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Reinforcement of the Member States' and Candidate Countries' institutional capacity for the protection of the European Union's financial interests:

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

1. Background

1.1. Origins of the concept (2000-2002)

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 EU's 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 EU's 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 expected 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

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.

1.2. Developments following the setting up of the AFCOS (2003-2010)

Reflecting on the past eight years of introduction and implementation of the AFCOS model in the New Member States and new Candidate Countries it is clear that all of them are committed to the idea of the AFCOS. Many have taken legal measures to establish the AFCOS as an operating institution. Nonetheless there is a view that some NMS, and indeed OLAF, have seen the AFCOS only as a useful instrument in the preparations for membership of the EU, rather than an effective instrument for being an actual Member State.

The experience as regards the enlargement process is that the rhythm of administrative reform in the Candidate countries comes to an end once the objective of membership is attained. The Commission and OLAF should ensure that this does not happen with the further enlargements. The closer a candidate country is to accession the sharper the political will is for reform. For that reason it is important to engage the political will of the Candidate country early in the process in order to involve them in the implementation of reforms.

A notable conclusion of the past experience of AFCOS model is also that where an AFCOS is placed within a Ministry of Finance its focus would mainly be on fraud prevention, reporting of irregularities and general financial control. On the other hand where an AFCOS is placed within a Ministry of Interior or being one of the Prime Minister's services, the focus would rather be on investigation and detection of suspected fraud cases. The administrative institutional setup in each of the countries involved slightly differs from one another. Therefore, the administrative setup and functioning of AFCOS in practice has also taken different formats.

To date OLAF have placed a lot of emphasis on the AFCOS (as a Service) being a central contact point within each national administration. And also on the AFCOS (as a Structure) being a network of relevant bodies within each national administration which bring together the aspects of fraud prevention, detection (investigation) and follow up (criminal sanctions and/or financial recovery). However, a great deal of OLAF's concern is whether the AFCOS as a central contact point is capable of co-operating with OLAF at an operational investigative level, being vested with the necessary investigative powers. So far experience shows that a very small number of AFCOS in NMS is in position to provide that.

The future role, tasks and responsibilities of AFCOS should be based on the assessment of the two aspects or models of the AFCOS implemented in practice so far: AFCOS as a central contact point (in effect an OLAF liaison office) and AFCOS as a horizontal network within each national administration but with a central contact point.

protecting the Communities' financial interests, Fight against fraud, Action plan for 2001-2003. Minutes of 29.11.2002, based on document A5-0393/2001.

It would also need to be defined from the operational investigative point of view what type of AFCOS is in the best interest of OLAF (if indeed any). There was the question of whether the AFCOS is just a useful pre-accession tool or whether the AFCOS has a role for actual Member States post accession. Should AFCOS be involved in operational investigative work and in issues of judicial cooperation? Is the AFCOS role more useful in the area of fraud prevention, coordination on anti fraud legislation, issues of reporting irregularities rather than in the area of fraud investigation?

Questions have also been addressed towards creation of the legal basis for AFCOS, as well as in what way the Old Member States could apply the same model of coordination.

Further efforts have been made by the Commission with regard to amendments of the Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) and repealing Regulation (EURATOM) No 1074/1999.

In the Commission proposal (March 2011) under the Article 3 on external investigations, paragraph 4 explicitly mentions Member States' obligation to designate a service facilitating coordination between national authorities involved and cooperation with OLAF.⁴

When amendments to the regulation will be adopted, AFCOS concept will be positioned within the EU legislative framework as has been suggested by AFCOS representatives at past meetings. The provision will not only be applicable to Member States, but also serve as a benchmark of the *acquis* for the Candidate Countries in their accession to the EU.

2. The AFCOS' main objectives

The designation of an AFCOS represents an institution building measure. By setting up or designating such service, giving it a legal mandate for functioning, Member States and Candidate Countries demonstrate their capability to give effective and equivalent protection to the EU's financial interests and to co-operate effectively in this respect with the Commission (OLAF), as required by Article 325 of the TFEU (ex Article 280 of the EC Treaty).

The mandate, organisational structure and operational mechanisms of the AFCOS 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 EU's financial interests; and

Ensuring co-operation with the Commission (OLAF) and the Member States, as required by Article 325 of the TFEU.

⁴ "Member States shall, for the purpose of this Regulation, designate a service (hereinafter "the anti-fraud coordination service)" to facilitate an effective cooperation and information exchange with the Office. Where appropriate, in accordance with national law, the anti-fraud coordination service may be regarded as a "competent authority" within the meaning of this Regulation."

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 EU's financial interests;

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

Identification of possible weaknesses in the national system for the management of EU funds, including pre-accession funds;

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 EU's 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 EU's 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 EU budget, including reporting obligations foreseen under EU 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). 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 EU's financial interests;

Development, in collaboration with the Commission (OLAF), of general and specific trainings (legislative, administrative and operational) in relation to the protection of the EU's financial interests, including study visits and temporary exchange

programmes (internships) 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 EU's 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 responsible for the control of EU's financial assistance, before and after the accession;

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 should have the mandate to ensure both co-ordination between the relevant services within the Member State and the Candidate Country concerned and co-operation with the Commission (OLAF) in cases related to the EU budget.

With regard to information related to irregularities or cases of suspected fraud, AFCOS should be authorised to:

- Request a relevant national administrative or law enforcement authority to analyse such information, 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).

With regard to OLAF investigations and on-the-spot checks, AFCOS should:

- Be responsible for receiving the on-the-spot checks notifications and identifying the competent administrative or law enforcement authority, which may provide OLAF with the necessary assistance;
- Put OLAF in contact with the national authority, which is relevant and can provide necessary operational cooperation in case of investigation;
- Foresee the possibility for the creation of joint investigations teams between OLAF and the relevant national authority;
- Organize periodical meetings with all relevant national administrative and law enforcement authorities, in order to be always updated on the investigation developments and eventually intervene in case of strong delay or in case of poor support provided by them;
- Ensure effective exchange of relevant information with the Commission (OLAF).

With regard to follow-up of investigations, AFCOS should:

- Facilitate exchange of information among involved national authorities, if necessary;
- Ensure effective exchange of relevant information with the Commission (OLAF), in particular with regard to recovery of misused EU funds.

In case of criminal investigation OLAF should be able to refer directly to the national judicial authority. Information to the AFCOS will be subject to agreement, as the case may be, of the competent judicial authority.

c) Ability to foster inter-institutional co-operation

It is essential that the AFCOS can also count on the support of any other national authorities, directly or indirectly involved in the protection of the EU's financial interests for its co-ordinating activities. Furthermore, the Member State's and 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.

Binding agreements should be concluded where necessary between the AFCOS and the other institutions involved in the protection of the EU's financial interests.

5. Commission (OLAF) support to the well-functioning AFCOS

5.1. Member States

(to be inserted)

5.2. Candidate Countries

The Commission (OLAF) can assist the Candidate Countries in the following areas:

a) Institution building

Such assistance includes the organisation of meetings, 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 events, 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 EU legislation, assistance in providing external expertise in technical 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).