

**JOINT TRAINING EVENT  
OF THE CONTACT COMMITTEE OF THE HEADS OF SAIs OF THE EU AND THE ECA  
AND THE EUROSAI  
(organized by the Czech Supreme Audit Office and the European Court of Auditors)**

**“EXPERIENCE WITH THE DEVELOPMENT AND CARRYING OUT CAP AUDITS”**

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**IRREGULARITIES IN THE FRAMEWORK OF THE EU REGULATIONS**

- Introduction**
- The Member State and irregularities**
- The Commission and irregularities**

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# 1. THE MAIN EU REGULATIONS

- *The main regulations dealing with irregularities are:*
- *Council regulation 1290/2005 of 21 June 2005: on the financing of the common agricultural policy*
- *Commission regulation 885/2006 of 21 June 2006: on the accreditation of paying agencies and other bodies and the clearance of accounts of the EAGF and the EAFRD*
- *Commission regulation 1848/2006 of 14 December 2006: concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and organisation of an information system in this field.*

## 2. ITALY: EAGF FINANCIAL CORRECTIONS 1999/2009 (situation October 2009)

Financial correction 1999-2009 (million euro):	
- conformity clearance decision	1.087,8
- clearance of account decision	243,6
<b>Total</b>	<b>1.331,4</b>
Irregularity cases 1982-1999	310,8
<b>Financial correction total</b>	<b>1.642,2</b>
Corrections under conciliation procedure	19,6
Corrections in dispute	291,9
<b>Corrections detected by the Commission</b>	<b>total 1.953,7</b>

### 3. THE FIVE AGREEMENTS ON THE PROTECTION OF THE FINANCIAL INTERESTS OF EU

- *The Convention of 26 July 1995 (to combat fraud which damages the EU budget)*
- *The (first) Protocol of 26 September 1996 (to combat corruption which damages the EU budget)*
- *The Protocol of interpretation of 29 November 1996 ( on the powers of the European Court of Justice)*
- *The Convention of 26 May 1997 (to combat corruption)*
- *The (second) Protocol of 19 June 1997 (to combat money laundering)*

## 4. FINANCIAL INTERESTS/IRREGULARITIES LINKS (1)

(art. 9,  
1290/2005)

*Protection of the financial interests of the Community  
and assurances regarding the management of Community funds*

*1. Member States shall:*

- *(a) within the framework of the common agricultural policy, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Community, and particularly in order to:*
  - *(i) check the genuineness and compliance of operations financed by the EAGF and the EAFRD;*
  - *(ii) prevent and pursue irregularities;*
  - *(iii) recover sums lost as a result of irregularities or negligence,*
- *(b) set up an efficient management and control system comprising the certification of accounts and a declaration of assurance based on the signature of the person in charge of the accredited paying agency*

## 5. FINANCIAL INTERESTS/IRREGULARITIES LINKS (2)

(art. 2,  
1848/2006)

1. *'Irregularity'* has the meaning assigned to it by Article 1(2) of Regulation (EC, Euratom) No 2988/95, that is 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 either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by charging an unjustified item of expenditure to the Community budget;

## 6. IRREGULARITIES DETECTION

### *Member State*

- *Cases where is the same administrative authority which finds a mistake regarding the eligibility of the financed expenditure*
- *Cases where the mistake and relevant irregularity is found by an audit or inspection body*
- *Cases where is the final beneficiary who voluntarily brings the mistake to the attention of the administrative authority*

### *Commission*

#### *Irregularity discovered during:*

- *The clearance of account procedure*
- *The monthly reimbursements procedure*
- *The conformity clearance procedure*

## 7. MEMBER STATE AND IRREGULARITIES (1. GENERAL RULE)

(art. 3.1  
1848/2006)

### *The Member State*

*... shall report to the Commission all the irregularities which have been the subject of a **primary administrative or judicial finding.***



# 8. MEMBER STATE AND IRREGULARITIES

## (2. EXCEPTIONS)

(art. 6,  
1848/2006)

*Where the irregularities relate to sums of less than EUR 10.000 in Community funding, Member States shall not forward the information provided for in Articles 3 and 5 to the Commission unless the latter expressly requests it (**De minimis rule**).*

(art. 3.2,  
1848/2006)

- *Cases where the irregularity consists solely of the failure to partially or totally execute an operation co-financed by the EAFRD or subsidised under the EAGF owing to the bankruptcy of the final beneficiary or the final recipient; however, irregularities preceding a bankruptcy and cases of suspected fraud must be reported,*
- *Cases brought to the attention of the administrative authority by the final beneficiary or the final recipient voluntarily and before detection by the relevant authority, whether before or after the payment of the public contribution,*
- *Cases where the administrative authority finds a mistake regarding the eligibility of the financed expenditure and corrects the mistake prior to payment of the public contribution.*

## 9. MEMBER STATE AND IRREGULARITIES (3. ADMINISTRATIVE OR JUDICIAL FINDINGS)

(art. 35,  
1290/2005)

### ***Definition of administrative or judicial finding***

*For the purposes of this Chapter the primary administrative or judicial finding means the first written assessment of a competent authority, either administrative or judicial, concluding on the basis of actual facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be adjusted or withdrawn as a result of developments in the course of the administrative or judicial procedure.*

## 10. MEMBER STATE AND IRREGULARITIES (4. REPORTING OBLIGATION DATE)

(art. 3.1  
1848/2006)

### ***Quarterly report***

*1. At the latest within two months following the end of each quarter, Member States shall report to the Commission all the irregularities which have been the subject of a primary administrative or judicial finding.*

# 11. MEMBER STATE AND IRREGULARITIES

## (5. RECOVERING THE SUMS)

(art. 32.2  
1290/2005)

*2. When the Community budget is credited, the Member State may retain 20% of the corresponding amounts as flat-rate recovery costs, except in cases of irregularity or negligence attributable to its administrative authorities or other official bodies.*

(art. 32.5  
1290/2005)

*5. If recovery has not taken place within four years of the primary administrative or judicial finding, or within eight years where recovery action is taken in the national courts, 50 % of the financial consequences of non-recovery shall be borne by the Member State concerned and 50 % by the Community budget.*

## 12. MEMBER STATE AND IRREGULARITIES (6. HALTING THE RECOVERING)

*(art.32.6,  
1290/2005)*

*6. If there is justification for doing so, Member States may decide not to pursue recovery. A decision to this effect may be taken only in the following cases:*

- (a) if the costs already and likely to be incurred total more than the amount to be recovered, or*
- (b) if recovery proves impossible owing to the insolvency, recorded and recognised under national law, of the debtor or the persons legally responsible for the irregularity.*

*The Member State shall show separately in the summary report referred to in the first subparagraph of paragraph 3 the amounts for which it has been decided not to pursue recovery and the grounds for its decision.*

# 13. MEMBER STATE AND IRREGULARITIES

## (7. THE COMMISSION'S ASSESSMENT)

(art. 32.8,  
1290/2005)

8. *Following completion of the procedure laid down in Article 31(3), the Commission may decide to exclude from financing sums charged to the Community budget in the following cases:*
- (a) *under paragraphs 5 and 6 of this Article, if it finds that the irregularity or lack of recovery is the outcome of irregularity or negligence attributable to the administrative authorities or another official body of the Member State;*
  - (b) *under paragraph 6 of this Article, if it considers that the grounds stated by the Member State do not justify its decision to halt the recovery procedure.*

(art. 32.4,  
1290/2005)

4. *After the procedure laid down in Article 31(3) has been followed, the Commission may decide to charge the sums to be recovered to the Member State in the following cases:*
- (a) *if the Member State has not for recovery purposes initiated all the appropriate administrative or judicial procedures laid down in national and Community legislation within one year of the primary administrative or judicial finding;*
  - (b) *if there has been no administrative or judicial finding, or the delay in making it is such as to jeopardise recovery, or the irregularity has not been included in the summary report provided for in the first subparagraph of paragraph 3 of this Article for the year in which the primary administrative or judicial finding is made.*

## 14. MEMBER STATE AND IRREGULARITIES (8. 50+50% RULE FOLLOW-UP)

(art. 32.5  
1290/2005)

The distribution of the financial burden of non-recovery in line with the first subparagraph shall be without prejudice to the requirement that the Member State concerned must pursue recovery procedures in compliance with Article 9(1) of this Regulation. Fifty percent of the amounts recovered in this way shall be credited to the EAGF, after application of the deduction provided for in paragraph 2 of this Article.

# 15. THE COMMISSION AND IRREGULARITIES

## (1. CONFORMITY CLEARANCE)

*(art. 31.1  
1290/2005)*

### *Conformity clearance*

*1. If the Commission finds that expenditure as indicated in Article 3(1) and Article 4 has been incurred in a way that has infringed Community rules, it shall decide what amounts are to be excluded from Community financing in accordance with the procedure referred to in Article 41(3).*

*(art. 31.4  
1290/2005)*

*4. Financing may not be refused for:*

*(a) expenditure as indicated in Article 3(1) which is incurred more than 24 months before the Commission notifies the member State in writing of its inspection findings.*



# 16. THE COMMISSION AND IRREGULARITIES

## (2. CONTRADICTORY PROCEDURE)

(art. 11.1  
885/2006)

*When, as a result of any inquiry, the Commission considers that expenditure was not effected in compliance with Community rules, it shall communicate its findings to the Member State concerned and indicate the corrective measures needed to ensure future compliance with those rules.*

*The Member State shall reply within two months of receipt of the communication and the Commission may modify its position in consequence. In justified cases, the Commission may agree to extend the period for reply.*

*After expiry of the period for reply, the Commission shall convene a bilateral meeting and both parties shall endeavour to come to an agreement as to the measures to be taken as well as to the evaluation of the gravity of the infringement and of the financial damage caused to the Community budget.*

(art. 11.2  
885/2006)

*Within two months from the date of the reception of the minutes of the bilateral meeting referred to in the third subparagraph of paragraph 1, the Member State shall communicate any information requested during that meeting or any other information which it considers useful for the ongoing examination.*

(art. 11.2.3  
885/2006)

*After the expiry of the period referred to in the first subparagraph, the Commission shall formally communicate its conclusions to the Member State on the basis of the information received in the framework of the conformity clearance procedure.*

# 17. THE COMMISSION AND IRREGULARITIES

## (3. CONCILIATION PROCEDURE)

(art. 16.1  
885/2006)

### **Conciliation procedure**

1. A Member State may refer a matter to the Conciliation Body within thirty working days of receipt of the Commission's formal communication referred to in the third subparagraph of Article 11(2) by sending a reasoned request for conciliation to the secretariat of the Conciliation Body.

(art. 16.4  
885/2006)

4. Where, within four months of a case being referred to it, the Conciliation Body is not able to reconcile the positions of the Commission and the Member State, the conciliation procedure shall be deemed to have failed. The report referred to in Article 12(c) shall state the reasons why the positions could not be reconciled. It shall indicate whether any partial agreement has been reached in the course of the proceedings

The report shall be sent to:

- (a) the Member State concerned;
- (b) the Commission;
- (c) the other Member States in the framework of the Committee on the Agricultural Funds.

(art. 11.3.  
885/2006)

The Commission, after having examined any report drawn up by the Conciliation Body in accordance with Chapter 3 of this Regulation, shall adopt, if necessary, one or more decisions under Article 31 of Regulation (EC) No 1290/2005 in order to exclude from Community financing expenditure affected by the non compliance with Community rules until the Member State has effectively implemented the corrective measures.

## 18. THE COMMISSION AND IRREGULARITIES (4. RECOVERING THE SUMS)

(art.11.4  
885/2006)

*4. As regards the EAGF, the deductions from the Community financing shall be made by the Commission from the monthly payments relating to the expenditure effected in the second month following the decision pursuant to Article 31 of Regulation (EC) No 1290/2005.*

# THE LAST SHIELD

THE COURT OF FIRST INSTANCE

