



RED FLAGS: IRREGULARITIES OR FRAUD

09 - 10 OCTOBER 2019

IRREGULARITY DEFINITION

EU1303/2013-ART. 2(36)

"Any breach of Union **law** or of national law relating to its application, resulting from **an act** or **omission** by **an economic** operator involved in the implementation of the ESI Funds, 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.**"

FINANCIAL ERROR VS IRREGULARITY

- ❑ **An error** that was already **included in the payment claim** to the European Commission (EC) by the Certifying Authority (CA) is considered an **irregularity**.
- ❑ Otherwise, if **an error was not included** in the payment claim, then it is considered to be **financial error**.

(Art.122 EU1303/2013)



The timing of the detection of the ineligible expenditure is a key factor to determine the error type: financial error or irregularity.

FINANCIAL ERRORS NOT CLASSIFIED AS IRREGULARITIES

Ineligible Expenses:

- ☐ corrected by controller or the lead partner before the submission of the project report to the Managing Authority (MA)/Joint Secretariat (JS); or
- ☐ corrected by the MA/JS during verification of project reports; or
- ☐ corrected by the CA during their verifications before including the amount in the payment claim to the EC;

EXAMPLES OF IRREGULARITIES IN ETC PROGRAMS



Public Procurement

- ☐ No proper procurement procedure followed
- ☐ Artificial splitting of contracts in order to benefit from the easier tendering procedure
- ☐ Complementary works related to already contracted services
- ☐ Specific Technical criteria/specifications set by beneficiary to limit the competition
- ☐ Fair market price could not be proven
- ☐ Publicity criteria not followed in the public procurement procedure

EXAMPLES OF IRREGULARITIES IN ETC PROGRAMS (2)

Other

- ☐ Inadequate audit trail of beneficiaries
- ☐ Staff costs wrongly calculated
- ☐ Ineligible amount of VAT declared
- ☐ Declared expenditures not related to the specific project
- ☐ Publicity and advertising rules of the Programs not followed



FRAUD TRIANGLE

Perceived Opportunity

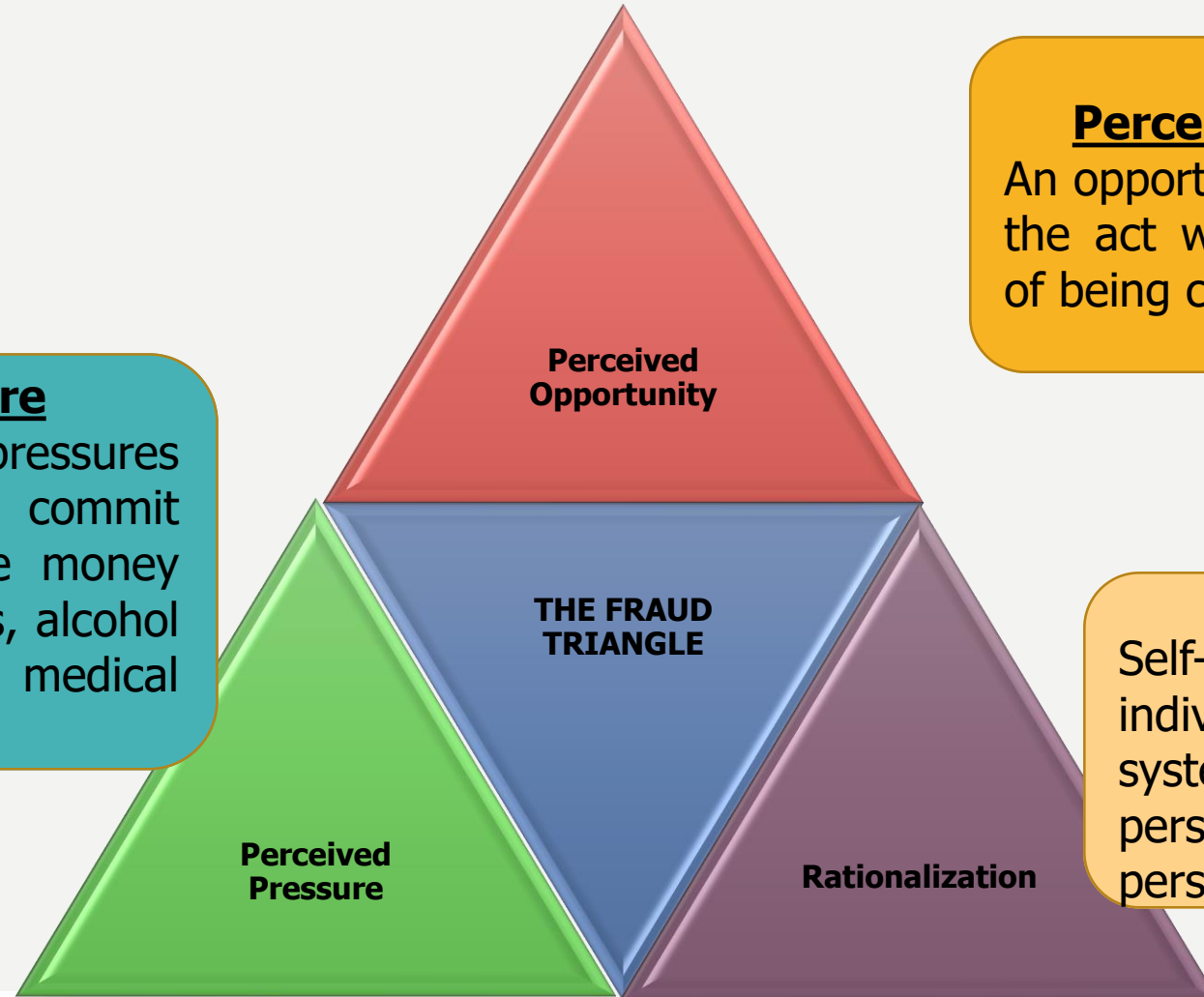
An opportunity arises to commit the act without a high chance of being caught.

Perceived Pressure

Financial or emotional pressures force an individual to commit fraud. They may include money problems, gambling debts, alcohol or drug addiction, huge medical bills.

Rationalization

Self-justification reflects the individuals' personal beliefs system and their standards of personal integrity. It reflects the person mind-set towards fraud.



FRAUD DEFINITION

Article 3 of EU Directive 2017/1371 on the fight against fraud to the Union's financial interests defines fraud as “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 or assets from the Union budget or budgets managed by the Union, or on its behalf;
- **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.”

FRAUD DEFINITION

ARTICLE 3 OF EU DIRECTIVE 2017/1371

Cases that fraud definition is applied:

- (a) in respect of non-procurement-related expenditure
- (b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests
- (c) in respect of revenue other than revenue arising from VAT own resources
- (d) in respect of revenue arising from VAT own resources

SUSPECTED FRAUD DEFINITION

ART. 2 EU 2015/1970

Suspected fraud is:

- ❑ an irregularity that gives rise to the initiation of **administrative or judicial proceedings** at national level in order to **establish the presence of intentional behaviour**, in particular fraud

CONFLICT OF INTEREST

"A situation where the impartial and objective exercise of the functions of a player... is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest"

A conflict of interest situation from which benefits obtained become immediately case of FRAUD.

MITIGATE RISKS:

- ☐ Independence and qualification of FLCs
- ☐ No contract between partners or with associated ones
- ☐ Dedicated space on the each Program checklist to report any suspicion for such cases

FRAUD VS IRREGULARITIES

FRAUD **(Intentional acts)**

- Handled at National Level
(Investigations & sanctions)
- Corrected by Reporting to OLAF –
suspected fraud, fraud cases and
irregularity above 10.000 € ERDF

IRREGULARITY **(mistakes/errors/bad management)**

- Handled at Program Level
(FLC/JS/CA/AA)
- Corrected at a national and program
level

RED FLAGS WARNING SIGNS ON PP



❑ Conflict of Interest issues

- ❑ Contracting employee does not complete the conflict of interest declaration
- ❑ Undocumented or frequent changes to contracts increasing the value of the contract
- ❑ Unexplained or unusual favouritism of a particular contractor

❑ Collusive bidding

- ❑ Bid rotation – submit bids bigger to allow each bidder to be the low bidder on a rotating basis

RED FLAGS WARNING SIGNS ON PP



- ❑ Tailored made specifications – bid technical specifications to fit on a specific contractor
 - ❑ Only one or a few bidders respond to request for bids
 - ❑ High number of competitive awards to supplier
 - ❑ Complaints from other bidders
- ❑ Leaking bid data
 - ❑ Poor controls on bidding procedures i.e not follow the deadlines
 - ❑ Acceptance of late bids, some bids opened early
 - ❑ All bids are rejected and contract is re-bid.

RED FLAGS WARNING SIGNS ON PP



- ❑ *Split Purchases* – split a purchase into two or more orders/contracts
 - ❑ Two or more related procurements procedures for the same contractor
 - ❑ Unjustified separation of purchases – separation of labour costs and materials
 - ❑ Sequential similar purchases just under the thresholds

RED FLAGS – WARNING SIGNS ON INVOICES



- ❑ Invoices with no logo of the company
- ❑ Erased or crossed out figures, write offs without signatures of authorised persons
- ❑ Handwritten amounts without signatures of authorised persons
- ❑ Unusual dates and amounts
- ❑ Unusual colour on official stamps
- ❑ Miscalculation in an invoice or in a Payslip produced by computer

RED FLAGS – WARNING SIGNS ON INVOICES



- ❑ Missing obligatory element of an invoice such as date, Tax Identification Number...
- ❑ Inconsistency between the dates of invoices produced by the same entity and their number

Example: Inv#152 issued 25/03/2012

Inv#103 issued 30/06/2012

- ❑ Invoices not matching the quotations in terms of price, quantity and/or description

ROLE OF FLC CONCERNING FRAUD ISSUES



- ❑ Fraud suspicion may appear to any related actor either at project level or program level
 - ❑ To beneficiary staff
 - ❑ To beneficiary activities
 - ❑ Collusion between the two
 - ❑ Conflict of Interest issues JS/FLC staff

FLC should have the “**appropriate scepticism**”- an attitude that includes a questioning mind and a critical assessment of audit evidence (COCOF 09/003/00)

ROLE OF FLC CONCERNING FRAUD ISSUES



PREVENTION AND DETECTION

The FLC should:

- ❑ Be aware and be able to detect the potential risks/flags/warnings of fraud
- ❑ Check and validate the partner's reports and all supporting documents with "appropriate scepticism"
- ❑ Try to answer in a conscious way all sections of the FLC checklist as the guidelines provided by the JS of each program

IRREGULARITIES & FRAUD SUSPICION...



- ❑ Irregularities - Inform the Approbation Body immediately
 - ❑ Contact Person: Mary Ioannou – mioannou@treasury.gov.cy
- ❑ Fraud Suspicion – Official communication to the Permanent Secretary of the DG EPCD.
 - ❑ Contact Person: Mary Ioannou – mioannou@treasury.gov.cy
 - ❑ Fraud Tip line in EU :
 - https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud_en

THANK YOU FOR YOUR ATTENTION!!!

QUESTIONS?



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**UNIT OF EUROPEAN TERRITORIAL COOPERATION
PROGRAMMES**

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