

1) Legal basis for Polish AFCOS

The Polish national Anti-Fraud Coordination Service (AFCOS) has been founded on the basis of the EC decision of 16th May 2002 adopting new Multi Country Program Phare MCP PH/2002/1412 which aimed at supporting the candidate countries to meet the membership obligations as prospective Member States and establishing the AFCOS services.

Basing on the Regulation of the President of the Council of Ministers of Republic of Poland of 30th August 2002 a new Bureau for International Treasury Relations within the Ministry of Finance was established and nominated as Polish AFCOS – a first partner for the European Anti-Fraud Office (OLAF).

Currently the tasks of the AFCOS are executed by the Department for the Protection of EU Financial Interests, being as well an organizational entity of the **Ministry of Finance**. The legal acts describing the tasks and role of the Department are:

1. Regulation No 68 of the President of the Council of Ministers of 24th June 2008 *on conferring the Statute upon the Ministry of Finance*
2. Regulation No 10 of the Minister of Finance of 10th July 2008 *on conferring the Organizational Regulations upon the Ministry of Finance*
3. Regulation No 61/BDG/2008 of the General Director of the Ministry of Finance of 13th November 2008 on approving the internal organizational regulations of the Department for the Protection of EU Financial Interests.

Legal acts adopted in order to ensure the effective fulfilling of the duties concerning the protection of the financial interests of the European Union:

1. Council of Ministers' Ordinance of 1st July 2003 on Government Plenipotentiary for Combating Fraud against Poland or the EU (O. J. 2003, no. 119, item 1113)
2. Regulation No 53 of the President of the Council of Ministers of 12th April 2006 r. on establishing the Multidisciplinary Team for Combating Fraud against Poland or the EU (not published in the O.J.)

2) Administrative / operational independence and budgetary provisions

As an organizational entity of the Ministry of Finance the Department for Protection of the EU Financial Interests has no financial independence. However, as a part of the Ministry it has operational independence in the area of EU funds – it is independent from the system of implementation of those funds in Poland. As an organizational entity of the Ministry of Finance the Department for Protection of the EU Financial Interests comes under the same regulations and budgetary limitations as other departments and bureaus of the Ministry.

3) Investigative role and functions

Polish AFCOS has no authorization to launch and conduct typical investigations comparable to the investigations of the law enforcement agencies. The Department is a part of the Treasury Control which i.a deals with the control of purposefulness and management of the public resources and EU funds.

However, the internal Organizational Statute of the Department states i.a. that it has competences in *“conducting explanatory (administrative) proceedings concerning cases involving infringement of the financial interests of the EU”*. The primary aim of the proceedings: to identify the actual stage of a case in question, in order to check/confirm the suspicion of an irregularity or financial fraud, affecting the financial interests of the European Union or Republic of Poland. The administrative proceedings shall focus on fast, comprehensive and objective gathering of informational basis (which can be used as evidence later-on), that can serve for reliable examination of the case

If AFCOS as a part of Treasury Control has no legal power to deal with the particular issue, the case is immediately forwarded to the respectful service or legislative body.

4) Role as regards the reporting of Irregularities

The Department for the Protection of EU Financial Interests (AFCOS) is responsible for timely reporting to the European Commission the information concerning irregularities related to the improper use of the structural funds, CF, EFF, EFRD and EAFRD.

The Department is obliged to assist the Government Plenipotentiary in the area of i.a. securing the current, proper exchange of information between the specific bodies of government administration in the field of prevention, detection, combating and reporting the cases of infringement of EU financial interests. One of its tasks is also the preparation of effective national systems for informing on irregularities concerning EU funds.

5) AFCOS role in Fraud prevention, detection and follow up - Relations with OLAF as regards communication, coordination and cooperation on OLAF investigations.

AFCOS performs legal activities on behalf of the Government Plenipotentiary for Combating Frauds against Republic of Poland or European Union. Fulfilling its obligations in this area, the Department has competences in conducting explanatory (administrative) proceedings, as well as executing national and international applications concerning administrative assistance in combating financial irregularities. It is responsible for tightening cooperation and communication between other services responsible for combating irregularities and fraud (i.a. Police, Border Guard, Customs Service). Its main duties are as follows:

- Cooperation and exchange of information with European and Polish institutions in the field of the protection of the UE financial interests, in particular: the cooperation with OLAF;
- Competences in carrying out the initial proceedings in case of any abuse of the UE and Polish financial interests;
- Supervision and coordination of the treasury controls in the field of the use of the UE resources;
- Processing the national and international applications for the administrative assistance within this area;
- Gathering and analyzing the information concerning the activities detrimental to the EU and Polish financial interests;
- Informing law enforcement services about possibilities of use of EU fund related to projects supporting the protection of the UE such as Hercules, Pericles and other;

- Preparing of risk analyses for national administration and analyses on irregularities detected in the field of improper use of EU funds for the institutions involved in the process of irregularity reporting.

Polish AFCOS is not a single national authority competent for cooperation with OLAF – that was a conscious decision while creating the service, consisting in division of tasks between different national institutions / authorities. AFCOS is mainly competent for the coordination of shared management issues relating to the OLAF investigations. It may be supported by other authorities involved in the process of managing the implementation of EU funds in Poland (mainly Managing Authorities for Operational Programmes and Paying Agencies for CAP). As for the shared management issues MA/PA can also be contacted directly by OLAF in order to fasten the exchange of information, shorten the duration of proceedings etc.

The coordination role of AFCOS consists in supporting OLAF with identification of the competent authority in Poland in case the Office cannot do it on its own, as it may lack additional information regarding a project in question, where possible irregularities or alleged fraud may have occurred. Nevertheless it has been agreed that AFCOS shall be regarded as the competent authority in case OLAF inquiry:

- is particularly complex and multidimensional
- needs additional support within the competences of Treasury Control
- or there is suspicion that an official or employee of one or several above mentioned institutions may have gone beyond his powers or may be involved in illegal activity related to EU funds.

The number of investigations launched by OLAF concerning the suspicion of irregularity or fraud in relation the EU funds has been systematically growing during the past years. The most significant part of cases conducted so far were those concerning alleged irregularities within the operational programmes co-financed from EAGGF, EFRD and PHARE. The role of AFCOS was to gather and forward information requested by OLAF, as well as to coordinate the national requests for administrative assistance sent to OLAF.

6) Any other relevant information

Department for the Protection of EU Financial Interests performs also activities of the Audit Institution, responsible for all tasks connected with ensuring that audits are carried out in order to verify the effective functioning of the management and control system of the operational programmes, as well as ensuring that audits are carried out on operations on the basis of an appropriate sample to verify expenditure declared.

Polish AFCOS is also responsible for:

- ❖ co-ordination of legislative, administrative & operational obligations & activities related to the protection of EU finances
- ❖ co-operation with Member States and the Commission (OLAF) as required by art. 325 (5) of the TFEU
- ❖ informing the EC on the outcomes of activities in relation to the combating of fraud related to cigarettes basing on the agreement between the EC, together with participating Member States of the EU and Philip Morris International / Japan Tobacco International / British American Tobacco / Imperial Tobacco.