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Guidance note on main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS)

I. Purpose of this guidance note

The purpose of this guidance note is to support the Member States' national administrations in designating their Anti-Fraud Co-ordination Service (AFCOS), as envisaged in Article 3(4) of the new OLAF Regulation¹ which entered into force on 1 October 2013:²

"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 introduces the concept of AFCOS without defining in more detail its mandate, institutional framework and the tasks of these services. This guidance note attempts to provide more detail, based on the Commission's expectations, recommendations and experience gained in cooperation with the competent national authorities in the field of protection of the EU's financial interests.

¹ Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248/1, 18.9.2013

² The OLAF Regulation does not apply when it overlaps with provisions already laid down in sectoral regulations (i.e. *lex specialis*), except where the general rules in the Regulation serve to improve or reinforce the investigation procedure; in particular, the implementation of AFCOS in the Member States does not in any way affect the obligations of the competent authorities already designated in the Member States to provide assistance and information directly to the Commission (OLAF) as laid down *inter alia* in Regulation (EC) No 515/97 for the customs sector.

II. Historical background

Since 2000, the Commission has encouraged every Candidate Country to establish or designate an operationally independent Anti-Fraud Co-ordination Service³ (“AFCOS”) and thus reinforce the Candidate Countries’ institutional capacity for the protection of the EU's financial interests. 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.

At the time of EU enlargement in 2004 and 2007 there was no relevant EU legal base for the designation of AFCOS. However, the designation of AFCOS was included as a priority in the 2001 Accession Partnerships and the Accession Countries committed themselves to this objective in their respective National Programmes for the Adoption of the *Acquis communautaire*, as well as in their Negotiation Positions under the relevant chapter on Financial Control.

In 2013, the AFCOS concept was positioned within the EU legislative framework by the adoption of the Regulation (EU, EURATOM) No 883/2013. The provision on the designation of AFCOS is not only applicable to the Member States, but also serves as a benchmark of the *Acquis communautaire* for the Candidate Countries in their accession to the EU.

Currently an AFCOS has been designated in the Member States of EU enlargement 2004, 2007 and 2013, as well as in some of the Candidate Countries (e.g. FYROM, Turkey, Montenegro). Recently, some of the old Member States have also taken steps to designate their AFCOS (e.g. France, the Netherlands).

III. AFCOS mandate

The mandate 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 investigative obligations and activities related to the protection of the EU’s financial interests; and

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

To perform tasks described in the Annex, in particular those mentioned under point 1(ii), it is OLAF's preference that an AFCOS is vested with investigative powers (administrative or criminal), which can complement the administrative investigative powers of OLAF during the on-the-spot checks in respective Member States. Ideally, this includes the operational independence of the AFCOS.

³ 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.

IV. Institutional framework of the AFCOS in the Member State

1. The placement of AFCOS

It is Member State's decision where to best place the AFCOS within its national administrative structure. In any case the placement of AFCOS should provide for its visibility and importance in relation to other relevant authorities in the field of protection of the EU's financial interests.

The Member States joining the EU in 2004 and after placed their AFCOS either within the Ministry of Finance or the Ministry of Interior. Some Member States also established it as an independent Government's service, which is also OLAF's preference.

2. Inter-institutional co-operation

The AFCOS should have the mandate to ensure both co-ordination between the relevant services within the Member State concerned and co-operation with OLAF in cases related to the EU budget.

This would involve national authorities, such as:

Administrative control authorities responsible for the control of the EU's financial assistance;

Treasury control authorities and state auditors;

Customs and Border Guards;

Investigation authorities of Customs (Customs Police);

Criminal or Financial Police or other investigative forces dealing with EU-financing matters;

Prosecuting authorities.

Furthermore, the Member State's legislative and administrative framework should facilitate these activities as much as possible.

Cooperation arrangements should be concluded where necessary between the AFCOS and the other national institutions involved in the protection of the EU's financial interests to facilitate day-to-day cooperation and exchange of information.

3. Investigative independence

Apart from its administrative coordination role, AFCOS established as a functionally independent body or a service within an existing institution may be vested with investigative powers.

An AFCOS with investigative powers should ideally have a legal mandate which guarantees its independence in investigative matters.

V. OLAF relations with AFCOS:

1. Administrative cooperation arrangement (ACA)

To create a more harmonised approach in cooperation with AFCOS in the Member States, in accordance with Article 1 (4) of the new OLAF Regulation, OLAF recommends the signing of an Administrative Cooperation Arrangement (ACA) between OLAF and AFCOS, setting out the framework for the working relationship between the partners subject to available resources.

An ACA is legally non-binding, does not create any obligations under international law or European Union law, and does not modify any existing legal rules or interfere with the legal frameworks governing the partners.

An ACA can be used to set practical arrangements and activities applicable to the national authority designated as AFCOS when supporting OLAF administrative investigations and on-the-spot checks performed in the Member State, as well as when exchanging investigative information with OLAF, for example collecting information at OLAF's request, sharing with OLAF information on EU linked investigations launched by Member States' authorities and ensuring the presence of persons at the interviews, etc.

2. Investigative support provided by OLAF

Investigative support provided by OLAF can include the analysis of relevant EU legislation, assistance in providing external expertise in technical matters and in investigations undertaken by the Member States' authorities and participation in investigations related to abuses of the EU budget. Such a participation can be either active (in which case the OLAF experts would act as investigators or coordinators), if the national provisions so allow, or passive (in which case OLAF experts act merely as observers or technical experts).

3. Institution building

OLAF can be involved in the organisation of meetings, training sessions and seminars on specific topics related to the fight against fraud (including organised crime) affecting the EU budget. Within certain limits, OLAF is able to co-finance (e.g. through Hercule and Pericles programme) such events, in which OLAF staff can participate as speakers or moderators.

VI. Candidate Countries

OLAF can also assist the Candidate Countries during their accession process to the EU and their alignment with the requirements of the *Acquis communautaire*.

Member States should not hesitate to seek further explanations of these guidelines and/or ask for OLAF support in designation of their AFCOS.

Annex

AFCOS tasks

1. Investigative tasks, including the exchange of investigative information

a) AFCOS should facilitate and ensure co-operation between national administrations, investigation authorities and prosecution authorities, as well as between these authorities and OLAF⁴, in cases of suspected fraud or irregularities affecting the EU's financial interests:

i. With regard to information related to irregularities or cases of suspected fraud, AFCOS may 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 OLAF.

ii. With regard to OLAF investigations and on-the-spot checks under Regulation (Euratom, EC) N° 2185/96, 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 relevant national authority that can provide the necessary cooperation in the case of an investigation;

Foresee the possibility for jointly carrying out investigations between OLAF and the relevant national authority;

Organise periodical meetings with all relevant national administrative and law enforcement authorities, in order to be always updated on the investigation developments and if necessary intervene in the case of excessive delay or in case of poor support provided by them;

Ensure effective exchange of relevant information with OLAF.

⁴ In cases of criminal investigation, OLAF should be able to refer directly to the national judicial authority. Information to the AFCOS will be subject to the consent, as the case may be, of the competent judicial authority.

- iii. With regard to implementation of OLAF's recommendations, AFCOS should:

Facilitate exchange of information among the involved national authorities;

Ensure effective exchange of relevant information with OLAF, in particular with regard to recovery of misused EU funds;

Report back to OLAF on action taken following information transmitted to them, as envisaged in Article 11(6) of the Regulation (EU, EURATOM) No 883/2013⁵.

- b) AFCOS should ensure the application of the Union's sectoral legislation on the reporting of irregularities, suspected fraud and fraud by sending regular reports via the Irregularity Management System (IMS) as part of the EU Anti-Fraud Information System (AFIS), of the detected irregularities, suspected fraud and established fraud, the amounts concerned and the progress of related administrative and legal proceeding.

If the above mentioned activities are performed by other competent national authorities, AFCOS should ensure any necessary coordination in this respect.

2. Preventive tasks

These tasks should include:

- a) Taking the lead in formulating, disseminating, co-ordinating and implementing a national anti-fraud strategy, aimed at reinforcing the protection of the EU's financial interests⁶;
- b) Monitoring of the legislative, regulatory and administrative adaptations, including the definition of relations with other institutions or bodies involved and the establishment of common co-ordination structures and mechanisms;
- c) Identification of possible weaknesses in the national system for the management of EU funds, including pre-accession funds;
- d) 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.

⁵ "At the request of the Office, the competent authorities of the Member States concerned shall, in due time, send to the Office information on action taken, if any, following the transmission by the Director-General of his recommendations in accordance with paragraph 3, and following the transmission by the Office of any information in accordance with paragraph 5."

⁶ In the context of the Commission Anti-Fraud Strategy (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, and the Court of Auditors on the Commission Anti-Fraud Strategy; COM(2011) 376 final)

3. Training tasks, including Hercule programme

These tasks should include:

- a) Definition of the training needs of different national institutions and bodies involved in the protection of the EU's financial interests;
- b) Development, in collaboration with OLAF, of general and specific training, including study visits and temporary exchange programmes (internships) with OLAF and Member States' administrations;
- c) Organisational support to training activities;
- d) Provision of assistance and advice to other national institutions and bodies involved in the protection of the EU's financial interests, and liaison with OLAF in this respect;
- e) Presentation of the results under the Hercule programme.