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To: Management Board
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eu-LISA **LIMITED BASIC**



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Anti-fraud Strategy 2019-2021

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1. Background

In December 2015, eu-LISA adopted its first Anti-fraud Strategy intended to cover 2016-2018 period. The environment eu-LISA operates in is very dynamic and so the risks are. Therefore, it is high time to update the risks on the anti-fraud radar, fine-tune mitigating actions, and revise the strategy accordingly, covering the next three years 2019 to 2021.

1.1. General Context

The EU budget is taxpayers' money that must be used only for implementing the policies which the legislators have approved. Fraud, involving EU funds has a broad negative impact on the reputation of the EU institutions and bodies, as well as on practical implementation of the EU policies.

On 24 June 2011, the Commission adopted its new Anti-Fraud Strategy¹ (CAFS) with the overall objective of improving the prevention and detection of fraud, and the conditions for investigations of fraud, and achieving adequate reparation and deterrence. This is to be done especially by developing close cooperation and synergy and by promoting the standards set out in the CAFS within the EU agencies and bodies, including joint undertakings.

The Commission has developed a Common Approach on EU decentralised agencies that requires a set of anti-fraud measures² to be put in place in the agencies.

1.2. eu-LISA Context

The European Agency for the Operational Management of large-scale IT systems in the area of freedom, security and justice (hereinafter called the "Agency" or "eu-LISA") was established by Regulation (EU) 1077/2011 of 25 October 2011 and became operational on 1 December 2012. The Agency's financial autonomy was granted on 22 May 2013. The initial legal base was replaced on 11 December 2018 by Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) and repealing Regulation (EC) No

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 implementation of the Commission anti-fraud strategy, SEC(2011) 787.

² Roadmap on the follow-up to the Common Approach on EU decentralised agencies, 18/12/2012, actions 33 – 35 Conflict of interests, actions 60 - 68 Anti-fraud activities.

1077/2011³. The new Regulation specifically sets responsibilities for the Executive Director and the Management Board for anti-fraud measures⁴.

The Agency is responsible for the operational management of the Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac. The Agency is also responsible for the preparation, development or operational management of the Entry/Exit System (EES), DubliNet, and the European Travel Information and Authorisation System (ETIAS).

The seat of the Agency is Tallinn, Estonia whilst the technical site is in Strasbourg, France. There is also a backup site for the systems under Agency's management in Sankt Johann im Pongau, Austria.

The Agency's governance is ensured by the following bodies and functions:

The Management Board is composed out of one member designated by each Member State and two representatives of the European Commission plus one representative from each associated country. Its function is to ensure that the Agency carries out its tasks, including the appointment, extension of the term of office and if appropriate the removal from office of the Executive Director. In June 2018, the Management Board decided to set up an **Audit, Compliance and Finance Committee (ACFC)**. The Committee's mandate is to assist the Management Board in fulfilling its responsibilities for audit and compliance matters and for financial matters assigned in the establishing Regulation and the Agency's Financial Regulation and providing structured and systematic oversight of the Agency's Internal Control and Risk Management, Internal Audit and External Audit, and budgetary and financial matters. It provides the Management Board with advice on the adequacy and effectiveness of the Agency's management practices in the areas above and has no decision making powers.

The Executive Director is appointed by the Management Board from a list of at least three candidates proposed by the Commission following an open and transparent selection procedure. His/her function is to manage and represent the Agency and to assist the Management Board. For this purpose he/she shall assume full responsibility for the tasks entrusted to the Agency and shall be subject to the procedure for annual discharge by the European Parliament for the implementation of the budget.

The Advisory Groups are composed by a representative of each Member State, the Commission plus one member from each associated country. They are established for each large-scale IT system that the Agency develops and manages with the exception of the EES-ETIAS Advisory Group. Their function is to provide the Management Board of eu-LISA with technical expertise relating to large-scale IT systems and, in particular, in the context of the preparation of the programming document of the Agency and the annual activity report.

³ OJ L 295, 21.11.2018, p. 99–137.

⁴ Article 24.3 of Regulation 2018/1726 on eu-LISA reads:

"The Executive Director shall be responsible for the implementation of tasks assigned to the Agency by this Regulation. In particular, the Executive Director shall be responsible for:... (i) protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, without prejudicing the investigative competence of the EPPO and OLAF, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative, including financial, penalties;

(j) preparing an anti-fraud strategy for the Agency and submitting it to the Management Board for approval as well as monitoring the proper and timely implementation of that strategy;..."

The Data Protection Officer, Security Officer, and Accounting Officer all are appointed by the Management Board of eu-LISA.

External and internal audit exercised by the European Court of Auditors, Internal Audit Service of the European Commission (IAS), and the Internal Audit Capability of eu-LISA (IAC).

Discharge authority is the European Parliament acting on recommendation from the Council.

In 2019, the Agency handles a budget of 296,692 million euros⁵. The budget is financed by European Union subsidy and contributions from the Associated Countries⁶. The Agency does not generate revenue from fees or charges stemming from the Systems under management.

The eu-LISA budget is mostly implemented through operational activities, procurement and staff expenditures. The budget allocated to operational expenditure and running cost, representing 90% of the total value, is for the most part implemented through procurement. The remainder, representing 10% of the total budget, is devoted to personnel expenditure, which is only minimally implemented through procurement.

The Agency plans to hire massively, from 162 posts occupied in October 2018, to 271 posts planned to be filled by the end of 2019.

The Agency's main stakeholders and partners are border management, law-enforcement and asylum authorities of the EU Member States, relevant authorities in the Associated Countries, the European Commission and economic operators.

A particular aspect is that in the case of procurement procedures to acquire goods and services required for development or operational management of the large-scale IT systems under its mandate, the Agency faces an oligopolistic market i.e. only a few big economic operators participating in financially significant call for tenders. A contributing factor to this situation is the scale and complexity of the operational activities supported through these procurement activities, among the largest in the European public sector market.

The Agency applies a framework of internal controls to ensure good governance of the organisation. This setup includes also a requirement to implement a procedure for reporting fraud as well as the need to have a solid and targeted anti-fraud strategy in place at the Agency.

⁵ Commitment appropriations in the final budget approved for the year 2018 amounted to 204,197 million euros

⁶ Contribution of associated countries represents about 1% of the total budget of the Agency

2. Introduction

The revised Strategy follows partially the structure and content suggested by OLAF⁷ in its guidance for developing anti-fraud strategies and it is also inspired from similar documents of other EU agencies⁸.

2.1. Guiding principles of eu-LISA Anti-fraud Strategy

The basic principles of the Anti-Fraud Strategy are based on ethics, integrity, enhanced transparency, fraud prevention, and good cooperation between internal and external stakeholders and partners.

The staff, the members of the Management Board and Advisory Groups, and all external contractors of eu-LISA must apply the highest standards of honesty and integrity in the exercise of their duties.

eu-LISA does not tolerate fraud and unethical behaviour and will report, without delay, any instance of suspected fraud to OLAF, which is exclusively competent to investigate these cases.

eu-LISA will take all actions and adopt all measures as appropriate, including termination of their employment agreements, against anyone defrauding or attempting to defraud the Agency and/or other EU assets and resources, or otherwise damaging eu-LISA's reputation. In all such cases, eu-LISA will continue to cooperate fully with OLAF and all other EU authorities and institutions.

2.2. Results of the first eu-LISA Anti-fraud Strategy

With its first Anti-fraud Strategy⁹ covering 2016, 2017 and 2018, eu-LISA had set three objectives and put in place 15 actions, each of them aimed at mitigating one, several or all the six fraud risks retained for mitigation. By the end of 2018, eu-LISA implemented 13 actions, which gives a satisfactory implementation rate of over 85%. The achievements are summarised hereunder:

⁷ European Anti-Fraud Office (OLAF), Methodology and guidance for DGs' anti-fraud strategies, February 2016

⁸ Frontex and EMA

⁹ The eu-LISA Anti-fraud Strategy (ref. doc 2015-170), adopted by the Management Board of eu-LISA at its meeting of 17 November 2015.

- The eu-LISA Ethical Behaviour and conduct Code was updated¹⁰,
- One fraud and ethics awareness session was organised in cooperation with OLAF¹¹,
- Rules on the prevention and management of conflict of interests are in place¹²,
- A whistle-blowing guidance was adopted¹³,
- A compliance checklist for anti-fraud related legal requirements was put in place,
- Controls preventing and detecting unauthorised access to Agency's IT systems and network are reviewed regularly,
- Staff with roles in the Agency's financial circuits was provided with a list of red flags,
- Register of exceptions and non-compliance events was put in place,
- Systematic external and internal audits are performed by the Internal Audit Capability (IAC), the Internal Audit Service of the Commission (IAS) and the European Court of Auditors (ECA).

By revising the anti-fraud strategy, the Agency targets to implement the actions pending from the previous exercise, move the preventive and detective anti-fraud measures to the next level, and to give a vigorous response to the significant changes impacting its personnel, budget and operating environment.

2.3. Definition of fraud for the purpose of eu-LISA Anti-Fraud Strategy

Fraud is any intentional act or omission designed to deceive others, resulting in the victim suffering a loss and/or the perpetrator achieving a gain.

Intention is the key element which distinguishes fraud from irregularity. An irregularity is an act which doesn't 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 both by beneficiaries claiming funds and by the authorities responsible for making payments. If an irregularity is committed deliberately, however, it may be judged as fraud.

The concept of fraud encompasses both internal and external misbehaviour. It covers in particular, but not only, any infringement of the financial interests of the EU as defined by the Convention on

¹⁰ eu-LISA Ethical Behaviour and Code of Conduct updated in January 2016, <https://www.eulisa.europa.eu/AboutUs/WhoWeAre/Documents>

¹¹ Fraud prevention in eu-LISA – 22/07/2016, OLAF D.2 – Fraud Prevention, analysis and reporting unit.

¹² Rules on the prevention and management of conflict of interest concerning eu-LISA staff members, ref. Ares(2018)548719 - 30/01/2018 adopted by a decision of the Executive director dated 30/01/2018. Rules on the prevention and management of conflict of interest concerning the members of the Management Board and members of the Advisory Groups adopted by the Management Board on 21/11/2018, ref. Doc 2018-183.

¹³ Decision on Implementing Rules on Guidelines on whistleblowing adopted by the Management Board on 26/06/2018, ref. Doc 2018-122.

the protection of the European Communities' financial interests¹⁴. It also covers misbehaviour that 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.

It is crucial to also cover non-financial fraud when carrying out the fraud risk assessment by taking into account the risks of serious damage to the image and reputation of the agency, the Commission and the European Union as a whole. The reputational impact may be far more important than the financial damage itself.

In principle, fraud is a penal law qualification given by a judge. For the purpose of drafting an anti-fraud strategy, detection of fraud means the detection of facts or highly suspicious circumstances that suggest fraud may be taking place.

2.4. Fraud risk identification and assessment

eu-LISA defines a risk as any event or issue that could occur and adversely impact the achievement of the Agency's objectives. Usually, particular fraud risks relate to compliance objectives (e.g. the legality and regularity of activities and financial transactions) but may also be associated with eu-LISA's performance objectives. A risk of fraud can arise when there is a serious vulnerability in a process, a file or a document that may point to a potential fraud.

In November 2018, the Agency identified and assessed potential fraud risks relevant to its objectives as part of the annual corporate risk management exercise. The following risks have been retained for mitigation in the next three years, 2019-2021:

- a. Negotiations with vendors documented insufficiently, lack of effective review of offers.
- b. Lack of follow up to and corrective action of systematic deviation from established procedures / controls.
- c. Manipulation of market study and invitations to tender in negotiated procedures.
- d. Undisclosed conflict of interest influencing procurement or recruitment decisions.
- e. Communication and interfacing with the vendor outside the contract framework.

¹⁴ Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, OJ C 316, 27.11.1995, p. 49.

2.5. Roles and Responsibilities

Roles	Responsibilities and tasks related to anti-fraud issues
Management Board	<ul style="list-style-type: none"> - adopting the anti-fraud strategy. - ensuring adequate follow-up to the findings and recommendations stemming from the various internal or external audit reports and evaluations as well as from investigations by the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO)
Executive Director	<ul style="list-style-type: none"> - protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, without prejudicing the investigative competence of the EPPO and OLAF, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative, including financial, penalties¹⁵, - preparing and presenting the Anti-fraud strategy to the Management Board and monitoring the proper and timely implementation of that strategy¹⁶, - giving 'the tone from the top' by promoting anti-fraud culture across eu-LISA, setting anti-fraud objectives, and putting in place effective arrangements for combating fraud by implementing the Anti-fraud strategy. - inform the Commission without delay on cases of presumed fraud and other financial irregularities, and of any completed or ongoing investigations by the EPPO or OLAF
Heads of Department	<ul style="list-style-type: none"> - promoting the anti-fraud culture within their departments, - checking staff awareness and ensuring that all suspected or reported cases of potential fraud are immediately reported to OLAF, - cooperating with all other functions involved in the implementation of the anti-fraud strategy.
All managers	<ul style="list-style-type: none"> - preventing and detecting fraud rests with managers as they are primary responsible as 'first line controls', - managing the risk of fraud.

¹⁵ Article 24(3)(i) of Regulation 2018/1726

¹⁶ Article 24.3 of Regulation 2018/1726

Operational/Financial Initiating Agents, Operational/Financial Verifying Agents, Authorising Officers by Delegation, Authorising Officer	<ul style="list-style-type: none"> - implementing the budget of the Agency in compliance with effective and efficient internal control, and in line with principle of sound financial management, - identifying and analysing “red-flags”¹⁷, - reporting any suspected fraudulent activities within eu-LISA to their line manager, Executive Director or OLAF as appropriate.
Internal Audit Capability of the eu-LISA (IAC) Internal Audit Service of the Commission (IAS)	<ul style="list-style-type: none"> - assisting management by determining whether the organization has adequate internal controls and fosters an adequate control environment, - considering fraud risk in every audit and performing appropriate procedures based on fraud risk, - reporting any suspected fraudulent activities within eu-LISA to OLAF and, as appropriate, to the Executive Director and the Management Board.
Legal officer	<ul style="list-style-type: none"> - setting and maintaining a compliance programme with anti-fraud related legal requirements.
Human Resources and Training	<ul style="list-style-type: none"> - ensuring compliance with Article 11 to 24 and articles 86 and 110 of Staff Regulations and relevant articles of the Conditions of Employment of other Servants of the European Communities (CEOs).
Accounting Officer	<ul style="list-style-type: none"> - validating the accounting system in line with Article 50 of eu-LISA Financial Regulation.
Manager in charge of risk management and internal control	<ul style="list-style-type: none"> - coordinating eu-LISA's Internal Control Framework and risk management, including the measures for achieving and maintaining compliance. - monitoring of implementation of the action plan of eu-LISA's anti-fraud strategy. Reporting annually on the status of its implementation to the Executive Director.
Experts, partners, suppliers, contractors and consultants	<ul style="list-style-type: none"> - complying with eu-LISA's antifraud principles and strategy.

¹⁷ Red-flags can be defined as situational pressures (e.g. unrealistic budget pressure or other performance indicators pressure) and / or opportunities to commit fraud (e.g. improper oversight by the Management Board, weak or non-existent internal controls, unusual or complex transactions, financial estimates that requires significant subjective judgement by management, ref. page 1.205 of 2016 Fraud Examiners Manual (International), Association of Certified Fraud Examiners (ACFE™))

3. Strategy

Taking into account the screening of fraud risks, both internally and externally with its partners, the Agency has decided to concentrate its efforts on achieving the following strategic objectives:

Objective 1

In December 2017, eu-LISA was entrusted with the development and operational management of the Entry/Exit (EES) system and in October 2018 it was entrusted with the European Travel Authorisation and Information System (ETIAS). The mandate came with significant financial budget, additional staff to hire, tight deadlines and high requirements set by stakeholders. Complex projects, multiple interdependencies and pressure to deliver will be the usual features of eu-LISA's operating environment in the next years.

The objective is to **reinforce anti-fraud culture in the Agency.**

Actions to reach objective 1¹⁸:

- Create and maintain a dedicated Intranet space on ethics, integrity and anti-fraud measures,
- Perform regular analysis of register of exceptions,
- Ensure that reporting officers consider in the appraisal process also the individual performance of internal control responsibilities;

Indicator: *% of financial actors who correctly respond to questions on prevention/detection of fraud issues*

Objective 2

Ethics, integrity and transparency are the cornerstones of a healthy, fraud-free work environment. The staff of eu-LISA, members of the Management Board and advisory groups, and all contractors must abide of the highest ethical standards in the exercise of their duties.

Objective is to **set and maintain a high level of ethics in line with the activities of eu-LISA.**

¹⁸ The Agency has put in place a detailed Action Plan, which is communicated internally to the action owners and contributors.

Actions to reach objective 2:

- Organise mandatory ethics training sessions, with focus on whistleblowing and conflict of interest, if possible jointly with OLAF experts,
- Continue evolving the implementation of the rules on prevention and management of conflict of interests,
- Include information and document in the planning process on how the distribution of posts within eu-LISA is done.

Indicator: *annual trend of ethical issues*

Objective 3

Most of the fraud risks are in threatening eu-LISA's objectives set for procurement and contract management. Early detection through paying specific attention to red flags in these areas can prevent the perpetrators of fraud from succeeding. The staff of eu-LISA are the first-and best-line of defence when it comes to protecting EU funds from misuse.

Objective is to **develop intelligence for prevention and detection purposes.**

Actions to reach objective 3:

- Update and communicate the red-flags list to actors in the financial circuit,
- Ensure proper audit trail of negotiations, offer reviews and approvals,
- Develop and put in place a control strategy.

Indicator: *% transactions (i.e. procurement procedures, commitments, payments) detected with potential fraud.*

Annex - Action Plan

This action plan is designed to implement the eu-LISA Anti-Fraud Strategy 2019 - 2021. When implementing the actions and wherever possible, the Agency will seek synergies with other evaluations and audits, and will share best practices with other agencies. Actions focus on prevention, detection and reporting of fraud.

#	Action description (<i>action type: prevention, detection, investigation, corrective</i>)	Entity in charge*	Deadline
1.	Reinforce the obligation of actors in the financial circuit to ensure proper audit trail of negotiations, offer reviews and approvals. Negotiation of prices by a single staff member shall be avoided (<i>prevention, detection</i>). Risk(s) primarily addressed: a.	FPU	Dec 2019
2.	Ensure that vendor management function is deployed in the new organizational structure (<i>prevention, detection</i>). Risk(s) primarily addressed: a and e.	CSD	Dec 2019
3.	Update and communicate the red-flags list to actors in the financial circuit (<i>prevention, detection</i>). Risk(s) primarily addressed: a.	FPU	Permanent
4.	Create and maintain a dedicated space on Intranet on ethics & integrity & anti-fraud measures that is filled with relevant content, updated and notified to all staff (<i>prevention</i>). Risk(s) primarily addressed: a and e.	HRU	Dec 2019
5.	Develop and put in place a control strategy (<i>prevention, detection</i>). Risk(s) primarily addressed: a, c and d.	FPU	Dec 2019
6.	Organise mandatory ethics training sessions, with focus on whistleblowing and conflict of interest. Develop a specific training instrument for the contractors working at/with the Agency (<i>prevention</i>). Risk(s) primarily addressed: a, c, d, and e.	HRTU	Permanent
7.	Perform regular analysis of register of exceptions and non-compliance events and inform the ED and management on the results to take actions as appropriate (<i>prevention, detection</i>). Risk(s) primarily addressed: b.	MRMIC	Permanent

#	Action description (<i>action type: prevention, detection, investigation, corrective</i>)	Entity in charge*	Deadline
8.	Ensure that reporting officers consider in the appraisal process also the individual performance of internal control responsibilities and implementation of corrective actions (<i>prevention, detection</i>). Risk(s) primarily addressed: b.	HRU	Dec 2019
9.	Organise a quality assurance and control function to ensure that project deliverables meet expectation contractual (<i>prevention, detection</i>). Risk(s) primarily addressed: b.	OPD	Dec 2019
10.	Continue evolving the implementation of the rules on prevention and management of conflict of interests (<i>prevention, detection</i>). Risk(s) primarily addressed: d.	HRU GCU	Permanent
11.	Put in place and document a guiding procedure for the recruitment process (<i>prevention, detection</i>). Risk(s) primarily addressed: d.	HRU	June 2019
12.	Include information (i.e. criteria) and document in the planning process how the distribution of existing posts among departments, units, functions of the Agency is done and on what are the conditions to ask additional posts (<i>prevention</i>). Risk(s) primarily addressed: d.	HRU	June 2019

* FPU = Finance and Procurement Unit

HRU = Human Resources Unit

GCU = General Coordination Unit

CSD = Corporate Services Department

OPD = Operations Department

MRMIC = Manager in Charge for Risk Management and Internal Control