



European
Commission

Chapter 32 – Financial Control

Protection of the EU's financial interests

*These slides accompany the explanation of the
acquis to Albania and North Macedonia and can
only be used for that purpose. Their content is
subject to further development of the acquis
and interpretation by the Court of Justice of the
European Union*

European
Anti-Fraud
Office

Overview of the requirements relating to the protection of EU's financial interests

1. **Legal alignment:** Alignment of national legislation with the "PIF Directive"
2. **Institutional and policy set-up:**
 - Establishment of an Anti-Fraud Coordination Service (AFCOS)
 - Creation of a corresponding AFCOS network of national authorities involved in the detection, investigation, prosecution and prevention of fraud;
 - Adoption of a national anti-fraud strategy;
3. **Cooperation with the European Commission/OLAF** - i.e. developing a track record on:
 - investigations;
 - reporting of irregularities.

Article 325 of the Treaty on the Functioning of the EU (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.



1. Alignment with the Directive on the fight against fraud to the Union's financial interests by means of criminal law ("PIF Directive")



History: PIF Convention (1)

- "PIF" = *protection des intérêts financiers*
- 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].
- Fraud affecting both expenditure and revenue must be **punishable by effective, proportionate and dissuasive** criminal penalties in every Member State.



History: PIF Convention (2)

- The Convention entered into force on **17 October 2002**, along with its First Protocol (on corruption) and the Protocol on its interpretation by the Court of Justice (ECJ Protocol).
- The Second Protocol aimed in particular at the **liability of legal persons, confiscation, money laundering and cooperation** for the purpose of protecting the EU's financial interests and **protecting personal data** related thereto.
- Since 2005, candidate countries acceded to this Convention and its Protocols by virtue of the Act of Accession.



History: PIF Directive (1)

- Legal basis in Lissabon Treaty; Art. 83(2) TFEU, not Art. 325!
- 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.



History: PIF Directive (2)

- Directive (EU) **2017/1371** of 5 July 2017 [OJ 2017 L 198, 29].
- The new directive **replaces** the PIF Convention and its three protocols (exc. for UK and DK).
- The directive does not radically change the previous system (under the Convention) but introduces a few **new aspects**.
- MS have until **July 2019** to transpose the Directive into national law.
- As **candidate countries** have previously aligned their national legislation with the PIF Convention, they now need to align it to the PIF Directive. Candidate countries are invited to provide an update to the Commission upon adoption of the required legal changes (table of concordance).

PIF Directive: Differences to PIF Convention (1)

- **VAT:** The directive clarifies that VAT fraud is covered, as regards cross-border cases involving a damage of at least EUR 10 Million.
 - PIF Convention: the Council had interpreted the Convention as excluding VAT (not in line with ECJ judgment in *C-105/14 Taricco*).
- **Fraud:** Distinction (i) non-procurement-related expenditure; (ii) procurement-related expenditure; (iii) general revenue; (iv) VAT revenue.
 - PIF Convention: only distinction expenditure/revenue.

PIF Directive: Differences to PIF Convention (2)

- **Money laundering:** reference to Directive (EU) 2015/849 ('AMLD4').
 - PIF Convention: reference to Directive 91/308/EEC, related to the proceeds of fraud, at least in serious cases.
- Broader definition of **corruption**: Definition of officials; the definition now also covers private actors who exercise functions equivalent to those performed by EU officials and MEPs/national MPs.
 - PIF Convention: the definition of EU officials was left to national law.
- New offence : **misappropriation**

PIF Directive: Differences to PIF Convention (3)

- Further harmonisation on **sanctions**: The directive provides for a harmonisation of the maximum penalty which, at a minimum, should be 4 years of imprisonment.
 - The PIF Convention only provided for a sentence of imprisonment.
- Introduction of **prescription periods** of at least 5/3 years from the commission for the investigation, prosecution and judgment; and 5 years from the date of final conviction for the execution of the sentence.
 - PIF Convention: prescription periods were not harmonised at all, which led to divergences between Member States.

Fraud: Expenditure fraud (Art. 3(2)(a) and (b))

- 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 Union budget or budgets managed by the Union, or on its behalf;
- **Non-disclosure** of information in violation of a specific obligation, with the same effect;
- **Misapplication** of such funds or assets for purposes other than those for which they were originally granted.
- **Procurement-related**: additional elements (unlawful gain & loss to the Union; damage).

Fraud: Revenue fraud (Art. 3(2)(c) and (d))

- Use or presentation of **false, incorrect or incomplete statements** or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf;
- **Non-disclosure** of information in violation of a specific obligation, with the same effect;
- **Misapplication** of a legally obtained benefit, with the same effect.
- Revenue arising from **VAT** own resources: additional elements (cross-border fraudulent schemes; *correct* VAT-related statements).



Other Offences: Money laundering (Art. 4(1))

- Each Member State shall take the necessary measures to ensure that money laundering as described in Art. 1(3) of **AMLD4** involving property derived from the criminal offences covered by the PIF Directive constitutes a criminal offence.



Other Offences: Corruption (Art. 4(2) and (4))

- Each Member State shall take the necessary measures to ensure that passive and active corruption, when committed intentionally, constitutes a criminal offence.
- Definition of **passive** and **active** corruption.
- Definition of '**public officials**' includes Union officials, persons holding an executive, administrative or judicial office at national, regional or local level; legislative offices assimilated; any other person assigned and exercising a public service function.



Other Offences: Misappropriation (Art. 4(3))

- Each Member State shall take the necessary measures to ensure that misappropriation, when committed intentionally, constitutes a criminal offence.
- Official **entrusted** with management of funds or assets;
- Commit or disburse funds/appropriate or use assets **contrary to the purpose**;
- **Damage** to the Union's financial interests.



2. Institutional and policy set-up



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 requirement for establishing an AFCOS is also part of the **IPA II Framework Agreement Article 50(2)**, which includes a list of specific tasks to be fulfilled by the AFCOS.



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 **focal 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**.



AT
Ministry of Finance
Department for Anti-
fraud, Tax and
Customs

BE
Ministry of Economy
Interdepartment
Commission for
Coordination of the Fight
against Fraud (CICF /
ICCF)

BG
Ministry of Interior
AFCOS Directorate

CY
Treasury of the Republic
of Cyprus
Directorate for European
Funds and Financial
Control

CZ
Ministry of Finance
Control Department

DE
Ministry of Finance
Division for the
protection of EU
financial interests

DK
Ministry of Finance
4th Division - EU
Budget and Education

EE
Ministry of Finance
Financial Control
Department

ES
Ministry of Finance
General State
Inspection

FI
Ministry of Finance
Government Financial
Controller

FR
Ministry of Finance
Délégation Nationale à
la Lutte contre la
Fraude (DNLF)

GR
Ministry of Justice
General Secretary
against Corruption

HR
Ministry of Finance
Independent Service for
Combating Irregularities
and Fraud

HU
Ministry of Economy
National Tax and
Customs Admin.



IE
Ministry of Finance
EU & International
Division - EU Budget
Section

IT
Presidency of Council of
Ministers
Guardia di Finanza,
Division Specialised in
Countering EU frauds at
the Department of
European Policies

LT
Ministry of Interior
Financial Crime and
Investigation
Service

LU
Ministry of Finance
Development Aid and
Compliance - Directorate
of International Financial
Relations

LV
Ministry of Finance
EU Funds Audit
Department

MT
Office of the Prime
Minister
Internal Audit and
Investigations Directorate

NL
Ministry of Finance
Customs Information
Centre

PL
Ministry of Finance
Treasury Control

PT
General Finance
Inspectorate

RO
Department for Fight
Against Fraud (DLAF)

SE
Swedish Economic
Crime Authority

SI
Ministry of Finance
Budget Supervision
Office

SK
Government Office
Section of Control and
Fight Against
Corruption

UK
City of London Police
National Police
Coordinators Office for
Economic Crime -
Economic Crime
Directorate

Administrative tasks

- Take the lead in creating and implementing a national **anti-fraud strategy** aimed at protection of the EU's financial interests
- Identification of possible **weaknesses in national systems for the management of EU funds**, including pre-accession funds
- Promote **administrative and/or legislative adaptations** leading to a more efficient protection of EU financial interest
- Ensure **sufficient human resources capacity**, including training activities
- **Awareness raising**, including dissemination of information and communication

Operational tasks

- **Support co-operation** between the national administration/prosecution authorities and OLAF
- **Share 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 regarding **on-the-spot checks**
- Facilitate the **follow-up to OLAF's recommendations** after the closure of a case as appropriate

AFCOS network

- Network of all national authorities involved in the protection of the EU's financial interests
- Provides **input and expertise for policy documents** (e.g. development of national anti-fraud strategy, legislation,...) as well as **investigative contacts**
- **Spanning the whole anti-fraud cycle** (detection, investigation, sanctions/recovery, prevention)
- Who should be involved?
 - Depending on the national set-up and distribution of tasks, e.g. Ministries of Finance, Interior and Justice, police, judicial authorities, other law enforcement bodies, authorities managing EU funds, audit and control bodies, customs and taxation authorities, anti-corruption authorities, etc.



National anti-fraud strategy (NAFS)

- A NAFS should identify the vulnerabilities to fraud within the management and control systems and ensure a harmonised response to these risks.
- Alongside the NAFS, a detailed action plan is necessary to translate the objectives of the strategy into concrete actions (e.g. adapting legislation and procedures, providing necessary resources, taking measures to enhance cooperation at national and/or EU level).
- The NAFS and action plan should be living documents undergoing regular evaluations and monitoring. The strategy may have a validity period of several years (at least 3-5 years) meanwhile the action plan can be set for 1-2 years.
- Guidance documents on NAFS provided by OLAF:
 - ▶ Practical Steps towards the drafting of a NAFS (2015)
 - ▶ General Guidelines on National Anti-Fraud Strategies (2016)



3. A track record of cooperation



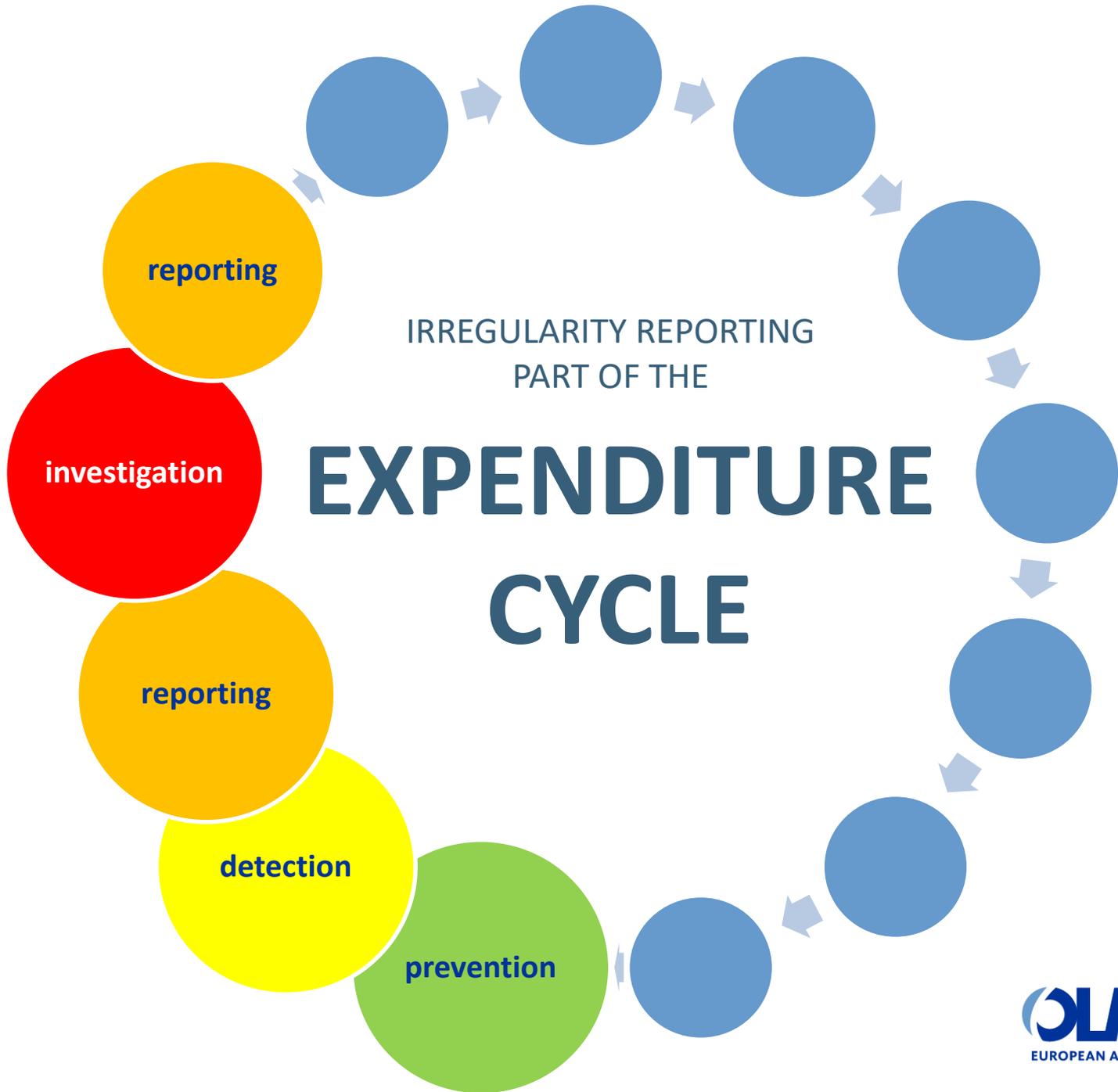
Investigations

- Examples of cooperation in the framework of OLAF investigations:
 - Exchange of information
 - Assistance in OLAF on-the-spot checks
 - Logistical support/ organisation of meetings
 - Expertise on national legislation
- Developing a track record of cooperation with OLAF is a **closing benchmark** in Chapter 32.



Reporting of irregularities

- Protecting the EU's financial interests also includes the corresponding **responsibility to report** on detected irregularities, including fraud, and their follow-up at national level.
- Reporting should be done electronically using the **Irregularity Management System (IMS)** provided by the European Commission.
- The underlying purpose of the system is to help to provide **assurance** that the beneficiary's management and control system for EU funds is functioning properly. In addition, the Commission uses the IMS data for proactive risk analysis.
- Developing a track record on irregularity reporting is a **closing benchmark** in Chapter 32.





Thank you for your attention!

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