

# Experience of Member States in management of irregularities and antifraud control: theory aspects and case study

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## Public procurement in projects supported from EU funds - quiz

- How many legal acts regulate the pp and EU funds in Poland (1/4/6/9) ?
- How many institutions are involved in controlling ESF projects in Poland (1/4/7/9) ?
- Which areas do generate a lot of irregularities ?
- Is any obligation to inform implementing company / institution about planned control of ESF project ?
- How long is a company obliged to keep marked equipment and materials from ESF project (1/3/5/8) ?

# Legal basis - Poland

- National Cohesion Strategy 2007-2013
- National Development Strategy 2007-2013
- The Regional Development Act
  
- Act on Public Finance – 2009
- The Public Finance Discipline Act – 2004
- The Public Procurement Act – 2009
- The Self-Government Act – 1990
- Polish Accounting Act – 1994
- Polish Tax Act (VAT) – 2009

## The main institutions with controlling powers – public procurement in scope of projects supported from EU funds

- The Management Authority
- The Intermediate Body
- The Public Procurement Office
  
- The Supreme Chamber of Control (NIK)
- The Regional Account Chamber (RIO) - 16
- The Treasury Control Office (UKS) - 16
- The Supervisor of Public Finance Discipline

\* Internal Audit (Act on Public Finance -2009)

# Control of ESF project – basic rules

- **Cross controls** – to investigate projects that benefit from two different sources
  - Managing Authority v outsourcing
  - based on SIMIK database (taxpayer identification number)
  - sample of 5% companies/institutions implementing more than 1 ESF project (drawing)
- **Controls of Annual Action Plan**
  - always "one step down"
- **Annual Control Plans**
  - deadline: 15 November (time for approval)
  - main elements (law base, structure of the control unit, criteria, schedule, range, forecast for immediate controls, template of checking lists, letters of authorization and post-control information etc) – open document ?

## The main rules for site visit verifications

- Two types of control:

### **monitoring visit:**

- Unexpected control during implementig of the project (trainings/workshops/additional classes/study visits).
- Comparison with: contract for co-financing the project, project's schedule, contracts with trainers & experts, list of participants, training materials, lease for premises
- Checking: the subject of the course, location, ESF marks, number of hours, essential progress) interview with participants

# The main rules for site visit verifications

## ■ Control in the company/institution's office

- Information at least 5 working days before the visit
- At least 2 controllers for <1-4> days
- Separate office space
- Required documents → defined in the written control information
- The scope of the control: finance (money transfers etc)/recruitment process/ data protection / essential progress / public procurement / information and promotion obligations etc.
- **planned** / **immediate** control
- Control report → 21 calendar days after control

# Methodology – general rules

- Basic rule – at least 30% of HC OP projects in each Measure, during implementation each year (it means = agreement ^ ... payment applications)
- Risk factors:
  - Projects implemented by institutions/companies operating below 6 months
  - High-value projects (above 2.5 mln € v > 30% of the average value in defined Measure in defined year)
  - Full of mistakes at the payment stage
  - Considerably breaking the schedules
  - Low scoring at the assessment stage
  - Companies/institutions that broke ESF rules in the past projects

# The Monitoring Committee

- Analysis & approval detailed criteria and periodic correction
  - Periodic control of the progress in achieving the aims of HC OP
  - Analysis and recommendation for annual Action Plans
  - \* Analysis of irregularities
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- Intermediate Body ↔ Control Institution
  - Police ↔ EU funds
  - MC & internal problem  
(public sector, private sector, social partners)



# Typical irregularities in ESF projects

- Public procurement
- Recruitment
- Finance
- Information and promotion obligations
- Other inventive tricks
- Mindless mistakes

# Public procurement

- Calculating the estimated value of public contracts with VAT ( $\neq$  net of VAT)
- Not respecting the "Common Procurement Vocabulary (CPV)"
- Not precise description of the subject of the procurement
- Breaking pp rules for single contracts for specific task above official thresholds (e.g. 14.000 €)
- Incorrect, false offers
- Lack v breaking time limit for contract notice
- Lowering the contract value
- Splliting the value of the procurement in aim to avoid pp procedures

# Breaking pp rules in ESF projects

- Two different kinds of consequences :
  - **cancel the contract** = serious break of pp rules **with** influence on the contract award decisions
  - **calculate the financial fines** = mistakes and errors **without** influence on the contract award decisions
- **Question** – Which institution is allowed to make such a decision (MA, IA, PPO, Court) ?
- **Question** – How are the financial fines calculated ?

# Breaking pp rules in ESF projects

**General rule:** financial fine = real loss

- Two methods:
  - **comparative** calculation (real loss)
  - **indicator** calculation (percentage indicator)

## **Service contract – Complex training for all teachers in the region**

**Case 1:** The c.a. rejected the lowest price bid (4.000.000 euro) and decided to choose to second one (more expensive – 4.050.000 euro), because c.a. had good cooperation with this consulting company in the previous staff-training contracts.

**Case 2:** The c.a. awarded the lowest price bid (4.000.000 euro) but during the contract c.a. decided for extra training time for participants (the same contractor – extra 50.000 euro).

**Case 3:** The c.a. required from candidates basing on only one type of software "ABC" (without any justification).

# Indicator calculation

- Only if The Managing Authority is not able to calculate precise real loss
- $W (fc) = W (ec) \times W (fs\%) \times W (\%)$
- Official scale of financial fines, for example:
  - Lack of publication of the contract notice – **100%**
  - Using different contract award criteria than defined in the contract notice – **25%**
  - **Discriminatory description** of the subject matter of the contract with reference to a specific make or source or trade marks – lack of record ”or equivalent”) – **25%**
  - Lack of information for the rest of tenderers about the awarded contract – **5%**

**Question** – Only one publication of contract notice (website of c.a. or national newspaper) ?

# Recruitment

- Incompatibility with basic ESF documents
- Incompatibility with application form
- Lack of official rules for recruitment
- Private ( $\neq$  public) recruitment
- Many souls  $\rightarrow$  no real persons on the participant's list
- Strange signatures on the attendance list
- Wrong recruitment rules (simply registration = first come  $\rightarrow$  first joined)
- Incompatibility between number of participants & training room's capacity

# Finance

- Ineligible costs because of: not connected with the aims / ineffective / virtual costs / lack of payment's proofs / not planned in the project's budget
- **Overestimated costs:** project's coordinators & managers & accountant, office support, instructors
- Lack of methodology for indirect costs
- Confusing direct and indirect costs
- Using “soft” projects as “hard” projects (cross-financing)
- Not precise partnerships, mainly financial responsibility (“screen option”)

# Information and promotion obligations

- Overestimated costs of information and promotion (brochures, posters, other materials: pen, pen-drives)
- Wrong distribution system of promotion materials
- Incorrect information and promotion channels
- Lack of logos on each single material, equipment, correspondence, certificates, and places
- Wrong audio-visual materials (e.g. T.V. – “25-3”)
- Which logo is correct ?



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## Other inventive tricks

- Imitation of long-term project
- Wholesale shopping of office necessities, equipment
- Overestimated costs of training rooms, catering, transport, printing materials
- False v outdated data (confirmed sources)
- Bending strategic documents to needs (precise pages)

## Mindless mistakes

- Lack of cohesion between schedule and budget of the project
- Unrealistic schedule of the project ( starting time !)
- Obligation to keep marked equipment and materials for 5 years period

# A few interesting ESF projects

- “Super e-Pupil”
- “Local dialect course”
- “Intensive workshops for local village leaders”
- “Set up a business with EU grant”
- “Spin off & spin out – women in business”
- “Super agricultural producer groups”
- “Network of Law Support Points”
- “Computers for seniors”
- “Professional trainings with certificates”
- “Analysis of educational needs in building sector in Maloposka region ”
- ”Local fireman = local leader”
- ”Everyone should be a lifeguard”
- ”Integration by sport – Local Football League”
- ”University Business Incubator”
- ”Regional cooking → regional business”
- ”Easy business ? Farm tourism !”
- ”My office = Lhe land of regional dreams”

