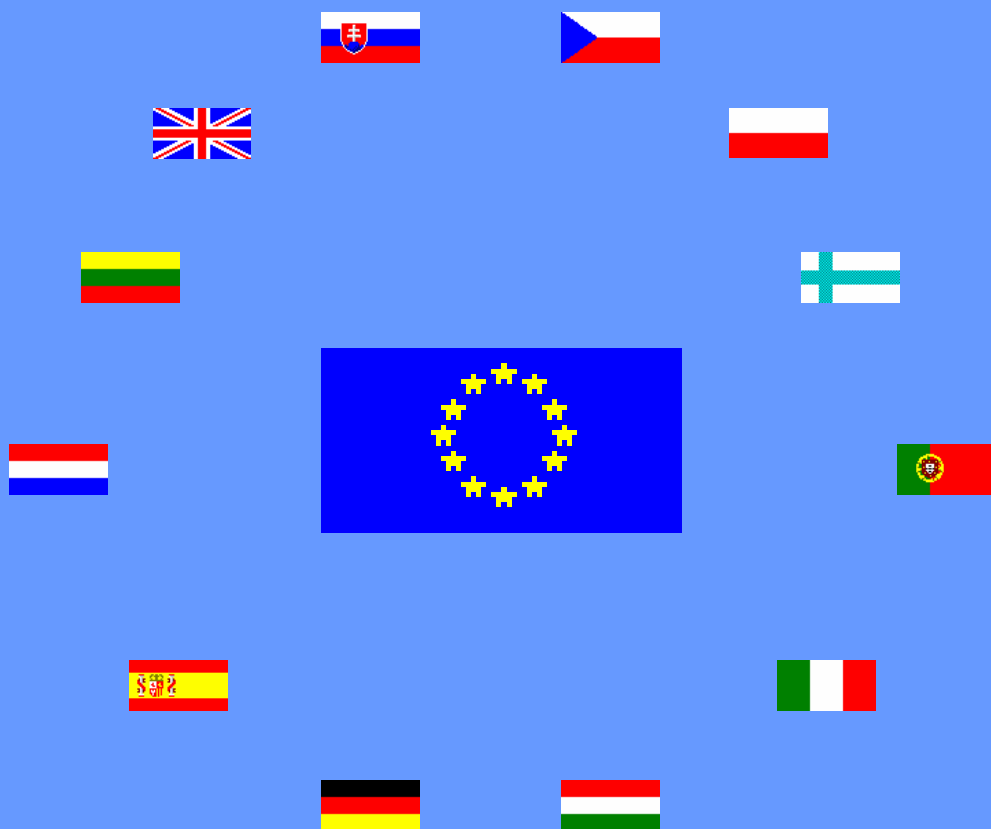


Report
to the
Contact Committee
of
the Heads of the Supreme Audit Institutions of the
EU Member States and the
European Court of Auditors



On the
Parallel Audit on the processes for identifying, reporting and following up on Irregularities
by the Working Group on Structural Funds

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Executive Summary

Background

In 2000 the Contact Committee created a Working Group to carry out an exploratory survey on EU Structural Funds. The aim of the Working Group was to gain an understanding of how these funds were controlled and managed by the various Member States and to identify possible risk areas. The Working Group reported its findings from this work to the Contact Committee in November 2002. The Contact Committee subsequently approved a first parallel audit on the application of two key regulatory requirements for the management and control of the Structural Funds, to ensure that all Member States implement independent checks on 5% of expenditure and that they have established appropriate audit trails to support transactions. The report on this review was presented to the December 2004 Contact Committee.

The 2004 Contact Committee gave the Working Group a mandate to continue its reviews of Structural Funds issues and specifically; to carry out a review of the processes in place for identifying, reporting and following up on irregularities. Irregularities are defined by EU Council Regulation 2988/1995 as *“any infringement of a provision of Community law resulting from an act or omission, intentional or not, by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities”*.

Audit Plan and Approach

In order to undertake this review the Working Group developed an Audit Plan (Annex A) to be used by the participating Supreme Audit Institutions (SAIs) in carrying out their respective national audits. The audit plan covered six specific Key Areas. Each SAI worked to this common format and submitted their respective country reports to the Working Group meeting held in Warsaw from 19-21 June 2006.

The Working Group, as guided by the Core Group of Germany (Chair), the Netherlands, Poland and the United Kingdom, have summarised the key findings and recommendations from those

country reports, and produced this consolidated report. The findings are presented in this report for every Key Area.

This is the first parallel audit involving the full participation of some of the new EU Member States. The Working Group recognised that not all Member States were able to fully address each of the six Key Areas but they were encouraged to cover as many of them as possible (see Overall Country Comparisons for Key Area 5 and 6).

The findings in this report are in line with observations made by the ECA in related Special Reports (No. 10/2001 on the financial control of the Structural Funds and No. 1/2005 on the management of OLAF), and in its Annual Report for 2005. Specific findings of ECA are also referred to in the Key Areas.

The bulk of the audit work was carried out between June 2005 and May 2006 and covered irregularities of the 2000-2006 programme period. When planning the audit work, it was recommended that, where feasible, SAIs should select a representative sample of a minimum of 40 recorded and reported irregularities. The auditor should have conducted sufficient audit work to form a judgement on each of the Key Areas examined. In undertaking work to form such judgements, each SAI could have utilized a number of different audit techniques, such as interviews, examination of a sample of recorded and reported irregularities and questionnaires. The overarching objective of our work and of this final report was to capture the SAIs judgements in identifying examples of both good practice and weaknesses in the systems and procedures in place within Member States.

In order to ensure consistency of approach, all participating SAIs conformed to the Audit Plan as far as was possible. It was acknowledged, however, that the scope of each examination was influenced by national rules and constraints: and for the new Member States, by the start date of May 2004 for the 2000-2006 programme period (scope and methods of audits carried out at Annexes B and C).

Relevant EU Regulations

The review paid particular attention to the following EU Regulations:

- Commission Regulation (EC) No. 1681/1994, concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field;
- Commission Regulation (EC) No 2035/2005, which made revisions to 1681/94 and took effect from 1 January 2006;
- Council Regulation (EC, EURATOM) No 2988/1995, which defines an irregularity;
- Council Regulation (EC, EURATOM) No 1260/99, in particular Article 38 on Financial Control and Article 39 on Financial Corrections;
- Commission Regulation (EC) No 438/2001, in particular Article 8 on recovery of irregular payments and finally
- Commission Regulation (EC) No 448/2001, on the procedure for making financial corrections.

The European Anti Fraud Office (OLAF)

According to these EU regulations, Member States are obliged to report details of irregularities to the European Anti Fraud Office (OLAF). OLAF was established in 1999 as an independent organisation within the Commission, with the aim of protecting the European Union's financial interests; and fighting fraud, corruption and other irregular activity within European Institutions and Member States.

All Member States are required to report details of irregularities to OLAF on a quarterly basis. OLAF carries out its work by conducting internal (within the Commission and/or Member States) and external (in Member States) investigations. Around 90% of

the cases currently under review by OLAF are external, involving irregularities including alleged fraud in Member States. OLAF produces case reports on investigations, reports to Commission disciplinary committees, develops anti-fraud policy and produces an annual report summarising the information received from Member States.

The SAI's review concentrated on the systems implemented by Member States for the application of EU Regulation 1681/1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field. The review also focused on the reporting arrangements between Member States and OLAF and on actions taken by the Commission/OLAF in response to reported irregularities, for example, in the area of financial corrections.

Main conclusions

- The review identified significant differences between Member States in the levels of understanding and compliance, as demonstrated by the reported conclusions within each Key Area and the examples of Good Practice and Weaknesses. Similarly, the review also identified a lack of consistency of performance within some Member States; particularly those who operate a decentralised system that involves several Managing Authorities and/or Intermediate Bodies.
- Although the Commission has issued several Regulations and additional guidance, the review identified a general lack of understanding within the majority of Member States as to how those Regulations and guidance should be interpreted. This has led to significant disagreements between the Commission and the Member States as to exactly what constitutes an irregularity (as opposed to a simple error) and what should be reported to the Commission.

- To support the Commission guidance, national authorities have issued additional guidance; but in most cases this has not had the desired effect of effectively clarifying the requirements for recording or reporting, or guaranteeing consistent interpretation of the Regulations.
- Whilst Member States recognized the need to comply with EU Regulations and guidance, several Member States voiced concern over the administrative burden placed upon them by the detailed recording and reporting requirements. Member States were also critical of the seeming lack of use made by the Commission/OLAF of this detailed information and of the lack of feedback.
- In general, the review concluded that the processes in place for the initial identification of potential irregularities within Member States were adequate. Significant weaknesses were identified, however, with the subsequent decision making processes as to how those irregularities should be further investigated, and whether or not they are required to be reported to OLAF.
- The review also identified deficiencies in the mechanisms of the reporting to OLAF. The majority of Member States were still not using the OLAF Anti Fraud Information System (AFIS) link: in part due to the technical incompatibilities between Member States' own systems and AFIS.
- Although Article 39 of EU Regulation No. 1260/1999 requires the charging of interest on late payment of amounts to be recovered, some national authorities do not charge interest.

Good practice

The review identified the following examples of good practice within some of the Member States:

- Single database of irregularities in use for all national programmes.

- Central (in-depth) review of how to deal with potential irregularities taken at the working level, and preparation of an overall report on irregularities.
- Regular exchange of information, the establishment of Working Groups and annual training sessions for the managing authorities and intermediate bodies to share knowledge and experiences of the responsible officials.
- Member State Authorities monitor compliance with the reporting deadlines by the divisions responsible for managing the grant funds and, where necessary, remind them of the need to submit these reports.
- Consistent correction of irregularities by deducting repayable amounts from subsequent payments or recovery of excess payments from the beneficiary.
- The risk of irregularities and the need to make financial corrections can be reduced by only transferring funds to grant applicants when (interim) checks have shown that no significant irregularities had occurred at those applicants.

Weaknesses

Within some of the Member States the review identified the following weaknesses:

- Insufficient training in application of guidance.
- Irregularities are in some cases neither recorded nor reported on first identification.
- No analysis of potential systemic errors had been carried out.
- Errors and potential irregularities may be corrected without ever being reported to the Commission.
- No central in-depth monitoring of decisions about reports to the Commission taken at the working level, at most a

formal check on completeness of the reports to the Commission.

- The follow up of irregularities is either reported not at all, too late, or not comprehensively enough and takes a long time.
- Beneficiaries who had to repay excess payments are not charged interest.

Recommendations

Our main recommendations apply to both the Member States and to the arrangements in place between the Commission/OLAF and the Member States. SAIs will monitor the implementation of these recommendations, where appropriate.

- Member States should seek to guarantee the standard of compliance with and interpretation of EU Regulations and internal guidance, by ensuring that appropriate training is provided for all staff involved in the process.
- More detailed analysis of irregularities should be carried out by the Member States in order to detect possible systemic errors.
- The charging of interest on late payments should be the rule, not the exception.
- All national authorities should make routine checks on whether a grant applicant was responsible for irregularities in the past before approving an application.
- In appropriate cases, applicants should be checked for their financial viability to minimize the risk of loss of funds through bankruptcy.
- Member States should require the Commission to clarify exactly when irregularities should first be recorded (and then later reported to the Commission).
- The Member States should work with the Commission to ensure that a compatible electronic reporting system is introduced that can be used by all Member States.

- The present reporting requirements should be simplified to reduce the administrative burden on Member States. The Commission should also give more feedback to Member States, detailing how the reported information, especially on the follow up of irregularities is used.

Audit Findings by Key Areas

Key Area 1: Guidance

The objective is to provide an overview of the guidance given by Member States' authorities on the application and interpretation of EU rules:

Conclusions

The review identified a lack of consistency of guidance both between and within Member States. This can lead to general non-compliance with EU Regulations and uncertainty as to how irregularities should be treated. Hence it potentially has an impact on all the Key Areas examined in this report. In some of the new Member States the quality of the guidance has still to be confirmed, due mainly to the May 2004 start date for the implementation of the 2000-2006 programme.

Findings

The review identified a lack of consistency of guidance both between and within Member States. This depended to a significant degree on how each was organised to manage Structural Funds.

In the several Member States where a single Central Focal Point has been established to deal with irregularities (D, E, FIN, H, P, PL, SK and UK) information and instructions from the Commission were effectively disseminated into general guidance and notified to the respective Managing Authorities.

Within most Member States, the Managing Authorities issue additional guidance in line with national procedures, to further interpret the EU Regulations and the general guidance provided by the Central Focal Point. In the Member States where there are a limited number of Managing Authorities (FIN and P) or devolved administrations, the review confirmed a consistent application of guidance across all Structural Funds. Where several authorities or administrations are involved, however, (E, H, NL and UK) application of EU Regulations depended to a significant degree on the quality of the specific guidance issued by

those separate authorities or administrations and also on how responsible staff is trained to interpret the guidance.

As a result, differing standards of performance in terms of compliance with EU Regulations were identified within some Member States; evidenced by variable levels of understanding as to the definition of an irregularity and how and when it should be recorded, reported, investigated and corrected.

Good practice

a) By the Central Focal Point

- The Central Focal Point effectively disseminates information from the Commission and provides Guidance to the various Managing Authorities (D, E, FIN, H, P, PL and UK)
- Effective liaison is maintained between the Central Focal Point and Managing Authorities throughout the entire process (D and FIN)

b) Within Managing Authorities

- Evidence that the Guidance is applied consistently by all Managing Authorities (D, FIN and P).
- The establishment and development of Working Groups to share knowledge and experiences on dealing with irregularities (CZ, D, E, FIN, P and PL).

Weaknesses and recommendations

Weaknesses

- The additional guidance issued and approved by some Managing Authorities within Member States was insufficient to effectively interpret EU Regulations (E, H, LT, NL, PL, SK and UK)
- Lack of clarity as to what constitutes an irregularity (CZ, D, E, H, I, LT, NL, PL and UK)
- No uniform practice of dealing with irregularities between and within the funds (E, H, NL and UK)
- Insufficient formal training in how to apply the guidance (I, PL and UK)

- Member States experienced difficulties in getting the Commission to respond effectively to requests for guidance or clarification (D, NL, FIN, PL and UK)
- Unnecessarily complicated procedures not derived from EU-Regulations, imposing extra duties on individual bodies (PL)

Recommendations

- All Member States should ensure that they have an effective Central Focal Point, providing consistent guidance and taking responsibility for discussing issues with the Commission.
- Where several Managing Authorities or devolved administrations are involved, the national Central Focal Point or responsible authority should take steps to ensure that common guidance is in place and is being consistently applied. Where there is insufficient guidance, Member States should take appropriate action to ensure compliance with the EU Regulations.
- Member States should seek to guarantee the standard of compliance with and interpretation of EU Regulations and internal guidance, by ensuring that appropriate training is provided for **all** staff involved in the process.
- Member States should request the Commission to consider establishing an “Irregularities Technical Group” for all Member States (and candidate countries for pre-accession funds) to explain and prompt discussion on key issues arising out of the Regulations governing the handling of irregularities. Particular attention should be given to the interpretation of the revised Regulations introduced with effect from 1 January 2006.
- Member States should require the Commission to be proactive in responding to requests for additional guidance and interpretation of the Regulations and should also consider providing appropriate training.

Overall Country Comparison Key Area 1

| Key Area 1 | Guidance | Interpretation |
|----------------------|----------|----------------|
| Czech Republic (CZ) | + | — |
| Finland (FIN) | + | + / — |
| Germany (D) | + | — |
| Hungary (H) | + / — | — |
| Italy (I) | + / — | — |
| Lithuania (LT) | — | — |
| Netherlands (NL) | — | — |
| Poland (PL) | + / — | — |
| Portugal (P) | + | + |
| Slovak Republic (SK) | + / — | 0 |
| Spain (E) | + / — | — |
| United Kingdom (UK) | — | — |

Legend:

+ = positive conclusion/best practice identified

+ / — = neutral (no serious weaknesses, no best practice)

— = negative conclusion/ weaknesses identified

0 = no results

Key Area 2: Identification and recording of potential irregularities

The objective is to provide an overview of the characteristics of the irregularities found:

Conclusions

The ability of Member States to effectively identify and record irregularities in compliance with the EU Regulations is to a significant extent affected by the quality of the detailed guidance in place and by the levels at which key decisions are taken. Consequently there were general concerns over the completeness of the identification and recording process, leading to the possible under-reporting of cases to the Commission. Member States considered that the requirement to record and report irregularities across a wide range of Codes was over-burdensome and of limited value, in terms of the use made of that information by the Commission.

Findings

The most common types of irregularities recorded are:

- Claims include items of ineligible expenditure- Code 325:
- Lack of supporting documentation - Code 210
- Requests for aid incorrect or incomplete - Code 207
- Absence of evidence required - Code 607
- Projects not carried out in conformity with the rules - Code 812 or not terminated (in most cases due to bankruptcy)
Code 811
- Other type, which must be explained - Code 999-

Similar types of irregularities (notably items of ineligible expenditure and lack of supporting documentation) have been found by the ECA in its annual financial audits of Structural Funds expenditure in the context of the Statement of Assurance on the EU accounts (see ECA Annual Reports:www.eca.europa.eu)

Within some Member States the initial decision-making process is delegated to a large number of subsidiary Authorities, which results in a significant lack of consistency in the approaches

adopted; and differing levels of awareness as to what is required to be recorded as a potential irregularity.

There was also a lack of clarity over the issue of exactly when an irregularity should first be recorded:

- when first identified;
- after full investigation;
- after the case has been settled and re-imburement can be sought from the claimant?

The review identified examples of disagreement between Member States and the Commission over the interpretation of the Regulations. Where irregularities were recorded and reported on initial suspicion, only for subsequent investigations to confirm that they should not have been treated as such, Member States considered that it was difficult to delete such information from the Anti-Fraud Information System (AFIS). As a result, the data held and used by the Commission/OLAF could be distorted.

The review also concluded that the Regulations place too great an administrative burden on Member States to record and report irregularities against too extensive a range of codes (over 100). Hence some Member States were not using the Codes, whilst others (D, FIN) were unclear as to the exact use made of this detailed information by the Commission, other than producing statistical reports.

Some Managing Authorities record irregularities below the Euro 4,000 (since 1 January 2006 10.000 €) threshold so that they can report completely on recovery action (CZ, FIN, NL, PL, UK).

Good practice

- Some Managing Authorities maintain a complete and transparent overview of the detected and reported irregularities (D, FIN, NL, P, UK).
- Single database of irregularities in use (CZ, D, FIN, P).

Weaknesses and recommendations

Weaknesses

- Lack of written procedures covering the findings from 5% inspection, external audit and systems reviews, and on how they should be reported (LT).
- Irregularities are not always recorded on first identification, but rather after investigations into the nature of the potential irregularity have been completed (D, H, NL and UK).
- Member States do not use consistent databases to record irregularities (PL, UK).

Recommendations

- Member States should seek a better understanding with the Commission as to exactly when irregularities should first be recorded (and then later reported to the Commission).
- The present reporting requirements, by detailed category, should be simplified to reduce the administrative burden put on Member States.

Overall Country Comparison Key Area 2

| Key Area 2 | Identification | Recording |
|----------------------|----------------|-----------|
| Czech Republic (CZ) | +/- | + |
| Finland (FIN) | + | + |
| Germany (D) | +/- | - |
| Hungary (H) | + | + |
| Italy (I) | +/- | +/- |
| Lithuania (LT) | +/- | 0 |
| Netherlands (NL) | +/- | - |
| Poland (PL) | 0 | - |
| Portugal (P) | + | + |
| Slovak Republic (SK) | +/- | +/- |
| Spain (E) | + | +/- |
| United Kingdom (UK) | + | - |

Legend:

+ = positive conclusion/best practice identified
weaknesses, no best practice)

+/- = neutral (no serious

- = negative conclusion/ weaknesses identified

0 = no results

Key Area 3: Examination and decision making on recorded irregularities

The objective is to provide an overview as to how Member States conclude as to whether or not reporting to the Commission is required in accordance with EU Regulations and guidance:

Conclusions

Differences (and difficulties) in interpretation of the EU Regulations are found in most Member States. This results in diverging decision-making practices regarding notification to the Commission.

Although the exemptions from the reporting obligation are detailed within the Regulations and guidance, Member States deal with exemptions in different ways.

In general, no analyses of recorded or reported irregularities have been carried out to identify possible systemic weaknesses.

Findings

A. Examination & decision-making

The Working Group identified a significant degree of disagreement between the Commission and Member States as to exactly which types of errors constitute an irregularity; and should be notified to the Commission. As a result the concept of what constitutes an irregularity is understood in different ways, leading to diversity between and within Member States (D, E, H, I, LT, NL, PL, UK). Hence irregularities may be financially corrected without ever being reported to the Commission (D, E, I, NL, UK). Sometimes irregularities are reported to the Commission only after a case has been fully investigated (D). In some other Member States there are insufficient procedures in place for identifying, reporting and monitoring irregularities (CZ, LT).

In one Member State no problems as to the interpretation of the EU Regulations and subsequent decision-making were identified (P).

Decisions as to what should be reported to the Commission are sometimes taken at a working level (intermediate bodies, decentralised managing authorities), and without central scrutiny.

At best, the Central Focal Point in some Member States carries out a formal check on the accuracy and completeness of the notifications. Partly, this is due to the legal and constitutional system of the Member States (D, H), partly, because the Central Focal Point abstains from doing so (E, NL, UK). In one country, authorities responsible for examining (potential) irregularities are overloaded, as they perform other tasks as well; resulting in lengthy investigation procedures (H).

Bankruptcies without fraudulent background have not been reported as irregularities by Finland, whilst in certain programmes in other Member States bankruptcies have been the only reason for notification of irregularities (D, NL). Since the revised Regulations were introduced with effect from 1 January 2006, there is no longer an obligation to report such cases.

B. Exemptions

All Member States audited are familiar with the main exemptions from the requirement to report cases to OLAF, as established in the EU Regulations. For example, there is no need to report:

- cases under the € 4,000 threshold (now € 10,000);
- irregularities communicated spontaneously by the final beneficiary or
- errors corrected prior to payment.

The review identified significant differences within Member States and Managing Authorities, however, in how possible exemption cases should be interpreted (see Key Area 1). For example, cases where “errors were corrected prior to payment” have been open to different interpretations (UK, NL). As a consequence, where irregularities are corrected before sending payment applications to the Commission, such cases are not reported as irregularities (D,NL, UK). In one Member State (PL) the managing authorities additionally prepare quarterly reports on irregularities for the Central Focal Point.

C. Analysis of possible systemic errors

Only one Member State (FIN) carried out a detailed analysis of recorded and reported irregularities, in order to detect possible systemic errors or other weaknesses in the management and control systems.

From the audits two (possible) systemic errors can be identified:

- Incorrect application of public procurement procedures (FIN, H, NL, PL).
- Notification of only bankruptcies as irregularities (D, NL).

Irregularities concerning public procurement have also been regularly reported by the ECA in its annual financial audits of Structural Funds expenditure in the context of the Statement of Assurance.

Good practice

- Central (in-depth) review of notification decisions taken at lower levels (FIN, P, PL) and preparation of an overall report on irregularities (PL).
- Regular exchange of information (D, FIN, H, P) and annual training sessions (FIN) for the managing authorities and intermediate bodies to enhance knowledge of the responsible officials.

Weaknesses and recommendations

Weaknesses

- Errors and potential irregularities may be corrected without ever being reported to the Commission (D, E, I, NL, UK).
- No central in-depth monitoring of decisions about notification taken at lower levels; at most a formal check on completeness of the notification (D, E, H, NL, UK).
- Some irregularities are notified at too late a stage, for example after decisions about financial corrections are made (FIN).
- Insufficient procedures are in place for identifying, reporting on and monitoring irregularities (CZ, LT).
- Lack of resources to investigate irregularities (H) and/or prepare reports on irregularities (PL).

- No or insufficient analysis of irregularities for potential systemic errors had been carried out (D, E, H, I, LT, NL, P, PL, UK).

Recommendations

- Member States should seek a clear agreement with the Commission as to whether or not all identified irregularities – corrected or not – should be reported and when.
- More detailed analysis of irregularities should be carried out by Member States in order to detect possible systemic errors.
- Member States should require the Commission to provide additional guidance on what it considers to constitute systemic errors.

Overall Country Comparison Key Area 3

| Key Area 3 | Uniform examination & decision making | Exemptions are correctly dealt with | Analysis of potential systemic errors |
|----------------------|---------------------------------------|-------------------------------------|---------------------------------------|
| Czech Republic (CZ) | — | 0 | — |
| Finland (FIN) | + | + | + |
| Germany (D) | — | + | — |
| Hungary (H) | — | + | — |
| Italy (I) | — | + | — |
| Lithuania (LT) | — | + | — |
| Netherlands (NL) | — | — | — |
| Poland (PL) | + | + | — |
| Portugal (P) | + | + | 0 |
| Slovak Republic (SK) | 0 | 0 | 0 |
| Spain (E) | — | + | — |
| United Kingdom (UK) | — | — | — |

Legend:

+ = positive conclusion/best practice identified

— = negative conclusion/ weaknesses identified

+ / — = neutral (no serious weaknesses, no best practice)

0 = no results

Key Area 4: Reporting to the Commission

The objective is to confirm that Member States have established a system for capturing and reporting details of irregularities to the Commission (via OLAF); and, where relevant, to other bodies, in accordance with EU Regulations and guidance:

Conclusions

Member States have established systems for capturing and reporting to the Commission on irregularities in using the Structural Funds, which generally meet the requirements of the EU Regulations. In most Member States responsibility for reporting to OLAF is assigned to one Central Focal Point. In most cases, relevant bodies routinely verify information on irregularities submitted by managing authorities, implementing authorities or final beneficiaries, before final reports are submitted to the Commission.

SAIs indicated that systems implemented in Member States have not always been effective enough, which was confirmed by delays in submitting reports on irregularities to the Commission. Some SAIs also identified problems in implementing IT systems for submitting reports on irregularities to the Commission; and incompatibilities between Member States' IT systems and AFIS.

Findings

In most of the Member States audited there exists a centralised system for capturing and reporting on identified irregularities (D, E, H, I, LT, P, PL, SK, UK). The centralised system implies that responsibility for reporting to the Commission (via OLAF) – was assigned to one body – the Central Focal Point. In some Member States (CZ, FIN, NL) there is no central body that captures all information on irregularities: rather, individual authorities are responsible for reporting irregularities for the Structural Funds (including Community Initiatives) to the Commission.

The review identified that the systems for reporting on irregularities were not fully effective. In five Member States (CZ, D, NL, P, UK) reports were submitted on time, in six Member States however (E, FIN, H, I, LT, PL), SAIs detected delays in submit-

ting reports to the Commission. Delays were caused, for example, by the late submission of information from implementing agencies (FIN), or as a result of inadequate human resources (PL).

In several Member States (D, E, FIN, NL, P, PL, UK) the reports were checked by relevant institutions before they were submitted to the Commission. Where the relevant institution does not have the legal competence to carry out a substantive check, it at least checks the report's plausibility (D).

In most Member States national systems of collecting data on irregularities are not compatible with AFIS; such systems were compliant in only a few Member States (H, NL, P).

Good practice

- Member States' Authorities monitor compliance with the reporting deadlines by the divisions responsible for managing the grant funds and, where necessary, remind them of the need to submit these reports (D, NL, PL, UK).
- Member States' Authorities prepare an annual report which provides information on irregularities detected and reported to the Commission (PL).

Weaknesses and recommendations

Weaknesses

- No links established with AFIS. This increases the necessary administrative input in all bodies involved (CZ, D, FIN, PL, UK).
- The irregularity reports are forwarded to the Commission without indication of the codes (D).
- Where the information is submitted electronically internally, there is no clear evidence of authorisation and/or certification at the appropriate level (UK).
- Neither OLAF nor the other Commission Services responsible for Structural Funds provide timely feedback to Member States on reported irregularities.

Recommendations

- Member States should work with the Commission to ensure that a compatible electronic reporting system is introduced that can be used by all.
- Member States should request the Commission to review the codes in order to make them simpler and less ambiguous. There should be a clear distinction between cases arising from mere negligence and those involving premeditated action.

Overall Country Comparison Key Area 4

| Key Area 4 | Central capturing of irregularities | Reporting to the Commission on time / complete | Electronic reporting | Checks on reports before notification to the Commission |
|----------------------|-------------------------------------|--|----------------------|---|
| Czech Republic (CZ) | + / — | + | + | 0 |
| Finland (FIN) | + | — | + / — | + |
| Germany (D) | + | + / — | — | + / — |
| Hungary (H) | + | — | — | + / — |
| Italy (I) | + / — | + / — | — | + |
| Lithuania (LT) | + | — | 0 | 0 |
| Netherlands (NL) | + / — | + / — | + | + |
| Poland (PL) | + | — | — | + |
| Portugal (P) | + | + | + | + |
| Slovak Republic (SK) | + | 0 | 0 | 0 |
| Spain (E) | + | — | — | + |
| United Kingdom (UK) | + | — | — | + |

Legend:

+ = positive conclusion/best practice identified

+ / — = neutral (no serious weaknesses, no best practice)

— = negative conclusion/ weaknesses identified

0 = no results

Key Area 5: Follow up/investigation of the reported irregularities

The objective is to confirm that Member States have adopted a consistent approach for investigating reported irregularities and that they take appropriate action to avoid such irregularities arising in the future, and thus limit the potential financial loss:

Conclusions

The review did not identify any significant feedback from the Commission on the cases reported by Member States.

The reporting of follow up procedures by the Member States needs to be improved.

Member States consider that the forms issued by the Commission could be made more streamlined and efficient. The amount of detail that has to be included in the reports causes considerable administrative effort for the national authorities.

In general, the follow up of irregularities takes a long time. Where several months elapse between the detection of an irregularity and the start of the refund procedure, this can have a detrimental effect on the effectiveness of those follow-up procedures, and of the chances of making financial recoveries.

Findings

A. Clear description of the causes of irregularities

Most national authorities investigate the causes of irregularities correctly. In some Member States causes are investigated thoroughly, but there is no analysis of the underlying causes in cases of bankruptcy (D, NL). Hence, not all reports provide an adequate basis for the Commission` s own general analysis of irregularities and their causes.

B. Recovery of excess payments

Member States took effective action to pursue recovery of funds. Irregular payments could be recovered either by claw-back of excess payments from subsequent claims, or by re-

funds from the beneficiaries. There were, however, cases in which there was little or no possibility of recovery, especially in cases of bankruptcy (D, I, NL, UK).

C. Clear, comprehensive and timely reporting to the Commission on follow up procedures

Member States consider that the reporting process is hampered by the over complexity of the forms issued by the Commission; for example, the same information (causes of irregularities) is requested in several different parts of the same form. The details required by the Commission for the description of irregularities and/or the requirements of AFIS cause considerable administrative effort for national authorities (D, FIN).

Most national authorities do not report the results of follow-up investigations promptly or in a standard format. In some Member States administrative procedures are slow (H, FIN). Reports are sometimes issued months after an irregularity has been first registered (E). It should be stressed that these findings do not apply to those Member States which do not report irregularities that could be corrected by national authorities in advance of EU-Payments at all (see Key Area 3). As a consequence, the follow up of these irregularities is not reported either (D, E, NL, UK).

D. Follow up on suspected cases of fraud

In general, cases which seem to be fraudulent are investigated promptly and thoroughly by national authorities (all Member States audited).

E. Adequate correction of identified systemic errors

Most Member States do not analyse irregularities for systemic errors. In Germany, the federal authorities scanned the Länders' reports for signs of systemic errors. They did not find such evidence, yet the ECA found systemic errors in the Länders' systems regularly during the last few years. The methodologies in place for the identification and reporting of sys-

temic errors are not altogether satisfactory: this applies particularly for cases of bankruptcy.

F. Length of time needed for follow up

In general, the follow up of irregularities takes months, sometimes years until a case can be concluded (D, E, FIN, I, NL, P, UK). Either the national authorities do not execute the follow up with the necessary urgency; or the investigations are suspended because of events beyond the national authorities' control. This applies especially for cases of fraud, which have to be handed over to independent investigators (e.g. Police, Prosecuting Attorney) who decide when and how to investigate a case, and when to inform the Managing Authorities about the results of their investigations (FIN). In other cases, the follow up is suspended due to court procedures (H). In cases of bankruptcy, legal procedures can take several years.

In some Member States, administrative procedures for the follow up of irregularities take too long (for example, FIN). In other cases, national authorities claim to need the time for a thorough and comprehensive investigation, which meets the standards given by EU regulations. In these cases the efficiency ("value for money") of the follow up procedures can be doubted (D). In some cases that were examined, more than 12 months elapsed between the detection of the irregularity and the beginning of the recovery procedure (E¹, I). Although the recovery of the payments was secured in these cases, such a long time between detection and correction of an irregularity could cause avoidable risks to EU funds and/or the national budget.

G. Action taken by the Commission regarding follow up on irregularities

For the samples of irregularities audited, the SAIs' investigations did not identify any actions taken by the Commission as a response to the reported irregularities. While the administrative effort of the national authorities is considerable, several Mem-

¹ 2 out of 61 cases

ber States felt that the Commission did not give any effective feedback on how the information provided to them is used.

Good practice

- In general, cases of irregularity are thoroughly investigated and the causes are described in the reports (D, E, FIN, H, UK).
- Potential fraud cases are passed immediately to the competent authorities for investigation and prosecution (D, FIN, NL, H, I, P, UK).
- Irregularities are analysed for systemic errors. Detected systemic errors are corrected (FIN).

Weaknesses and recommendations

Weaknesses

- The follow up of irregularities is either not reported at all, is reported too late, or is lacking in detail (all Member States audited).
- Most national authorities do not effectively analyse detected irregularities for systemic errors.
- Cases of bankruptcy are not analysed for underlying causes (D, NL).
- In general, the follow up of irregularities takes too long (all Member States).

Recommendations

- The reporting of follow up action and results needs to be improved. National authorities should demonstrate greater urgency in completing their investigations on long outstanding cases.
- In order to avoid the possible risk of losing EU or national funds as a result of bankruptcies, national authorities should give greater consideration to an applicant's financial viability before approving a project application.
- All national authorities should use the follow up of irregularities as a chance to analyse their own systems for systemic errors or weaknesses (see Key Area 3).
- Member States should require the Commission to give more feedback to the Member States about how the reported information on follow up is used, and on the value of the arduous and time consuming mechanism.

Overall Country Comparison Key Area 5

| Key Area 5 ² | Clear description of the causes of irregularities | Recovery of excess payments | Clear, comprehensive and timely reporting to the Commission on follow up procedures | Follow up on suspected cases of fraud | Adequate correction of identified systemic errors | Length of time needed for follow up | Action taken by Commission/the Commission regarding follow up on irregularities |
|-------------------------|---|-----------------------------|---|---------------------------------------|---|-------------------------------------|---|
| 1) Finland (FIN) | + | + | - | + | + | - | - |
| 2) Germany (D) | +/- | +/- | +/- | + | - | - | - |
| 3) Hungary (H) | + | + | 0 | + | +/- | +/- | - |
| 4) Italy (I) | + | - | +/- | + | - | - | - |
| 5) Netherlands (NL) | +/- | +/- | - | + | - | - | - |
| 6) Portugal (P) | + | +/- | - | + | +/- | - | 0 |
| 7) Spain (E) | + | + | - | +/- | +/- | - | 0 |
| 8) United Kingdom (UK) | + | + | - | + | - | - | - |

Legend:

+ = positive conclusion/best practice identified

+/- = neutral (no serious weaknesses, no best practice)

- = negative conclusion/ weaknesses identified

0 = no results

² The SAIs of Lithuania, Slovakia, Poland and the Czech Republic did not comment on Key Area 5.

Key Area 6: Financial Corrections

The objective is to confirm that appropriate financial corrections have been made by Member States in response to the irregularities identified and to identify any measures taken by the Commission

Conclusions

National authorities did not always ensure that amounts that were subject to financial corrections were deducted from the payment applications made to the Commission.

Although the EU-Regulation requests the charging of interest on late repayment of excess payments some national authorities do not charge interest.

Only a few national authorities check whether an applicant was responsible for irregularities in the past before approving a new application.

Findings

A. Financial correction actions taken by Member States

The review identified cases where the beneficiary paid back excess payments; but, contrary to EU Regulations, these sums were not excluded from the certificate of expenditure and payment application to the Commission (E).

Only one Member State had carried out routine checks on whether a grant applicant was responsible for irregularities in the past (NL).

One Member State does not charge interest on money to be repaid by beneficiaries (H).

In another Member State interest was charged but the payment request sent to the Commission was not reduced accordingly (E).

In most cases of bankruptcy, financial corrections cannot be executed and recovery of the EU or National funds is not possible (D, NL,UK).

B. Documentation and reporting of financial corrections

In some cases, the reports sent to the Commission on financial corrections were not in full compliance with the corrections recorded in the national database. When asked for the amount of financial corrections made, some national authorities could not provide exact figures.

In its audit of Structural Funds expenditure in the context of the 2005 Statement of Assurance, the ECA has identified inadequate reporting of recovery action by the Member States to the Commission (see ECA Annual Report 2005, paragraphs 6.36 to 6.37).

C. Actions taken by the Commission regarding financial corrections

The review could find no evidence of any direct action being taken by the Commission against Member States in respect of either reported irregularities or potential financial corrections (D, E, FIN, H, I, NL, UK).

Good practice

- Consideration of charging interest on outstanding payments (FIN, I, UK).
- Consistent correction of irregularities by deducting repayable amounts from subsequent payments; or by the recovery of excess payments from the beneficiary (D, FIN, H, I, NL).
- Potential irregularities and the need to make financial corrections are avoided by only transferring funds to grant applicants when (interim) checks have shown that no earlier irregularities had occurred (NL).

Weaknesses and recommendations

Weaknesses

- Some of the reporting bodies did not know the amount of financial corrections made and information to support the financial corrections actions taken were not always properly recorded.
- Some financial corrections were executed against the beneficiary but the payment application to the Commission

was not reduced. As a result, the financial correction did not take place from the EU Budgets point of view (E).

- No interest charges are levied on beneficiaries who have repaid irregular payments late (E, H).

Recommendations

- Member States should be more stringent in ensuring that amounts that have been subject to financial correction are excluded from the payment application to the Commission as soon as possible.
- The charging of interest on late repayment of excess payments should be the rule, not the exception.
- All national authorities should make routine checks on whether a grant applicant was responsible for irregularities in the past before approving an application.

Overall Country Comparison Key Area 6

| Key Area 6 ³ | Financial correction actions taken by Member States | Documentation and reporting of financial corrections | Evidence of action taken by the Commission regarding financial corrections |
|-------------------------|---|--|--|
| 1) Finland (FIN) | + | + | — |
| 2) Germany (D) | + | + | — |
| 3) Hungary (H) | + / — | + | — |
| 4) Italy (I) | + | + | — |
| 5) Netherlands (NL) | + | + | — |
| 6) Portugal (P) | + | + | 0 |
| 7) Spain (E) | — | + | — |
| 8) United Kingdom (UK) | + / — | — | — |

Legend:

+ = positive conclusion/best practice identified

+ / — = neutral (no serious weaknesses, no best practice)

— = negative conclusion/ weaknesses identified

0 = no results

³ The SAIs of Lithuania, Slovakia, the Czech Republic and Poland did not comment on Key Area 6.

Annex A: Audit Plan

(separate edition)

Annex B: Audit Scope (Funds and Objectives)

| Funds Covered in the Audit | | | | |
|-----------------------------------|-------------|--------------|------------|-------------|
| | ERDF | EAGGF | ESF | FIFG |
| Czech Republic | | x | | x |
| Finland | | | x | |
| Germany | x | | x | |
| Hungary | x | x | x | |
| Italy | x | x | x | x |
| Lithuania | x | x | x | x |
| Netherlands | x | | x | |
| Poland | x | | x | |
| Portugal | x | x | x | x |
| Slovak Republic | | | x | |
| Spain | x | x | x | x |
| United Kingdom | x | x | x | x |

| Objectives Covered in the Audit | | | | |
|--|--------------------|--------------------|--------------------|--|
| | Objective 1 | Objective 2 | Objective 3 | Total no. of Programmes included in the audit |
| Czech Republic | 1 | | | 1 |
| Finland | | | 1 | 1 |
| Germany | | 1 | 1 | 2 |
| Hungary | 1 | 4 | | 5 |
| Italy | 3 | 4 | 4 | 11 |
| Lithuania | 1 | | | 1 |
| Netherlands | | 2 | 1 | 3 |
| Poland | 4 | | | 4 |
| Portugal | 1 | | | 1 |
| Slovak Republic | | 1 | 1 | 2 |
| Spain | 13 | 5 | 3 | 21 |
| United Kingdom | | | | |

Annex C: Audit Work by SAIs (methods)

The table below records the different audit methods used by the SAIs in getting their audit evidence but does not reflect differences in the extent and depth of audit review.

| <i>Audit work</i> | | National SAIs/Member States | | | | | | | | | | | |
|-------------------|---|-----------------------------|----|-----|-----|----|---|----|----|----|----|----|-----|
| | | CZ | D | E | FIN | H | I | LT | NL | P | PL | SK | UK |
| 1 | Study of manuals, documents (<i>description systems, procedures</i>) | X | X | X | X | X | X | X | X | X | X | X | X |
| 2 | Questionnaires (<i>written</i>) and/or confirmation (<i>written response by third parties</i>) | X* | X | X | – | X | X | X | X | X | X | X | X |
| 3 | Inquiries (<i>verbal</i>)/(in depth) interviews | X | X | X | X | X | X | X | X | X | X | X | X |
| 4 | Analysis of (irregularity) records and reports | X** | X | X | X | X | X | – | X | * | X | * | X* |
| 5 | Inspection/observation responsible authorities and/or projects | – | X* | X* | X | X | X | X* | – | –* | X | X | X |
| 6 | Inspection/analysis of project files (<i>check documents, decisions taken, et cetera</i>) | – | X | X | X | X | X | – | X | –* | X* | X | X** |
| 7 | Analysis/review of work done by others (<i>audit reports, expression of opinion by public accountants/auditors</i>) | – | X | X | X | X | X | – | X | –* | X | X | X |
| 8 | substantive testing (<i>e.g. test if transactions have taken place, are accurate and valid</i>), to identify potential irregularities | – | X | X** | – | X* | – | – | – | –* | X* | X | X |

CZ* : Questionnaires only, no third party confirmation;

CZ** : Analysis of “Nil” reports only, no irregularities recorded.

D* : Due to legal reasons only projects of the “Xenos” programme carried out by the Federal Ministry for Labour and Social Affairs were inspected. The Bundesrechnungshof is not entitled to audit authorities of the German “Länder“ even if they are implementing Structural Funds programmes or projects. This task is within the competence of the SAIs of the “Länder”.

E* : One out of the four working teams only;

E** : Re-imburements analysis. Checking if the financial corrections already made are correct.

H* : Not on-the-spot-control, but controlling all documents of 20 projects, whether the applicant/beneficiary and Management Authorities, or Intermediate Bodies have fulfilled the requirements of EU and Hungarian law and Regulations

LT* : Inspection/observation responsible authorities only.

P* : In its capacity as external superior control body, the Portuguese Court of Auditors analyses the Inspectorate-General of Finance’s (IGF) reports and the answers by this Inspectorate to questionnaires on irregularities, complemented, whenever necessary, by meetings with other national authorities in the area of Structural Funds.

PL* Inspection/analysis of files for projects cofinanced by the ERDF

SK* : Not applied, no irregularities.

UK* : Includes reconciliations between the information submitted by originating authorities and what is submitted to OLAF by the Central Focal Point;

UK** : Mainly the results of 5% Inspection – Article 10.

Annex D: List of Abbreviations

| | |
|--------|--|
| AFIS | ANTI FRAUD INFORMATION SYSTEM |
| EAGGF: | EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND |
| ECA | EUROPEAN COURT OF AUDITORS |
| ESF | EUROPEAN SOCIAL FUND |
| ERDF | EUROPEAN REGIONAL DEVELOPMENT FUND |
| FIFG | FINANCIAL INSTRUMENT FOR FISHERIES GUIDANCE |
| OLAF | EUROPEAN ANTI FRAUD OFFICE |
| SAI | SUPREME AUDIT INSTITUTION |

Countries

| | |
|------------|-----------------------|
| CZ | Czech Republic |
| D | Germany |
| E | Spain |
| FIN | Finland |
| H | Hungary |
| I | Italy |
| LT | Lithuania |
| NL | Netherlands |
| P | Portugal |
| PL | Poland |
| SK | Slovakia |
| UK | United Kingdom |