

EMPOWERING ANTI-CORRUPTION AGENCIES: DEFYING INSTITUTIONAL FAILURE AND STRENGTHENING PREVENTIVE AND REPRESSIVE CAPACITIES

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THE ROLE OF CROATIAN AFCOS IN ENHANCING THE SYSTEM ON MANAGING IRREGULARITIES AND FRAUD WITHIN THE EU PRE-ACCESSION PROGRAMS MANAGEMENT AND IMPLEMENTATION

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INTRODUCTION

Since 2000., the Commission has encouraged every Candidate Country to establish or designate an operationally independent Anti-Fraud Co-ordination Service (AFCOS). These services should be responsible for the co-ordination of all legislative, administrative and operational aspects of the protection of the Communities financial interest and should be capable for 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 communautaire*, as well as in their Negotiation Positions.

By pursuing this objective, the Commission expects to fulfil one of the aims of its Action Plan for the protection of the Communities financial interests and the fight against fraud, namely to involve the Applicant Countries more closely in fraud prevention and fraud repression.

According above mentioned, Regulation on Amendments of Internal Organisation of the Ministry of Finance establishes the rights and obligations of the organisational unit acting as the Anti-Fraud Coordinating Service of Croatia (AFCOS). According to the Regulation on Amendments of Internal Organization of the Ministry of Finance, Department for combating irregularities and fraud (AFCOS) is located in the Budget Supervision Sector of State Budget Execution Directorate within State Treasury of the Ministry of Finance.

LEGAL BASIS AND REQUIREMENTS

A comprehensive anti-fraud policy needs to be supported by the legal instruments for the prevention, detection, control and punishment of fraud and irregularities. It is also important to develop the culture of prevention. Anti-fraud policy is a system of measures and procedures established through legal provisions and practices and it covers prevention, detection and treatment of suspected fraud and other irregularities. Also, it aims to raise the irregularity awareness and to give guidance to the reporting and how the investigation of the reported case will proceed.

These actions are necessary to achieve through anti-fraud policy:

- Protection of the financial interests of the European Union,
- Recovery and refund of any amount wrongly paid as a result of the irregularity,
- Prevention of similar irregularities occurring in the future,
- Revision of systems and procedures to ensure such irregularities will not reoccur in the future,
- Collaboration with the EC and (when relevant) with other countries in order to identify and suppress cross border fraud.

Fraud is one risk (among the others) which may affect the achievement of objectives in the most effective manner. In common with other risks, it is management's responsibility to ensure that sufficient controls exist to deter (or detect) any fraudulent activity.

Croatian Law on the amendments of the Criminal Code regulates new criminal offences on harming EU financial interest with the aim to align with definitions within "The Convention on the protection of the Communities' Financial Interests" (OJ C 316, 27.11.1995, p.49.). Article 224. b describes the offence of Special case of fraud prejudicing the European Union financial interests, and Article 292. a describes the offence of Abuse of powers relating to EU funds.

EC Council Regulation (CR) 718/2007 implementing CR No 1085/2006 establishing an instrument for pre-accession assistance (IPA) requires the National Authorising Officer (NAO) to report to the EC on irregularities, based on Article 19 on Anti-fraud measures. It is requirement of the EC that beneficiary countries report and control all irregularities.

In a pre-accession period, in which the Instrument for Pre-Accession (IPA) is implemented, the rules of Council Regulation implementing the IPA need to be followed, whether EU rules differ with national

rules governing national funds or not. IPA regulation requires reporting on irregularities to the NAO while Government of Croatia Regulations OG, NN 127/2007 and 14/2008 on Amendments of Internal Organisation of the Ministry of Finance **provides the operational competences and responsibilities for irregularity reporting in context of EU funds to the Department for Combating Irregularities and Fraud (AFCOS)**. Hence, AFCOS as an organisational unit for combating of irregularities and fraud and as coordinating and operative service will receive irregularity reports, check them and prepare them on behalf of the NAO, as NAO's technical assistance.

AFCOS reports on behalf of the NAO on irregularities to the European Anti-Fraud Office (OLAF) in Brussels and to the respective DGs for the Component concerned under IPA and also under CARDS, Phare, ISPA and SAPARD Programmes.

Concerning the legal framework for managing irregularities and fraud the **“Act on the Implementation System of the European Union Funded Programmes and the Implementation System of Projects Financed through Loans and Grants from other Foreign Sources”** regulates the implementation system of the European Union funded programmes in the Republic of Croatia and the implementation system of projects financed through loans and grants to the Republic of Croatia from other foreign sources.

According to this Act two regulations which include provisions on irregularity reporting and a scope of work of Department for Combating Irregularities and Fraud (AFCOS) are adopted:

1. Regulation on the scope and content of responsibilities and the authorizations of the bodies responsible for management of the Instrument for Pre-accession Assistance (IPA)
2. Regulation on amendments on Regulation on managing CARDS, Phare, ISPA and SAPARD programmes.

According to the provisions of those two regulations, **the activities of protecting EU financial interests, of uncovering irregularities and informing the National Authorising Officer thereof shall be carried out by the Department for Combating Irregularities and Fraud (AFCOS) under the Ministry of Finance.**

The Department for Combating Irregularities and Fraud (AFCOS) is in charge of the following:

- a) coordination of legislative, administrative and operational activities with a view to protecting the EU's financial interests and, with regard to this, close cooperation with the European Anti-Fraud Office (hereinafter: OLAF);
- b) exchange of information on irregularities with OLAF;
- c) participation in on-site inspections and inquiries carried out by OLAF's experts on the territory of the Republic of Croatia;
- d) in cooperation with OLAF, development of professional training programmes for employees of bodies taking part in the protection of the EU's financial interests, and provision of organizational support in their realization;
- e) introducing budgetary controls for the purpose of collecting evidence, ascertaining facts and instituting sanctions proceedings against bodies involved in the management of the European Community's pre-accession funds;
- f) reporting on the undertaken activities to the State Attorney's Office of the Republic of Croatia, the Civil Service Court and other competent institutions;
- g) instituting appropriate proceedings on the basis of well-founded reports of irregularities collected via an e-mail address opened specially for the purpose of reporting irregularities;

- h) exchange of information with other public authority bodies if suspecting irregularities in the use of the European Community's pre-accession funds and appropriate reporting of crimes to the competent bodies of the Republic of Croatia;
- i) keeping track of the investigation with regard to the illegal use of the European Community's pre-accession funds;
- j) reporting to the National Authorising Officer on the measures undertaken and the results of instituted proceedings for the purpose of imposing sanctions for uncovered irregularities;
- k) receiving, supervising and consolidating reports on irregularities in the management and use of the European Community's pre-accession funds and forwarding them to the National Authorising Officer;
- l) keeping a central register of uncovered irregularities.

Also, all the bodies participating in the management and implementation of the pre – accession programmes shall cooperate with the AFCOS.

The Minister of Finance, upon the proposal of the National Authorising Officer, shall issue a **Guidelines on prevention, detection, reporting and treatment of irregularities, which will provide a detailed procedures with regard to irregularities management.**

All the bodies participating in the management and implementation of the pre- accession programmes shall act in accordance with the Guidelines and within every body participating in the management and implementation of the pre – accession programmes shall be appointed a person in charge of irregularities. The person in charge of irregularities shall act in accordance with the above mentioned Guidelines.

PREVENTION OF IRREGULARITIES

The surest way to reduce irregularities is to make them unacceptable to the various participants or actors involved in projects. Irregularities can occur at any stage in the life cycle of a project or programme as well as in the day-to-day operation of any institution / organisation. Systems set up for ensuring the detection and prevention of irregularities must therefore cover the whole project life cycle.

AFCOS and the Irregularities Officers Network have a key role to generate awareness of methods of preventing corruption in the workplace.

The main preconditions needed to achieve the prevention of irregularities shall be as follows:

- Strong commitment from the top management,
- Transparent, comprehensive and easy to use written procedures,
- Code of ethics,
- Declaration of confidentiality and Impartiality signed by all employees,
- Respected principle of separation of powers assuring that there is no conflict of interest,
- Adequate personnel with comprehensive job descriptions,

- Effective internal control system: independent audit function, fully resources and certified internal auditors,
- A transparent monitoring and evaluation system,
- On-the-spot checks carried out regularly and based on a risk assessment,
- A comprehensive system for filing and archiving all relevant documents,
- Proper procedures for reporting of irregularities.

Irregularities may occur that only affect national funds (i.e. contribution from State Budget). Where an irregularity of this nature is suspected or discovered then the advice and procedures in this section will still be followed. If any irregularity has a financial implication, then, according to the NAO's responsibilities for recovery, steps will be taken to recover any losses.

If the losses were due to fraud, negligence or criminal activity, the action specified in the national regulation will be taken by competent bodies.

Eradication of irregularities is just as important as uncovering them. Whenever any irregularities are uncovered, a system of eradication will be instituted. The identification and reporting of any suspected fraud or other irregularities are as important as immediate implementation of corrective action (including sanctions and the launching of civil or criminal proceedings) further to the investigation of the cases of fraud and/or irregularities.

RESPONSIBILITIES

The following institutions (and their respective staff) should monitor and report irregularities, make recommendations and take, where appropriate, corrective measures:

- Competent Accrediting Officer (CAO),
- **National Authorising Officer (NAO)**,
- National IPA Co-ordinator (NIPAC),
- The Strategic Coordinator for the Regional Development Component and the Human Resources Development Component,
- National Fund (NF),
- Programme Authorising Officer (PAO)*,
- Responsible person for IPA component/programme/measure / Head of the Body Responsible for the Programme (HOS),
- Central Finance and Contracting Agency(CFCA),
- Operating Structure Bodies (OSBs), i.e. managing IPA Programmes, Priority/Measures and/or Projects
- Project Implementing Units (PIU)*,
- Internal Auditors,
- **Irregularity Officers**,
- **AFCOS**,
- **OLAF**.

National Authorising Officer (NAO) shall ensure investigation and satisfactory treatment of suspected and actual cases of fraud and irregularities discovered and shall establish reporting to the European Commission and OLAF according to the EC Regulation 1681/94 and 2035/2005.

The NAO must be immediately informed in case any discovered irregularity or fraud is suspected. In such cases, AFCOS will inform and provide any necessary information to the NAO.

When receiving a notification on suspicion relating to commission of an irregularity, the AFCOS in cooperation with the NAO initiates the investigation into the irregularity by initiating administrative proceedings or State Attorney's Office investigation. Also, the NAO is obliged to initiate the recovery of any sums wrongly paid and transfer such sums to the EC and is responsible that all necessary actions are taken within OSBs to remedy the irregularity and to prevent its recurrence through formal communication with HOS that is subsequently responsible to ensure actions are remediated within individual bodies of the OS.

Irregularity Officer(s) is/are appointed at the Body Responsible for the Programme and at each OSB (the Bodies Responsible for Measure/Priority (P/M Line Ministry) and Implementing Body/Agency) **to be the main contact point in relation to irregularities.**

The job descriptions of the positions associated with Irregularity Officer functions integrate the duties and activities in relation to the responsibilities assigned to the Irregularity Officers.

IO as a person responsible for monitoring and reporting should not be involved in design or implementation of a certain process to avoid personal conflict of interests. If due to limited resources such role is assigned to the IO, it is recommended to assign the irregularity officer role for those processes to another person or reassign the design and implementation role to another position. Irregularity officers should not be employees (staff) of Financial or Accounting Units/ Departments or of Internal Audit Departments. Procedures for reporting, recording and following up cases of irregularities are handled by the Irregularity Officers who may also propose certain corrective actions.

The Irregularity Officer responsibilities are:

- To receive information on irregularities and suspicion of fraud, and to report them,
- To prepare Irregularity Reports and submit them for the IO of BRP for HOS and/or AFCOS,
- To open irregularity files, to maintain and update an archive of Irregularity Reports, Irregularity Register and supporting evidence and documentation and to obtain the follow-up status on how irregularities were resolved,
- To treat received documents and information with due care and following the relevant provisions and internal procedures as described in detail in the Administrative Issues Chapter,
- To ensure cooperation with the Irregularity Officers Network, AFCOS and national or EC investigators by providing available documents and information concerning the irregularity case in question, and to obtain the follow-up status on how irregularities were resolved,
- To prepare, maintain and update an Irregularity Chapter in the Manual of Procedures in accordance with the AFCOS Guidelines,

- To carry out communication and prevention of irregularities role within each OSB, following AFCOS guidance and to attend the regular meetings of AFCOS and irregularity officers,
- To provide support to AFCOS and NAO in conducting periodic assessment of the fraud risks, with the aim to identify potential indicators that may signal occurrence of irregularities. Communication of any sensitive issues should be proceeded through AFCOS on behalf of NAO,
- To act as a contact point for discussion of Irregularities in each OSB, participate and provide support in organisation of training programmes on irregularities issues,
- To promote integrity and the culture of reporting irregularities,
- To liaise with Procurement, Finance, Accounting and other staff to gain assurance that they have completed the irregularities declaration from their implementation of the OSB's Manual of Procedures.

PROCEDURES AFTER DETECTION OF IRREGULARITIES

An irregularity can be reported to the Irregularity Officer by any means of communication (personally, by telephone, by e-mail, fax ...) verbally or in written form, formally or informally and also anonymously. Another way for someone to point out an irregularity would be to provide as much detail as possible on email address: nepravilnosti.eu@mfin.hr

The Republic of Croatia administration bodies and the Commission shall take all necessary precautions to ensure that the information, which they exchange, remains confidential. The information referred to the process of reporting information on irregularities must not, in particular, be sent to persons other than those in the Croatian institutions or within the Community institutions whose duties require that they have access to it, unless providing of information has been explicitly agreed. This information should be covered by professional confidentiality and be protected in the same way as similar information is protected by the national legislation and by the corresponding provisions applicable to the Community institutions.

REPORTING IRREGULARITIES

Every public servant or employee should report on any irregularities detected and suspicion of fraud. There are two methods of reporting, formally (quarterly reports) and informally (whistleblowing or informing). The Irregularity can be reported by any means of communication (personally, by telephone, by e-mail, fax ...), or anonymously to an Irregularity Officer (the IO will record this communication in the Irregularity Notification Form. The Irregularity Control Grid should be used to maintain control over the status of reports at different levels. This is designed for AFCOS to ensure *completeness* of all reports received since there should be one report submitted for each Programme, Measure and/or Project. AFCOS has the lead in controlling the overall Head of Operating Structure IO's Irregularity Reports and their Quality Control. IO reports should be collated and quality controlled by IOs at the HOS level before being submitted to AFCOS.

"WHISTLE BLOWING" PRINCIPLE

There are 2 methods of reporting irregularities:

1. Reporting channels by using an Irregularity Report
2. Whistle blowing

The formal method is the submission of the Irregularity Report.

Users should not be afraid to report irregularities and should be encouraged to do so in order to maximize the performance and Value for Money from government.

State administration, as every organisation faces the risk of something going seriously wrong or of unknowingly harbouring a corrupt individual. Procedures for raising concerns about fraud, corruption or other serious wrongdoing are relevant to all responsible organisations and to the people who work there. Where such a risk arises, usually the first people to realise or suspect the problem will be those who work in or with the organisation. Staff members who fulfil this obligation enjoy protection from adverse consequences of “blowing the whistle”.

Staff members are, obliged to report facts pointing to a possible illegal activity, including fraud or corruption, or to a serious failure to comply with the professional obligations of officials. The duty only concerns facts discovered by the official in the course of or in connection with her/his duties. An official who becomes aware of any serious wrongdoing has to transmit it in writing and without delay to any person within the structure e.g. NAO, PAO, RP in OSB / Head of the Body Responsible for the Programme, Irregularity Officer, or directly to AFCOS.

The suspicion on irregularity can also be reported anonymously. The obligation to report serious irregularities applies to all officials and other agents of the institutions. The scope of the duty to report does not only cover irregular financial transactions but also extends to other forms of serious wrongdoings. The relation between the reporting duties under the whistle blowing rules and under the Financial Regulation is set out in Article 60(6) of the Financial Regulation: *“In the event of any illegal activity, fraud or corruption which may harm the interests of the Community, he/she shall inform the authorities and bodies designated by the applicable legislation.”*

The authorities informed are required to take appropriate action. As these are wrongdoings for which OLAF is competent, AFCOS on behalf of NAO will transmit it, without delay, to OLAF and to the European Commission. Therefore, while the official has a choice of reporting channels, the information should ultimately reach OLAF in a short period of time.

Another way for someone to anonymously point out an irregularity would be to provide as much detail as possible on email address: nepravilnosti.eu@mfin.hr, which will be managed by AFCOS, or to OLAF on: General enquires: olaf-courrier@ec.europa.eu or Fax: +32-2-2960853

It should be noted that staff members will not be expected to prove that the wrongdoing is occurring, nor will they lose protection simply because their concern turned out not to be correct, provided that they could not have been expected to realise that. However, even if there is substance to the information itself, the protection can be lost if the official makes unwarranted or damaging allegations that s/he cannot show to be honest or reasonable. The effect of this is that wherever an official is contemplating an external disclosure, s/he will be well-advised to let the facts speak for themselves.

The “whistleblowers” are protected by legal provisions within Croatian Law on amendments on Law on Civil Servants OG (NN) 27/2008.