

PUBLIC FINANCIAL INSPECTION, LAW *INSPEKTIMI FINANCIAR PUBLIK, LIGJ*

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Unofficial translation of the initial law on Public Financial Inspection:

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LAW

No. 112/2015

ON PUBLIC FINANCIAL INSPECTION

Based in the Constitution of the Republic of Albania, article 78 and 83, point 1, on proposal of the Council of Ministers,

THE PARLIAMENT OF THE REPUBLIC OF ALBANIA DECIDED:

Chapter I GENERAL PROVISIONS

Article 1 Object of the Law

This law sets forth the purpose, principles and rules with regard to the financial inspection in public sector and tasks and responsibilities of structures involved in the process.

Article 2

Mission

The mission of public financial inspection is to confirm the compliance with the law in using public funds and providing assistance in improving public financial management

Article 3

Purpose of the Law

The purpose of this law is to protect the financial interests of public entities against serious financial mismanagement, fraud, theft, destruction of the property, abuse of power or corruption.

Article 4

Scope of the Law

Subject to public inspection is:

- a) General government units;
- b) State enterprises, non-profit organizations and joint authorities which are owned, controlled, funded, or financially guaranteed by a general government entity; or in which a general government entity, owns or controls a part of the property, which grants to owner the controlling rights;
- c) Any legal or natural entity, only for funds from the state budget, European Union or funds under an international agreement where Albanian State is the beneficiary.

Article 5

Definitions

For the purpose of this law, the following terms imply:

1. AFCOS "is "the Anti-Fraud Coordination service" appointed in Albania to facilitate the cooperation with relevant institutions in the European Union.
2. "Property Damage" the definition is the same as provided in the Civil Code of the Republic of Albania.
3. "Public funds" are all the funds, including EU funds and the funds of other donors, which are collected, received, kept, allocated and spent by the public entities including revenues, expenditures, loans and grants for public entities.
4. "Financial guarantee", is the amount frozen pursuant to an agreement signed by the general government entity to secure the completion of a contract or other actions undertaken from a third party.
5. "Public financial inspector" is the person assigned to carry out public financial inspection.

6. "Serious financial mismanagement" is actions or inactions by a head or official of an entity that could result or has resulted in the financial insolvency of the entity or in considerable losses over and above any losses foreseen in the approved budget.
7. "International agreements "are agreements where Albanian State is the beneficiary, the meaning of which is given in law on signing the treaties and international agreements.
8. "Fraud", "Theft", Destruction of property "," Corruption ", the definition is the same as provided in the Penal Code of Republic of Albania
9. "General government entities" means the same as it is defined in the budgetary system management law.
10. OLAF "is the European Anti-Fraud Office
11. "Non-profit Organizations" same definitions provided in Civil Code and Law on Nonprofit Organizations.
12. "Irregularity" shall be non-adherence to or an erroneous application of laws and other regulations stemming from actions or inactions of the public funds users, and which have or might have a harmful impact to public funds, irrespective of whether it involves revenues/receipts, expenses / expenditures, recoveries, assets or liabilities.
13. "State companies" same definition as provided in the law on "Trade and commercial companies".

Article 6

Principles of Public Financial Inspection

Public Financial Inspection is performed in line with general principles defined in the Code of Administrative Procedure of the Republic of Albania.

Article 7

Activity of public financial inspection

1. Financial inspection is an ex-post activity for checking the regularity of transactions and other activities of financial management performed under the responsibility of public entity and individuals, in order to:
 - a) Define violations to normative acts and suspicions for committed fraud;
 - b) Detect irregularities and damages caused on the property of public unit;
 - c) Identify the responsible individuals for violations committed and ask for indemnification, disciplinary or administrative measures to be taken, according to the level or type of responsibility.
2. This activity is performed by employees of the responsible unit for Public Financial Inspection in the Ministry of Finance. In the cases of lack of human resources and lack of specialties for covering specific areas of public financial inspection, public administration

employees or external experts shall be engaged. Selection criteria and the remuneration for external experts, employees of public administration or not, are regulated by decision of Council of Ministers upon the proposal of Minister of Finance.

Article 8

Basis for commencement of public financial inspection

1. Public Financial Inspection starts only upon the request, information or complaint.
2. The sources of the request, information or complaint are:
 - a) Request by the President of Republic of Albania;
 - b) Request by the Prime Minister's Office;
 - c) Request by Minister of Finance;
 - d) State Supreme Audit requests;
 - e) Request by the General Prosecutors Office;
 - f) Requests by Heads or Authorizing Officers of public units;
 - g) Request by OLAF;
 - h) Information for irregularities from Internal Audit reports;
 - i) Information from Financial Management and Control reports;
 - j) Complaints by employees in the public or private sector;
 - k) Complaints by any legal or natural entity.
 - l) Information or complains by anonymous individuals containing elements of financial mismanagement, fraud, theft, destruction of property, abuse of power or corruption.

Chapter II

DECISION-MAKING AUTHORITIES IN PUBLIC FINANCIAL INSPECTION

Article 9

Obligations of the Minister of Finance

1. The Minister of Finance is responsible for regulating the functioning of centralized public financial inspection.
2. The Minister of Finance issues orders and instructions and approves methodologies on:
 - a. criteria to initiate a public financial inspection, including the relevance of the violation
 - b. rules and procedures for carrying out the public financial inspection;
 - c. the code of ethics for public financial inspectors;
3. The Minister of Finance based on the final inspection report, the assessment of the head of responsible unit for public financial inspection and with the approval of the Principal

Authorizing Officer orders regulatory, compensatory, administrative or disciplinary measures.

4. Minister of Finance appoints the bodies in AFCOS reporting network, which is composed of all national authorities involved in the preventing, reporting and avoiding of irregularities related to EU funds and signs a cooperative agreement with them.
5. Minister of Finance, upon proposal of Principal Authorising Officer, removes from the list of public financial inspectors the employees of public administration or external experts, in cases of violations in fulfilling their duties during the public financial inspection activity.

Article 10

The rights of Minister of Finance

1. Based on public financial inspection report, assessment of the Head of responsible unit for public financial inspection and approval of the Principal authorizing officer, the Minister of Finance has the right to:
 - a. Propose to the head of the unit to take appropriate measures for ending and /or avoiding the negative consequences of these activities;
 - b. propose to the Prime Minister to take the necessary further actions, where the responsible individual is a minister or head of the general government unit;
 - c. ask the competent authorities to stop the activities that lead to irregularities or cause damage to the units and individuals subject of inspection;
 - ç. ask the competent authorities or heads of units and individuals to abolish / revoke any administrative act issued in contradiction to the legislation in vigour;
 - d. ask the responsible authorities to take measures for the indemnification or disciplinary/administrative measures in line with respective procedures.
2. In cases of non-compliance with letters c, ç and d of paragraph 1 of this Article, the Minister of Finance at the proposal of the Principal Authorizing Officer may order to:
 - a. Block the use of budget funds, planned in the annual budget Act, for the relevant year, at the program, item or project level, until the report on implementation of the measures taken pursuant to point 1 of this article is submitted.
 - b. Block bank accounts of public entities where irregularities related to the funds have been detected until elimination of irregularities.

Article 11

Functions of the Principal Authorizing Officer

1. The principal authorizing officer is the responsible authority to initiate the public financial inspection. Decision of Principal Authorizing Officer is based on the opinion of responsible unit for Public Financial Inspection.
2. The principal authorizing officer, in the event of complaints, before taking the decision to start the Public Financial Inspection, whenever possible may request a prior investigation to be carried out by the head of the given entity or public unit that covers the specific field related to the complaint.
3. The principal authorizing officer submits the order of the Minister of Finance for the completion of the Public Financial Inspection to the inspected entity along with the final report of the inspection.
4. For European funds only, the functions of the Principal Authorizing Officer regarding the Public Financial Inspection are performed by the National Authorizing Officer (NAO).

CHAPTER III

RESPONSIBLE UNIT FOR PUBLIC FINANCIAL INSPECTION

Article 12

Structure of responsible unit for Public Financial Inspection

1. Responsible unit for public financial inspection is part of the Ministry of Finance structure.
2. Labour relationship for the employees of responsible unit for public financial inspection is regulated by legislation in power on civil servant.
3. Employee of the responsible unit for public financial inspection at the function of Head of the unit must have a university diploma "Master of Science" or its equivalent in Economy or Law sciences, as well as at least 10 years of professional experience in public units.
4. Employee of the responsible unit for public financial inspection at the function of inspector in the unit must have a university diploma "Master of Science" or its equivalent in Economy or Law sciences, as well as at least 5 years of professional experience in public units.

Article 13

Functions of responsible unit for public financial inspection

Responsible unit for Public financial inspection fulfils the following functions:

1. Analyses the requests, information or complains and gives feedback to Principal Authorizing Officer on commencing or not the public financial inspection or the prior inspection.

2. Carries out public financial inspection, following the rules approved by the Minister of Finance, and is responsible for their quality.
3. Proposes to the principal authorizing officer and to the Minister of Finance measures to be taken at the completion of public financial inspection
4. Follows up the implementation of recommendations issued by the Minister of Finance, and informs the Principal principle authorizing officer.
5. Proposes orders, instructions and methodologies for approval pursuant to provisions of this law
6. Plays the AFCOS role and serves as contact point for OLAF.
7. Submits the annual report of activities to the Principal Principle authorizing officer and the Minister of Finance, within March 31 of the next year.
8. Requests and exchanges information with the other public entities, in the area of public financial inspection

Article 14
AFCOS functions

1. AFCOS coordinates all legal, administrative and operational activities related to the protection of EU financial interests in the country.
2. The rights of AFCOS are :
 - a) Ask the national administrative authority or respective legal authority to analyse the information in order to start the investigation;
 - b) Ask the above mentioned authorities to start an investigation, if it is necessary;
 - c) Ask to be informed on the results of investigation;
 - ç) Ensure an effective exchange of information with European Office against Fraud (OLAF);
1. Obligations of AFCOS are:
 - a) Be responsible for accepting the controls in the country and identifying the legal or administrative authorities, which might offer the necessary assistance to the European Office Against Fraud, OLAF;
 - b) Establish the contacts between the European office Against Fraud and national authorities in order to ensure operational cooperation in cases of investigation;
 - c) Plan to establish joint administrative investigation/inspection teams between European Office Against Fraud and national authorities;
 - ç) Arrange periodical meetings with national legal and administrative authorities in order to be updated on the development of investigations, and intervene in cases of delays or poor support from authorities;
 - d) Ensure effective exchange of information with European Office Against Fraud;

Article 15
Obligation to provide information

Responsible Unit for Public financial Inspection provides information on performed public financial inspection, where information is requested by authorities which are legally entitled.

Article 16
The rights of public financial inspectors

In performing their tasks, public financial inspectors, have the right to:

- a) Unlimited access to the premises of the unit, submitted to inspection.
- b) Unlimited access related to the inspection, to all information, accounting, and electronic information and including those classified, according to their level of access, in accordance with the legislation in force.
- c) Ask the employees of the unit or individuals, subject to inspection, to provide authentic documents, official copies of documents, information and references, statements for all bank accounts in the country and abroad as well as other documentation related to financial inspection, within the set time limits.
- ç) Exercise controls and ask for official copies of documents, information and references to legal or natural entities outside the subject of inspection, only in relation to the object of public financial inspection.
- d) Prevent the access of responsible persons to safe boxes, warehouses and other items, submitted to inspection, by sealing them in the presence of an official from the unit submitted to inspection.

Article 17
Obligations of public financial inspectors

1. In performing their duties, public financial inspectors have the obligation to:
 - a) Identify themselves with an official identification document and the order assigning them for conducting the public financial inspection;
 - b) Report objectively and accurately the results of public financial activity, irregularities and damages identified, reasons leading to them and violations, based on the facts and circumstances officially controlled by them;
 - c) maintain the confidentiality on any facts or circumstances, obtained during the process of their inspection, except for cases provided by law;
- ç) Ask the termination of any actions which might lead to irregularities;
- d) Know and implement the code of ethics for public financial inspectors;

2. Public financial inspectors may be suspended from the inspection mission, upon proposal of the Head of responsible unit for Public Financial Inspection and approval of the Principal Authorizing Officer before mission is concluded:
 - a) where conflict of interest implications are proved;
 - b) For violations during inspection activity or lack of competences for conducting public financial inspection.

Article 18

Conflict of interest for public financial inspectors

The conflict of interest for public financial inspectors, includes cases provided for by legislation in force regulating the conflict of interest and also where:

- a) In the last 3 years they have worked for the unit or individual, subject of inspection;
- b) In the last 3 years, have been involved in management or supervision of units and/or individuals subject of inspection
- c) Spouse/cohabitant or a relative down to the second generation have been employed in the last 3 years as reporting officials or have worked in a management or supervising position for the unit or individual submitted to inspection.

Article 19

The rights of inspected subjects

1. The subjects of inspection have the right to:
 - a) become acquainted with the decision to start public financial inspection;
 - b) request the identification of the public financial inspectors:
 - c) be present and to pursue on their own, or through their representatives, all inspection activities;
 - ç) To request and receive information from the inspector about the inspection procedure or any taken action or decision.
 - d) to submit, in writing or verbally, opinions, explanations about the facts, circumstances or legal issues that relate to the inspection;
 - dh) Request to be introduced to the record and ascertainment act of the Inspection;
 - e) Submit their objections on the assessment of administered facts, on the results of inspection and the decision intended to be taken at the conclusion of the inspection.
2. When participation, during the inspection, according to the letter "c" of point 1 of this Article, prevents carrying out the inspection, the inspector may decide to be excluded

from participation. The decision is reflected in the inspection record and cannot be appealed separately.

Article 20

Obligations of inspected subjects

1. Any inspected subject has the obligation to:
 - a) Cooperate with and not impede employees conducting a public financial inspection, during the financial inspection mission;
 - b) Provide to employees conducting a public financial inspection unlimited access to premises and all the documentation related to inspection;
 - c) Submit within the time limits set by the inspectors, documents, official copies of documents, information and statements for each bank account and written explanation as well as reports;
 - ç) Submit, within the deadline set by the financial inspectors, accurate data, statements, and official copies of documents related to inspection
 - d) Implement the measures issued by the Minister of Finance in line with letters c, ç and d of point 1, article 10 of this law, as well as within a period of two months after receiving the notification, inform in writing the Principal authorizing Officer on the measures taken.
2. Pursuant to point 1 of this article, any legal or natural entity have no right to refuse providing information, referring to previous inspections, controls by other units or bank confidentiality, as well as the information classified as state secret or professional secret for the area subject of inspection and only for himself.

Article 21

Fulfilment of Public Financial Inspection

1. Public Financial Inspection Activity is based on sub-legal acts approved by the Minister of Finance pursuant to point 2, article 9 of this Law.
2. Rules and procedures for fulfilling the public financial inspection are approved by the Minister of Finance and they include all the processes of an inspection service, from receiving the decision for commencing an inspection to the implementation of measures issued by the Minister of Finance, pursuant to point 1, article 10 of this law.

Article 22

Informing the authorities

1. Information on results of a financial inspection performed in a central government unit and spending units of public funds, where irregularities have been detected, shall be sent to a superior unit.
2. In the event of financial inspection to local government bodies and their spending units, the information shall also be sent to the local government council, where irregularities have been detected.
3. Information on public financial inspection results where irregularities have been detected, pursuant to letter b, article 4 of this law, shall be sent to the highest authority which exercises the property rights on the state or local property capital of the unit or individual submitted to control.

CHAPTER IV VIOLATIONS AND APPEALS

Article 23 Responsibility for causing the damage

1. For any damages caused to the public units and individuals, detected during the financial inspection, responsibility shall be kept in line with the Civil Code provisions.
2. Where damage is caused by several individuals, they are altogether kept responsible, pursuant to provisions of Civil Code.
3. Any individual who ordered or permitted payments against the laws in vigor or undertakes commitments out of funds provided in the budget is responsible for the payment of the liability.

Article 24 Penal violations

Where the information leads to reasonable doubts on the existence of an offense, the Principal authorizing officer informs the Minister of Finance and reports the case in writing to the General Prosecutor's Office.

Article 25 Disciplinary measures

Where public financial inspector, member of public administration, repeatedly commits violations in carrying out inspections, at the request of Public Financial inspection Head, the Principal Authorizing Officer, asks the authority responsible for the employee, to start the disciplinary procedure.

Article 26
Court appeal

Measures taken by the Minister of Finance pursuant to points 1 and 2 of article 10 of this Law may be appealed in the respective administrative court, within 45 days from the date of being informed on the measures.

CHAPTER V
FINAL AND TRANSITORY PROVISIONS

ARTICLE 27
Transitory period for the implementation of the Law

1. Minister of Finance shall, within six months from entry into force of this Law, issue sub legal acts pursuant to points 2 and 4, article 9 of this Law.
2. Council of Minister shall issue, within the first 6 months of entry into force of this law, sub-legal acts pursuant to point 2, article 7 of this Law.

Article 28
Abrogation

1. Law no. 10294, dated 01.07.2010 "On public financial inspection", as well as any other act that contradicts this Law, shall be abolished.
2. Sub legal acts issued pursuant to Law no.10294, dated 01.07.2010 "On public financial inspection" remain in vigor until the approval of sub legal acts pursuant to this Law, as far as they do not contradict provisions of this Law".

Article 29
Entry into force

This Law enters into force 15 days after publication in the Official Journal

SPEAKER