

Decision No MC/2017/02

**of the Management Committee of the Office of the Body of European
Regulators for Electronic Communications (BEREC Office) on the Anti-fraud
Strategy**

The Management Committee of the BEREC Office;

Having regard to Regulation (EC) № 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing BEREC and the Office,

Having regard to the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community,

Having regard to MC (10) 45 Decision by the Management Committee of the Body of European Regulators for Electronic Communications (BEREC) concerning the accession of the BEREC Office to the inter-institutional agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by the European Anti-Fraud Office (OLAF),

Having regard to MC (10) 46 Decision by the Management Committee of the Body of European Regulators for Electronic Communications (BEREC) concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Unions' interests,

Having regard to the BEREC Office Internal Control Framework and Standards (ICS), and in particular the Internal Control Standard 2: Ethical and Organisational Values.

Whereas:

- 1) The Internal Control Standard 2 requires that the management and staff are aware of and share appropriate ethical and organisational values and uphold them through their own behaviour and decision-making,
- 2) The European Parliament, the Council of the EU and the European Commission issued on 19 July 2012 a Joint Statement on decentralised agencies. On 18 December 2012, the Commission subsequently presented a Roadmap on the follow-up to the Common Approach on EU decentralised agencies, which sets up 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). Action 19 (b) of the Action Plan accompanying the CAFS states that, in line with Anti-fraud Strategies at the Commission and DG level's, 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 agencies, which was communicated on 25 November 2013 to the agencies, 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,
- 5) The BEREC Office 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 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 match the specificities of the BEREC Office's activities, the BEREC Office conducted the anti-fraud risk assessment and has developed the Anti-fraud Strategy for the period 2017-2019, having due regard to the costs and benefits of the measures to be implemented.

Article 1

1. The Anti-fraud Strategy for the period 2017-2019, as annexed to this Decision, is adopted.
2. The Administrative Manager of the BEREC Office adopts further internal measures which are necessary to implement the Action Plan of the Anti-fraud Strategy for the period 2017-2019.

Article 2

Final provisions

This Decision shall take effect on the day of its adoption.

Done at Paris, on 23 February, 2017

For the Management Committee

Sébastien SORIANO
BEREC Chair 2017

Annex I – BEREC Office Anti-fraud Strategy

BEREC Office Anti-fraud Strategy for the period 2017-2019

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1. General context

In order to manage efficiently the operational and administrative resources allocated to implement the European Union (EU) policies and contribute to the smooth functioning of the institutions, bodies and agencies in a cost effective way while reducing the administrative burden¹, it is clear that any fraud or other illegal activities affecting the EU budget are to be precluded as they have a particularly negative impact on the objective mentioned above and consequently on the reputation of the institutions concerned.

In light of these elements and based on Article 325 TFEU, the European Commission (EC), has adopted implementing rules to counter fraud and any illegal activities affecting the financial and reputational interests of the EU in the framework of its daily activities involving the use of available resources.

Namely, on 24 June 2011, the EC adopted its new Anti-Fraud Strategy² (CAFS) with the overall objective to improve the prevention and detection of fraud, the conditions for investigations of fraud, and to achieve adequate reparation and deterrence, with proportionate and dissuasive sanctions and to respect the due processes.

This objective needs to be achieved 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.

Consequently, in July 2012 the European Parliament, the Council and the EC agreed on a Common Approach on EU decentralised agencies³ which requires their management bodies to adopt an anti-fraud strategy with an aim of improving their efficiency, transparency and accountability.⁴

In 2013 OLAF adopted a Methodology and guidance for anti-fraud strategies for EU decentralised agencies⁵. The use of the methodology is not compulsory but it should allow each Agency to draw up a tailored strategy adapted to its specific context and risk to fraud.

Consequently, the Management Committee approved the current Strategy, which takes into account the priorities set by the EC and aims at developing anti-fraud activities through prevention, detection, awareness raising and closer cooperation with OLAF in order to address and mitigate any fraud or other illegal activities affecting the EU budget.

The overall objective of this Strategy is to improve prevention, detection and investigation of fraud, and to pursue adequate deterrence and reparation, with proportionate and dissuasive

¹ Please refer to Article 317 (principle of sound financial management) of Consolidated version of the Treaty on the Functioning of the European Union (TFEU), OJ C 326, 26.10.2012 (Consolidated version).

² 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.

³http://ec.europa.eu/commission_20102014/sefcovic/documents/120719_agencies_common_appr_en.pdf

⁴ OLAF Methodology and guidance for anti-fraud strategies for EU decentralized agencies, Ref. Ares (2013)3560341-25/11/2013, p. 3.

⁵ Ref. No Ares(2013) 3560341 – 25/11/2013 (registered under BEREC Office ref. No MC (14) 08 of 14/01/2014)

sanctions. The main rules and anti-fraud measures are linked also to the anti-fraud Strategy of DG CONNECT of the EC, which is also active in this area.

The Strategy shall be valid for three years and will be updated in the course of its implementation if necessary, or after its assessment at the end of the implementation period.

Any update during the course of the three years' implementation of the Strategy which does not affect relevant or sensitive parts of its content, can be decided by the Administrative Manager of the BEREC Office who will inform the Management Committee accordingly.

2. The BEREC Office specific context

The BEREC Office has been established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009⁶. The BEREC Office is established as a Community body with legal personality within the meaning of Article 208 of the Financial Regulation.

The BEREC Office works in the area of electronic communications and has a budget of k EUR 4 331 for 2017. The BEREC Office is financed only by a EU contribution. Almost half of this BEREC Office's budget will be used for financing of staff expenditure (k EUR 2 448), k EUR 390 will be used for financing of the BEREC Office's infrastructure and operating expenditure and k EUR 1 408 – for expenditure supporting BEREC's activity.

According to Article 6 (2) of the BEREC Regulation, the BEREC Office performs its tasks under the guidance of the BEREC Board of Regulators (BoR) by:

- providing professional and administrative support services to BEREC,
- collecting and exchange of information from national regulatory authorities (NRAs) in relation to all BEREC tasks,
- disseminating regulatory best practices among NRAs,
- assisting the Chair in the preparation of the work of the BoR,
- setting up Expert Working Groups (EWG), upon request of the BoR, and providing them with the support need in order to ensure their smooth functioning.

In accordance with Article 16(1) of the BEREC Regulation, for the purpose of combating fraud, corruption and other illegal acts, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) apply directly to the BEREC Office without any restriction.

In accordance with Article 16(2) of the BEREC Regulation, the BEREC Office shall accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF).

⁶ Regulation (EC) No. 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.

In compliance with this provision, in 2010 the BEREC Office acceded to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by OLAF⁷.

Moreover, the Management Committee also adopted a decision concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental applicable to the staff of the Office⁸.

In this context, the BEREC Office has developed the present Strategy.

3. Principles

Ethics, integrity, professionalism and transparency are key principles for EU institutions, bodies and agencies. The BEREC Office commits itself to ensuring that these principles are properly applied. The Management Committee and all staff (including the Administrative Manager), seconded national experts and trainees, as well as the BEREC Office 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 BEREC Office stakeholders.

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

The BEREC Office will take all actions and adopt all measures as appropriate, including termination of employment contracts, against anyone defrauding or attempting to defraud the BEREC Office. In all such cases, the BEREC Office will cooperate fully with OLAF and other EU authorities, institutions, bodies and other agencies on fraud matters.

4. Definitions of irregularity and fraud

When referring to this Strategy, the term **irregularity**⁹ 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 purposes of this Strategy, the concept of fraud encompasses both internal and external misbehaviours and is defined¹⁰ as any intentional act or omission relating to:

⁷ MC (10) 45 Decision by the Management Committee of the Body of European Regulators for Electronic Communications (BEREC) concerning the accession of the BEREC Office to the inter-institutional agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by the European Anti-Fraud Office (OLAF).

⁸ MC (10) 46, Decision by the BEREC Office MC concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Unions' interests.

⁹ Article 1 (2) of Council Regulation 2988/95 on the protection of European Communities' financial interests, OJ L 312 of 23.12.95.

¹⁰ 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.

- 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 assumption that under the definition of fraud should also be placed all misbehaviours which may not have a direct on the EU's financial interests but anyhow have a serious reputational impact and may be far more import 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 unfairly distribute positions and resources, they are guilty of nepotism, depending on their relationship with the person who benefits.¹¹
- **conflict of interests**: situation where the impartial and objective exercise of the functions of 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.¹²
- **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;
- **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);
- **plagiarism**: use or imitation ideas of another author and representation of them as one's own original work
- **wilful destruction** or removal of records;
- **concealment of material facts**;
- **fraudulent bankruptcy** may occur in various ways but one of the most common methods of indulging in fraud is to make false statements with regards to one's assets while filing a

¹¹ Glossary of the U4 Anti-Corruption Resource Centre.

¹² Article 57 of the Financial Regulation.

claim for bankruptcy protection. Concealment of assets from the court can be done by illegal transfer of money to family members or friends, shift the property or assets to offshore accounts and failing to report the various sources of income.

- **breach of IT systems, cyber fraud.**

5. Fraud risk-assessment

In line with OLAF's methodology and guidance for anti-fraud strategies for EU decentralized agencies, the BEREC Office conducted a full risk assessment, which identified the following risks related to fraud:

1. Low general awareness of staff when it comes to identification, reporting and prevention of fraud, including: fraud typology, fraud reporting, organisations involved.
2. No central points for risk reporting are clearly identified/known to staff. (Confusion among staff member on to whom to turn to if there is a suspicion of fraud).
3. Absence of practical arrangements to ensure protection of whistle-blowers, which may discourage reporting fraud suspicion.

6. Objectives and actions

The strategic objectives of this Strategy are driven by the BEREC Office's principles. The highest standards of ethics, integrity, professionalism and transparency are values which we follow in our every-day business. In order to keep them at the highest level, the BEREC Office have set certain objectives to counter fraud at all levels of the organisation and thus reinforce the public trust in its activities.

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

Till now, the BEREC Office has already successfully developed a number of procedures and policies designed to mitigate identified risks, including major fraud risks as stated above, namely:

- a code of conduct;
- a declaration of interests for the members of the Management Committee and all staff (including the Administrative Manager), seconded national experts and trainees, as well as the BEREC Office contractors' staff;
- transparency policies to enable public scrutiny;
- transparent recruitment procedures, internal and external audits, ex ante and ex post controls;
- risks management;
- other control and supervision mechanisms.

In order to address those major risks identified, the following objectives are to be achieved through the specified actions during the period of validity of this Strategy:

1. Objective: *Enhance fraud awareness within the organization through targeted communication and training (prevention of fraud) and establish and maintain a high level of general ethics culture at the BERECE Office*

The fraud deterrence is facilitated by a widespread understanding and sharing of the ethical values and relevant rules underlining any activity of the BERECE Office.

The objective is inspired by the need to constantly communicate the rules and ethical values of the EU public service from the highest level to each member of staff. By increasing the employees' education in this regard is of utmost importance and a keystone to a successful implementation of the Anti-fraud Strategy.

The BERECE Office employees need to gain awareness both of high-level principles, values and rules in order to be guided by a sense of propriety and conduct all times in a manner that can bear the closest public scrutiny.

- Actions to achieve the 1st objective:

- design and organize a compulsory in-house training on anti-fraud matters;
- communicate to staff on regular basis to set and maintain a general ethics culture;
- organize a yearly anti-fraud survey, as a part of the staff survey.

2. Objective: *Clarify roles in the process of detection, reporting and handling irregularities within the meaning of fraud (detection and investigations of fraud)*

The purpose of this objective is to establish an effective system in tackling irregularities and applying it consistently.

The objective itself aims at tightening potential gaps in managing financial and operational processes and to empower staff members to handle them in the everyday business. The BERECE Office's intention is, together with having the internal system on handling the irregularities, to closely cooperate with other EU institutions, bodies and agencies and learn from their experience on the fight against fraud.

- Actions to achieve the 2nd objective:

- designate an Anti-fraud Officer (also to be a contact point in charge of assisting OLAF in investigations on this matter);
- develop internal anti-fraud processes (zero tolerance policy and systematic enforcement);
- carry out regular fraud risk assessment (as a part of overall risk assessment);
- establish good working relationships with other EU institutions, bodies and agencies and particularly with DG CONNECT and OLAF in countering internal and/or external fraud.

3. Objective: Implement practical arrangements to ensure protection of whistle-blowers

A whistleblowing policy for staff and procedures for reporting irregularities will be developed and adopted in parallel to the Strategy.

This policy will be for internal purposes and will be adopted by Internal Administrative Instruction (IAI) of the Administrative Manager.

- Actions to achieve the 3rd objective:

- Adoption of an (IAI) setting the internal whistleblowing policy.

7. Roles and responsibilities

Addressing and mitigating the risk of fraud properly is a key aspect of sound and effective management. The fraud, itself, cannot be dealt with in isolation and shall be undertaken as a common exercise of BEREC Office's management and staff members.

However, regardless of the fact that all staff members shall have a knowledge and clear understanding of this Strategy, some individuals or groups have specific roles and/or responsibilities as identified below:

- i. **Management Committee** is responsible for the adoption of the Anti-fraud Strategy;
- ii. **Administrative Manager** shall be responsible for the implementation of the Strategy by promoting anti-fraud culture at the BEREC Office and arranging effective combats of fraud;
- iii. **Heads of Units** shall have as primary role to be controllers for the prevention and detection of fraud within their Units and ensure that all suspected cases of potential fraud are immediately reported to the Anti-fraud Officer, Administrative Manager, Management Committee and/or OLAF directly;
- iv. **Anti-fraud Officer** is responsible for identifying and preventing risk of breach of legal provisions and ethical behaviour rules. He/she coordinates the implementation of this Strategy, perform anti-fraud risk assessments (as a part of overall risk assessment), reports to the Administrative Manager on implementation of agreed actions and acts as a contact point to OLAF for the Strategy-related matters.
- v. **Human Resources Officer, Legal Officer and Legal and Administration Support Officer** shall contribute to promoting staff awareness on anti-fraud principles and ethical behaviour and propose to apply sanctions and disciplinary measures in cases of fraud.
- vi. **Staff members** must have a knowledge and understanding of the Strategy and report any reasonable concerns with regard to fraud either to the Heads of Units and/or Administrative Manager, Management Committee and/or directly to OLAF in accordance with the existing rules and practices.

8. Review and monitoring of implementation

The Anti-fraud Officer will ensure that the BEREC Office's Anti-fraud Strategy is up-to-date and in line with all developments, best practices and legislative requirements. Nevertheless and without prejudice of previously stated needs, the Strategy shall be reviewed every three years.

The implementation of Strategy itself and its results will be reported in the BEREC Office Consolidated Annual Activity Report and will be measured by indicating:

- i. Number of cases reported to the Anti-fraud Officer, and
- ii. Number of cases sent to OLAF for investigation.

9. Action plan 2017 - 2019

	<i>Actions to achieve</i>	<i>Timeline</i>	<i>Indicator</i>
1. Objective	a) Design and organize an in-house training on anti-fraud matters	Q1 2017	Training organized
	b) Communicate to staff on regular basis a general ethics culture	Ongoing	Session on general ethics culture organized
	c) Organize a yearly anti-fraud survey (as a part of a regular staff survey)	Ongoing	Survey conducted
2. Objective	a) Designate an Anti-fraud Officer	Q1 2017	Person identified
	b) Develop internal anti-fraud processes (zero tolerance policy and systematic enforcement)	Q4 2017	Processes developed
	c) Carry out a regular anti-fraud assessment (as part of regular risk assessment)	Ongoing	Risk assessment carried-out
	d) Establish good working relationships with other EU institutions, bodies and agencies to combat fraud	Q4 2017/ Q1 2018	Bilateral meetings organized
3. Objective	a) Adoption of an IAI on the internal whistleblowing policy	Q1-Q2 2019	Adoption of the IAI