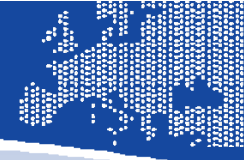


IRREGULARITIES ETC 2007-2013 programmes Interact seminar ROME 15.6.2010

Claude Tournier
Deputy Head of Unit
DG REGIO J3

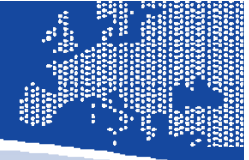


Content

1. The legislation: applicable Regulations on irregularities
 - 2988/95 + 1681/94
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 - Latest amendments

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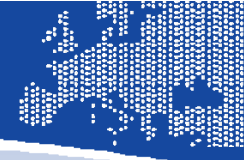
3. Challenges specific to ETC programmes
 - Roles of MA,MS, FLC,CA, AA
 - Coordination
 - Who pays for losses?
 - How to make suitable arrangements



The legislation: applicable Regulations on irregularities

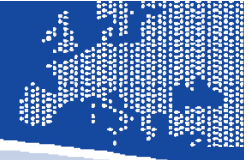
Commission Regulations 2988/95 + 1681/94: Definition / obligation to communicate

- Definition: irregularity means 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 Communities by charging an unjustified item of expenditure to the Community budget
- “Primary administrative or judicial finding” means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure



The legislation: applicable Regulations on irregularities

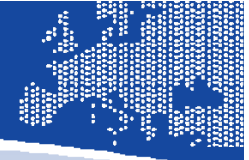
- Communicate: Originally paper and / or IT, now by Electronic means IMS (Web based), usually centralised communication by MS (AFCOS)
- Content: Identification of Fund, programme, measure, provision infringed, date of (detection), how, suspicion of fraud or not, how discovered, ..., identity of persons involved, total amount, public amount and EU amounts...



The legislation on irregularities

Concrete examples:

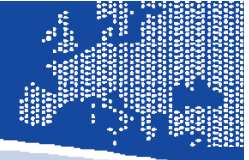
- Invoice / wages charged twice
- Expenditure outside eligibility dates
- Cost not approved in finance plan/budget or not related to approved project / budget
- VAT unduly charged
- Contract awarded without respect of national/EU rules



The legislation: applicable Regulations on irregularities

Commission Regulation 2035/2005

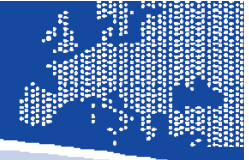
- “Irregularities relating to the Interreg programmes (...), shall be reported by the Member State in which the expenditure was incurred. The Member State shall at the same time inform the managing authority and the paying authority for the programme and the person or body designated to establish declarations on winding-up under Article 15 of Regulation (EC) No 438/2001.”
- New threshold for communication: EU Funding EUR 10 000.



The legislation: applicable Regulations on irregularities

Commission Regulation 1828/2006 Section 4 on
Irregularities: Articles 27 to 36.

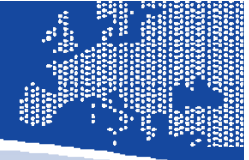
- Takes over the content of previous legislation (including 2035/05) and adapts it to provisions of the programming period 2007-13
- Cases of derogations are determined consistently throughout the period: bankruptcies, spontaneous information from beneficiary, cases detected before payment of public contribution and before declaration to the Commission (+ no suspected fraud)
- Accounts to be kept of amounts recoverable, recovered or withdrawn even if below communication threshold.



The legislation: applicable Regulations on irregularities

Latest amendments of 1828/06 in Reg. 846/2009

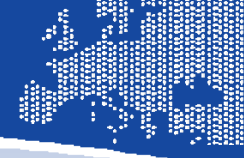
- Specific provisions for First level controllers in ETC programmes (instead of MA)
- Art. 20 modified: CA requests EU budget to bear the loss; Commission decides within one year
- Art. 28 modified: co-financing rate of priority axis to calculate EU fund at stake
- “Cases brought to the attention of MA or CA by the beneficiaries before **or after** inclusion in (...) a payment claim to the Commission” need not be communicated.
- Modification of follow up reporting under Art. 30
- Annex XI to 846/2009 gives the formats for reporting on amounts withdrawn, recovered, pending recoveries, irrecoverable amounts: a single statement by 31 March each year



The legislation: applicable Regulations on irregularities

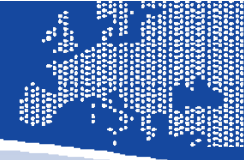
Specificities of legislation for ETC: Regulation 1080/2006

- Art. 17. 2 provides for the CA to ensure recovery (of amounts paid as a result of irregularity) from the lead beneficiary (LP), and for the beneficiaries (PP) to repay the lead partner for amounts unduly paid according to the agreement existing between them.
- Art. 17. 3 provides for the MS on whose territory the irregularity occurred to pay back to the CA
- Art. 20 1 a) provides for the LP to arrange sound financial management and recoveries
- Art. 20 2 provides a) for each beneficiary to assume responsibility for its own irregularities and b) each beneficiary (outside programme region) informs its MS that it participates in the programme.



Commission's guidance and expectations

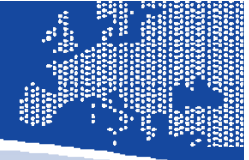
- COCOF 10/0002/02 on reporting on withdrawn, recovered or recoverable amounts and amounts considered irrecoverable
- Corrections by MS /Programmes authorities
- Corrections at closure by Commission if necessary



Challenges specific to ETC programmes

Roles of MA, JTS, MSs, FLC, CA, AA: who does what in your programme?

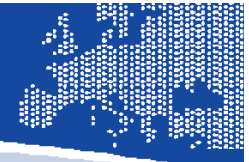
1. Prevention: not today on the agenda but to be tackled first !
2. Detection
3. Reporting to Commission financial amounts
4. Communication to OLAF
5. Concluding / paying back to Commission.



Challenges specific to ETC programmes

Coordination is needed and should be clarified

- In writing
- Timely
- With instruments that enable legal actions, recoveries and manageable timing until closure of the cases.
- Don't forget the possibility of flat rate corrections



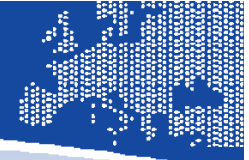
Challenges specific to ETC programmes

Who pays for losses ?

How to make suitable arrangements ?

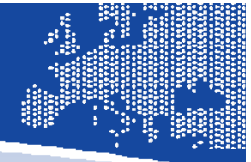
Cascade system: involve the right representative at the right level:

1. between partners,
2. between LP and CA,
3. between MS and or
4. between MS and CA.
5. Other possibilities: Regions and MS, depending on the constitutional situation ...



Challenges specific to ETC programmes

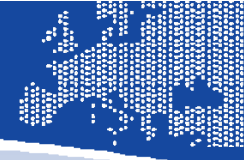
1. Table on irregularities: who contributes to the table to be sent by the CA to the Commission?
Who is accountable for which data?
2. Who is accountable for efficient and fast recovery where needed?



The tables on withdrawals, recoveries and pending recoveries. Annex XI to 846/2009

ANNUAL STATEMENT ON WITHDRAWN AND RECOVERED AMOUNTS, PENDING RECOVERIES AND IRRECOVERABLE AMOUNTS (ARTICLE 20(2))

- Page 1 : WITHDRAWALS AND RECOVERIES DEDUCTED FROM STATEMENTS OF EXPENDITURE DURING THE YEAR 20xx
 - Priority axis
 - (A) withdrawals (1)
 - Total amount of expenditure paid by beneficiaries withdrawn (3)
 - Corresponding public contribution withdrawn (4)
 - Total amount of expenditure withdrawn relating to irregularities reported under Art. 28(1) of Regulation (EC) No 1828/2006 (5)
 - Amount of corresponding public contribution withdrawn relating to irregularities reported under Art. 28(1) of Regulation (EC) No 1828/2006 (6)
 - (B) recoveries (2)
 - Public contribution recovered (7)
 - Total amount of expenditure paid by beneficiaries (8)
 - Amount of public contribution recovered relating to irregularities reported under Art. 28(1) of Regulation (EC) No 1828/2006 (9)
 - Total amount of expenditure relating to irregularities reported under Art. 28(1) of Reg (EC) No 1828/2006
- Page 2: pending recoveries 31/12 20XX
- Page 3 irrecoverable amounts 31/12/20xx



Thank you for your attention

Questions, comments?