

# Irregularities and frauds

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Irregularities – how do we manage?  
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# When an error becomes irregularity?

- Formally the errors become irregularities if they are detected in the expenditure declared to the EC in interim payment applications (Article 122(2)(c))

## Consequences:

1. corrections that Member States undertake before declaring the related expenditure to the Commission are not financial corrections within the meaning of Article 143(2).

# **When an error becomes irregularity?**

## **Consequences:**

2. the resources can therefore be reused for the same operation.

3. If there is a financial correction in the expenditure declared to the EC , i.e. a cancellation of part or the entire public contribution to an operation, the reuse of funds in the same operation is not possible.

## **Established irregularity**

# Irregularity definition

3 cumulative conditions:

1. **breach of Union law**, or of national law relating to its application
2. resulting from an **act or omission** by an **economic operator** involved in the implementation of the ESI Funds
3. which **has, or would have**, the effect of prejudicing the budget of the Union by **charging an unjustified item of expenditure to the budget of the Union**

Defined in Article 2(36) CPR

# Irregularities in ETC - examples

## Public procurement

- Artificial splitting of services
- Complementary works related to already contracted investment
- Technical ability criteria set by beneficiary limited the competition
- Fair market price could not be proven

## Other

- Staff costs wrongly calculated
- Ineligible VAT declared
- Expenditure not related to the project

# Withdrawal and recovery

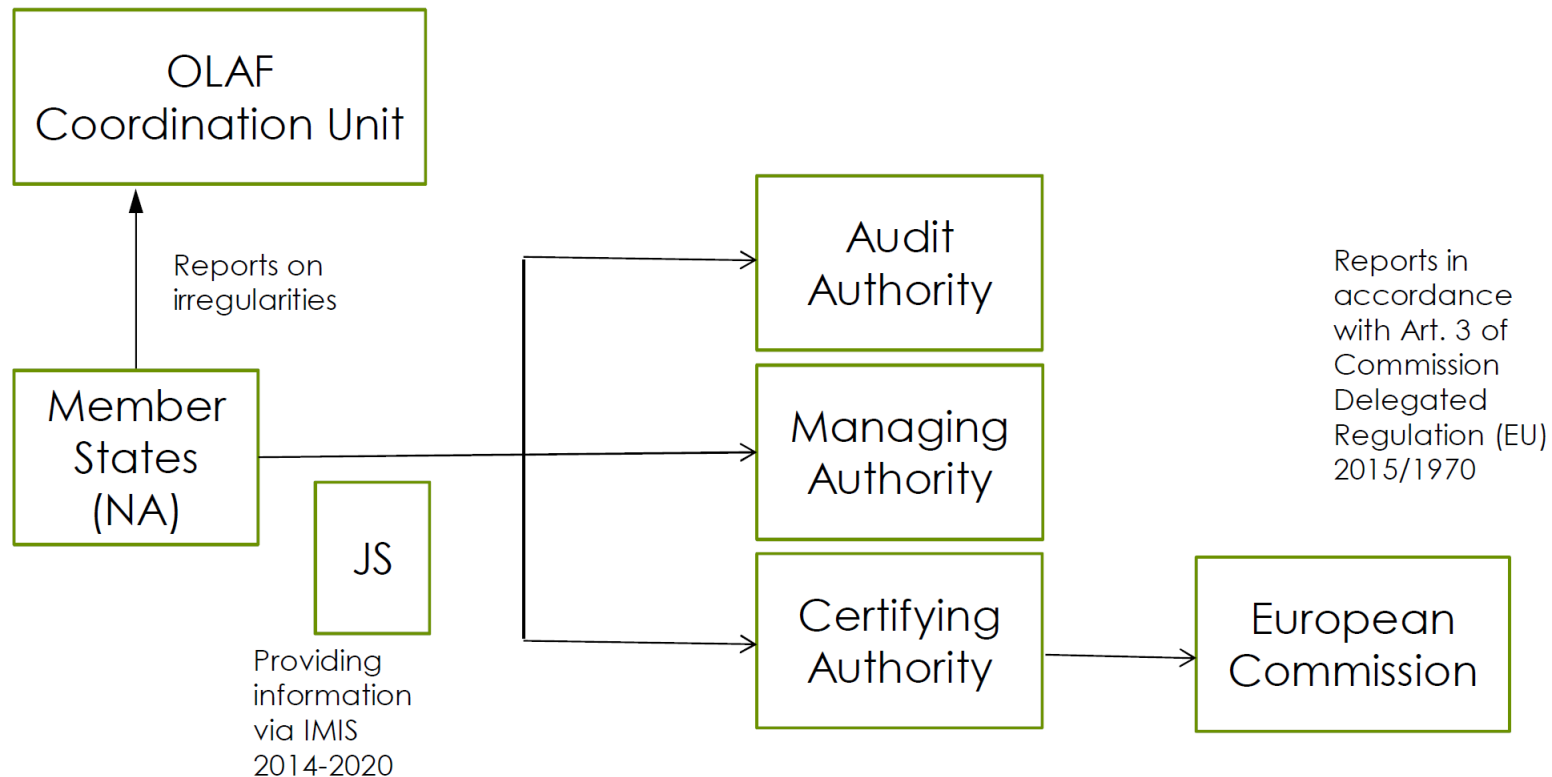
## Withdrawal

Irregular expenditure **withdrawn immediately** by deduction from the **next interim payment application**, releasing funds for other operations.

## Recovery

Irregular expenditure **left**, pending the **outcome of the proceedings** to recover unduly paid amount from beneficiaries. The expenditure deducted once recovery is effective.

# Reporting of irregularities



# Suspected fraud

irregularity giving rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud



# Fraud definition (1)

... fraud affecting the European Communities' financial interests shall consist of in respect of expenditure...any **intentional act** or omission relating to:

- the 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 general budget of the European Communities or budgets managed by, or on behalf of, the European Communities;

## Fraud definition (2)

- non-disclosure of information in violation of a specific obligation, with the same effect;
- the misapplication of such funds for purposes other than those for which they were originally granted

Article 1 of The Convention of 26 July 1995 on the protection of the European Communities' financial interests (transposed into criminal law at national level, came into force as of 17.10.2002)

# Irregular amounts below 250 EUR

- in ETC MS (or 3<sup>rd</sup> countries) decide whether to recover or not
- the threshold of EUR 250 is to be calculated by operation and by accounting year
- do not have to be deducted from the certified amounts (->reimbursed to the EU budget)
- no assessment of possible fault or negligence of the MS carried out by the EC

# Typology of project findings

- Reasons for establishing common typology
  - Identify root causes of errors
  - Explanations to ECA and EP
- Used for the qualitative and quantitative analysis by AAs
- Planned structured data in SFC 2014
- Adopted at the programme level?

# Updates

- Examples of antifraud activities in Member States – Workshop September 2018

<https://webcast.ec.europa.eu/workshop-on-good-practices-in-preventing-fraud-and-corruption-in-the-european-structural-and-investment-funds>

- Study + Compendium of anti-fraud practices for preventing and detecting fraud and corruption in ESI Funds

[https://ec.europa.eu/regional\\_policy/sources/docgener/studies/pdf/implem\\_article125\\_en.pdf](https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/implem_article125_en.pdf)

[https://ec.europa.eu/regional\\_policy/sources/docgener/studies/pdf/implem\\_article125\\_compendium\\_en.pdf](https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/implem_article125_compendium_en.pdf)

- ESIF Guidance – Revisions 2018

# **ESIF Guidances – Revisions 2018 (1)**

1. On the Drawing of Management Declaration and Annual Summary
2. On Audit of Accounts
3. On Amounts Withdrawn, Recovered, to be Recovered and Irrecoverable Amounts
4. On Preparation, Examination and Acceptance of Accounts

Published in December 2018

# Cooperation works

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