



European
Commission

Chapter 32 – Financial Control

Protection of the EU's financial interests

European
Anti-Fraud
Office



CHAPTER 32

**PUBLIC INTERNAL
FINANCIAL CONTROL
AND
EXTERNAL AUDIT**

**PROTECTION
OF THE EU's
FINANCIAL
INTERESTS**

**PROTECTION
OF THE € AGAINST
COUNTERFEITING**

Specific "benchmarks"

**1. Alignment with
PFI Convention
and its Protocols**

**2. Effective and
efficient
cooperation**

1. Alignment with the Convention on the protection of the EU's financial interests (PIF Convention) and its Protocols



PIF Convention

- Linked to article 325 TFEU
- Council Act of 26 July 1995 drawing up the Convention on the protection of the financial interests of the European Communities [OJ C 316, 27.11.1995].
- To tackle fraud affecting the financial interests of the European Union.
- Fraud affecting both expenditure and revenue must be **punishable by effective, proportionate and dissuasive** criminal penalties in every Member State.



Expenditure fraud

- Any act or **deliberate omission** involving 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 EU or budgets managed by, or on behalf of, the EU;
- **Non-disclosure** of information in violation of a specific obligation, with the same effect;
- **Misapplication** of such funds for purposes other than those for which they were originally granted.

Revenue fraud

- Any act or **deliberate omission** involving 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 EU or budgets managed by, or on behalf of, the EU;
- **Non-disclosure** of information in violation of a specific obligation, with the same effect;
- **Misapplication** of a legally obtained benefit, with the same effect.



PIF Convention

- The Convention entered into force on 17 October 2002, along with its First Protocol and the Protocol on its interpretation by the Court of Justice (ECJ Protocol).
- Since 2005 the Acceding Countries accede to this Convention and its Protocols by virtue of the Act of Accession.



PIF Convention – main content points

Content:

- Each Member State must take the necessary measures to ensure that the conduct against EU's financial interests, as well as participating in, instigating, or attempting such conduct, **are punishable by effective, proportionate and dissuasive criminal penalties**. In cases of serious fraud, these penalties must include custodial sentences that can give rise to extradition.
- Each Member State must take the necessary measures to allow **heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable** in accordance with the principles defined by its national law in cases of fraud affecting the EU's financial interests.



PIF Convention – main content points (cont.)

- Each Member State must take the necessary measures to **establish its jurisdiction** over the offences it has established in accordance with its obligations under the Convention.
- If a fraud constitutes a criminal offence and concerns at least two Member States, those **States must cooperate effectively in the investigation, the prosecution and the enforcement of the penalties imposed** by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.



PIF Convention – main content points (cont.)

- In the event of disputes between the Member States as to the interpretation or application of the Convention, the case must first be examined within the Council. If the Council has not found a solution within six months, a party to the dispute may petition the Court of Justice. The Court of Justice also has jurisdiction over disputes between Member States and the Commission.



First Protocol

- First Protocol of 27 September 1996 to the Convention on the protection of the European Communities' financial interests [Official Journal C 313, 23.10.1996].
- Focuses on the definition of the concepts of "official", "active"/"passive" corruption and on the harmonisation of penalties for corruption offences.
- An explanatory report to this Protocol was adopted on 19 December 1997.
- The Protocol entered into force on 17 October 2002.



ECJ Protocol

- Protocol of 29 November 1996 on the interpretation, **by way of preliminary rulings**, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests [Official Journal C 151, 20.5.1997].
- This Protocol **allows national courts to petition the Court of Justice** for preliminary rulings interpreting the Convention on the protection of the European Communities' financial interests and its Protocols.
- The Protocol entered into force on 17 October 2002.



Second Protocol

- Second Council Protocol of 19 June 1997 to the Convention on the protection of the European Communities' financial interests [Official Journal C 221, 19.7.1997].
- This Protocol is aimed in particular at the **liability of legal persons, confiscation, money laundering and cooperation between the Member States and the Commission** for the purpose of protecting the EU's financial interests and **protecting personal data** related thereto.
- The Protocol entered into force on 19 May 2009.



Current legislative initiative: **Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive)**

- In order to ensure the implementation of the Union policy in the area of the protection of the Union's financial interests, **it is essential to continue to approximate the criminal laws** of the Member States **by complementing the protection under administrative and civil law** for the most serious types of fraud-related conduct in this field, whilst avoiding inconsistencies, both within and among these areas of law.
- As this Directive provides for **minimum rules**, Member States are free to adopt or maintain more stringent rules for criminal offences affecting the Union's financial interests.
- When adopted, the Directive will replace the Convention and the Protocols.

2. Effective and efficient cooperation



Lisbon Treaty – Article 325 TFEU

- The Union and the Member States shall **counter fraud and any other illegal activities** affecting the financial interests of the Union [...]
- Member States shall **take the same measures** to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.
- [...] the Member States shall **coordinate their action** aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, **close and regular cooperation between the competent authorities**.



Anti-Fraud Co-ordination Service (AFCOS)

- Since 2000, the Commission has requested every Candidate Country to establish or designate an operationally independent **Anti-Fraud Co-ordination Service (AFCOS)** prior to accession to ensure an efficient fight against fraud and protection of the EU financial interests.
- Included as a priority in 2001 Accession Partnership and Accession Countries have committed to this objective in their respective National Programmes for the adoption of *Acquis communautaire*.
- AFCOS not only to be seen as a useful instrument in the preparations for membership of the EU, but also as an **effective instrument** for a (future) Member State.



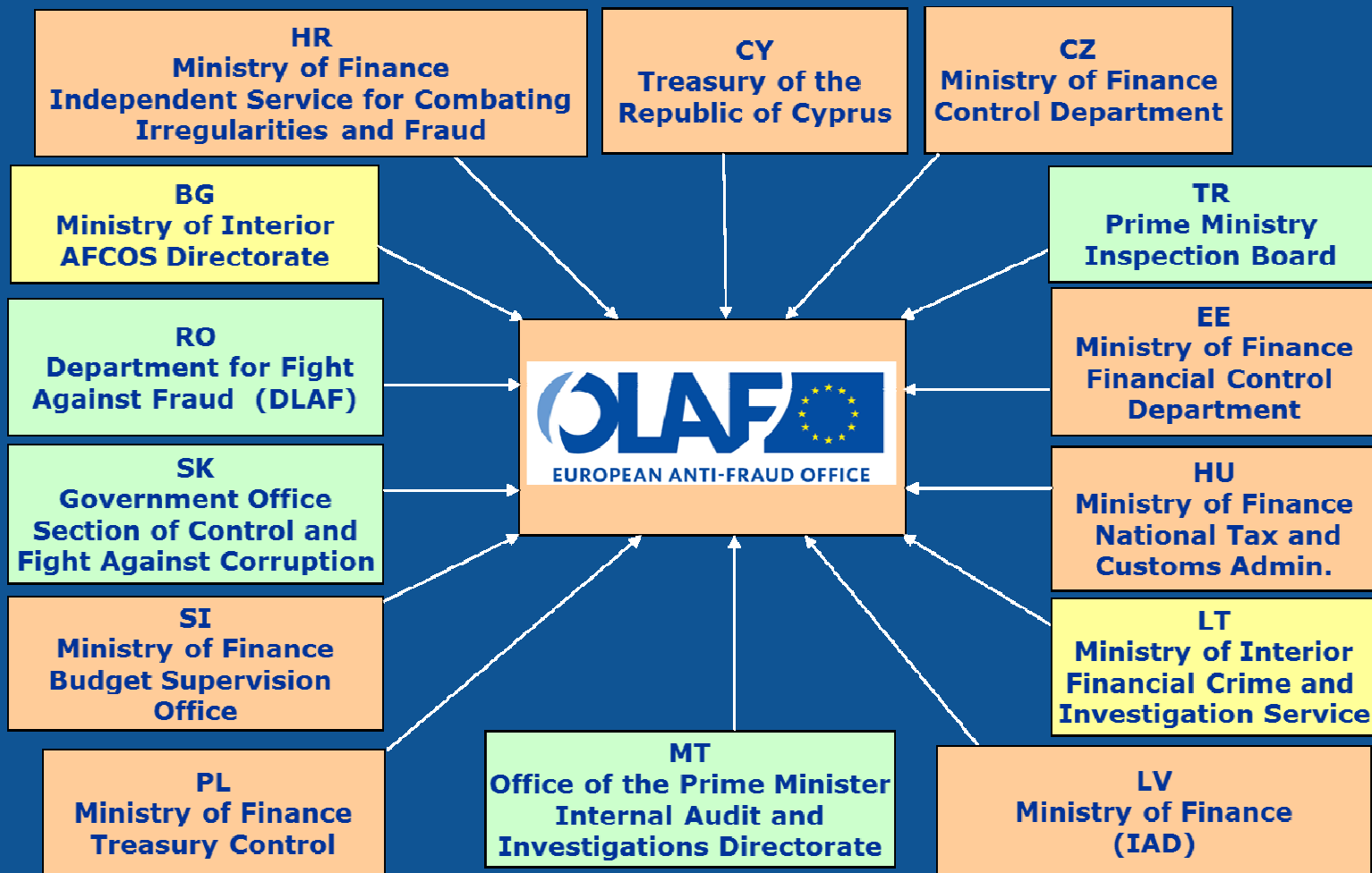
Anti-Fraud Co-ordination Service (AFCOS)

- The AFCOS concept was positioned within the EU legislative framework by the adoption of the **Regulation (EU, EURATOM) No 883/2013 of 11 September 2013** concerning investigations conducted by the European Anti-Fraud Office (OLAF).
- The Article 3(4) on the designation of AFCOS is not only applicable to the Member States, but also serves as a negotiation benchmark for the Candidate Countries in their accession to the EU:
"Member States shall, for the purposes of this Regulation, designate a service ("the anti-fraud coordination service") to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, in accordance with national law, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation."
- The Regulation entered into force on 1 October 2013.



Anti-Fraud Co-ordination Service (AFCOS)

- The institutional setup in each of the countries involved differs from one another. Therefore, the administrative setup and functioning of AFCOS in practice has also taken different formats.
- AFCOS must be at a minimum a central contact point capable to facilitate effective and efficient cooperation and exchange of information, including information of an operational nature, with OLAF.
- AFCOS fulfils administrative and operational tasks and responsibilities.





Administrative tasks and responsibilities

- Taking the lead in creating and implementing a national **anti-fraud strategy** aimed at protection of the EU financial interests
- Capacity to promote **administrative and/or legislative adaptations** leading to a more efficient protection of EU financial interest
- Identification of possible **weaknesses in the national system for the management of EU funds**, including pre-accession funds
- Dissemination of information and communication
- Sufficient human resources capacity, including training activities



Operational tasks and responsibilities

- Ensure **co-operation** between the national administration, Prosecution authorities and the Commission (OLAF)
- **Exchange of relevant information** within the national administration and with OLAF on the **irregularities** and **suspected fraud cases**
- Ensuring fulfilment of all the obligations arising from Regulation 2185/1996 on **on-the-spot checks**
- Ensuring and facilitating **recovery of unduly paid funds**



AFCOS - benefits for OLAF

- **Identified national authorities** as partners in OLAF investigations and policy activities
- **Multidisciplinary composition** of the national anti-fraud structure (AFCOS Network) to facilitate communication at a national level
- **Operational independence** of AFCOS adds to more efficient information exchange and coordination of investigative activities
- **Extended investigative powers** granting OLAF the necessary assistance by all competent national authorities



Thank you for your attention!