Irregularities

Content:

1. Legal basis
2. System of irregularity detection and reporting
3. Common types of irregularities
4. Fraud as type of irregularity
5. Prevention of irregularities
6. Financial corrections
7. Recovery of irregular expenditure
8. Questions for discussion
Legal Basis of Irregularity System

- EU legislation
- Law on Management of EU Structural Funds and Cohesion Fund
- Cabinet of Ministers Regulations No 740
- Guidelines and internal regulations of CFCA
Legal Basis of Irregularity System – EU Level


Legal Basis of Irregularity System – National Level

Law On Management of European Union Structural Funds and the Cohesion Fund

Cabinet of Ministers Regulations No 740 «Procedures for notification of irregularities detected in the introduction of European Union Structural Funds and Cohesion Fund, adoption of administrative decisions regarding utilization of the financing granted and recovery of non-conforming expenditure»

Guidelines of the Managing Authority No 10.11 for reporting on the irregularities identified during the EU Funds implementation and recovery of irregular expenditure in the programming period 2007-2013

CFCA Internal Regulations No 39-1-3/14 «Regulations on detection and notification of irregularities and recovery of irregular expenditure»
Definition of «Irregularity»

Article 2 (7), Regulation 1083/2006:
**Irregularity** - any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget

Additionally **Cabinet of Ministers Regulation No 740** - irregularity is detected where the beneficiary is found guilty of illegal employment (without work permit or of persons without residence permit)

«Simple definition» - irregularity is a situation when EU or national rules and laws are not respected by the beneficiary causing actual or potential loss to the EU budget through unjustified expenditure
Procedures for Detection of Irregularities Within the CFCA - Scheme

- Report by the employee to the CFCA Director
- Legal opinion regarding existence of irregularity
- Decision by the Management group
- Decision of the CFCA towards the beneficiary establishing irregularity
- Registration of the irregularity in the Management information system
Procedures for Detection of Irregularities Within the CFCA (1)

- CFCA employee having detected a potential case of irregularity prepares a report to the CFCA Director
- Legal provision division examines the case and prepares a legal opinion on the report
- The Management Group is summoned by the Director and a decision is adopted on existence of the irregularity and reimbursement of expenditure
Procedures for Detection of Irregularities Within the CFCA (2)

- The Management Group consists of the CFCA Director, Directors of the departments of the CFCA and Head of Legal Provision Division
- Decisions within the Management Group are adopted by a simple majority vote
- Decisions of the Management Group are recorded and used for further preparation of the CFCA decisions towards the respective beneficiaries. Standard decisions are applied as pattern in future similar cases.
Obligation to Report Irregularities Detected

Article 28, Regulation 1828/2006:

*Member States shall report to the Commission any irregularities which have been the subject of a primary administrative or judicial finding, except where:*

- irregularity consists of failure to execute the operation owing to the bankruptcy of the beneficiary,
- the case is brought to the attention of the managing authority by the beneficiary voluntarily,
- the case is detected and corrected by the managing authority before inclusion of the expenditure concerned in the statement of expenditure to the Commission,
- the irregularity relates to amounts of less than EUR 10 000 chargeable to the general budget of the European Communities.

*However all cases of suspected fraud must be reported and the Member State shall immediately report to the Commission any irregularities where it is feared that they may have repercussions outside its territory or new malpractices are employed.*
Reporting Scheme of Irregularities

**CFCA**
Detects irregularity, enters data into the EU Structural Funds and Cohesion Fund information system (MIS)

**Managing Authority**
Quarterly summarizes data entered into MIS and organizes working group

**CFCA**
Enters data on irregularities to be reported to the Commission into IMS
Irregularities Detected

According to data included in the Management information system in programming period 2007-2013 CFCA has detected 1455 irregularities at the amount of 22 449 490,92 EUR (total number of irregularities detected by institutions – 6123, total sum – 279 047 024, 76 EUR)
## Irregularities Detected – by Activities

<table>
<thead>
<tr>
<th>Activity</th>
<th>Irregularities</th>
<th>Sum of irregularity (EU funds)</th>
<th>Scope of activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3.2.3.</td>
<td>59</td>
<td>231 126,32</td>
<td>Medical care - extending the competence of personnel</td>
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<tr>
<td>TP</td>
<td>656</td>
<td>564 844,29</td>
<td>Technical assistance</td>
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<td>3.1.4.</td>
<td>39</td>
<td>699 003,01</td>
<td>Development of infrastructure of employment and social service institutions</td>
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<td>3.1.5.</td>
<td>161</td>
<td>2 475 159,81</td>
<td>Health care infrastructure</td>
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<td>3.2.1.3.1</td>
<td>45</td>
<td>210 552,37</td>
<td>Development of accessibility and transportation system (outside Riga)</td>
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<td>3.2.2.1.1</td>
<td>127</td>
<td>3 357 899,11</td>
<td>Development of IT systems</td>
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<td>3.4.1.1</td>
<td>324</td>
<td>7 249 110,74</td>
<td>Development of water management facilities</td>
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<td>3.4.1.5.2</td>
<td>6</td>
<td>51 621,94</td>
<td>Hydraulic structures for elimination of flooding risks</td>
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<td>3.4.3.</td>
<td>29</td>
<td>611 766,82</td>
<td>Development of culture infrastructure</td>
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<tr>
<td>3.5.1.2.3</td>
<td>9</td>
<td>6 992 215,41</td>
<td>Development of environmental protection infrastructure (waste management)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1455</td>
<td>22 449 490,92</td>
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</table>
Types of Irregularities Detected by the CFCA

- Breach of procurement regulations (44%)
- Suspected fraud (2%)
- Other irregularities (50%)
Types of Irregularities Detected by the CFCA

- **Breach of procurement regulations** – application of wrong procurement procedure or non-application of procedure where it is necessary, application of unlawful selection/award criteria, substantial modification of contract conditions (payment procedures, amounts, extended deadlines)
- **Other irregularities** – termination of contract and recovery of sums paid (co-financing problems); works invoiced, but not performed
- **Suspected fraud** – falsified supporting documents
- **Breach of contract and implementing regulations** – inclusion of non-eligible expenditure (items that can not be financed, expenditure outside eligibility period), non-conformity of items or materials delivered
Fraud as Type of Irregularity

**Regulation 1828/2006 Article 27 c)** – «suspected fraud» means an irregularity giving rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behavior, in particular fraud, as referred to in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests.

**Article 1(1)(a) of the Convention** - fraud affecting the European Communities' financial interests shall consist of:
- the use or presentation of false, incorrect or incomplete statements or documents,
- non-disclosure of information in violation of a specific obligation,
- the misapplication of such funds for purposes other than those for which they were originally granted.
National Definition of «fraud»

Article 177, Criminal Law – acquiring property of another person or of rights to such property, by the use, in bad faith, of trust or by deceit
Anti-Fraud Strategy

Identification
- Identification of risks
- Initial controls
- Training
- Investigations
- Preservation of evidence

Prevention

Elimination
- Knowledge-based information campaign
- Reporting
- Penalties

Effective controls
Prevention of Irregularities

- Training of beneficiaries
- Training of employees
- Information on common irregularities detected provided to the beneficiaries
- Ex-ante control of procurement documentation
- Guidelines and standard documentation
Financial Corrections

Content:

1. Legal basis
2. Principles of application of financial corrections
3. Financial corrections applied by the CFCA
Legal Basis – EU Level

Article 98 (1) and (2), Regulation 1083/2006:
The Member State shall make the financial corrections required in connection with the individual or systemic irregularities detected in operations or operational programmes. The corrections made by a Member State shall consist of cancelling all or part of the public contribution to the operational programme. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Funds.

Commission Decision of 19.12.2013 on the setting out and approval of guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement
Legal Basis – National Level

Cabinet of Ministers Regulations No 740 «Procedures for notification of irregularities detected in the introduction of European Union Structural Funds and Cohesion Fund, adoption of administrative decisions regarding utilization of the financing granted and recovery of non-conforming expenditure»

Article 6 - where the Contracting Authority adopts a decision on irregularity and the sum of irregular expenditure can not be precisely determined or where it would be disproportionate to recover the whole sum of irregular expenditure, a proportionate financial correction can be applied.

Guidelines of Managing Authority No 10.10 on Making Financial Corrections in Projects Financed from the European Union Funds

Based on the Commission Guidelines, provide principles, criteria and scales to be applied where proportional financial corrections are made – detailed list of examples and correction rates.
Application of Financial Corrections by the CFCA

CFCA Internal Regulations No 39-1-3/14 «Regulations on detection and notification of irregularities and recovery of irregular expenditure»

Include delegation to apply financial correction when adopting a decision on irregularity

When adopting the decision on irregularity within the Management Group, decision is made whether financial correction can be applied and the appropriate amount is detected according to the Management Authority Guidelines
Principles for Application of Financial Corrections

• The purpose of financial corrections is to restore the situation in which the expenditure made from European Union funds and Latvian state budget are in line with the applicable rules and regulations
• Gravity of infringement must be taken into account
• When several deficiencies are found in the same case of irregularity, the financial corrections are not cumulated and correction rate of the most serious breach is applied
Financial Corrections applied by the CFCA (2011-2013) in Public Procurement

<table>
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<tr>
<th></th>
<th>0%</th>
<th>2%</th>
<th>5%</th>
<th>10%</th>
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<td>Breach of principle of equal treatment</td>
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<td>0</td>
<td>18</td>
<td>56</td>
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<td>Unlawful selection criteria</td>
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<td>0</td>
<td>2</td>
<td>15</td>
<td>4</td>
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<td>Inadequate publicity</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>8</td>
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<tr>
<td>Substantial modifications of the procurement contract</td>
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<td>0</td>
<td>0</td>
<td>2</td>
<td>10</td>
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<tr>
<td>Additional works without procedure</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>21</td>
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<tr>
<td>Ancillary elements</td>
<td>16</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>0</td>
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</table>
Examples of Irregularities in Public Procurement

- **Breach of principle of equal treatment** – more favorable treatment of applicant (information, rules)
- **Unlawful selection criteria** – required experience in public sector, prohibition to subcontract, inadequate turnover
- **Inadequate publicity** – division of procurement object and non-application of adequate procurement procedure
- **Substantial modifications of the procurement contract** – extension of deadline, change of payment
- **Additional works without procedure** – contract awarded directly
- **Ancillary elements** – deficiencies in documentation, publications requirements not fully met (publication in local not national newspaper)
Recovery Methods of Irregular Expenditure from Public Bodies

- Withholding of irregular expenditure
- Writing-off of irregular expenditure (sum below 120 EUR)
- Voluntary repayment
- Issue submitted to the Cabinet of Ministers
Recovery Methods of Irregular Expenditure from Private Parties

- Withholding of irregular expenditure
- Writing-off of irregular expenditure (sum below 120 EUR)
- Voluntary repayment
- Compulsory execution of recovery decision or action brought to court
Questions for Discussion (1)

- Adoption of irregularity decision within institution – scheme? Strengths and weaknesses?
- Status of irregularity decisions – rights to appeal?
- Common types of irregularities detected?
- Registration of irregularities (MIS)? Use of the system for analysis? Connection with other systems and status/use of data acquired?
- Involvement of audit authorities – right to adopt decision on irregularities? Contradictory opinions between institutions?
Questions for Discussion (2)

- National regulations regarding «fraud»? Definition compatible with definition of Regulation 1828/2006?
- Cooperation for investigation of fraud cases?
- Acquisition and preservation of evidence? Amount of information disclosed to the beneficiary in case of suspected fraud?
- Sanctions for beneficiaries involved in fraud?
- Sanctions for state institutions and municipalities in case of irregularities?
- Fraud committed within procurement contract by supplier – negative consequences for the beneficiary?
Questions for Discussion (3)

• Methods used for prevention of irregularities?
• Application of financial corrections – legal basis and guidelines? Status of the applicable documents?
• Application of financial corrections and recovery – initially or for each request for payment?
• Examples of amounts of financial corrections applied?
• Reduction of the amount of financial correction for local/small-scale procurement procedures?
• Disputes with beneficiaries regarding financial corrections applied? Court cases?
Questions for Discussion (4)

• Recovery methods of irregular expenditure? Writing-off (through state budget or in cases of systemic irregularities)?
• Recovery of irregular expenditure from different project of the same beneficiary?
• Compensation of damage to the controlling institutions?
• Compensation of damage to the beneficiary if irregularity due to actions of third parties?
Thank you!