

Practice Name:

Assisting OLAF's investigators during on-the-spot checks

10 step model

Practice category:

- Measures to fight fraud
- On-the-spot-checks
- Assistance to OLAF investigators



Contact:

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Country:

Bulgaria

Fraud risk(s) countered

- Conflict of interest
- Avoidance or manipulation of public procurement procedures
- Double funding
- Collusion
- Manipulation of project costs
- **Others – applicable to all fraud risks**

Context and objective(s)

Regulation 2185/96, concerning on-the-spot checks (OTSC) and inspections carried out by the European Commission (EC) in order to protect European Communities' financial interests against fraud and other irregularities, requires national authorities to provide sufficient assistance to the EC, in particular – the European Anti-Fraud Office (OLAF), to conduct OTSC in the territory of the given country.

Each EU Member State (MS) has established its own approach to implementing the regulation. This has led to some EU MS to look for examples of good models of cooperation to adapt within their national legislation.

The objective of this practice is to Introduce the Bulgarian 10-step model of assisting OLAF's investigators when conducting an OTSC in the territory of the country according to Regulation 2185/96.

Description of the practice

Article 4 of Regulation 2185/96 stipulates that MS have the right to participate during the OTSC conducted in their territory. The participation increases the chances of successfully assisting OLAF with the preparations, process and conclusion of the checks carried out.

In order to participate, all MS have designated a service (“the anti-fraud coordination service”, AFCOS) to facilitate effective cooperation and exchange of information, including information of an operational nature with OLAF. AFCOS is the competent authority that provides assistance - either by itself or by contacting other competent authorities.

The Bulgarian Anti-Fraud Service (AFCOS Bulgaria) has put in place a 10-step model of assistance to OLAF investigators while performing OTSC in the territory of Bulgaria, as follows:

Step 1 Gathering (expanding) information

An OTSC is always preceded by a notice sent by OLAF on the object, purpose and legal basis of the controls in place. It is performed on an economic operator pursuant to **Regulation 2988/95 on the protection of the European Communities financial interests**. The purpose of the OTSC is to provide evidence for the investigation of OLAF.

In order to prepare for the OTSC, AFCOS’ first step (or in other MS – the designated competent authority) is to check its own information databases. The aim is to expand the information about a particular economic operator, to see if there are any previous allegations, irregularities or fraud cases registered against them, including if there are any prosecution checks or pre-trial proceedings. In the case of Bulgaria, AFCOS uses the information systems of the Ministry of the Interior to gather information about the persons involved (names, addresses) who represent the economic operators in line with the rules of personal data protection (GDPR). All the available public databases are also used including, for example, the Commercial Register. If needed, AFCOS visits the address of the economic operator in advance to confirm that the gathered information and the registered address are correct.

Step 2 Provision of participants

Depending on the scope of the check, various national authorities may take part according their competence. AFCOS informs these relevant authorities in advance to secure their assistance when needed. Authorities who may be notified are the Prosecutor’s Office, in order to guarantee their participation in case of a crime, or the Public Finance Inspection Agency who are authorised to take action in case the economic operator refuses to co-operate. In addition to national authorities, local police authorities are also notified in case their assistance is needed.

Step 3 Information actualisation concerning pre-trial proceedings and prosecution checks

The information gathering of Step 1 is further updated at this stage to include any new information regarding the status of prosecution checks and pre-trial proceedings. The OTSC may impact the investigation, therefore AFCOS may need the supervising prosecutor’s permission to gather this additional information.

Step 4 Interview preparation

An interview is scheduled with the economic operators to provide them with the possibility to present their point of view, and in order to obtain relevant information for the case. AFCOS administers an advanced notification to the economic operator specifying the date, place and language of the interview, the possibility for the presence of a lawyer and the required documentation to be presented by the economic operator. The interview may be prepared with the assistance of the Managing Authority or Intermediate body responsible for the funding of the project.

Step 5 OTSC Plan

Each step of the OTSC is carefully planned and included in an internal document called “OTSC plan”, corresponding to OLAF’s plan. This plan is communicated internally to the Minister of the Interior.

Step 6 Work meeting between the authorities

Before the check itself, the OLAF investigative team meets AFCOS representatives responsible for granting them assistance, pursuant to Regulation 2185/96. This is the moment when AFCOS presents and discusses the preparations made, the acquired information and the plan of the OTSC. If needed, representatives from other authorities are also present.

Step 7 Starting the OTSC. Logistics

AFCOS provides the logistics that are vital for the smooth organisation of the OTSC, including transportation, IT capacity, translation services and all materials necessary for the evaluation. AFCOS experts take part in the scheduled activities, according to art. 4 of Regulation 2185/96.

Step 8 OTSC core activities

Throughout the check itself, AFCOS experts are in constant contact with the Public Financial Inspection Agency, the Prosecutor’s Office, the Criminal and Local Police in order to swiftly respond to cases of refusal by the economic operator or attempts at hindering the check. An AFCOS expert, with clearance to access information from the systems of the Ministry of the Interior, provides direct support to the investigation team. At this stage of the check all types of information may be gathered, including computer data, budgetary and accounting documents, documentation of the project and physical checks as to the nature and the quantity of goods.

Step 9 Participation in the OTSC. Finalisation of the OTSC

AFCOS experts take an active part in the OTSC according to art. 4 of Regulation 2185/96. They sign the reports prepared by the OLAF investigators. Representatives of the national body responsible for the management of EU funds also participate actively in the check and sign the OLAF’s reports. The OTSC is finalised when all evidence is gathered according to national and European law and all documentation is drafted and signed (such as protocols of findings, statements by persons etc.)

Step 10 Final Analysis and Feedback

After the OTSC is finished, a meeting between the OLAF investigative team and AFCOS representatives is held, where the results are presented. Experts debate the results of the OTSC, possible obstacles and possibilities for improvement.

Unique features

This practice has a structured approach to granting OLAF investigators assistance during an OTSC, as required by Regulation 2185/96. It stands out from similar practices because of its effectiveness to provide assistance from the very moment OLAF investigators send a notification of a planned OTSC, to the inclusion of national authorities, to the OTSC’s conclusion. Based on annual AFCO reports of the last 10 years in the country where this practice has been developed, almost 100% of OTSCs are satisfactorily carried out.

Outcomes and results

This model has been shared as a good example throughout national and EU levels, as it provides a foreseeable and structured approach towards a positive outcome – effective assistance to OLAF’s investigators on the territory of an MS where an OTSC is planned. The result is a successful OTSC, backed up by evidence, statement of persons, relevant documentation and any other necessary information.

Key success factors

No specific requirements are needed as every MS is obliged to provide assistance to OLAF investigators according to Regulation 2185/96, and to designate a competent service to facilitate effective cooperation and exchange of information with OLAF according to art 11 of **Regulation 883/2013** of 11 September 2013. **Regulation 883/2013** concerns investigations conducted by the European Anti-Fraud Office (OLAF) and repeals Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999. As recommended by the European Court of Auditors, AFCOS should be set up with the widest range of functions in order to be most effective.

Challenges encountered & lessons learned

No specific challenges in implementing this action has been detected so far.

Potential for the transferability

This good practice has ideal transferability potential that is only limited by the powers of the relevant bodies on the national level who are responsible for providing OLAF investigators with assistance under Regulation 2185/96.