules into concrete terms through relevant training on Ethics and Integrity. The training is part of the Agency's Learning and Development Framework, and is obligatory for all new staff members. It focuses on enhancing awareness about professional ethics and contributes to a better understanding of: the main staff conduct principles and rules/code of good administrative behaviour; the main staff obligations; conflict of interest; reporting of frauds and disciplinary matters; prevention of wrongdoings; protection of staff in working relationships and delivery of work; recognising and minimising risk situations.

Other measures

Additional measures, both preventive and detective, have been introduced in order to support effective risk management (including the risk of fraud):

- **Preventive** – segregation of duties, management supervision, regular meetings and monitoring tools (financial and non-financial), awareness-raising actions on general conduct and other measures.
- **Detective** – various checks and verifications performed to detect any issues related to sensitive functions, including independent audits, ex-post reporting, etc.

A thorough fraud risk assessment has taken place as part of the development of the anti-fraud strategy in order to identify any fraud risk areas not covered by the existing controls, and to propose specific actions to address the potential risks. The results are presented under p. 4 below.

4. ANTI-FRAUD STRATEGY

4.1. Fraud risk assessment

The following aspects are taken into consideration when assessing the fraud risk related to the Agency's activities:

- In any organisation, certain staff members are required to perform functions involving significant autonomy or executive power, implying a risk that such powers may be misused for personal gain;
- The degree of personal judgement and influence in the decision making processes within the Agency is limited. The Agency is implementing and executing tasks from a pre-defined framework, either on the basis of EU legislation or on the basis of its Work Programme adopted by the Administrative Board.
- For most internal decisions proper risk mitigating measures are put in place to ensure transparency and stakeholder involvement in the decision-making process. Decisions are never taken by one individual. Specific measures include: public consultations, workshops, information meetings, surveys, etc.
- Most acts of the Agency in the regulatory area are non-binding. Also, the process of adoption of these acts combines the proposal from the Director and a formal opinion by the Board of Regulators. Policy decisions are not taken by staff of the Agency, but in the EU institutional context by the European Commission, European Parliament and Council or by the Administrative Board.
- The risks involved are to a large extent managed within the Agency's Policy for the prevention and management of conflicts of interest.

Prior to the elaboration of the anti-fraud strategy, the Agency carried out a specific fraud risk assessment exercise. Four main potential risks areas were identified:

- 1) Leak of information
- 2) Conflict of interest
- 3) Favouritism
- 4) Staff or contractors' misconduct

These potential risks areas formulate the basis for the specific anti-fraud objectives for the Agency for the next three years. A careful assessment of the main resources at the Agency's disposal took place in order to provide for the formulation of realistic and reachable objectives.

An annual review of the fraud risks will take place as a part of the Agency's annual risk assessment, implemented in the framework of the preparation of the Annual Work Programme. Due to their specific characteristics (i.e. low likelihood, but significant, important impact should the risk materialise), special attention will be paid to fraud risks within the annual risk assessment, even if the risks identified in this respect are not considered critical. The fraud risks will also be reviewed each time significant changes occur or new potential risks are identified, and appropriate mitigating actions will be defined.

4.2. Objectives

On the basis of the results of the risk assessment, the Agency has formulated three operational objectives, accompanied by an Action Plan (Annex 1). When implementing the proposed actions, the Agency will take as much as possible advantage of synergies achieved through the cooperation with other Agencies and external partners (Member States, third countries), by sharing best practices, etc.

- **Objective 1: To raise the level of fraud awareness in the Agency, including increasing knowledge and capacity for performing preventive and detective controls**

As described above, the Agency has introduced a number of internal controls that support effective prevention and detection of fraud and, where necessary, the introduction of corrective measures in areas where real risks have occurred.

The increased communication and awareness-raising amongst staff on fraud prevention and detection and the specific measures and instruments they have at their disposal will ensure that these specific controls are known and used by all staff. It will also decrease the chances that risks materialise and will improve staff's ability to deal with such cases when and if they occur.

Therefore, the Agency will ensure that appropriate targeted training/information sessions are made available to all staff and that the relevant information on the prevention, detection investigation and corrective measures related to fraud, is published and easily accessible on the Agency's Intranet.

- **Objective 2: To support effective prevention and detection of fraud risk, in particular through development of procedures, guidelines or specific anti-fraud measures and controls, where necessary**

Identification and management of risks are key components of the risk management process in the Agency. **Ex-ante and ex-post controls** in both the administrative and the operational areas have been established. However, as certain procedures have not been specifically designed to manage the risk of fraud, the Agency will explore whether the performed checks could also address fraud prevention and detection, taking cost-benefit considerations into account. The Agency will also strive to increase fraud risks awareness of those involved in the controls. Specific control procedures may be introduced or further enhanced in the fraud risk areas, as identified above, where potentially high fraud risks are perceived.

Furthermore, in order to increase internal exchange of information and coordination, fraud risks and results from audits, on-the-spot visits, financial and other controls will be discussed at the regular internal meetings, whenever relevant. This is expected to significantly improve prevention and detection of fraud.

- **Objective 3: To establish appropriate internal procedures for reporting and handling potential fraud cases and their outcomes.**

Where the Agency has entrusted to OLAF the task of conducting internal administrative investigations in instances where serious wrongdoings or potential fraudulent behaviour is suspected, it shall ensure close cooperation and maintain regular contacts with the Office on such cases.

Therefore, the Agency needs to establish internal rules for fraud suspicion reporting and handling, as well as following-up on the results of OLAF investigations. These rules will also need to be reviewed and kept up to date.

The Action Plan in Annex I proposes the concrete steps to achieve the specific objectives, as well as assigns deadlines and specific responsibilities for their implementation.