



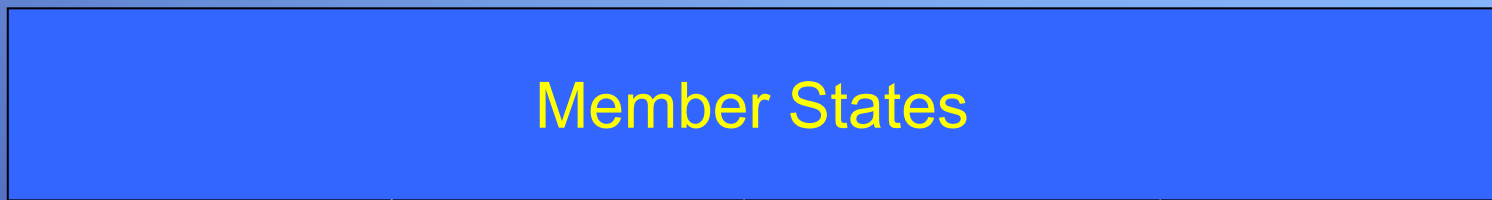
OLAF

European Anti-fraud Office

ARTICLE 280 OF EC TREATY

- ❑ 1. The **Community and the Member States** shall **counter fraud** [...] through **measures** [...] which shall act as a **deterrent** and be such as to afford **effective** protection in the Member States.
- ❑ 2. **Member States** shall take the **same measures** to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests. [**PRINCIPLE OF EQUIVALENT PROTECTION**]
- ❑ 3. Without prejudice to other provisions of this Treaty, the Member States shall **coordinate** their action aimed at **protecting the financial interests of the Community against fraud**. To this end they shall organise, **together with the Commission, close and regular cooperation** between the competent authorities.
- ❑ 4. The Council acts in accordance with the **co-decision** procedure. These measures shall not concern the application of national criminal law or the national administration of justice.
- ❑ 5. The Commission, in cooperation with the Member States, shall **each year** submit to the European Parliament and to the Council **a report** on the measures taken for the implementation of this article.

Article 280 of EC Treaty



Member States

Take **deterrent and effective** measures to protect EC Financial interests

Take the **same measures** to protect EC financial Interests as they adopt at national level to protect their own budget

Shall **coordinate** their action and organise, together with the Commission, **close** and **regular cooperation** between the competent authorities

Turkey

**Pre-accession financial
assistance
(Reg. 2500/2001)**

Croatia

**PHARE
ISPA
SAPARD**

Decentralised
Implementation
System

Memoranda of
Understanding of
14/2/2002

Memoranda of
Understanding
5/5/2005

OBIGATION TO COMMUNICATE IRREGULARITIES ON PRE- ACCESSION ASSISTANCE

Memoranda of Understanding



The National Authorising Officer shall immediately report all suspected and actual cases of fraud and irregularity to the European Commission.

OBLIGATION TO COMMUNICATE IRREGULARITIES

Structural Actions



**Regs. (CE)
1681/94, 1831/94,
438/2001 and 2035/2005**

Agriculture expenditure



**Reg. (CE)
595/91**

Own resources



**Reg (CE)
1150/2000**

- **Quarterly communication of new cases of irregularities subject of initial administrative or judicial investigations.**
- Details to be provided :
 - - the identification of the project or measure in question,
 - - the provision which has been infringed,
 - - the nature and amount of the expenditure; in cases where no payment has been made, the amounts which would have been wrongly paid had the irregularity not been discovered, except where the error or negligence is detected before payment and does not result in any administrative or judicial penalty,
 - - the total amount and its distribution between the different sources of financing,
 - - the period during which, or the moment at which, the irregularity was committed,
 - - the practices employed in committing the irregularity,
 - - the manner in which the irregularity was discovered,

Communication of irregularities (article 3 of Regulations 1681/1994 and 1831/1994)

- More details to be provided :
 - - the national authorities or bodies which drew up the official report on the irregularity,
 - - the financial consequences, the suspension (if any) of payments and the possibilities of recovery,
 - - the date and source of the first information leading to suspicion that an irregularity was in evidence,
 - - the date on which the official report on the irregularity was drawn up,
 - - where appropriate, the Member States and the non-member countries involved,
 - - the identity of the natural and legal persons involved, save in cases where such information is of no relevance in combating irregularities on account of the character of the irregularity concerned.
- 2. Where some of the information set out in paragraph 1, and in particular that concerning the practices employed in committing the irregularity and the manner in which it was discovered, is not available, beneficiary Member States shall as far as possible supply the missing information when forwarding subsequent quarterly reports of irregularities to the Commission.
- 3. If national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorization of the competent court or tribunal.

Communication of irregularities (article 5 of Regulations 1681/1994 and 1831/1994)

- **Beneficiary Member States shall inform the Commission, with reference back to any previous report made pursuant to Article 3, of the procedures instituted following all irregularities previously notified and of important changes resulting therefrom.**
- - the amounts which have been, or are expected to be, recovered,
- - the interim measures taken by beneficiary Member States to safeguard recovery of sums wrongly paid,
- - the judicial and administrative procedures instituted with a view to recovering sums wrongly paid and to imposing sanctions,
- - the reasons for any abandonment of recovery procedures; the Commission shall as far as possible, be notified before a decision is taken,
- - any abandonment of criminal prosecutions.
- Beneficiary Member States shall notify the Commission of administrative or judicial decisions, or the main points thereof, concerning the termination of these procedures.

“Primary administrative or judicial finding” means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure;

REGULATION 2185/1996 ON-THE-SPOT CHECKS AND INSPECTIONS

- Adopted in 1996 : legal basis for the operational activity of OLAF (also applicable to the pre-accession funds and pre-accession financial assistance to Turkey)
- Main instrument awarded by the EU Treaty : checks and inspections to the economic operators.
- Sets up EC's powers and Member States' obligations on checks and inspections carried out by EC inspectors.

- Apply to all areas of the Community activity
- Dealing with the detection of serious trans-national irregularities
- Do not affect the criminal competences of the Member States

EQUIVALENT PROTECTION

- ❑ EC inspectors have access to information and documents **under the same conditions** as national inspectors.
- ❑ **Reports prepared by EC inspectors constitute admissible evidence** in administrative or judicial proceedings **in the same way** and under the same conditions as reports drawn up by national inspectors.
- ❑ **Information** must be covered by professional secrecy and **protected in the same way** as similar information is protected by the national legislation of the Member State.
- ❑ **Obligation for Member States** under the national law, and at the Commission's request, to **safeguard evidences (art. 7.2)** : "Where necessary, it shall be for the Member States, at the Commission's request, to take the appropriate precautionary measures under national law, in particular in order to safeguard evidence »

OBLIGATION TO CO-OPERATE

- ❑ Checks and inspections prepared and conducted in close cooperation with MS.
- ❑ Officials of MS may participate in checks and inspections.
- ❑ Economic operators have to collaborate with the EC and MS inspectors (grant access to premises, lands, etc.).
- ❑ If economic operators refuse, MS must assist the EC inspectors to allow them to discharge their tasks

OBLIGATION TO COMMUNICATE SUSPICIONS OF FRAUD

- MS shall forward to the OLAF without delay any information relating to possible fraud or irregularity
- MS shall forward any document or information which relates to a current internal investigation
- MS shall send the OLAF any document or information pertinent related to the fight against fraud affecting the EC's financial interests

Thank you for your attention

OLAF - European Anti-fraud Office

European Commission

Rue Joseph II Straat 30 B-1000 Brussels

Luc SCHAERLAEKENS, head of unit

Strategic programming, reports, consultative committee, external relations

Phone : +32 2 296 50 59

E-mail : luc.schaerlaekens@cec.eu.int