SHIFT2RAIL ANTI FRAUD STRATEGY 2017-2020

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1 Background

1.1 General context

The EU budget is taxpayer's money that must be used only for implementing the policies, which the EU legislature has approved. Fraud involving EU funds has a particularly negative impact on the reputation of the Union institutions and bodies and the implementation of their policies.

On 24 June 2011, the Commission has adopted its new Anti-fraud Strategy (CAFS)[1], its overall objective being 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, including joint undertakings.

The Commission has developed a Common approach on EU decentralised agencies that provides for a set of anti-fraud measures to be considered for implementation.

1.2 Shift2Rail Joint Undertaking context

The S2R JU

The Shift2Rail Joint Undertaking (hereinafter referred to as the S2R JU) was established in 2014 as a new public-private partnership in the rail sector[2].

The S2R JU is the first European rail joint technology initiative (JTI) to seek focused research and innovation (R&I) and market-driven solutions by accelerating the integration of new and advanced technologies into innovative rail product solutions. Shift2Rail will promote the competitiveness of the European Rail Industry and will meet the changing EU transport needs. Through the R&I carried out within this Horizon 2020 initiative, the aim is to create the necessary technology to establish a Single European Railway Area (SERA).

The Shift2Rail programme is structured in five asset-specific Innovation Programmes (IPs), covering all the different technical and functional (process) subsystems of the rail system:

IP1: cost-efficient and reliable trains, including high-capacity trains and high-speed trains;
IP2: advanced traffic management & control systems;
IP3: cost-efficient, sustainable and reliable high-capacity infrastructure;

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

[2] Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the Shift2Rail Joint Undertaking

IP4: IT solutions for attractive railway services;
IP5: technologies for sustainable & attractive European freight.

In addition, horizontal activities are performed through the Cross Cutting Activities.

The S2R JU Budget

In accordance with its basic act, the budget is implemented through grant agreements and procurement. The Union is providing the funding; indicatively 80% of the Programme is implemented by the Other Members (i.e. the JU Members other than the Union) and the remaining 20% by any other entity (but the Other Members), all through Research and Innovation activities.

The S2R JU Budget is governed by Articles 3 and 4 of Council Regulation (EU) No 642/2014 of June 16th, 2014[3].

1.3   Anti-Fraud measures

Anti-fraud measures shall be an essential element of the legal and financial framework of the S2R JU. In this respect, inter alia, the following measures are key components towards sound financial management and inherently addressing fraud risks:

- activities implemented in accordance with H2020 Rules of Participation are managed making use of the H2020 tools provided by the Commission Services for Grant Management, in accordance with the relevant Delegation Agreement to the S2R JU. As a result, the Commission Services ensure their compliance with the General Financial Regulations and, by analogy, the S2R JU Financial Rules, the H2020 Framework Regulation[4], the Rules for Participation[5] and the H2020 anti-fraud strategy,

- relevant preventive and protective measures in the Internal Control Systems (Articles 11 and 12 of the S2R JU Financial Rules[6]),

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[3]   http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0642
[4] Article 30 ("Protection of the financial interests of the Union") of the Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p.104),
[5]   REGULATION (EU) No 1290/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006. UE OJ. L 347/81 of 20.12.2013.
[6]   https://shift2rail.org/wp-content/uploads/2016/01/S2R-JU-GB_Decision-N-21-2015-revised-financial-rules.pdf

- participation to fraud prevention activities of the European Anti-Fraud Office (OLAF), according to Article 16 (paragraph 1, subparagraph 2) of the S2R JU Financial Rules the JU.

Definitions

Definition of Fraud:

According to the definition used by OLAF, Fraud[7] covers a range of irregularities and illegal acts characterized by intentional deception or misrepresentation, damaging the interests of the EU. Fraud differs from 'irregularity'[8], 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 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 the protection of the Union's financial interest. 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.

Definition of Anti-Fraud Strategy:

The Anti-Fraud Strategy is a framework set up primarily to prevent, but also to address the issue of fraud at S2R JU level providing the objectives of the Executive Director and the Governing Board in the fight against fraud for the next two to three years. The purpose of the Anti-Fraud Strategy is to provide management with a tool to ensure progress and transparency as regards the protection of the EU financial interests and all financial matters

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[7] In respect of expenditure, as 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
In respect of revenue, as 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 illegal diminution of the resources of 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
-misapplication of a legally obtained benefit, with the same effect

[8] **Irregularity** is "any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure". *Council Regulation (EC) No 2988/95, Article 1 (2), OJ L 321, 23.12.1995, p.2*

regardless of source, compliance with EU ethical values and therefore the protection of the EU reputation.

2 Fraud risk assessment

Before setting up the Anti-Fraud Strategy and action plan, the S2R JU carried out, in Q2 and Q3 of 2017, a risk assessment exercise which included also the identification of fraud related risks.

This fraud risk assessment involved 3 steps:

1. Identification of the risk of fraud as regards the general objectives set to the JU (see Article 2 of the Council Regulation establishing the S2R JU[9]);
2. Assessment and prioritising of related fraud risks;
3. Selection of main risks for which there is a need of mitigating measures and monitoring, including with regard to fraud.

When carrying out the fraud risk assessment, further to the basic elements following the European Commission's ("OLAF") methodology and guidance for anti-fraud strategies, the S2R JU additionally covered non-financial fraud elements by taking into account the risks of serious damage to the image and reputation of the JU and the Union as a whole. Furthermore, it included abuse of law, corruption, money laundering, fraudulent behaviour in procurements, conflicts of interests, fraudulent behaviour in recruitment and any behaviour defined as illegal[10].

The level of fraud risk itself was assessed and hierarchized following its impact and the probability of its occurrence. The impact was classified in five different categories and the probability of occurrence was ranged from 1 (lowest) to 5 (highest). Further to the assessment exercise itself, risks have been confronted to mitigating actions for the purpose of establishing the remaining risk level (net criticality) enabling the establishment of a main risk register.

The selected findings related to fraud are addressed in S2R JU 2017 Antifraud Action Plan (See Chapter 6 of the present document). Nevertheless, their materiality level has not been deemed serious enough for being reported to the Governing Board as part of the draft Annual Work Plan 2018 in October 2017.

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[9] Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the Shift2Rail Joint Undertaking (OJ L 177, 17.6.2014, p. 9)

[10] It is to be noted that all aspects of fraud associated to grant management haven't been taken into consideration in this document as the H2020 anti-fraud strategy as defined by the European Commission is applicable and strictly followed by the S2R JU.

Main findings:

In general terms, taking into account the overall context and existing Internal Control Management System, the overall risk of significant undetected fraud appears limited. Nevertheless, the following risks have been identified in the context of the S2R JU Anti-Fraud risk assessment:

- R1: A member of S2R JU staff with influence over the evaluation of tenders and contract award decision has an undeclared interest in one of the competing economic operators
- R2: Deliberate, artificial increase of budget foreseen for ensuring contracts
- R3: Tender documents are drafted so as to favour a particular supplier
- R4: The same entities are invited to tender with the knowledge that the same service provider/ supplier is likely to be awarded the contract each time
- R5: One tenderer is actively invited, while other potential suppliers are ignored
- R6: Information relative to a procurement initiative is provided to only a preferred entity during administration of a call for tender.
- R7: Data leakage due to weak physical security systems or unauthorized computer network access or connexion
- R8: Lack of designated staff member as contact point with OLAF

3   Means and resources

The S2R JU has at its disposal means and resources which are engaged in tackling fraud. The main resources are:

3.1   Human resources

	Units/functions	Tasks related to anti-fraud issues
1	Legal and procurement	Reviewing procurement contracts
2	Human resources	Training on ethics
3	Finance and Budget	Application of the 4 eyes principles, segregation of duties and S2R JU Financial Circuits

3.2   IT tools

	IT tools	Units involved
1	ABAC (Workflow, SAP, Security…)	Administration and Finance
2	S2R Cooperation Tool	To monitor the Programme progress and ensure transparency of communication and equal treatment between Members
3	H2020 tools	To manage the grants in a transparent, efficient and effective manner providing also for equal treatment of grant beneficiaries

3.3 Specific procedures, networks and trainings

	Units/functions	Units involved	Task related to anti-fraud issues
1	EC Head of Agencies network	Executive Director/HoRI/HoAF	Exchange of information
2	EC Head of Resources network	HoAF	Exchange of information, best practices
3	EC Auditnet for agencies	Accounting Correspondent	Exchange of information, best practice, presentations, methodology, red flags etc.
4	EC Inter JUs Accounting Network	Accounting Correspondent	Exchange of information
5	EC Admin/HR network	HR Officer	Exchange of information, best practices.
6	EC Network of Data protection Officers (DPOs)	Data Protection Officer	Exchange of information, best practices.
7	EC Network of Procurement Officers (NAPO)	Legal officer	Exchange of information, best practices.
8	EC Inter JUs Legal Network (IALN)	Legal officer	Exchange of information, best practices and drafting of official advice upon requests from other Networks.
9	OLAF training sessions	ALL	Participation in workshops, information sessions, training sessions related to fraud
10	OLAF General training sessions	ALL	Participation in workshops, information sessions, training sessions related to fraud
11	S2R Programme and Financial Procedures	ALL	S2R website - https://shift2rail.org/about-shift2rail/reference-documents/ under "Functioning of the JU"

4 STRATEGY

Taking into account the fraud risks screening, the S2R JU has decided to concentrate its efforts to realise the following strategic objectives, that may be subject to review in the following years taking into consideration the evolution of its Programme implementation.

4.1 Objective 1: MAINTAIN A CULTURE OF INTEGRITY AND BUILD CAPACITIES THROUGH TRAINING AND GUIDANCE

Mitigation action - 2017 Anti-Fraud risk assessment main findings: R1, R2, R3, R4, R5 and R6.

Integrity and high standards of professional conduct are crucial for the independence and reputation of the S2R JU. By nature, in Joint Undertakings public and private interests are mixed and there is a higher likelihood of conflicts of interest. The S2R JU's objective for this Anti-Fraud Strategy is to continue to promote and maintain the highest level of ethical behaviour amongst staff, S2R JU Members representatives in their different roles, members of the different committees, working groups, etc. This starts with an adequate tone at the top cultivating an organizational culture that does not tolerate fraud, malfeasance and other forms of corruption and will include looking at lessons learned.

To ensure that managers and staff members are aware of their responsibilities regarding preventing fraud, awareness-building is of key importance. Additionally, training is vital in maintaining the effectiveness and credibility of the Strategy. Therefore, the S2R JU will focus on awareness raising actions on both ethics and fraud prevention and detection. Each staff member should be made aware of types of ethical conduct/behaviour that he/she must observe. In parallel, the S2R JU communicates relevant guidelines and procedures on how staff should react in the case they suspect fraud is committed, provided by OLAF, available in its lobby. Moreover, links to OLAF and other relevant sites will be published on the S2R JU web page.

4.2 Objective 2: ENSURE A HIGH LEVEL OF REACTIVITY

Mitigation action - 2017 Anti-Fraud risk assessment main findings: all risks, especially R8.

The second objective of this Strategy is to ensure a high level of reactivity in case a fraud case is suspected. This includes fostering a close collaboration with OLAF regarding the reporting of suspected fraud cases and providing full cooperation regarding cases under investigation. Therefore a procedure will be put in place on how to manage potential OLAF cases (i.e. establish what staff should do if they suspect fraud, assist OLAF in carrying out investigations by defining roles, responsibilities and an appropriate internal workflow). In parallel, the S2R JU will determine the contact person for the relations with OLAF. The contact person will maintain a register of cases examined by OLAF and a record of official correspondence with OLAF. This procedure will be formalised and published.

4.3   Objective 3: PREVENT DATA LEAKAGE

Mitigation action - 2017 Anti-Fraud risk assessment main findings: R7.

Loss, misuse, modification, or unauthorized access to S2R sensitive/confidential information can adversely affect the privacy of a staff member or third party (e.g. information on selection and recruitment processes), trade secrets of a business (e.g. commercial/financial or intellectual information about a bidder in a procurement) or even the security of the S2R JU (e.g. unauthorized access/transactions) depending on the level of sensitivity and nature of the information. To limit the risk, the objective of the S2R JU is to ensure awareness of S2R JU staff on management and access of restricted, sensitive and personal data and to ensure a strictly managed process regarding access right management (Financial tool etc.). Additionally, Regulation (EC) n° 45/2001 on the Protection of Personal data applies and the S2R JU is committed to strictly follow processes and procedures imposed by the before cited regulation.

5   INDICATORS

Indicators will be used to report on the Anti-Fraud Strategy. The results of fraud prevention and detection activities will be reported by the Executive Director in a chapter of the annual activity report of the S2R JU presented to the Board for approval.

The following indicators will be used by the S2R JU to report on the fraud prevention and detection activities in the Annual Activity Report.

1. Number and value of contracts subject to close monitoring or additional controls due to an assessment of a high risk of fraud.

2. Number (and trend in number) of files sent to OLAF for investigation.

3. Time elapsed between receipt by staff or management of first information on alleged internal fraud and transmission to OLAF.

4. Time elapsed between OLAF requests for information and date when information is provided to OLAF.

5. Time elapsed between receipt of an OLAF report and the decision on recovery or disciplinary sanctions by the S2R JU

6 ACTION PLAN

This action plan designed to implement the Anti-Fraud Strategy of the S2R JU covers the period from October 2017 till end of 2020. The target dates are geared to the level of priority. When implementing the actions, the S2R JU will take as much as possible advantage of synergies through cooperating with other Union institutions and bodies, starting with other JUs and overall H2020 family.

The actions will cover the stages of the anti-fraud cycle: prevention, detection, investigation and corrective measures.

Operational objective	Priority	Unit in charge	Deadline	Indicator
1. Maintain a culture of integrity and Build capacities through training and guidance for S2R JU staff	Ensure an ethical and anti-fraud 'tone at the top': ensure management regularly conveys messages on ethics and fraud prevention to staff	S2R JU ED and Management	Constant monitoring – regular communication in weekly team meetings	Number of messages conveyed by management to staff on ethics and fraud prevention
	After a fraud case is closed, set up a debriefing with S2R JU staff on best practices concerning prevention, detection and recovery	S2R JU ED and Management	Ad hoc, when required	Number of debriefing sessions with S2R JU staff on best practices after a fraud case is closed
	Continue to raise awareness and systematic focus on ethics at governance bodies of the S2R JU	S2R JU ED and Management	Ad hoc, when required	Number of ethics awareness

Operational objective	Priority	Unit in charge	Deadline	Indicator
				raising actions targeted at the governance bodies of the S2R JU
	Implement indicators regarding Fraud into Annual Activity reporting	S2R JU ED and Management	Each year once when applicable, Q2	Indicators mentioned in the AAR
	Include links to OLAF homepage and anti-fraud documentation on S2R JU Web page under the tab "functioning of the JU"	HoAF	Q4 2017	Publication of the links on the S2R JU Website
	Training Provide a training session to all S2R JU staff on fraud prevention	HoAF	Q2 2017 – done – to be repeated for new staff either in 2018 or in 2019 depending on staff turnover	Number of staff members that attended the S2R JU training on ethics and fraud prevention
	Organise a S2R JU training on ethics	HoAF	Q2 2017 – done – to be repeated for new staff either in 2018 or in 2019 depending on staff turnover	Number of staff members that attended the S2R JU training on ethics and fraud prevention
	HR issues: - Whistleblowing			

Operational objective	Priority	Unit in charge	Deadline	Indicator
	- Anti harassment			
	Guidance Communicate practical guidance to S2R JU staff on red flags, whistleblowing, how to react and how to report fraud and ensure this guidance is easy accessible (Availability of prospects in lobby, welcome pack and shared on the S2R JU website)	HoAF and Management	Q2 2017 – done Q4 2017 – for the publication of relevant guidance on S2R website	Presence of practical guidance for S2R JU staff on red flags, how to react when they come across a potential case, how to report fraud and Possible administrative and financial sanctions and number of staff participating in OLAF & DP Workshops
	Draw up concise guidance for S2R JU staff on possible administrative and financial penalties that can be taken in cases of misconduct, irregularities and fraud	HoAF and Management	Q2 2017 - done	
2. Ensure a high level of reactivity	**Prevention/Detection/Investigation/Corrective measures** Appoint a 'person of confidence' competent and available to guide S2R JU staff in the area of fraud (and advertise this)	S2R JU ED and Management	Q4 2017	ED Decision on nomination of contact person with OLAF
	Ensure swift transmission of key information to OLAF and full cooperation during a possible investigation and make sure that precautionary, protective and recovery measures are initiated as soon as possible	S2R JU ED and Management	Ad hoc, when required	Time elapsed between OLAF requests for

Operational objective	Priority	Unit in charge	Deadline	Indicator
				information and date when information is provided to OLAF
3. Prevent data leakage	Ensure awareness of S2R JU staff on management and access of restricted, sensitive and personal data	Legal Officer	Q2 2017 - done	Number of awareness raising actions regarding access to data and organisation of DP Workshop as well as adoption of DP related recommended processes and procedures
	Define and implement a process of access right management (Financial Systems)	HoAF with the support of LISO	Constant monitoring – Access rights to ABAC financial system is conditioned by the approval of the ED or the HoAF. Annual independent review of ABAC security periodic	Number of Access rights granted and periodic report on ABAC security

Operational objective	Priority	Unit in charge	Deadline	Indicator
			validation (with DG BUDGET) – done in May 2017. By analogy to apply the same to other systems.	
	Ensure the effective implementation of physical security measures regarding storage of sensitive data	HoAF, DPO, LISO, HR Officer, all S2R JU staff	Ongoing – Q4 2017 – List of processing operations requiring secure locked cupboards for hard copies established – staff awareness to be raised and ensure effective implementation	Availability of secure locked cupboards for staff dealing with sensitive data