



EUROPEAN COMMISSION
EUROPEAN ANTI-FRAUD OFFICE (OLAF)

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Brussels,
2 December 2002

Reinforcement of the candidate countries' institutional capacity for the protection of the Communities' financial interests:

Main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS)

1. Background

Since 2000, the Commission has encouraged every Candidate Country to establish or designate an operationally independent Anti-Fraud Co-ordination Service¹ ("AFCOS"). These services should be responsible for the co-ordination of all legislative, administrative and operational aspects of the protection of the Communities' financial interests and should be capable of co-operating with OLAF at an operational level. The existence of a specific service for the protection of the Communities' financial interests in the country is an important element of the Commission's strategy aimed at reinforcing the Candidate Countries' institutional capacity for the protection of these interests.

The designation of AFCOS has been included as a priority in the 2001 Accession Partnerships and the Accession Countries have committed themselves to this objective in their respective National Programmes for the Adoption of the Acquis, as well as in their Negotiation Positions under Chapter 28 on Financial Control.

By pursuing this objective, the Commission expects to fulfil one of the aims of its Action Plan 2001 – 2003 for the protection of the Communities' financial interests and the fight against fraud², namely to involve the Applicant Countries more closely in fraud prevention and fraud repression. The Budgetary Control Committee of the European Parliament has, in its report of 29 November 2001³, underlined the need for such a strategy, describing the effective

¹ These services were earlier named "Central or Single Contact Point". The name change was inspired by the recognition that their competencies should be much broader than merely acting as a point of contact with the Commission and the Member States, and should encompass wide-ranging co-ordinating powers.

² (COM (2001) 254 final).

³ Draft European Parliament resolution on the Commission annual report 2000 on the protection of the Communities' financial interests and the fight against fraud and on the Commission communication on protecting the Communities' financial interests, Fight against fraud, Action plan for 2001-2003. Minutes of 29.11.2002, based on document A5-0393/2001.

protection of the Communities' financial interests in the Candidate Countries as one of the major challenges in the years ahead.

The need for reinforcing the Candidate Countries' administrative structures for the protection of the Communities' financial interests has once again been underlined in the Commission's Strategy Paper "Towards the Enlarged Union" of 9 October 2002, which specifies that this objective should be achieved by the second half of 2003.

2. The AFCOS' main objectives

Strictly speaking, the designation of an AFCOS is not an obligation under Community law but rather an institution building measure. However, by setting up such services, Candidate Countries demonstrate their capability to give effective and equivalent protection to the Communities' financial interests and to co-operate effectively in this respect with the Commission (OLAF) and Member States, as required by Article 280 of the EC Treaty.

The mandate, organisational structure and operational mechanisms of the AFCOS in the candidate countries may vary, depending on country-specific circumstances. In all cases however, the AFCOS should have the mandate for:

co-ordinating, within the country, all legislative, administrative and operational obligations and activities related to the protection of the Communities' financial interests; and

ensuring co-operation with the Commission (OLAF) and the Member States, as required by Article 280 of the EC Treaty.

3. Specific functions of an AFCOS

Following on from the foregoing, the functions of an AFCOS should include:

a) Functions of a legislative and prospective nature

taking the lead in formulating, disseminating, co-ordinating and implementing a comprehensive national anti-fraud strategy, aimed at reinforcing the protection of the Communities' financial interests ;

identification of possible weaknesses in the national system for the management of Community funds, including pre-accession funds (ISPA, PHARE, SAPARD) ;

initiation of the necessary legislative, regulatory and administrative adaptations, aimed at ensuring an effective protection of the Communities' financial interests, including the definition of relations with other institutions or bodies involved in the protection of the Communities' financial interests and the establishment of common co-ordination structures and mechanisms;

dissemination of information to authorities responsible for the management of EU funds and revenues, concerning obligations and procedures to follow as regards the protection of the Communities' financial interests.

b) Operational functions, including the exchange of information

facilitating and ensuring co-operation between the national administration, investigation authorities and prosecution authorities, as well as between these authorities and the Commission (OLAF), in cases of suspected fraud or irregularities affecting the Communities' financial interests;

ensuring and monitoring the exchange and provision of relevant information at all levels within the national administration and with the Commission (OLAF) as regards cases of suspected fraud and other irregularities affecting Community funds (and after accession, Community resources), including reporting obligations foreseen under Community legislation and pre-accession instruments. This supposes the establishment of interdepartmental electronic information links as well as a well-functioning information exchange mechanism with the Commission (OLAF), centrally managed by the AFCOS. This mechanism also includes monitoring the use and operation, by all national authorities concerned, of the EU Anti-Fraud Information System (AFIS).

c) Training-related functions

definition of the training needs of the different institutions and bodies involved in the protection of the Communities' financial interests;

development, in close collaboration with the Commission (OLAF), of general and specific training programmes and training modules about the different (legislative, administrative and operational) aspects of the protection of the Communities' financial interests, including temporary exchange programmes with the Commission (OLAF) and Member States' administrations ;

organisational support to training activities;

provision of assistance and advice to other institutions and bodies involved in the protection of the Communities' financial interests, and liaison with the Commission (OLAF) in this respect.

4. The AFCOS' status and institutional framework

The following characteristics are essential if the AFCOS is to exercise its co-ordinating tasks in an effective manner:

a) Multi-disciplinary character:

The service will preferably be composed of experts coming from the different national administrative control and law enforcement authorities, responsible or involved in investigations of presumed irregularities and fraud involving EU-funds or in the supervision of such investigations. The following types of authorities may second agents to the AFCOS:

administrative control authorities (before accession: authorities responsible for the control of PHARE- SAPARD- ISPA Funds ; after accession: all authorities responsible for the control of EU resources and expenditure)

treasury control authorities and state auditors

experts in VAT and Taxation matters

Customs and Border Guards

investigation authorities of Customs (Customs Police)

specific Police or other investigative forces dealing with EU-related matters

prosecuting authorities

In case it is not possible to establish a multi-disciplinary group from the beginning, the AFCOS should be able to request, when needed, adequate input from the remaining competent authorities with the objective of formulating an adequate assessment of cases of presumed irregularities and fraud

b) Operational independence:

It must be clear from the outset that, while the investigative part (or parts) of the AFCOS from an administrative point of view may be established as a service within an existing institution, it should have a legal mandate which guarantees its independence in operational matters.

The AFCOS, having the mandate to ensure both co-ordination between the relevant services within the Candidate Country and co-operation with the Commission (OLAF) in cases related to the EU budget, should be authorised to:

request an administrative or law enforcement authority to analyse information related to irregularities or cases of suspected fraud, for the purpose of initiating an investigation;

request the said authority to initiate an investigation, if necessary;

request to be informed of the results of such an investigation.

ensure effective exchange of relevant information with the Commission (OLAF)

c) Ability to foster inter-institutional co-operation

It is essential that the AFCOS can also count on the support of other institutions or bodies outside the AFCOS but directly or indirectly involved in the protection of the Communities' financial interests for its co-ordinating activities. Furthermore, the Candidate Country's legislative and administrative framework should not stand in the way of such activities, but should instead facilitate these as much as possible. Where necessary, binding agreements should be concluded between the AFCOS and the other institutions involved in the protection of the Communities' financial interests.

5. Commission (OLAF) support to the establishment of well-functioning AFCOS in the Candidate Countries

In the framework of the PHARE multi-country anti-fraud programme⁴ of 16 May 2002 (MCP), the Commission (OLAF) can assist the Candidate Countries in the following areas:

a) Institution building

Such assistance includes the organisation of training sessions and seminars on specific topics related to the fight against fraud affecting the EU Budget and organised crime. Within certain limits, OLAF is able to co-finance such seminars, in which OLAF staff can participate as lecturers or moderators.

OLAF can further assist the candidate country in its institution building process with expertise and advice in different key topics, such as the AFCOS' organisational structure, its mandate and competencies and the skills required of AFCOS staff.

Within certain limits, OLAF is able to host, for a limited period, trainees from some of the AFCOS within its organisation.

b) Technical assistance

Such assistance includes the provision of advice to the Candidate Countries on the adequate equipment needed to improve the operational capacity of the law enforcement authorities.

On the basis of a needs assessment, co-financing may be provided for the purchase of technical equipment used by AFCOS in the framework of its fight against fraud affecting the EU Budget.

c) Operational support

At a Candidate Country's request, OLAF can assist them (and in particular the AFCOS) with judicial and technical expertise in enquiries related to irregularities and cases of suspected fraud.

This can include the analysis of relevant EC legislation, assistance in providing external expertise in technical matters (related for example to agricultural or customs matters) and in investigations undertaken by the Candidate Country's authorities, and participation in investigations related to abuses of the EU-budget. Such participation can be either active (in which case the OLAF experts would act as investigators), if the national provisions allow so, or passive (in which case OLAF experts act merely as observers or technical experts).

⁴ PHARE multi-country anti-fraud programme for the protection of the financial interests of the Community (PH/2002/1412). The programme is made up of three components: (a) assistance in setting up the anti-fraud structures, (b) establishment of communication links and databases and (c) development of operational know-how.