



# FIVE DAY CONFERENCE

Further strengthening of the competent institutions in the area of managing on irregularities with the aim of protection of the EU financial interests

Zagreb | Croatia 07<sup>th</sup> - 11<sup>th</sup> May 2018

## ROUND TABLES' Conclusions

# Introduction

"My remarks are,  
as always, appropriate,  
sound, and to the point"

**Hercule Poirot**

Dear colleagues,

Exchange of information on the international level is one of the effective fraud prevention measures. The importance of this measure is even greater taking into account the fact that fraud often crosses national borders and fraudsters get more innovative in exploiting opportunities for committing fraud. There is new *modus operandi* to be analysed, new risk indicators to be developed and new preventive measures to be set up. Therefore it is of utmost importance to exchange knowledge, experience and best practice in regards to irregularity management with the aim of protection of the EU financial interests.

The general objective of the five day conference "*Further strengthening of the competent institutions in the area of managing on irregularities with the aim of protection of the EU financial interests*" was to ensure effective and efficient protection of the EU financial interests by strengthening competent institutions of the participating countries in the area of irregularities management and implementing effective anti-fraud measures.

Five day conference was organized by the Service for Combating Irregularities and Fraud, Ministry of Finance of the Republic of Croatia under the HERCULE III Programme and it was held in Zagreb in the period 07-11 May 2018 with participating Member States; Bulgaria, Croatia, Estonia, Malta, Netherlands, Romania and Spain, candidate countries Montenegro and Serbia and potential candidate country Bosnia and Herzegovina.

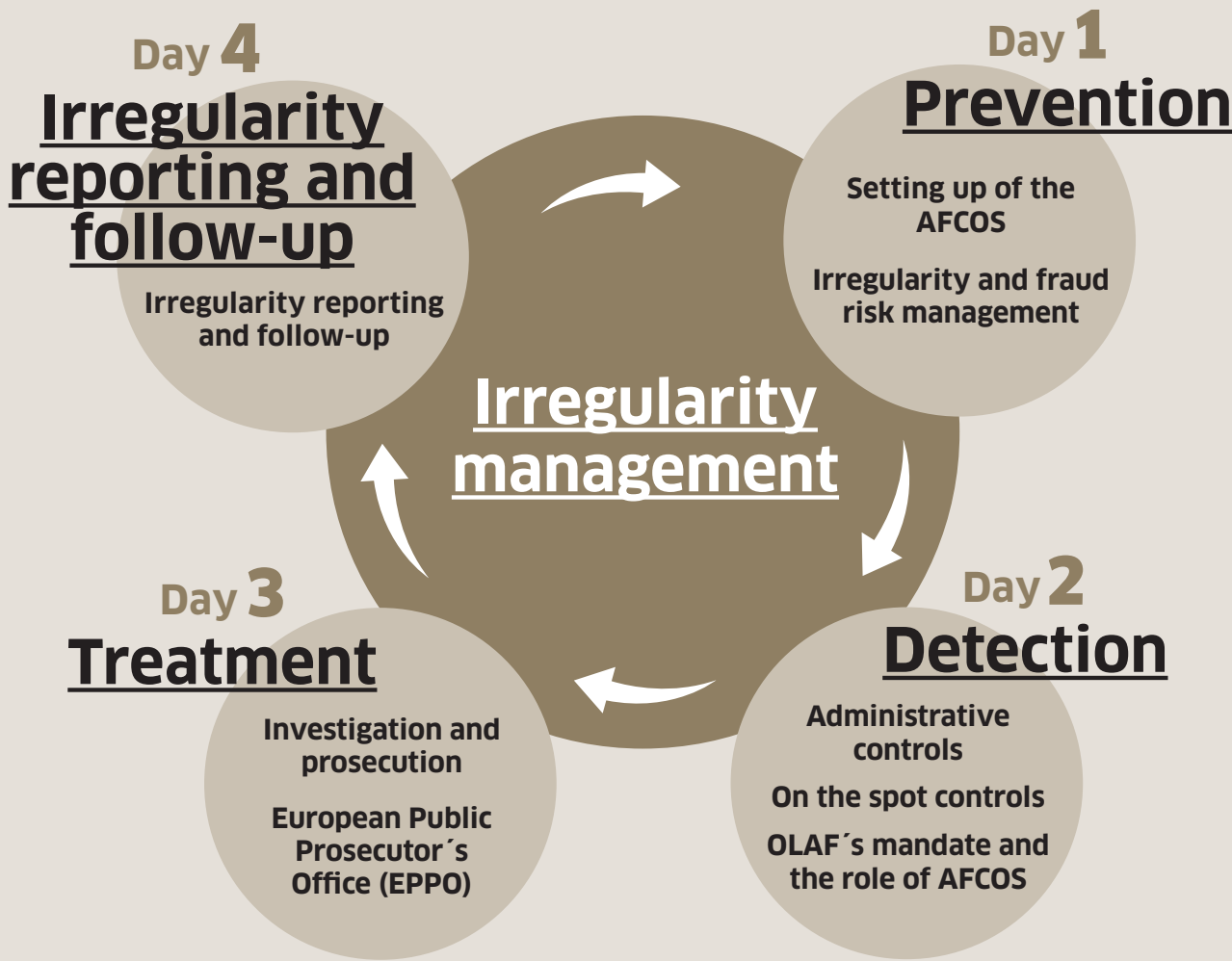
Conclusions of the conference are issued in this Brochure. Namely, it includes key points and conclusions reached during round tables discussions focused on four main topics and I hope that it will greatly contribute to our future joint work and activities aimed at reaching our common goals in protection of the EU financial interests.

Mirjana Jurić  
Head of AFCOS Croatia



The training session is supported by the European Union Programme Hercule III (2014.-2020.). This programme is implemented by the European Commission and it was established to promote activities in the field of the protection of the financial interests of the European Union.

This communication reflects the author's view and that the European Commission is not responsible for the views displayed in the publications and/or in conjunction with the activities for which grant is used.



# Day 1

## Prevention

Prevention of irregularities and fraud has many tools, such as capacity building, training of beneficiaries, awareness raising, development of ethical organisational culture, risk management, set up of preventive controls (control of procurement plans, ex-ante control of tender documentation), fraud-proofing of legislation, ensuring the protection of whistle-blowers, cooperation at the national and international level, etc.

By the adoption of the Regulation (EU) No 1303/2013, the European Union put a stronger emphasis on fraud risk management and anti-fraud measures than it was the case in the previous programming period. Therefore, the focus of the first day of the Conference was set on the irregularity and fraud risk management.

The objective of the first day round table was to exchange practices among participants with regard to the following topics:

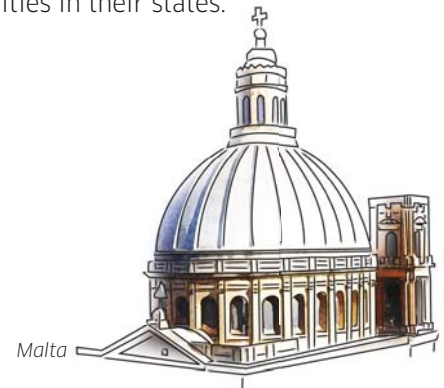
- 1) Risk management methodology: tools, actors, the level of compliance between the methodology set up in the context of the EU fund management and the national budget management, the role of AFCOS
- 2) Common problems related to fraud risk assessment and risk management in general
- 3) Effectiveness / real benefits of risk management

### Participants of the first day round table came from:

- Malta
- Romania
- Netherlands
- Bosnia and Herzegovina
- Croatia
- Serbia
- Estonia
- Bulgaria
- Montenegro

Institutions that were represented were Internal Audit and Investigation Department, Police and Border Guard Board, Ministries of Finance and AFCOS Services/Offices. In addition, competencies of AFCOS Services differ substantially from one participating state to another, varying from a coordinative function only to conducting administrative investigations.

There were no representatives of Managing Authorities. However, the participants presented the practice set up by Managing Authorities in their states.



# Conclusions:

## 1) Risk management methodology:

- In most cases the risk management methodology is different for programmes co-financed by the EU and for programmes co-financed by the national budget. However, in some cases the methodology follows the same principles
- In majority of cases risk management methodology for programmes co-financed by the EU Funds is more progressive than the one for programmes co-financed by national budget (For example, it incorporates fraud risk assessment)
- On the other hand, in case of one candidate country there is a risk management methodology developed for public bodies. However, this methodology is not applied in the context of programmes funded by the EU

## 2) Common problems related to fraud risk assessment and risk management in general:

- Participants agree that fraud risk management for programmes co-financed by the EU Funds is the responsibility of Managing Authorities. However, the AFCOS Service should have an insight into fraud risk assessment results

In case of one Member State the AFCOS Service is in charge of the revenue side of the budget, while

the Managing Authority is in charge of its expenditure side. However, the Ministry of Finance has an overall responsibility for the budget and therefore has an insight into its both aspects

In one case the fraud risk self-assessment tool has been incorporated into the risk management methodology for programmes co-financed by the national budget (national methodology)

- Most of Member State representatives have confirmed that their bodies have used fraud risk self-assessment tool annexed to the Commission's guidance on fraud risk assessment and effective and proportionate anti-fraud measures of June 2014. However, only one state has made modifications to that tool. Namely, the tool was assessed by AFCOS partners and it was amended by lots of questions
- Participants have outlined the following problems related to the use of the fraud risk self-assessment tool and risk management in general:
  - The quality of risk assessment has differed between different bodies, especially between bodies responsible for different (operational) programmes
  - Risk identification difficulties – there will always be unspotted risks

- Risk assessment difficulties – different level of the understanding of the concept by different bodies; risk assessment is a subjective category and there are different approaches to the assessment by different bodies (strict vs. mild)
- In many cases the level of protection of national co-financing is lower than that of the EU co-financing. Namely, sums affected by irregularities are paid from the national budget but they are not repaid to the national budget by beneficiaries and there are no measures set up to ensure that kind of repayment
- Public perception of AFCOS Services in Candidate Countries is negative due to misunderstanding of their mandate (AFCOS Services are perceived as informers of the EC and therefore traitors of the national financial interests)

One country had no problems to outline neither with regard to the use of fraud risk self-assessment tool nor with regard to risk management in general.

### 3) Effectiveness / real benefits of risk management:

- Risk management is one of the oldest management functions. It is a part of everyday life and a matter of common sense. However, the approach to risk management is often not systematic and it is not adequately documented

In line with the abovementioned, all participants have agreed that risk management is a useful management function and not only a function that had to be carried out from the compliance standpoint. However, the risk management methodology has to be (further) developed and actors in risk management have to be trained to implement it

- Risk assessment is performed at different levels and each body has to perform risk management in line with its scope of work:
  - Strategic risk assessment has to be done by each body in order to handle risks that are jeopardising its strategic objectives
  - Operational risk assessment has to be done in order to handle risks that are jeopardising timely and legal implementation of functions, processes and activities. Irregularity and fraud risks are therefore operational risks

Operational risk assessment is also used for planning of audit, management verifications, identification of risky economic operators by tax and customs authorities, etc.

One should also bear in mind that strategic and operational risks are interconnected because operational risks can be either triggers or consequences of strategic risks and vice versa.

- There are different IT tools which can contribute to risk assessment such as ARACHNE. One of Member States uses Arachne, another intends to use it in the context of ESI Funds and one uses its national IT system instead
- Benefits of fraud risk management as presented by the participants:
  - Achieving better efficiency of controls because there are more controls put in place in high risk areas and less controls in low risk areas
  - Introduction of new controls
  - Reducing fraud and irregularities
- Top risks as presented by the participants:
  - Double funding, corruption and conflict of interest, falsified documents, fake projects and results



Bosnia and Herzegovina



Estonia

- New anti-fraud measures (controls) that were implemented or planned as a result of fraud risk assessment:
  - Better cooperation with the police, tax administration and customs administration, benefits of specific analysis conducted by those bodies
- Measuring effectiveness of anti-fraud measures:
  - Only one Member State provided an answer to this question – it defined qualitative and quantitative progress indicators



Spain

## Day 2

# Detection and establishing of irregularities and suspicions of fraud

Detection of irregularities or suspicions of fraud is the most challenging phase of irregularity management because one has to:

- Build adequate administrative capacity with a view to detecting and reporting of suspected irregularities and fraud
- Set up and implement human resource management policy which ensures staff retention, motivation and adequate organisational culture
- Achieve the correct balance between the risk of irregularity / fraud and the level of controls imposed
- Achieve the correct balance between the severity of the irregularity and the correction imposed, i.e. establish fair and reasonable treatment of beneficiaries and adequate communication with them
- Achieve coordination between administrative and judicial proceedings



Montenegro

Participants of the second day round table came from:

- Estonia
- Bulgaria
- Netherlands
- Montenegro
- Croatia
- Romania
- Malta
- Spain
- Serbia
- OLAF



Netherlands

## Conclusions:

### 1) Preconditions for effective detection:

- Ensuring adequate number and profile of staff (for example civil engineers, legal experts) and providing them with training concerning specific aspects of verification, specifically in the context of assessing, detecting and reporting on suspected irregularities/fraud
- Ensuring reasonable workload



## 2) Treatment of information about suspicions of irregularities / fraud

- If Managing Authority / Intermediate Body receives (anonymous) alert concerning suspected irregularity/fraud, the alert should first be analysed in order to establish whether the information falls within the MA's competency to act, whether the source is reliable and whether the information is sufficient to justify further activities
- In case a suspicion of fraud is established, the case should be reported to the State Attorney's Office (i.e. relevant national bodies)
- The information about suspected fraud should not be communicated to the beneficiary because of the risk of jeopardising the investigation
- In performing administrative verifications and site visits institutions should rely on their own resources as much as possible. Outsourcing should be an option only in cases of absence of competencies or when additional expert opinion is needed
- Out of three participants, two agree that an increase of sample size due to irregularities detected should total 10%, and one thinks that it depends on the type of irregularity

## 3) Preventive and corrective measures following the suspicion of irregularity / fraud

- It should be decided on the basis of case by case approach whether only a part of the contract

(payments) should be suspended, or the whole contract (sometimes only a part of investment may be affected by fraud). In case of evidence of collusion, the whole contract should be suspended

- Beneficiary has the obligation to respect all provisions of the contract, and is responsible for its execution (which includes control of contractors). Therefore, in cases of fraud committed by the contractor, the beneficiary should also bear financial consequences (suspension of payments) as the responsible institution
- Out of four participants, two agree that even if an irregularity is considered formal and has no effect on the budget corrections should be applied, while two think that corrections should not be applied
- Two Member States use national guidelines based on COCOF ones or national and COCOF guidelines for determining seriousness of irregularities/corrections in public procurement. Two candidate countries use only national ones
- Participants had no experience with irregularities concerning expenditure claimed on the basis of simplified cost options
- All three participants agreed that corrections should be applied in case the target level of indicator is not achieved by beneficiaries

#### 4) Application of provisions of Article 143 of the Regulation (EU) No 1303/2013

- Common understanding at the round table (although understanding of the provision may differ across MSs): the irregular amount is the amount that has been paid to the beneficiary (on the basis of their claim), while the amount that has not been paid yet, i.e. the amount not affected by irregularity, can be reused within the same operation which means that another procurement is possible
- The established rate of correction shall be applied with respect to all claims by the beneficiary concerning specific procurement affected by irregularity
- Both grant and procurement contracts should include provisions concerning suspension of payments/termination of contract in case of fraud. As for practice, all four interviewed participants said that grant contracts included penalties in case contractual obligations are not met / fulfilled

#### 5) Judicial vs. administrative procedure

- A judicial procedure should be always viewed separately from the administrative procedure
- In case corrections are not imposed on beneficiaries on the basis of fraud, they can still bear the consequences of established irregularities in accordance with the outcomes of the administrative procedure
- If amount to be recovered is pending to judicial decision, the decision shall be respected. In case the

amount paid has to be recovered regardless of the judicial decision (criminal investigation), it shall be recovered. This means that criminal investigation and recovery of amounts paid do not have to be linked

- If decision of a national court differs from the findings of OLAF, decision of the national court should still be respected

#### 6) The role of the European Anti-Fraud Office (OLAF)

- In case of unsatisfactory decision of the national court, it is recommended to report the case to OLAF because they could provide better protection to the MA
- Administrative procedures of OLAF have tight(er) deadlines while judicial proceedings at the national level may take longer time
- OLAF highlighted the importance of joint missions of OLAF and national judicial authorities. Its benefits reflect in easier detection of possible cross-border fraud, standardisation of practice and unified approach of MS towards organisations/persons involved in fraudulent behaviour



# Day 3

## Treatment

The objective of the third day round table was to improve the efficiency of work of the competent institutions with regard to investigations and prosecution as well as the cooperation, communication and exchanging of the information within the countries on the inter-institutional and operational levels.

### Participants of the third day round table came from:

- Bulgaria
- Romania
- Estonia
- Serbia
- Montenegro
- Bosnia and Herzegovina
- Spain
- Croatia
- OLAF

## Conclusions:

### 1) In what way are the financial interests of the EU protected within criminal legislation and compliance with the PIF Directive?

- The similarities and differences related to provisions of Criminal code which ensured the protection of the EU financial interests in Member States were discussed as well as the level of compliance of the Criminal Code with the PIF Convention i.e. the PIF Directive

- Some of the States have completely aligned their criminal legislation with the PIF Directive, while some countries have aligned their legislation with the PIF Convention but are still in a process of alignment with PIF Directive
- In Bosnia and Herzegovina, being a country with the status of a potential candidate, the protection of the EU financial interests is ensured by provisions of the Budget Act which also ensures protection of the national financial interests. The alignment with the PIF Directive still has not been conducted
- With regard to the specific reference in national legislation to fraud against the EU budget, some countries have ensured protection of the EU financial interests by prescribing a criminal offence and criminal-law sanctions which refer both to the EU and national financial interests, while other countries have prescribed separate criminal offenses for EU and national financial interests
- In conclusion, it is extremely important that different countries (both member states and candidate countries, but also potential candidate countries) reach consensus in aligning their criminal legislation with the PIF Directive to the greatest possible extent, in order to achieve consistency in description of the criminal offense of fraud, including a description of corrupt criminal offenses, and related criminal-law sanctions. Reaching that consistency is crucial for avoiding risks of unequal treatment of perpetrators in different states in cases of alleged suspicions of irregularities that are characterized by a criminal

offense of fraud or corruption. This is particularly important when it comes to cases of irregularities that have been committed or whose effect exceeds the limits of one or more States, or whose involvement involves multiple nationals

## 2) **Is there a law on protection of whistleblowers and do the whistleblowers have adequate legal protection?**

- This topic developed a discussion about the existence of the legal framework that protects persons who report (suspected) irregularities, so called whistleblowers, and the similarities and differences of the legal framework
- Throughout the discussion, the reached conclusion was that none of the countries participating in the round table, apart from the Republic of Serbia, had ensured protection of whistleblowers by means of a special law, but their protection has been ensured through various regulations such as Criminal code, Criminal Procedure Act, Civil Service Act, Labor Law, Trade Law, Anti-Corruption Law, Law on Civil Servants and Employees in Local and Regional Self-Government, Law on the Protection of the Confidentiality of Data, Act on the System of Internal Controls in Public Sector (PIFC), etc. Republic of Croatia is planing to adopt special act for protection of whistleblowers by the end of the year 2018. It is one of the activities in the Action plan for suppression of corruption for the period 2017-2018.
- With regard to the question of the effectiveness of the provisions of the relevant laws, apart from the colleague from Romania who pointed out

that in Romania there were positive examples of whistleblowers really being protected, representatives of other States did not have any knowledge of the effects of their laws in practice

- It has also been emphasized that a large number of whistleblowers want to see that the competent authorities seriously understand and treat their alerts, while ignoring them and ignoring further procedures leads to avoiding reporting irregularities
- In conclusion, the importance of protection of whistleblowers and encouraging them to report irregularities reflects itself in the fact that at the EU level there is a working group for the protection of whistleblowers established (including whistleblowers reporting irregularities with detrimental effect on the EU budget) which tend to formulate the most appropriate model i.e. a legal framework proposal that would provide the widest possible degree of protection, including ways to encourage potential applicants to report irregularities to a greater extent

## 3) **How many investigations did OLAF conduct in your country?**

- This question raised a discussion on a number of investigations that were conducted by OLAF on the territory of a particular country, the effects of these investigations and possible problems that might have encountered during the OLAF investigation
- The conclusion was that all countries, more or less, have a satisfactory legislative framework for conducting investigations of OLAF and that the most

of investigations are currently being carried out in Bulgaria and Romania, whereas by the accession of the Republic of Croatia to the EU, the number of investigations of OLAF intensified in comparison to the pre-accession period

- The representatives of some countries did not have any knowledge of OLAF's investigations and whether they are being conducted, so OLAF's representative informed them about OLAF's Report which consists of those information
- What is highlighted as extremely important is the fact that if some States do not report irregularities or cases of suspected fraud or corruption, it does not mean that there are not any of them
- Given the fact that OLAF's Final Report sent to the State Attorney's Office is not binding on Member States, it often happens that a large number of OLAF investigations unfortunately do not result in further prosecution, i.e. prosecution of potential perpetrators in front of the court and with convictions. In that respect, it has repeatedly undergone with changes in legal framework related to the investigations of OLAF, but there is still no satisfactory solution in the area of enhanced OLAF's powers and procedures. Therefore, drafting and adopting Council Regulation (EU) 2017/1939 on the enforcement of enhanced cooperation in relation to the establishment of the European Public Prosecutor's Office (EPPO) is of a great importance for ensuring a unified approach at EU level in dealing with irregularities that have elements of a criminal offense. There is also a need to

mention the necessity of harmonizing national criminal legislation with the PIF Directive, and the question is who will monitor the level of compliance of all countries that have agreed to intensified cooperation with the European Public Prosecutor's Office and in that direction give a rating or an assessment whether, and in which extent, have they aligned their national criminal legislations with regard to the prosecution and sanctioning of perpetrators, i.e. the prosecution of a criminal offense of fraud or a corrupt criminal offense

- In the forthcoming period, it is certainly essential to define more clearly what is actually considered as "protecting the financial interests of the EU" and what role, which functions and which tools will help European Public Prosecutor's Office (EPPO), OLAF and AFCOS to achieve this goal. Changes should not be only on cosmetic level, but essential changes should be introduced. In conclusion, it is necessary to make amendments to the Guidance note on main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS)
- 4) Is there an independent body outside of the operating structure that identifies irregularities and suspicion on fraud? What body is this and how does it function?**
- This topic developed a discussion on the existence or even the need for an body that would carry out administrative checks (within the operational structure and at the level of beneficiaries) and thus indicate whether the operational or managing structure, which is also competent and responsible for the appropriate managing and controlling the use of EU funds, can recognize irregularities, is able to

handle cases of irregularities, can indicate the correct type of irregularity and ultimately know and want to report it

- After the establishment of OLAF, the need for the national contact points in the Member States arised, mainly in the form of the so-called AFCOSs, and the function and role of AFCOS were described in the Guidance note on the main tasks and responsibilities of an Anti-Fraud Co-ordination Service (AFCOS) issued on several occasions (2002, 2011 and 2013)
- During the negotiation process, in the cases of Romania, Bulgaria and Croatia, the European Commission insisted on the establishment of AFCOS and, to a large extent, on the implementation of the recommendations from these Guidelines
- In this respect, in the case of the Republic of Croatia, in order to reduce the risk of failure to report irregularities by the authorities responsible for management and control, one of the requirements of the EC was to clearly define which body outside of the operational structure would establish irregularities within the administrative investigations
- By adopting Regulation 883/2013 the obligation of all Member States to set up AFCOS is prescribed, but at the same time it was failed to prescribe the minimum criteria AFCOS must meet in relation to its function and competence with a view to achieving uniformity at the level of all Member States, and also to improve Guidance notes in terms of improving recommendations whose implementation would contribute to greater protection of EU financial interests including

recommendations related to defining the existence of such an independent body

- This has led to the situation that of all the member states only Romanian and Bulgarian AFCOS actually fully consume the role of an independent body which, within the scope of its authority conducts investigations outside the operational structure itself, and therefore may affect the number of irregularities being reported as well as the quality of the reporting itself. Likewise, the Republic of Serbia as a candidate country has recognized the importance of the existence of such an independent body and has been assigned this function to their AFCOS office
- Finally, on this issue, it is certainly necessary to open a debate at the level of the European Commission's Advisory Committee for the Coordination of Fraud Prevention (COCOLAF), primarily in the Subcommittee called AFCOS Group, but also in the other two Subcommittees: Subcommittee entitled Reporting and Analysis of Fraudulent and Other Irregularities Group and subcommittee called Fraud Prevention Group



*Serbia*

## 5) How are AFCOSs organized/established?

- The model and competencies of AFCOSs at the level of the Member States were further discussed whereas the discussion on the existence of an independent body outside the operational structure that identifies irregularities and suspicions of fraud could have led to the conclusion that uneven requirements of the European Commission towards some Member States have led to significant differences in AFCOSs organization and competency, and this brings to question the overall role and function of AFCOSs with regard to protection of EU financial interests
- Namely, such an approach has led to the existence of AFCOSs which are established as whole systems, independent services with a range of powers and responsibilities, including administrative investigations (Romania and Bulgaria) while on the other hand, in the old Member States AFCOSs are established as so-called mailbox, or where Member States have set only one person as a contact point



Romania



Belgium

- It also comes to the conclusion that the role and functioning of AFCOSs both in relation to OLAF and EPPO is completely unclear and that the amendments to Regulation 883/2013 are highly necessary in that direction, and finally, revision of Regulation 883/2013, because leaving things as they are leads to inequality, double criteria and discrimination of individual states, which ultimately reflects on the successful implementation of other provisions of this Regulation
- Similarly, by addressing this issue, it will be much easier for the candidate countries and potential candidates to fulfil the requirements set out in the negotiating chapters/Accession Agreement when it comes to protecting the EU financial interests
- Finally, on this issue, it is certainly necessary to open a debate at the level of the European Commission's Advisory Committee for the Coordination of Fraud Prevention (COCOLAF), primarily in the Subcommittee called AFCOS Group, but also in the other two Subcommittees: Subcommittee entitled Reporting and Analysis of Fraudulent and Other Irregularities Group and subcommittee called Fraud Prevention Group, including meetings of Working Party on Combating Fraud (GAF)

# Day 4

## Reporting

Reporting of irregularities and suspected and established fraud is another tool for sound financial management. Namely, the communication on irregularities has a dual purpose:

- A preventive one, because statistical data on established irregularities allows identification of risk areas (identification of processes which are exposed to irregularity and fraud risk, systemic irregularities, beneficiaries and management and control system bodies) and formulation of adequate risk mitigation measures
- A corrective one, because it allows for administrative, financial and judicial follow-up

Therefore, it is of utmost importance to develop a reporting system which ensures timely, complete, well structured and consistent information. It is a system where everybody understand its role, which includes quality control and which is preferably backed up by appropriate IT system.

The objective of the final day round table was to see how the reporting process is done in the participating countries and what are the main problems with which they are faced when going through the irregularity process.

**Participants of the fourth day round table came from:**

- Montenegro
- Spain
- Netherlands
- Serbia
- Estonia
- Bulgaria
- Croatia
- Bosnia and Herzegovina

## Conclusions:

- 1) **Description per country in regards to; who establishes irregularities, who performs independent administrative checks, who is notified on irregularities, what kind of analysis is done, how suspicion on fraud is reported and what are most common problems**
  - **Croatian AFCOS Service** gathers irregularity reports from irregularity reporting system bodies; it performs quality check of those reports; if necessary, it sends them for correction to irregularity reporting system bodies, and, if reports are considered correct, it sends to the European Anti-Fraud Office (OLAF)
  - It also conducts statistical analysis of established irregularities and prepares quarterly reports on irregularities for the senior management of the Ministry of Finance. Twice a year it prepares



a report for the Parliament which is a part of the comprehensive report on the use of the EU pre-accession programmes and European Structural and Investment Funds, which is prepared by the Coordination body

- The abovementioned analysis allows for identification of problems with regard to irregularity management and initiation of activities aimed at solving those problems such as improvement of irregularity management procedures, organization of specific trainings for the AFCOS System bodies, organization of meetings with particular bodies, etc.
- In **Montenegro** it is the NAO Support Office which establishes irregularities together with the AFCOS Office. NAO SO reports to OLAF through submission of Irregularity Reports in hard copy but in the future it is planned that AFCOS take over that function through submission of the reports in Irregularity Management System. The analysis of the reported irregularities is done by NAO SO in communication with line IPA institutions on quarterly basis. Montenegro still has no experience with reporting suspicion of fraud and they mentioned that the most common problem that they have detected is the determining the exact data of the Primary Administrative or Judicial Finding (PACA).
- In **Netherlands** it is the Managing Authority that has the power to perform on the spot checks and is the one that establishes irregularities. Irregularities are reported within two months after they are established.

It was mentioned that the Audit Authority (AA) has the authority to conduct both ex ante and ex post controls. Analysis of the irregularities is performed by the AA and is shared with MoF. Currently, the most common problem the Netherlands face is the position of AFCOS Service as there are different authorities dealing with expenditure and revenue side of the EU budget

- In **Estonia** it is the Intermediate Body (level 2) that is in charge of detection and reporting of the irregularities to the Managing Authority (MA). They have their own data base for all ESI Funds and MA reports irregularities to OLAF and uploads information into the national system. Suspicion on fraud is reported to OLAF as soon as possible after the approval of the police. Statistical analysis is published on the web pages of the Ministry of Finance and is performed by the customs, police, MA, AA and AFCOS Service. It was mentioned that there are no current problems but there were most of the problems mentioned in the round table in the past. Most of the problems were solved by means of intensive education of all parties involved
- **Spain** has mentioned that Intermediate Body (IB) and Audit Authority established irregularities upon their detection. It is the IB that notifies MA and MA notifies AA who in the end notifies OLAF of irregularities and suspicion on fraud. Suspicion on fraud is reported on quarterly basis after it has been sent to the prosecutor's office. The most common problem reported is determining what fraud is and establishing the exact date of the Primary Administrative or

## Judicial Finding (PACA)

In addition, a problem of interpretation has arisen recently in Spain, due to the fact that the legal definition of “suspected fraud” refers to the “*initiation of judicial proceedings*”, coming to the issue whether the classification of the irregularity as suspected fraud should be done when the prosecutor, once analysed the seriousness of the irregularity, send the case to the “judge” (“*juetz de instrucción*”).

This is due to the special structure of criminal proceedings in Spain, where the investigation is carried out by a specific type of judge (“*Juez de instrucción*”, which is different from the judge/court entitled to solve the case)) and the public prosecutor is entitled only to carry out certain preliminary acts, and always in the end it must send the case to the “*juetz de instrucción*” to carry out the investigation.

- **Serbian** representatives have mentioned that National Authorizing Officer (NAO) makes the decision on irregularities and reports them to OLAF (NAO for indirect management, Ministry of external relations for shared management). All the irregularities must be reported immediately regardless of threshold. AFCOS Service is informed about the irregularities. AFCOS Service is also independent of management and control system and has the authority to perform checks. The process of analysis of the irregularity is to be set up in the near future. The most common problem reported is what fraud is, what irregularity is and how to detect and establish them

- In **Bulgaria** Managing Authority (MA) and Intermediate Bodies (IBs) establish irregularities as they have responsibility for the shared management. Audit findings are discussed and MA decides on the outcome. AFCOS has the power to perform administrative investigations and management and control system bodies perform controls and make decisions on recommendations. The MA reports to the AFCOS Service on quarterly basis and AFCOS Service is the one who reports to OLAF
- The analysis of the irregularities is performed annually by the AFCOS Service for the AFCOS Council. Suspicion on fraud reports are sent to OLAF after the information was sent to the prosecutor’s office, but now the reporting is done after the prosecutors open a case. The most common problem reported is determining when to send reports on suspicion of fraud and the problems with the IT transfer of data from the national IT system to the Irregularity Management System (IMS)
- In **Bosnia and Hercegovina** the AFCOS System has not yet been established. The 1st level control office for cross-border cooperation is responsible for irregularities. Ministry of Finance and Treasury and the Agency for Investigation and Protection report to OLAF. There is a procedure for reporting statistics to Directorate for EU Integrations
- In **Malta** establishing of irregularity is done by MA, IB, AA and AFCOS Service. AFCOS also has the power to perform financial investigations in terms of the legal base and AA can perform independent administrative checks and on the spot checks

- Information on irregularities are gathered by MA and then forwarded to all the involved bodies including AA and AFCOS Service who inputs reportable irregularities in IMS and send them to OLAF. Suspicion on fraud is forwarded to AFCOS and after the necessary investigations are carried out they are sent through IMS to OLAF

"Instinct is a marvellous thing" *mused Poirot.*

"It can neither be explained nor ignored"

*Agatha Christie*



Message:

**Fraud cannot be eliminated because it is a matter of the human nature**

However:

**Tend to be cleverer than fraudsters!**

*(Do not be fooled by the ones who are not so clever!)*

Follow your instinct  
and good luck!



## CONTACT INFORMATION

# BENEFICIARY INSTITUTION OF THE PROJECT

### **SERVICE FOR COMBATING IRREGULARITIES AND FRAUD**

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### **EUROPEAN COMMISSION**

#### **EUROPEAN ANTI-FRAUD OFFICE (OLAF)**

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[https://ec.europa.eu/anti-fraud/policy/hercule\\_en](https://ec.europa.eu/anti-fraud/policy/hercule_en)