

Irregularities

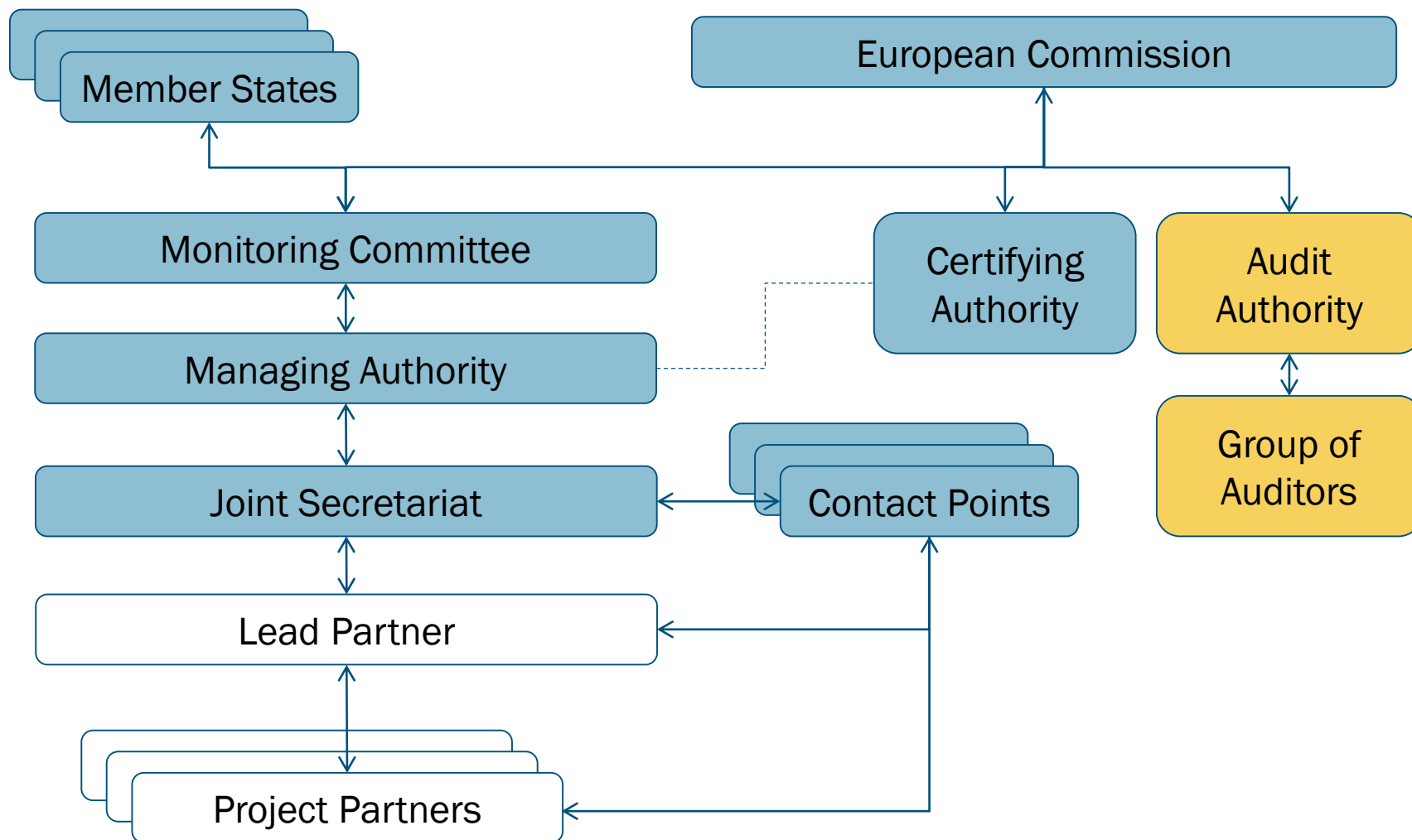
21 October 2020 | Anti-fraud meeting,
online

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Audit and control bodies



Financial errors

Ineligible expenditure that is NOT deemed an irregularity:

- corrected before the submission MA/JS;
- deducted by the MA/JS;
- addressed by the CA

Errors do not decrease the project budget.



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:

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



Irregularities - definition

An irregularity in the meaning of Article 2(36) CPR requires three cumulative conditions to be met. It must:

- be a breach of EU or of national law relating to its application,
- done by an economic operator involved in the implementation of ESI funds,
- have 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

When can irregularity be found

- Can be found a any time
- By the following bodies:
 - Lead beneficiary
 - FLC
 - The programme
 - EC
 - Audit authority



Irregularity must be corrected

Article 143(2) CPR Member States must make the financial corrections required in connection with individual or systemic irregularities.

It also lays down that "financial corrections shall consist of cancelling all or part of the public contribution to an operation or an OP".

It further indicates that Member States shall take into account the **nature and gravity** of the irregularities and the financial loss to the Funds or the EMFF and shall apply a proportionate correction.

Article 143(2) CPR requires furthermore that "financial corrections shall be recorded in the accounts for the accounting year in which the **cancellation is decided**"

Financial correction

Art.143(2) CPR only refers to expenditure which has already been included in payment applications submitted to the Commission.

Therefore, corrections that Member States undertake **before declaring the related expenditure to the Commission** are not **financial corrections** within the meaning of art.143(2).

Any corrections made by the managing authority **before including expenditure in a payment application to the Commission** is not a **financial correction** within the meaning of Article 143(2) CPR and the resources can therefore be reused for the same operation

Irregularities in ETC - examples

Public procurement

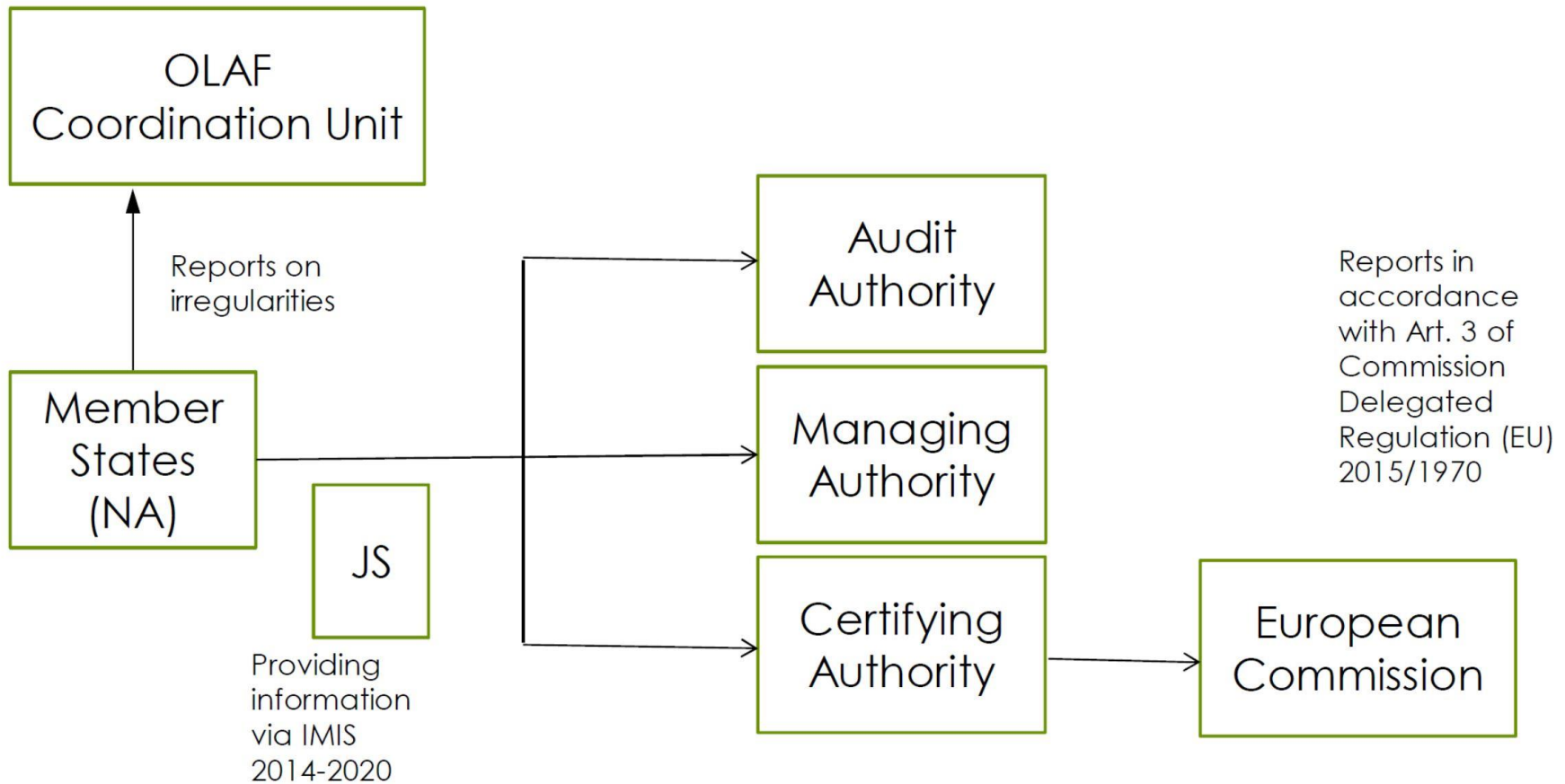
- Artificial splitting of services
- Complementary works related to already contracted investment
- Technical ability criteria set by beneficiary limited the competition
- Fair market price could not be proven

Other

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



Reporting irregularities



Withdrawal and recovery

Withdrawal

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

Recovery

Recovering unduly paid amount from beneficiaries. The expenditure is deducted once the recovery is effective. The actual process will be provided by the programme.

Irregular amounts below 250 EUR

- in ETC MS (or 3rd 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



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)

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>

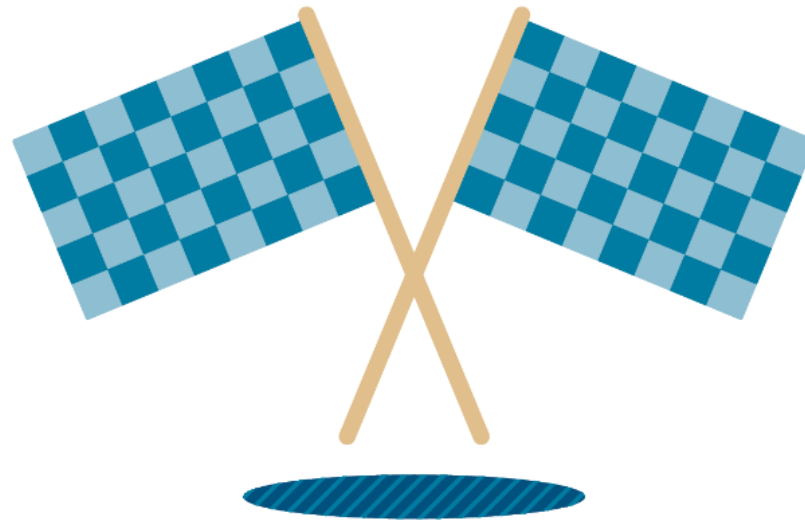
- Study + Compendium of anti-fraud practices for preventing and detecting fraud and corruption in ESI Funds

https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/implement_article125_en.pdf

https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/implement_article125_compendium_en.pdf

- ESIF Guidance – Revisions 2018

1. On the Drawing of Management Declaration and Annual Summary, with Annex 2 – Typology of findings from management verifications
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



Key elements

Types of findings

Error: any mistake that you did not intend to do, any unintentional misstatements

Irregularity: any breach of EU, national law or standard procedure, omission, intentional or unintentional

Systemic irregularity: any irregularity, with a probability of occurrence in similar types of operations

Fraud: the use or presentation of false, incorrect or incomplete statements or documents

Red flags

The most common signs of possible fraud

- Indicator of possible irregularities or fraud
- Factor or a set of elements that are unusual or vary from regular activity
- Signal that something is different and may need to be observed
- The presence of a red flag should make the controller more vigilant to confirm or deny the potential of error
- The MAs have the responsibility to exclude the suspicions

Role of the first level controller

- The controllers shall immediately notify the Managing Authority and the respective National Authority and other relevant national bodies (following the relevant and applicable legislation)

Methods of detection

- Risk-based analysis
- Cross checks
- Desk checks
- On-the-spot checks
- . . .

Findings from management verifications

Expenditures

- Noncompliance with the principle of sound financial management
- Accounting and calculation errors at partner/project level
- Missing supporting information or documentation
- Incorrect supporting information or documentation
- Lack or incomplete audit trail

Findings from management verifications

Expenditures

- Expenditure not paid by beneficiary
- Expenditure not related to the project
- Expenditure outside of the eligibility area
- Expenditure incurred before or after the eligibility period
- Ineligible VAT or other taxes

Findings from management verifications

SCOs

- Wrong methodology (in advance, fair, verifiable and equitable)
- Wrong application of the methodology (off-the-shelf or other)
- Changing the method (flat rate applicable for staff cost) during the implementation period
- Expenditures calculated in simplified cost options also validated under different budget line
- Expenditure calculated in simplified cost options (i.e. lump sum) and diminished while not using the correct milestones set

Take-home notes

- The existence of mistakes observed during desk and on-the-spot verifications does not mean the irregularities and fraud exist
- However, certain areas need extra attention to confirm and deny if there is a risk of irregularity or fraud

Cooperation works

All materials will be available on:

[**www.interact-eu.net**](http://www.interact-eu.net)