

### 3.3.5 Fraud

For the purposes of this report, Fraud and Corruption are distinguished: in this context we have adopted a version of the generally-accepted definition of “corruption” as it relates to public officials – *“abuse of public office for private advantage”*.

Corruption as defined therefore overlaps with the concept of “Fraud”, which is taken to mean (in relation to fraudulently obtaining a financial benefit involving public funds) - *“a severe irregularity in expenditure or revenue, which involves deliberate misrepresentation to obtain a benefit, by providing false, misleading, or incomplete information, or by the non-disclosure of required information. Fraud also includes the misapplication of funds for an unauthorised purpose.”*

Thus both private citizens and public officials, in dishonestly obtaining a benefit to which they are not entitled from a public agency, may commit fraud, which may or may involve an act of corruption on the part of a public official – for example taking a bribe to accept a false claim for payment.

This chapter therefore does not deal with corruption matters as such, or with the other forms of fraudulent misrepresentation, such as obtaining licences or permissions, or identity fraud, which do not involve public (i.e EC) funds.

Responsibility for prosecuting fraud and corruption matters is handled only at the State Level. If a specific case of fraud were to be regarded as meeting the constitutional test of being “likely to threaten the interests of Bosnia and Herzegovina”, any investigation and prosecution would be undertaken under the law of the relevant Entity or Canton, as appropriate. Such a situation is considered to be unlikely to arise.

*The OHR has an  
Anti-Fraud unit*

There is no centralised Anti-Fraud Co-ordination Service in place in either the Entity or in the Cantons. However, the Office of the High Representative includes an Anti-Fraud unit (CIPRU), which issued a policy dealing with Anti-Fraud in 1999: it is being implemented actively at the State Level, especially in the areas of Economic Crime and Organised Crime, by State Prosecutors and Courts with the support of OHR and international experts.

Fraud is generally defined as a criminal offence in the recently reformed Criminal Code, following German legal traditions.

The definition of Fraud committed against EC interests and its criminalisation is not specifically included in the Criminal Code. Currently attention is being given by OHR to identifying and assessing weaknesses in the system for management of Community funds.

A Feasibility Study has recently been approved by the EU to assess the scope and impact of Conflict of Interest, fraud and corruption (etc).

#### 3.3.5.1 Conclusion

Weaknesses in the national system for ensuring sound management of Community funds are being assessed by the Office of the High Representative.

While some progress is being made, the requirements as defined in the EC's concept of Financial Control, particularly on protection of the EU financial interest, and by OLAF for a central Anti-Fraud Co-ordination Service are not yet met.