

## Difference Between Fraud and Irregularities

### Definitions of Fraud and Irregularities and Suspected Fraud



#### Fraud

- Collins English Dictionary 10<sup>th</sup> edition: Fraud can be defined as ‘deceit, trickery or sharp practice or breach of confidence perpetrated for profit to gain some unfair or dishonest advantage’.

#### Irregularity

- The definition of an ‘irregularity’ in Structural Funds terms includes any administrative or financial mismanagement that comes about either by act or omission by an economic operator which has or would have the effect of prejudicing the general budget of the Communities or budgets managed by them, by charging an unjustified item of expenditure to the Community Budget.



# Difference Between Fraud and Irregularities

## Suspected Fraud



- Means an irregularity giving rise to the initiation of administrative and /or judicial proceedings at a national level in order to establish the presence of **intentional behaviour**, in particular fraud.
- Fraud can only be classed as suspected fraud at the outset of an enquiry. Cases should be indicated as suspected fraud if the details suggest **intent to deceive or misappropriate funds. For an irregularity to be defined as fraud it needs to be an intentional act or omission.** 'Fraud is an irregularity committed intentionally which constitutes a criminal offence'. Poor management, financial control or record keeping is not suspected fraud.



## Differences between fraud and irregularities

- The typical organisation loses five percent of its annual revenue to fraud. Frauds committed by owners or executives were more than nine times as costly as employee fraud. The industries most commonly affected are banking, manufacturing and government. (*Report to the Nations on Occupational Fraud and Abuse*. Association of Certified Fraud examiners 2010).
- For the Structural Funds for 2009 €700m of money disbursed should not have been paid out according to auditors. (According to the European Commission's "Fight Against Fraud" report, suspected fraud in 2009 structural fund expenditure was €109m. The remaining amount is irregularities ranging from minor mistakes to more serious errors).
- Irregularity reports are very important because this is how many fraud cases come to the attention of OLAF.
- An irregularity therefore may or may not be a fraud.



## Fraud in the Public Sector : Fraud Statistics



Facts	Figures
Fraud happens in all businesses	<b>Total revenue losses estimated at between 5% and 6%</b>
2/3 of organisations identify and report fraud	
Employee fraud most common, followed by financial reporting fraud and medical / insurance fraud	<b>60% of all fraud is employee fraud</b>
Fraud detected most often by tips and complaints, internal audit, by accident or through internal controls	<b>40% tips and complaints 24% internal audit 21% by accident 15% internal controls</b>
Financial audits often do not detect fraud	<b>Approx. 10% of fraud detected by financial audits</b>
Average duration of fraud before discovery	<b>25 months</b>

## Irregularities and errors

- Irregularities can arise due to human error and not correctly following the regulations of the Structural Funds.
- Irregularities can be one-off or systemic. A systemic irregularity is a recurrent error due to serious failings in management and control systems designed to ensure correct accounting and compliance with rules and regulations.
- All error amounts over €10,000 must be reported to the Commission in an irregularity report if the expenditure had been certified to the commission.
- Not all irregularities are quantifiable in monetary terms.



# Examples of Irregularities



- Evidence gathered at a monitoring, verification or audit visits indicating that items of ineligible expenditure have been included in the calculation of grant previously claimed and paid.
- Evidence gathered at monitoring visit indicating that progress against targets/objectives which have been included in previous progress reports has been inflated.
- Evidence that a project has failed to implement the European Commission's requirements in publicity or procurement.
- Evidence that a partner organisation has not set up adequate systems to control and monitor the grant awarded to projects
- An incorrectly calculated grant claim received from the Lead partner or project partners

# Irregularities and Irish Errors – Reported by the Irish Financial Control Unit

- The Irish ERDF Financial Control Unit Winding –up declaration and report. Productive Sector 2000-2006 noted:
  1. European Commission audit findings corrections of €600,000 -made due to a failure to provide sufficient supporting evidence to establish eligibility of expenditure.
  2. Overhead costs of €19m that had to be removed because they were not based upon real costs in violation of Rule 1 of 448/2004.
  3. Corrections of €7.5m as a result of shortcomings in the public procurement process.



# Higher Education Authority Examples of Reduction in Previously Declared Expenditure – HEA Irregularities and Errors





## Higher Education Authority Examples of Reduction in Previously Declared Expenditure – HEA Irregularities and Errors

- Overheads costs that were ineligible because they were not based upon real costs.
- Legal fees that are not eligible but have been included.
- Shortcomings in the public procurement process.
- Banks fees included in error.
- Insufficient documentation to support expenditure declared.
- Claiming late payment charges as part of eligible expenditure.
- Under the funding model, VAT was recoverable by the beneficiary and should not therefore have been included in expenditure returns.
- Money claimed on expenditure return that has not cleared through the bank in the claim period.

## Higher Education Authority (HEA) Examples of Reduction in Previously Declared Expenditure – HEA Irregularities and Errors

- Funds for travel and subsistence found in Capital expenditure returns.
- Pensions not paid into a managed fund found in ESF claims.
- Exam correction allowances included in salaries when only the teaching element is allowed for ESF claims.
- Insufficient tenders or quotes found in ESF programmes meaning irregularities of procurement items.
- No cases of fraud have been found in HEA managed programmes.

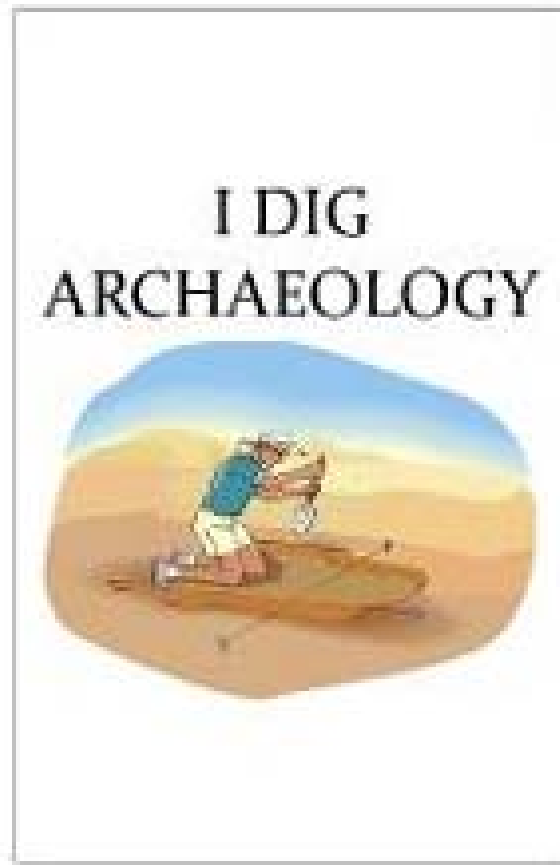


# HEA Managed Programme - Irregularity Case Study A

- Higher Education Institution proposed a new research building. Normal design, planning and procurement procedures observed.
- Contract awarded and the building proceeded as planned.
- Shortly thereafter additional funding was secured.
- There was an extension added. The rates of the successful tender were extrapolated and used. No new tender.
- The Financial Control Unit (FCU) queried whether the extension was in breach of EU procurement regulations as there was no 'unforeseeable circumstances' attached to the original contract to cover the extension.
- The FCU recommend the Managing Authority (MA) refer the case to the DG for Internal Markets of the European Commission for a decision.
- Given the uncertainty surrounding the eligibility of expenditure the MA also took the precautionary step of withdrawing the entirety of expenditure on this project.



# HEA Managed Programme Irregularity Case Study B



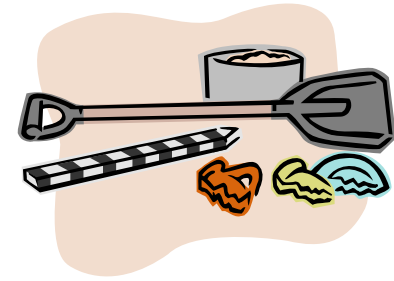
# HEA Managed Programme - Irregularity Case Study B

Higher Education Institution proposed a new research building.

- Preliminary soil testing on the proposed construction site turned up nothing of concern.
- The building of three floors had normal design, planning and procurement procedures observed
- Contract awarded.
- Shortly after going on site, archaeological ruins were discovered and construction halted.
- Following detailed archaeological investigations, it was decided that in order to preserve the archaeological ruins, the ground floor of the building would have to be raised.



## HEA Managed Programme -Irregularity Case Study B



- The planning authority granted approval stating, due to the loss of space on the ground floor as originally designed, it was permitting an additional floor on the building.
- The HEI reviewed their two options:
  1. Have the current contractor build to the third floor, retender for the fourth floor and potentially have a different contractor build the fourth floor with the original contractor coming back to finish the job and add the roof.
  2. As the archaeological ruins were ‘unforeseen’, review the current contract, use the original Bill of Quantities to extrapolate the cost of the extra floor (up to 50% of the original contract) and ask the contractor, currently on site, to add the extra floor.
- Option **2** was chosen. The Financial Control Unit accepted the argument of “unforeseen circumstances” in relation to the archaeological ruins as justifiable reasons for following the procurement process as outlined above but the Commission has yet to make the ruling.

## Main Fraud areas in ERDF

OLAF have found that the main frauds in ERDF are:

- i. Attempted subversion of tendering processes through false or exaggerated bids, cartel bids, illegal or irregular sub-contracting, etc.
- ii. False or exaggerated, even double/triple cost claims for inputs or services.
- iii. Fraud and irregularities resulting from situations of conflict of interest which there are either no or insufficient administrative structures to combat.
- About two-thirds of alleged EU fraud concerns just six countries: Bulgaria, Romania, Greece, Italy, Poland and Spain.
- OLAF has found that in many cases fraud in the Structural Funds **are organised and have not resulted from simple opportunity.**

## Some fraud examples



### Example One

- A notable EU fraudster: A dentist in Cosenza used EU funds to buy a yellow Ferrari Testarossa and a Formula One car, along with 55 other luxury cars. Received EU money by inventing a solar-panel business that never saw the light of day. He was part of a larger fraud scheme involving a staggering €80 million in which four business organisations siphoned off funds during a four year period to buy luxury items such as cars, motorbikes and yachts. (IlGiornale (19.08.06))

### Example Two

- A criminal syndicate have been charged with fraud for fake research projects. They created a cross border network of fictitious companies and subcontractors.
- To make the companies seem legitimate grant applications included names of real scientists and established research institutes and companies without their knowledge. (Nature News 14.06.11)





## Some fraud examples continued

### Example Three

#### Eastern European businessman jailed for EU fraud



- An Eastern European court sentenced a businessman to 12 years in jail for pocketing millions of euros in EU farm aid.
- The businessman was imprisoned for buying second-hand equipment for the meat processing industry then forging the paperwork to the EU to present it as new. The prosecution had demanded a sentence of 17 years.
- The scheme allowed the businessman - to siphon off 7.5 million euros (9.2 million dollars) in EU subsidies.
- The scheme prompted Brussels to subsequently freeze over 100 million euros in farm aid to the Eastern European country.
- In addition to the jail terms, the businessman, his wife and four of the accomplices will also see half of their property confiscated.
- *(2010 EUbusiness Ltd. )*

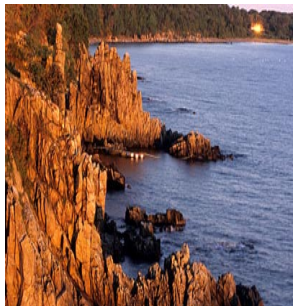
## Some Examples of Waste



Some examples of waste:



- A public toilet in the UK has been co-financed by the ERDF. The European Commission's website describes it as 'award-winning' and the aim of the subsidy is purportedly to promote, regional competitiveness.
- Not forgetting Ireland a waste of funds – EU Grants were given to fund golf seminars in Ireland entitled 'Pace of Play' and how to manage it.
- A Danish businessman received €100,000 in EU subsidies to build a ski-slope on Bornholm - an island without high hills or regular snowfall. The businessman, Ole Harild, said that "I never thought they (the EU experts) were going to back something so crazy". Mr Harild used the money to mark out a run and buy a snow blower and skis to hire out. Unfortunately, " in was only open for one day last winter.



Sky News October 13, 2008



Ireland's EU Structural Funds  
Programmes 2007 - 2013

Co-funded by the Irish Government  
and the European Union



EUROPEAN REGIONAL  
DEVELOPMENT FUND

# Management Tools for Identifying and Preventing Fraud and Irregularities in EU Funded Projects

## Mechanisms for Identifying Irregularities in ERDF

- Monitoring visits
- Notification by grant recipients - Higher Education Institution identified that some lecturers' salaries should not be included in claim because possible funding from another grant programme
- Detailed checking of grant claims and progress reports
- Verification visits
- On-the-spot checks
- Local knowledge (press/members of the public) - Irish press revealed how state training agency receiving EU funds employed a tutor who doctored results so students could pass exams otherwise would have failed. This initiated investigations.
- National and Commission audit reviews



# Management Tools for Identifying and Preventing Fraud and Irregularities in EU Funded Projects

- The following slides outline the procedures adopted by the HEA to minimise the possibility of fraud and irregularities in the HEA managed Programme for Research in Third Level Institutions (PRTL) EU co-funded programmes.
- There has been no instance of fraud ever discovered in any of the PRTL Programmes.

Procedures are adopted throughout the Programmes phases

- Assessment of project and selection and award
- Monitoring and control on two levels: Exchequer monitoring and ERDF monitoring
- Mid term review
- Final assessment



# ERDF Cascade Structure 2007-2013 (N+2) Ireland

**Certifying  
Authority**

Department of Finance

**Managing  
Authority**

S&E and BMW Regional Assemblies  
Submits B3 Forms

**Intermediate  
Body**

Department of Jobs Enterprise and  
Innovation Submits B2 Form

**Public  
Beneficiary  
Body**

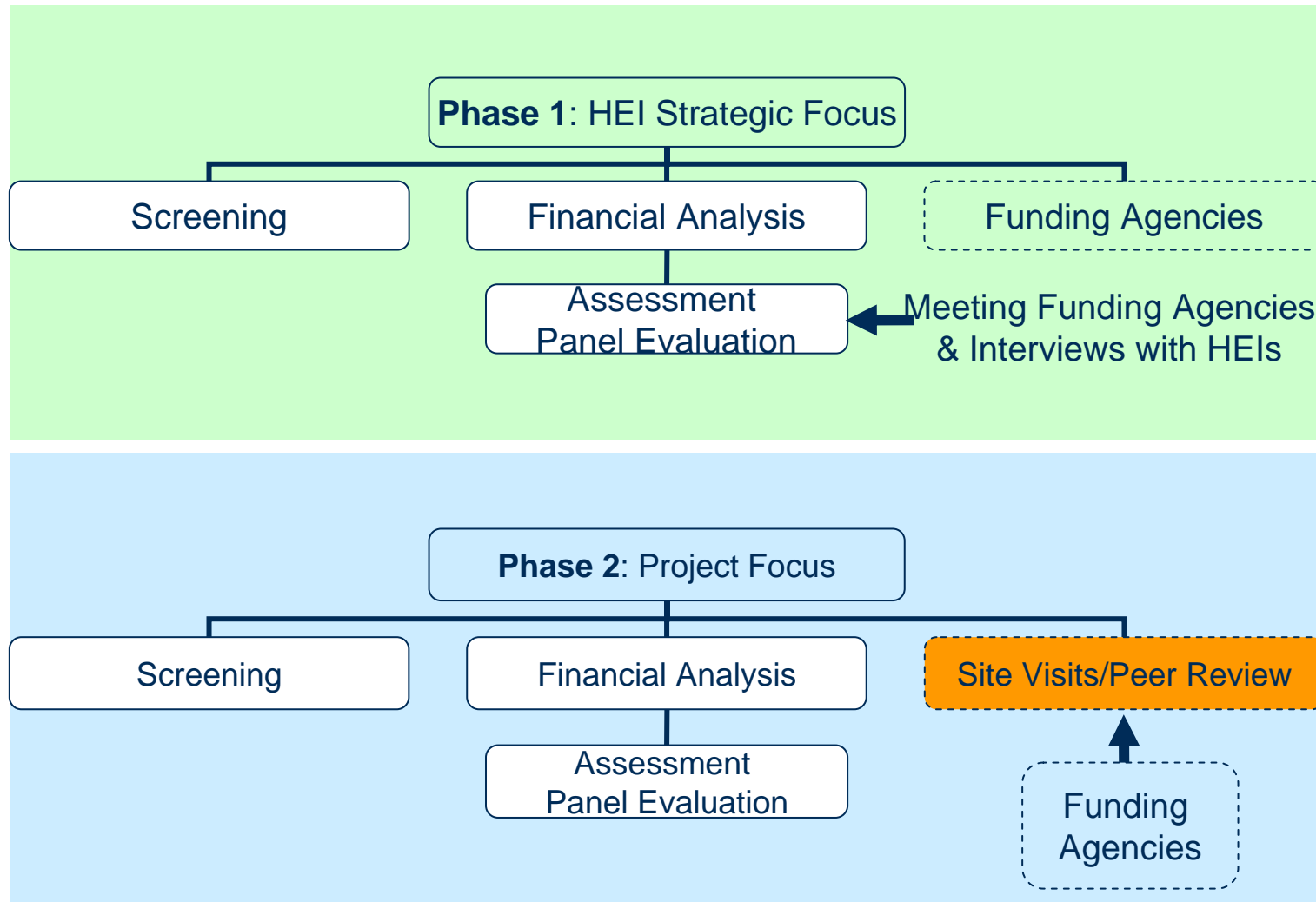
Higher Education Authority  
Submits B1 form

**Final  
Beneficiaries**

Higher Education Institution (HEI) receiving  
grant aid. Submits B0 (Expenditure Claim) Form  
to HEA



# Example: PRTL Assessment and Selection Process - 2 Phases



## Monitoring & Control on Two Levels



### Exchequer Monitoring

- Monitoring progress of projects in line with objectives
- Meeting of deliverables and milestones
- Monitoring spending and eligibility

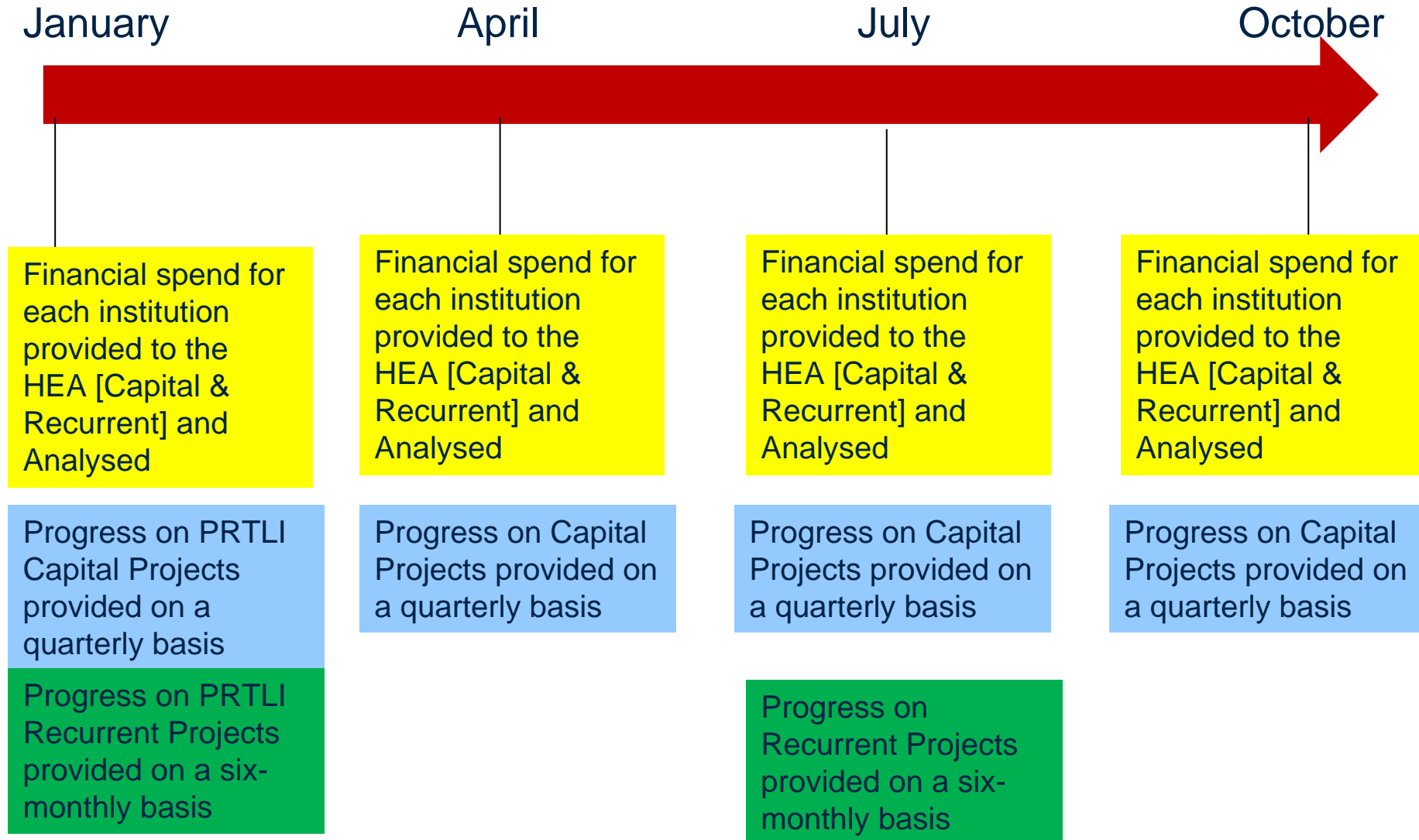


### Ensure compliance with EU Guidelines

- Adequate controls are in operation to ensure that payments are eligible
- Publicity/ Procurements/ Procedures Manual & Retention of Documentation



# Exchequer Reporting & Monitoring (PRTLTI)





# Monitoring



**In addition to regular monitoring of progress, projects are subject to:**

**A mid-term review** [currently on-going for PRTL Cycle 5 projects]

- Assesses progress, performance & achievements of projects to date
- Assess the extent to which the aims & objectives of PRTL Cycle 5 are being met & whether the activities are leading to the desired outcomes
- In the case of capital projects, to assess progress, compliance with relevant publicity and procurement procedures and costs incurred to date
- To examine value for money for the Programme.
- To identify remedial actions where appropriate.

## **Final Assessment**

.As above, carried out by peer review and involves evaluating the outcomes of the projects in line with their original objectives

## Monitoring (continued)



It is important to ensure that integrated controls are in place to validate that all expenditure claimed is based on a real and approved project. The following are some examples of the types of control.

### **The Capital Programme Section of the HEA Monitors all capital information submitted including:**

- Quarterly reports – required to confirm project continues with agreed brief.
- Final reports
- Cashflows – payments are made monthly based on receipt of cashflow.
- All other information requested on space deliverables etc.
  
- This regular reporting system ensures that any changes to the project progress and deliverables are readily identified. The HEA Technical Advisor (Quantity Surveyor) follows up with the institution if there are any inconsistencies.
  
- Capital audits and site visits are also carried out periodically to further ensure project is progressing in accordance with agreed brief.
  
- The regular monitoring process ensures that any issues encountered by institutions during project implementation are reported and resolved without delay.

## Monitoring (continued)

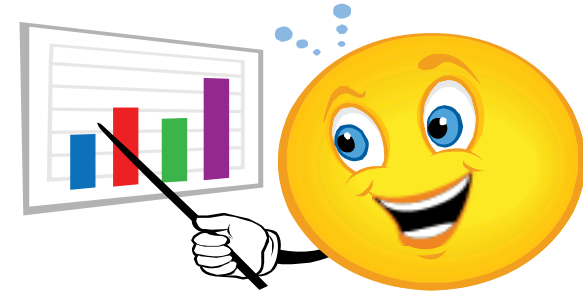
### **Adequate controls are in operation to ensure that payments are eligible**

1. Before expenditure is declared the HEA outsources audits on selected sample of projects for Full Article 13 Checks.
2. Each B0 (expenditure return) return has at least 50 percent desk checking on each expenditure item in the nominal ledger printout of all transactions.
3. Every two years each Higher Education Institution is visited and checked under 3Ps and the R.
  - a number of transactions are checked under procurement
  - under publicity – publicity folders are checked, machinery/equipment is checked so that logo stickers are in place. Buildings checked for billboards/plaques. This checking will also ensure that co-funded equipment/physical space exists.

# ERDF Monitoring Adherence to EU Regulations

## “3 P’s and the R”

- **P**rocedures Manual
- **P**ublicity and Information requirements:  
Publicity Folder, Logos, Billboards, Plaques, etc.
- **P**rocurement – Ensure National and EU rules followed by HEIs  
(OJEU Award Notice requested)
- **R**etention of Documentation: at least 2015 & at least 2022
- Eligible Expenditure consistent with National Eligibility Rules
- Accounting Records and Adequate Audit Trail



# ERDF Monitoring Adherence to EU Regulations -



## Procedures Manual

- States specific roles and names.
- Needs to explain clear segregation between those who make payments and treatment of receipts.
- Specify the checks in place to ensure there is no overlapping of EU aid for ERDF projects.



## Publicity and Information Requirements

- Ensuring PRTL recruitment advertisements contain all EU logos and are published in scientific journals and not just national newspapers.



## Retention of documentation

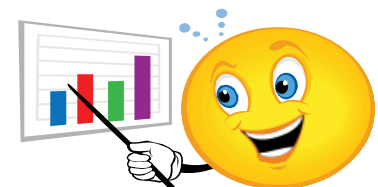
- Clearly stated in procedures manual not only year files must be retained until but also the specific location of files or ideally file numbers.



# ERDF Monitoring Adherence to EU Regulations -

## Procurement

- Must follow national and EU procurement guidelines.
- Above OJEU thresholds then a contract notice must be included. It is preferable that tender documents should be uploaded and where possible include the selection criteria/weighting for procurement.
- The tender can be open, restricted, competitive dialogue, negotiated (very rare).
- At least two personnel should be present at tender opening – they need to sign tender opening sheet, date, names in block capitals and include tender values.
- Evaluation sheets as per point above. Was ‘MEAT’ used.
- Contract Award Notice must be placed in OJEU. Copy must be sent to HEA.



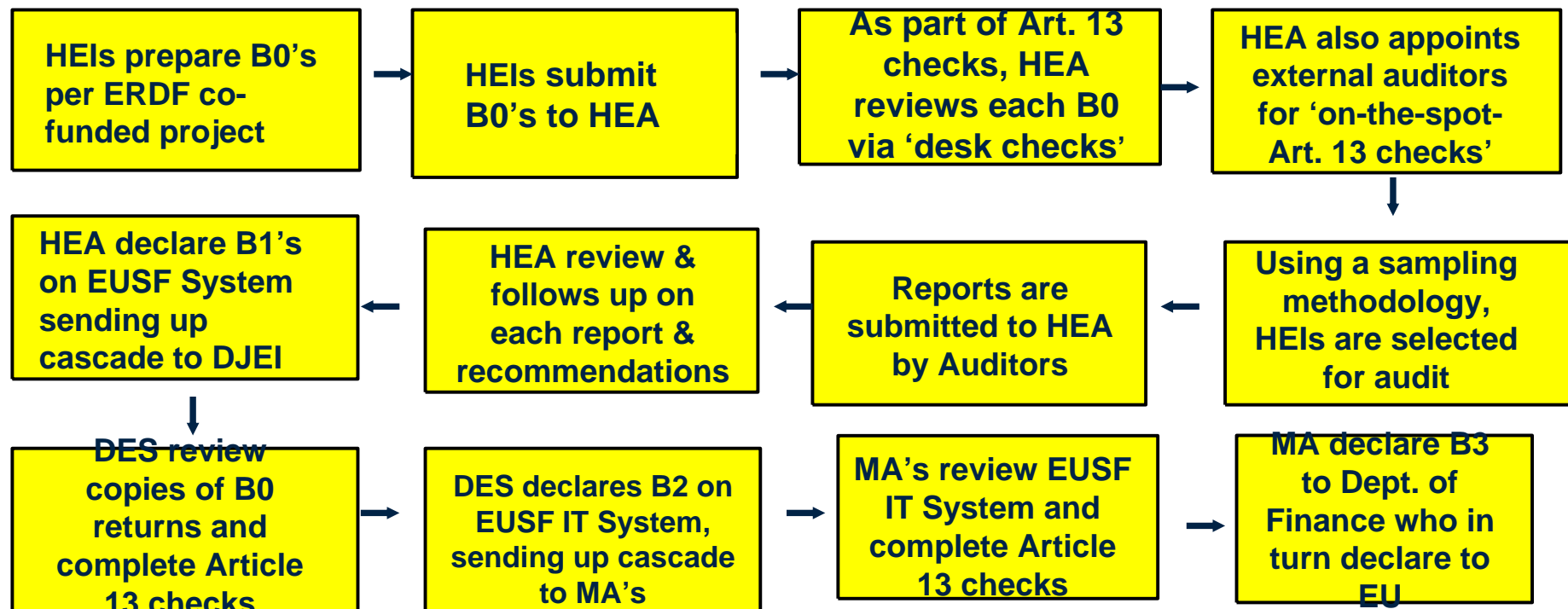
## ERDF Monitoring Adherence to EU Regulations -

### Procurement Continued

- Successful and unsuccessful letters should be placed on procurement file.
- Additional works - unforeseen circumstances. Check that final contract, other than acceptable variations, same as original tendered price.
- If specialist equipment where there are only one or two suppliers then an expansive explanatory note should be on file together with a single source justification sheet signed by at least two people including a finance official..

All the above checks on 3Ps and R will help minimise fraud and irregularities.

# Claim Procedures as per HEA Procedures Manual [ B1,B2,B3 forms]





## Preventative Measures



- Remember there is little scope for bending the rules and this will help in avoiding irregularities.

Some examples:

- My contract is urgent - do I have to advertise in the OJEU and adhere to the minimum times for responses? – ‘urgency’ and ‘exceptional circumstances’ are very narrowly interpreted by the European Court and EU Commission.
- Unforeseen Circumstances - unforeseen is very narrowly interpreted. Case Study A.
- Can I try to negotiate a better deal on a tender price to get better value for money? - Post tender negotiation is prohibited as it diminishes transparency and can give rise to abuses in the tendering process.

## More Preventative Measures

- Educate your staff (HEA obviously advocates this) - staff should be familiar with EU and international regulations.
- Evaluation of tenders by a suitably competent team. Objectivity achieved by using a scoring system based on all the relevant published weighted criteria.
- Separate functions within the procurement cycle, for example, ensure that ordering and receiving goods and services are distinct from payment for goods and services.
- Ensure the procurement process observes non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide service and freedom of establishment.
- Transparency is essential in the fight against fraud.



## More Preventive Measures



- Member States are supposed to publish details of the distribution of the money under the European Transparency Initiative.
- Amongst the most transparent states are newer EU members such as Slovakia and Poland. They made their data available for download with clear indications about how much EU money was being given to beneficiaries. (Ireland No. 10, UK No. 17 on transparency list) - Source: The Bureau of Investigative Journalism
- Ireland has a Competition Authority where contracting authorities can report any suspected anti-competitive practices such as collusive tendering.
- Candidates or tenderers who have been convicted of involvement in organised crime, fraud, corruption or money laundering must be excluded from performing a public contract.



## Conclusion



- Please differentiate between irregularity and fraud
- Check common irregularities
- Procurement is complex and there is a need to know the areas where expenditure is ineligible
- Be careful in defining what constitutes ‘unforeseen circumstances’

### **The use of:**

- Stringent monitoring of progress through reporting
- Extensive desk checks
- Full Reconciliations
- Mid-Term Reviews
- Final Assessments should minimise irregularities and any attempt to defraud the Irish Exchequer or the EU.

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**HEA**

Higher Education Authority  
An tÚdarás um Ard-Oideachas

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# Any Questions?

