

Fraud and Corruption Risks Related to EU Funds Implementation

Bad and good practice in prevention of fraud and corruption

EU FUNDS WATCH project – Czech Republic

Transparency International Czech Republic

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Introduction

The regional policy of the European Union, known also as Economic and Social Cohesion Policy (or cohesion policy) represents a principle of solidarity within the EU, where richer member states finance the development of poorer states and regions, in order to improve a quality of life of all EU citizens.

The aim of the cohesion policy according to EU documents is to support harmonised and sustainable economic development, high level of employment, and protection and improvement of environment at the EU territory. Encouragement of cross-border, regional and international cooperation represents another important part of the support. The EU regional policy also supports implementation of the Lisbon strategy. Among its objective there is not only sustainable development, innovation, and competitiveness but also support of the development of open, flexible and cohesive society with high level of employment.

Cohesion policy represents one of the most important European policies (next to the agriculture policy) and the EU spends on it more than one third of its budget. This policy represents considerable opportunity for all recipient countries. In practical terms and from the point of view of the ordinary citizens such policy is identified with distribution and implementation of European funds¹. The funds may bring resources for necessary structural and infrastructure investment to ensure sustainable economic development as well as for adjusting social capital for such development. Absorbing EU funds is also a considerable responsibility for the beneficiary governments and administrations. There is the responsibility towards their own societies and citizens, so that the funds will be spent on actions leading to the desired societal development. But there is also a responsibility towards the donor member states and the principle of solidarity itself. And last but not least the effective use of EU funds towards the objectives mentioned above is also important for strengthening or loosening of European integration.

On the other hand the EU funds represent a considerable risk regarding misuse of these resources for private gain and associated corruption risks. There are at least three negative consequences of EU funds misuse:

- direct financial losses of EU funds;
- inability to reach objectives and targeted development;
- losing public confidence in the entire concept of EU solidarity.

That is why much attention should be given to the issues of prevention of any fraud, abuse and mismanagement of these funds. That is also the reason why this project - “EU Funds Watch” - was initiated by four “new” EU member states.

¹ We use this common term for different EU financial instruments. In the research for this study only European Regional Development Fund (ERDF), European Social Fund (ESF) and Cohesion Fund (FS) were examined.

EU funds in the Czech Republic

Financial support of the EU to the Czech society started well before the country joined the EU in 2004, in the form of pre-accession financial instruments like Phare, SAPARD or ISPA. These financial instruments administered with massive support and involvement of the EU experts helped establish the implementing structures and train (through practical experience) the first generation of Czech experts on EU funds administration.

The first funding period for the Czech Republic as a member of the EU was 2004-2006. In this period the EU financial support was implemented through three objectives. Within these objectives there were 7 main operational programmes (5 operational programmes in Objective 1, and 1 in each Objective 2 and 3).

Table 1: Funds available to the Czech Republic in 2004-2006 period (million €)

	2004-2006	2004	2005	2006
Cohesion fund	945.3	316.9	266.1	362.3
Structural funds	1 584.40	381.5	528.9	674
Objective 1 (13 regions)	1 454.30	339	485.5	629.8
Objective 2 (Prague)	71.3	23.3	23.8	24.2
Objective 3 (Prague)	58.8	19.2	19.6	20
Community Initiatives	100.8	28.6	32.1	40.1
Interreg	68.7	21	21.4	26.3
Equal	32.1	7.6	10.7	13.8
Structural operations altogether	2 630.50	727	827.1	1 076.30

In the current programming period 2007-2013, financial support from EU funds extended significantly, both regarding the financial amount and the implementation structure. While in period of 2004-2006 the total funding was approx. 2.6 billion €, in the current programming period the amount increased ten times to 26.9 billion €. The scope of the funding can be seen at the following table:

Table 2: Funds available in the programming period 2007-2013

Objective	Funds for all EU27		EU funds for Czech Republic	
Convergence	283 b. € (approx. 7,082.80 b. CZK)	81.54%	25.88 b. € (approx. 730.00 b. CZK)	96.98%
Regional competitiveness and employment	54.96 b. € (approx. 1,385.40 b. CZK)	15.95%	419.09 mil. € (approx. 11.73 b. CZK)	1.56%
European territorial cooperation	8,72 b. € (approx. 218.55 b. CZK)	2.52%	389.05 mil. € (approx 10.97 b. CZK)	1.46%
Altogether	347 b. €	100,00%	26.69 b. € (approx. 752.70 b. CZK)	100%

Source: Ministry of Regional Development of the Czech Republic

Also the number of operational programmes increased significantly. The current programming period established specific operation programmes (Regional Operation Programme for each NUTS 2 region). As a result there are 7 regional operational programmes:

- North-West;
- North-East;
- Moravia-Silesia;
- South-East;
- South-West;
- Central Moravia;
- Central Bohemia.

There are also 8 thematic operational programmes:

- Operational programme Transport;
- Operational programme Enterprise and Innovation;
- Operational programme Environment;
- Operational programme Research and Development for Innovation;
- Operational programme Human Resources and Employment;
- Education for Competitiveness;
- Integrated Operational Programme;
- Operational Programme Technical Assistance.

Finally there are two operational programmes for the country capital of Prague:

- Operational programme – Prague Competitiveness;
- Operational Programme – Prague Adaptability.

The huge difference between the period of 2004-2006 and full programming period of 2007-2013 may explain a lot of difficulties that the Czech Republic has experienced during the current period.

Moreover, this increase in the amount of provided funds and in the relevant implementation structure also meant the establishment of a number of new institutions and the increase in the number of employees without necessary experience.

Coordination authority

The National Coordination Authority (NCA) is the authority covering all of the operational programmes in the Czech Republic financed from the structural funds and the Cohesion Fund. It works within the Czech Ministry of Regional Development, which was appointed as the central methodological and coordination authority for economic and social cohesion in the 2007-2013 period.

The NCA is further in charge of coordinating a uniform implementation environment (i.e., an environment in which all institutions engaged in ESC policy management in the Czech Republic operate) and of managing consulting and other committees and the thematic working groups.

The coordination role in the area of institutional capacity should contribute to ensuring that well-qualified personnel work in the implementing structures. The way the motivation system is set up should prevent such educated and experienced employees from leaving for the private sector.

The central methodological role of the NCA is carried out by the issuance of methodological documentation in cross-sectional areas common for all operational programmes, such as horizontal topics, public aid, and eligible expenditure. These methodologies are imperative for all managing authorities.

Identified areas of risks

Within the framework of this project, areas of risks of fraud and corruption related to EU funds were established during the meeting of experts from the Czech Republic, Lithuania, Estonia and Hungary. Despite the existence of a number of fundamental differences in the implementation of EU funds, several common areas of risks were identified. Consequently in each country the examples of risks connected with each identified area were further examined through media and internet search and interviews (both oral and through e-mails) were conducted with representatives of implementation structures, control and auditing bodies and police officers and prosecutors.

Based on these discussions with project partners and on the research conducted in the Czech Republic, the following structure of risks emerged:

1. Human resources management
Risks related to staff dealing with EU funds including its selection and recruitment, assets declarations and conflicts of interest, qualification and training.
2. Internal regulations
Risks related to inappropriate, overcomplicated, incoherent and overlapping internal regulations.
3. Evaluation and selection of projects to be funded
Risks related to decision making procedure on source allocation for individual projects to be funded.
4. Transparency of EU funds
Risks related to distribution of EU funds in the ways that are not adequately subject to public control and oversight due to non-transparent procedures.
5. Auditing, controlling, irregularities reporting
Risks related to ineffective control and auditing and dealing with irregularities where fraud and corruption are not identified and lessons from previous fraud and corruption cases are not learned.
6. Prosecution
Risks related to insufficient reporting of suspected crime to law enforcement bodies and ineffective prosecution of fraud and corruption leading to impunity of fraud perpetrators and lack of deterrent role of law enforcement.

In this context, it is worth mentioning the outcomes of the analysis prepared by Ernst & Young for the Ministry of Regional Development. According to the analysis, any strategy aimed at fight against fraud and corruption should focus on four phases²:

- Prevention, i.e. reduction of opportunities (not only reduction of fraud opportunities but also reducing motivation and justification of fraud);
- Successful identification of fraud indicators;

² Ernst & Young, EU Funds Anti-corruption Strategy, March 2013.

- Harm reduction for the losses incurred to EU budget and national budget due to fraud;
- Reduction of risks of repeated confirmed fraud in future.

During the programming period 2007-2013 the attention of all relevant Czech authorities to the issues of prevention of fraud and corruption was considerably low. However, the increase in number of fraud cases, and temporary freeze of funding provided to number of operational programmes resulted in gradual change of their policy.

Yet the implementation structures often focus on unspecified prevention, control and possibly prosecution. The use of feedback from identified cases as a source for targeted prevention is very rare.

Human resources management

Human resources management represents a particular problem in the Czech Republic, perhaps the only EU member state without particular legislation regulating position and rights and duties of civil servants. Next to the problem of selecting the best people for the right position the deficiencies in human resources policy also touch the issue of conflict of interests, anti-corruption training and protection of whistleblowers.

Efficient implementation of EU funds requires a strong human resources policy ensuring that only highly qualified people with strong integrity will be hired for the main positions in the EU fund implementation structure. At the same time human resources policy should ensure that staff involved in EU funds is as much as possible separated from unduly political interferences and resistant to corruption and fraud seductions.

The Czech Republic has no enacted Civil Service Code; all governmental employees are governed by Labour Act which is focused more on labour protection than on strong human resources policy. As a result there are no legally binding provisions that would establish clear rules of human resources policy – selection and recruitment of staff, regular assessment, and promotions. The Czech government, being aware of this critical situation and under the pressure from European Commission, adopted a special resolution³ setting special requirements (Recruitment Guidelines) for recruitment of staff engaged in EU funds implementation, which makes transparent selection procedure compulsory. The Guidelines mainly regulate issues such as sufficient announcement, 3-member recruitment boards and recruitment report. Full audit trail is another important part of the Guidelines.

However, detailed procedures such as psychological assessment, methods of examining the competences or ways of appointment to recruitment boards are fully in the hands of individual EU funds management bodies.

³ Government resolution No.313/2012.

Moreover, the Guidelines are not compulsory for Regional Councils, i.e. management bodies for Regional Operational Programmes which are governed by regional self-governments and by the central government.

Especially public bodies starting with the new operational programmes in programming period 2007-2013 and having none or little experience with previous programming period of pre-accession programmes were not provided any assistance with human resources management.

Bad practice:**Regional council: Bohemia North West – example of grave failure of personnel policy**

Mr. Kušnierz was appointed as the Director of the Office of the Regional Council of Cohesion Region of North West Bohemia. In 2011 he was sentenced for corruption. It appeared that he was active political person. Next to insufficient education he was dismissed from previous position for managerial failures. As a Secretary of City Council of City of Most he was already investigated for economical crime. A number of other allegations have been raised in relation to EU funds misuse within the scope of responsibility of the office under his management.

The question how a person with such personal professional history can be selected as the right person for supervising billions of EU funds was never answered by responsible authorities.

Conflict of interests

Conflict of interest is not properly dealt with by the Czech legislation. Existing legislation⁴ limits the scope of the law to elected representatives and public officials at management positions. Moreover, the interpretation of the personal scope of the law is unclear, there are different opinions on which positions are covered by the legislation and have to meet its obligations. In any way the desk officers such as project or financial managers do not fall under the law.

In practical terms there is not a common understanding of the situations where somebody is in the conflict of interests, nor how the conflict of interest should be handled. Moreover, the conflicts of interest of members of evaluation committees are handled exclusively through non-bias declaration (see below).

Codes of Ethics

The only tools which can be used for providing guidelines concerning the conflict of interest are Codes of Ethics. According to the desk research not all operational programmes have their Code of Ethics – it appeared that only 10 of 22 examined Operational Programmes Management Authorities have their Code of Ethics as a separate document on the internet. Moreover, half of these existing

⁴ Act No. 159/2006 Sb., on conflict of interests.

Codes are very difficult to find on the relevant websites. The codes are to some extent different which makes their content less persuasive especially for those who move among different operational programmes. The use of code of ethics as a strong management tool is rare. There are more indications suggesting that the code of ethics used in relation with Monitoring Committees members. There are no indications that they are used in relation to staff of regular management authorities.

Good practice: Office of the Regional Council Moravia-Silesia

Personal stability and low staff turnover represents one of the management priorities for the Council management. All applicants have to pass psychological tests. As a strong preventive measure, the testing includes honesty/integrity assessment. The initial training of the new employees includes topics such as institution culture, code of ethics, principles of communication and fraud and corruption prevention strategy. During the whole career, institutional values are strongly promoted and adherence to the values (summarized in the Code of Ethics) is reflected in personal evaluation. In addition to more general and declaratory code of ethics of the whole operational programme, the Office has its own specific Code of Ethics, which is visibly placed on its website and in which the individual provisions are accompanied by practical examples.

This policy results in low employee fluctuation and higher quality of staff. The Regional Council Office represents a good example that investment in human resources management is worthwhile.

Anticorruption training

In programme period of 2007 – 2013 no specific anticorruption strategy was in place. This means that also anti-corruption training was not systematic or centrally coordinated. Ministry of the Regional Development, as EU funds coordination body, does not offer an anti-corruption training within their, otherwise extensive, training schemes. At some management bodies (e.g. when the management body is a part of the ministry) the anti-corruption training is a part of introductory training of the whole institution. It is very much up to the individual management bodies to realise the importance of targeted anti-corruption training.

As only few institutions have a strong experience with anti-corruption training there is rather often misunderstanding regarding the nature and content of anti-corruption training. It must be repeatedly explained that effective anti-corruption training not only supports personal integrity but mainly introduces various indicators of fraud and corruption, and also presents corruption situations and their correct solutions and relevant procedures.

Good practice: Centre for Regional Development Anti-corruption training

Centre of regional development is an intermediate body implementing several operational programmes. In 2012 the management decided to organise an anticorruption training for all professional employees of the Centre. This is a good example of open minded management since there was no central government policy in this issue. Moreover Centre staff is rather busy with everyday tasks and management had to explain the staff that to miss one day for anti-corruption training is a good professional investment. The Transparency International Czech Republic was contracted to provide such training in Prague and in several other regional centres. The content of the training was carefully prepared in cooperation with contractor and Human resources department of the Centre. Possible corruption risks were jointly identified and the training was target to mitigate them. As a result the feedback from the training participants was excellent.

The special attention was given not only to prevention of fraud and corruption but mainly on proper reaction situations which may be of corruption nature, and also how to properly react to direct offer of a bribe. Participants never participate in such training and despite initial reservations the participants highly appreciated the trainings.

Whistleblowing

There is no complex whistleblowing protection neither in the Czech National Legislation nor in EU funds implementation structure specifically. Together with non-existing civil service legislation (see above) civil servants are extremely vulnerable to political or managerial pressure/retribution. It is not surprising than that the line public officials working in the EU funds implementation structure are cautious to make public their warning on suspected fraud or corruption.

Whistleblowing centre (Anti-corruption Legal Advisory Centre – ALAC) run by the Transparency International - Czech Republic, however, received several whistleblowers reports concerning possible fraud in EU funds (because of serious nature, they were mainly passed further to police). This experience means that broader established protection of whistleblowers and promotion of their reporting would help to reveal more case of EU funds mishandling.

Recommendations:

- Keep the key staff responsible for implementation of EU funds in under civil service conditions. Using external companies working under different legal conditions should be used exceptionally.

- Human resources policy should be rigorous and should be made an integral part of EU implementation activities. HR policy represents not only fully transparent selection and appointment procedures but also elaborated system of internal evaluation and promotions ensuring that high quality persons remain in the service and are promoted. The EU funds implementation procedures represent such specificity that long lasting experience in working with them is crucial for successful implementation. All effort should be spent to keep experience staff in the institution.
- Codes of Ethic should not be only an appendix of the other numerous documentation, but should become an integral tool of personal management and should be sufficiently visible at relevant institutions web pages. Also the code of ethics should be pointed to when misbehaviour of offices staff is dealt with.
- Conflict of interest represents one of the major risks related EU funds implementation. Possible conflict of interest of different agents should be regularly examined and detected conflict of interest should be rigorously dealt with.
- Anticorruption training should be a regular part of the personal development of EU funds implementation structures staff.
- Promote whistleblowing protection regulations. The issue of whistleblowing protection should be part of the anti-corruption training both for managers and for line staff.

Internal regulations

Internal regulations represent a road map for every participant in the implementation process – beneficiaries, management authorities, supervisory bodies, investigation bodies. Such regulations should be fully concise with European and national legislation, it should be clear and reasonable short, and as much as possible stable in time. Different sets of regulations, often changes in regulations, contradiction between national and European legislations make EU funds implementation more difficult to manage and control, enable number of unintentional technical mistakes, but also successful masking of planned fraud and misuse.

The transposition of EU legislation into national legislation is not always complex. This distinction is sometimes solved by the imposing obligations to the beneficiaries to be in line not only with full Czech legislation and specific set of documents related to the particular program but also with the extended set of EU regulation. For majority of beneficiaries this obligation is in reality only formal – they have to accept the conditions which they are in principle not able to meet. The whole procedure serves as an excuse for management bodies for their inability to transpose relevant EU legislation into their specific document in sufficient manner.

The second problem is represented by the permanent gradual development of internal Operational Programme guidelines. While it is fully understandable that improved knowledge of the real mechanism of EU funds implementation as well as experience with numerous attempts to circumvent the regulations and misuse the funds lead to drafting of more precise provisions into

internal documentation. Nevertheless, as a result, each operational programme has number of versions of internal regulation accompanied by the list of Guidance letters. This means that those who manage and control the programmes should assess different projects according to different sets of rules. The risk of mistakes and/or manipulation with the projects is thus fundamentally increased.

Bad practice: Different sets of regulations for each Operational programme

The Czech Republic run 23 Operational programmes. Each of them has different sets of regulations. The role of central government (central management bodies like National Coordination Authority) in streamlining the regulation and establishing binding explanations has been rather weak at the beginning of programme period. This makes situation extremely difficult both for recipients and for auditing bodies.

Recommendations:

- Internal regulations should be given sufficient attention not only at the level of Operational programmes but also at the central governmental bodies responsible for EU funds and also at the level of the whole government.
- Responsible ministry should play a strong role in harmonising the internal regulations and providing assistance to individual Operational Programmes Management bodies and recipients. Methodical and advisory role of the central EU coordination body should not be underestimated.
- Full harmonization of relevant EU legislation and national legislation should be given sufficient attention. It is advisable to establishing of permanent advisory legislation body which should examine possible contradiction between EU legislation and national legislation.
- More systematic and intensive training should be organised for management authorities, intermediate bodies and for control and auditing bodies in order to fully understand the complexity of regulatory framework.

Evaluation and selection of projects to be funded

Evaluation and selections of best projects meeting both the real needs of the country and/or regions and number of technical, financial and qualitative requirements represents a core of the prevention of fraud and corruption. The structure of evaluation process can considerably influence possibility of risk of unduly interferences into substance matter evaluation. The risk is enhanced also by large number of Operation programmes and its evaluation procedures which make more difficult both external and public control. Lack of details in evaluation procedures connected with more complicated evaluation system (two – three levels) makes it more difficult to identify structural gaps

and react on apparent misbehaviour. The more complicated evaluation procedures the less transparency and actually the more opportunities for manipulating with results.

During the research specific risks have been identified:

1. Risks connected with wrongly established set of evaluation criteria. E.g. number of side criteria can override the key criteria and even project with 0 point on economic effectiveness can be selected.⁵
2. Risks connected with conflicts of interests and too political interference into evaluation and selection process. There is a wide range of risk connected with conflict of interest starting from the fact that those with direct or indirect links to different applicants can influence the final decision on granting, up to possible manipulation of the final results (repeated sessions of evaluation commissions with different results, granting project which were previously eliminated or vice versa, changing evaluations in parts where it is forbidden by the relevant regulation or making changes in the evaluation commission during evaluations).
3. Specific treatment of priority projects.
There are a number of so called strategic projects implemented by ministries and other pre-selected public bodies which need not to go through competitive selection process. While this approach may be justified as the best way to reach given development goals, the implementation shows some serious shortcomings.

Bad practice – distorting of evaluation processes:

Two steps evaluation process used in some Regional Operational programmes. The first step is independent expert evaluation on eligibility, conformity and substance matter/quality. The second step is represented by establishing of different forms of evaluation/selection commission. While the first step is done by more or the less independent experts, the next phase is much more subjective. The evaluation commission can “modify” the substance matter evaluation. Such commissions are usually composed of regional political representatives. In principle such second step evaluation should “correct” only exceptional cases like evident duplicity of projects or enhancement of support of project with high regional relevance. Unclear procedures this second step can, however, enable

⁵ Information from control event of the Supreme Audit Office No.: 12/06 – Financial means allocated for the implementation of the priority axis “Integrated development of the region” within the Regional operation program of the cohesion region Central Bohemia for the period 2007–2013 stated: “Evaluation criteria of the Regional operation program for Central Bohemia for priority axis 3 until 2009 did not sufficiently reflect the principles of properly financial management, especially effectiveness, efficiency and economy of selected project. Evaluation criteria for axis 3 was not able to ensure that project contradict to the above mentioned principles will not be eliminated.

significant influence the project evaluation. In practice in number of cases such politically nominate evaluation committee overrode the expert evaluation and push trough projects they want.⁶

Bad practice: Treatment of pre-selected “strategic” projects

There are a number of so called strategic projects implemented by ministries and other pre-selected public bodies which need not to go through competitive selection process. While this approach may be justified as the best way to reach given development goals, the implementation shows some serious shortcomings. One of the worst examples was so called “Individual National Projects” managed by the Czech Ministry of Education, Youth and Sports. It turned out that the Ministry had no strategy which should be implemented through such projects. Instead the ministry selected number of projects fully arbitrarily, in accordance with personal preferences of Minister Josef Dobeš.

Bad practice: Conflict of interests

Conflict of interest and mixing of different roles in evaluation procedures of EU funds was criticised by the Czech Supreme Auditing Office. In Audit report 11/17 focused on Operational Programme Education for Competitiveness managed by Czech Ministry of Education found in some case that 14% of projects were evaluated by evaluation commission where 4 to 7 their members out of 10 declared their conflict of interest in relation to projects.

Good practice – Ministry of the Regional Development

During planning of the new programming period of 2014 – 2020 Ministry of Regional Development prepared Guidelines for evaluation procedures. The Guidelines leave a possibility for different evaluation models open; however, it sets a number of compulsory requirements like list of decisions of the evaluation committee which is forbidden, requirement concerning voting, documentation etc. Requirement of the compulsory publication of the minutes from evaluation commission with justification of every change to expert numerical evaluation is especially important.

Recommendations:

- The selection procedures should be as much objective and transparent as possible. Strictly measurable and quantitative evaluations of more external evaluations should be preferred.

⁶ The Czech Supreme Audit Office report 11/17, <http://www.nku.cz/assets/media/informace-11-17.pdf>

This would enable management authority at any time explain and justify according which criteria any project has been selected.

- The selection results and reason for selection/non selection should be made public.
- Composition of the evaluation commission should be given utmost attention, expert view should be given priority over political view, changes of the commission composition during evaluation should be forbidden as well as repeated evaluation, changing of decisions etc.

Transparency of processes

Transparency of any processes connected with distribution of EU funds is extremely important. Clear information to public on which projects were supported, under which conditions, and for which reasons and how much these project costs represents an important prevention tool. User friendly information about projects and beneficiaries fulfil three main roles:

- Increase a knowledge of project supported in different regions may provide a necessary feedback for decision making authorities what public see as important for the regional development. This may rectify possibly one-sided civil servants view on priorities.
- Good knowledge of local project supported from EU funds may improve the overall approach of public towards the funds, may motivate new or smaller subjects to prepare a project and apply for funds. High level of transparency may be an important tool for more democratic approach towards whole EU structural policy.
- May prevent supporting project based on fraud and corruption and projects on which different political “friends” will benefit because of the risk that such deals will be make public and will publicly criticized.
- Such interactive tool can help also evaluators to understand nature of the applicant and express concerns in situations indicating the “professional grant-eaters”.

Transparency is, of course, costly. Nevertheless, the cost may not be as high as one may assume (see web portal “www.fondyeu.eu” below). Also any cost for rightly directed publicity is always much cheaper than costs of fraud and misuse of the funds.

Good practice: Web portal on EU funds run by NGO

The aim of the web portal “Fondyeu.eu” project (<http://www.fondyeu.eu/>) is to increase the level of transparency and information about beneficiaries of EU funds grants support and their projects. Open project database prepared by NGO “Naši politici” (Our politicians) combine data on supported projects with data from business register. Any interested person can check who is recipient of EU funds, for which projects and in which amounts. The web page enable to simple and user friendly search and linking of detailed information concerning beneficiaries and concerning supported projects. Data can be linked with business register and public procurement register so the reader can see who is a beneficiary of EU support. There are links also to the database of active politicians, so

possible conflict of interest or any unduly political influence can be also seen. As a result anybody can easily find possible links among grant recipients and politicians connected with them.

It represents a base for public feedback on whether the EU support is well targeted and if it is not just camouflage for support of business and political network. There is also important preventive role as there is always a “risk” that support for non-sense projects will be detected and criticise by public.

The web portal was prepared by NGO with minimal financial cost. This means that funding cannot be an obstacle for developing such tools.

Good practice: Maps of the EU funded projects

European Commission Representation in the Czech Republic initiated and funded the transparency project with the aim of visualising number of projects funded from EU funds. In 2013 almost 16.000 projects can be found on interactive map through simple search according in regions and municipalities. The database and interactive map can be found on <http://www.mapaprojektu.cz/cs/index.shtml> . The database is searchable also through another criteria – address, NUTS, name of the project. Each project is briefly described as well as funding scheme.

The weak point is that only small part of the project funded by EU funds is presented. Management of each Operational programme is responsible for feeding the database. It may happen that any suspicious project will not be inserted to the database. Nevertheless visualised presentation of successful project represents perhaps the best tool enhance a good relation of public to their locally supported projects.

Positive presentation of EU funds successes

For many people, EU funds represent a symbol of bureaucracy, non-transparent practices, nonsensical activities and waste of money. This image is supported by the media who are much keener to present negative information and examples of misuse of the funds than any positive reports. Therefore it is becoming ever more important to come up with new and innovative ways of presenting EU funds to general public, not only to show the usefulness of project results for citizens but also (and most importantly) to help engage the general public in strategic decision making and programmes monitoring. Good concrete examples of innovative prevention are photo contest organised by Czech Ministry of Regional Development (<http://www.kvalitazivota.eu/soutez/uvod/>). Other example is the informative channel on YouTube presenting interesting projects (<http://www.youtube.com/user/fondyeu?feature=watch>.)

Other example of using competition as a tool for presenting successful project can be found at Prizes for the best entrepreneur project organised by the intermediate agency Czechinvest <http://www.czechinvest.org/ceny-za-nejlepsi-podnikatelske-projekty-podporene-z-oppi-maji-sve-drzitele>.

Bad example: No information about the selection process

Publicly available information about the individual operation programmes varies a lot. It is not surprising that from user friendliness point of view the different information for applicants are easily available. There are calls for proposals, Guidelines, changes in guidelines.... There are also numerous monitoring tables understandable only to those who are professionals in the subject. The information for public monitoring of EU funds is, however, rare. The search in the internet has reveal very few information about the selection and granting process, ration of supported and non supported projects, reasons for not supporting, details from evaluation procedures.

This lack of information for general public or newcomer applicants enhance the understanding of EU funds as not transparent, close, perhaps “mysterious” process for pre-selected applicants only. As pointed out above, such general feelings increase risks for real abuse of EU funds.

Recommendation:

- Support new and innovative tools for presenting supported projects and beneficiaries;
- Enable interactive search of information related to supported project and beneficiaries which enable external public control of the usefulness and effectiveness of individual operational programmes and their projects;
- Make the whole process of allocation of EU funds more transparent. Provide much more information about the evaluation and selection procedure.

Auditing, controlling, irregularities reporting

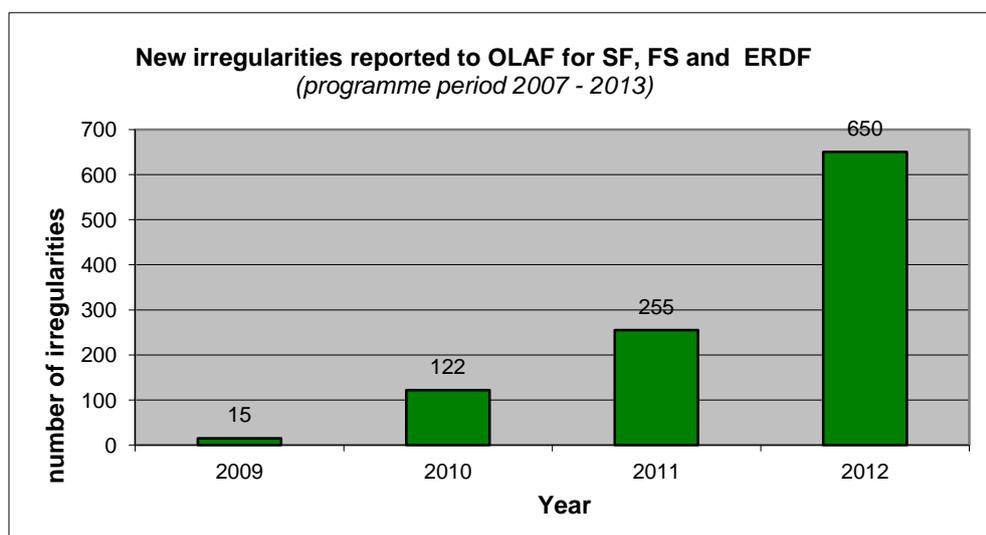
Proper control and auditing represents important part of process of implementation of the European funds. Audit should verify correctness of the substance matter and financial management of the implementation process and at the same time it can provide valuable feedback to the management bodies regarding the system they had established.

System of irregularities reporting, internal management control, audit from different national and EU bodies is complex and rather extensive. Staff of implementation system bodies often complain that they are “over-controlled”, and that several auditing bodies came to control something at the same time.

The fraud and corruption risk connected with controlling system can be classified as follows:

- Problems connected with low qualification of auditing bodies.
Lack of experience and low qualification leads to focus on insignificant details and omitting the fundamental issues. Small administrative mistakes (e.g. breaking of publicity rules) are reported while the major issues like conflicts of interest, insufficient targeting of the whole operational programme or its axis, or lack of measurable monitoring of results is neglected. The TI research suggested that these problems are connected mainly with individual auditing bodies and less with higher auditing authority like Supreme Auditing Office, external audits or audits from European Bodies (European Commission or European Court of Auditors).
- Unduly political influence over auditing bodies.
Auditors should be independent from the direct influence of the management of the bodies they are entitled to audit. This is often not the case (see bad example below).
- Neglecting the control and audit results.
Despite the critical statements above the control and audit findings bring large number of information on individual or systematic mistakes, failures or risks which are not mitigated. Especially the findings on gaps in the whole system are very useful. However, these finding are not sufficiently used in the management process of the body which was audited and very seldom the findings are discussed within other operational programmes management authorities.

Table 3: Irregularities reporting:



Source: Ministry of Finance of the Czech Republic

It is not surprising that number of irregularities increase in relation to number of implemented projects. The sharp increase of reported irregularities may also indicate the improved ability of

relevant staff to identify and report irregularities. In anyway reported irregularities represent important source of information on possible fraud and corruption.

The irregularities according to the law which were presumably affected:

- National budgetary rules (Act No. 218/2000 Sb.) - 28 %,
- Public procurement legislation (Act No. 137/2006 Sb.) - 24 %,
- Legislation of European Communities - 16%,
- Budgetary rules of local and regional administration (Act No.: 250/2000 Sb.) - 15 %,
- breaking a legal act establishing a grant or Operational programme Guidelines - 10 %,
- breaking of other internal Guidelines, like Guidelines for financial flows – 4 %,
- Penal law (Act No.40/2009 Sb.) - 1 %,
- Act on Accounting (Act No. 563/1991 Sb.) -1 %,
- Breaking Instruction of the National coordination body (NOK) - 1 %.

Supreme Auditing Office represents one of the most reliable control and auditing bodies in the Czech Republic which is fully independent to different partial influences. Increasing attention is given to the audits of projects supported from EU funds which can be demonstrated at the Table 4.

Table 4: Number of SAO controls conducted in the period 2009-2013

Year	Number of controls on system and transaction	Number of controls focused on EU funds
2009	3	4
2010	5	1
2011	7	5
2012	6	4
2013	6	3

Source: Supreme auditing office (SAO), presentation at the conference EU Funds watch, Prague 16 May 2013

The main problems according the SAO findings:

- Deficiencies in the system of control and supervision
- Insufficiently established monitoring indicators
- Non-transparent selection of projects
- Human resources
- Insufficient approach to the purposeful, efficient and economical use of financial means

The Supreme Audit Office (SAO) of the Czech Republic under new president Mr. Kala also started to give much more attention to control how different projects met declared targets. In a number of

cases they identified situations where targeted indicators were set completely wrong. For example, some targets were fulfilled by natural social process even before the start of any project intervention. Such SAO audits represent an important impetus to more responsible and deliberate target setting

The research shows that, firstly, there is a growing number of information received from the control and auditing. Exponential increase in number of reported irregularities does not only represent a certain momentum in the lifespan of EU funds but important source of knowledge. There are indications that such knowledge is not fully analyzed, generalized and used in prevention of further irregularities (which would meet the requirements of an efficient anti-corruption strategy against fraud and corruption related to EU funds as defined by the analysis prepared by Ernst & Young for the Ministry of Regional Development⁷).

Secondly, the results of SAO show that sufficient attention is given to the system issues and general care for financial management, evaluation of overall impact of EU funds intervention and general effectiveness. These results are in contrary to some opinion that the audit is focused on unimportant formal and administrative issues only.

Bad practice: Reliability of audit⁸

European Commission in its Annual Activity Report of the DG Regional and Urban Policy seriously criticized the Czech Republic for low reliability of auditing of the individual operational programs.

“ For one audit authority (Czech Republic), it was concluded that it essentially does not function and an action plan, linked to payment interruptions, was carried out in 2011-2012 leading to two flat rate financial corrections accepted in 2012”.

The problem has been caused by the fact that auditing bodies were subordinated to each operational programme management authorities that is ministries and mainly Regional self-governments. So while the auditing bodies were formally independent from the direct influence of the political leadership of the institutions they were associated with, in fact they were under strong political influence.

As a result of this criticism the whole system was changed and authorised auditing bodies (PAS) were centralised under Ministry of Finance.

Good practice: External audits

⁷ Ernst & Young, EU Funds Anti-corruption Strategy, March 2013.

⁸ 2012 Annual Activity Report DG Regional and Urban Policy, page 38, see http://ec.europa.eu/atwork/synthesis/aar/doc/regio_aar_2012.pdf

In certain situations the whole management structure of operational programmes is under such strong political influence that internal controlling bodies are not able to provide relevant and reliable feedback. In such situation commissioning external audit of the whole operational programme or its parts represents a very good option. Such external audit can assess level of irregularities of the whole system and evaluate decision making procedures and controlling systems. In 2012 the Czech Ministry of Finance commissioned one such external audit at the Regional Operational Programme North West. The audit was executed by Deloitte Advisory and revealed that the Office of Regional Operational Programme committed serious mistakes in all 35 examined cases. Based on this alarming outcome, some radical changes were adopted. This external audit helped significantly improve the operational mechanism of the Operational Programme.

Recommendations:

- Give sufficient attention to the internal management control within the management system
- Quality of control and audit should be given sufficient attention, perhaps over quantity
- Make full use of the control and audit findings in further work of the whole EU funds implementation system. Findings regarding the system, monitoring and financial management are of utmost importance not only for controlled and audited body but for all other management authorities.

Prosecution

Prosecution of fraud and abuse connected with European funds represents an important tool not only to stop on-going criminal activity and European funds abusing but also it represents a good opportunity for prevention.

It is important to stress that crime committed against subsidies and more generally against financial interest of EU can be committed by three rather different set of possible perpetrators with very different preventive and repressive approach. These are:

- Perpetrators in management bodies
- Contracting authority of public procurement
- Applicants and beneficiaries

Perpetrators from management authorities represent the most difficult target group. They consist of political representatives or senior civil servants with extended powers. They are in a position to influence the rules and regulations, they can influence targeting and timing of calls and can also influence the concrete selection procedures. On the other hand it may be risky for rank and file staff to point on their possible misbehaviour.

Example of prosecution: Prosecution of political pressure⁹

Former Deputy Regional Governor at North Bohemia Region Petr Kouda is being prosecuted for unduly influence on European Funds Regional Management Authority. Allegedly, the evaluation score has been irregularly changed based on his intervention.

The news server www.aktualne.cz after his criminal charge described, how the evaluation score of one for the project application, which is commonly connected with his name from the very beginning, has been changed so as to receive funding. According to the Ministry of finance the project was also overpriced.

Police investigators further detected that Mr. Kouda and Mr. Markvart, Director of the Office of the Regional Council (EU funds management body) made unduly and prohibited pressure on the Operational Programme management Body staff in order to ensure millions of granted funds for the recipients selected themselves.

Contracting authorities of public procurement would they be from management bodies or from beneficiaries represents the largest group. Public procurement are understood as a serious problem in the Czech Republic in general. As such it is not the primarily focus of this project and study (public procurement was dealt with in another OLAF supported project in 2010¹⁰).

Crimes committed by applicants and beneficiaries are perhaps more easy to detect by well working management and control bodies. Apart from public procurement there are number of typical criminal behaviour:

- Using counterfeited documents (invoices, certifications);
- Declaration of non-existing works and services;
- False proves of beneficiary own resources;
- Apparent abuse of grant resources (spending not connected with the project);
- Colluded public procurement;
- Artificial and fake purpose of the grant;
- Fake investment;
- Influence to bidders in public procurement.

Example: Prosecution of former Member of Parliament Petr Wolf¹¹

⁹ <http://aktualne.centrum.cz/domaci/regiony/ustecky/clanek.phtml?id=761511>

¹⁰ „Kvalita a integrity veřejných zakázek“, Transparency International Czech Republic, Prague 2009

¹¹ http://zpravy.idnes.cz/exposlanec-wolf-dostal-za-zneuziti-dotace-5-let-vezeni-a-pokutu-pvo-/krimi.aspx?c=A120127_074947_ostrava-zpravy_jog

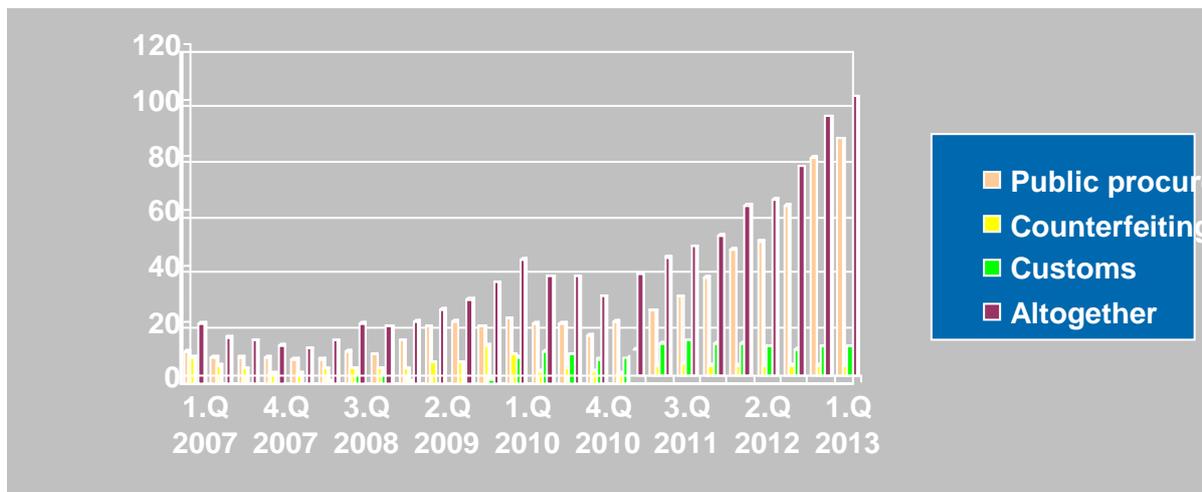
Petr Wolf, former Member of Czech Parliament, was sentenced for fraud connected to the grant received from the Ministry of Environment. The Court stated that Mr. Wolf received the grant based on distorted, untrue and false information. Together with his wife he used between 2005 – 2007 altogether 11 millions. Part of these funds has been used for his private purpose (e.g. travel). Project results were moreover copy paste from internet.

Mr. Wolf was sentenced to 5 years imprisonment unconditionally and fine of 1 million Czech crown, appeal court increased sentence to 6 years of imprisonment and fine of 5 million. Mr. Wolf's wife was sentenced to 3 years imprisonment conditionally postponed and fine 1 million CK.

The crime committed in connection with European funds can be related to number different provisions of the Czech Penal Code. The most specific provisions are Grant (subsidy) fraud (§ 212 of the Penal Code) or Harm or EU financial interest (§ 260 of the Penal code).

The following figure shows the increase in prosecutions connected with EU financial interests during the programming period¹².

Table 5: Number of prosecutions in relation to EU financial interests

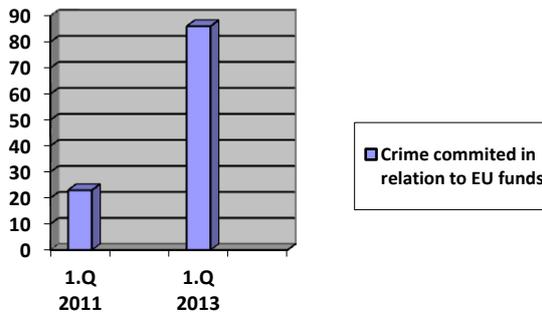


Source: Supreme Prosecution Office

Police and prosecutor office proved to acquire necessary experience and knowledge for successful prosecution of crime related to EU funds misuse. The growing number of prosecutions can be seen at the table 6. Again, like with audit findings, criminal prosecutions represents enormous amount of information of fraud method. Such information may and should be used as a training material for fraud indication and prevention.

¹² Source: presentation of Mr. Michal Fiala, Supreme Prosecution Office, the conference EU FUNDS WATCH in Prague, 16 May 2013, see more http://www.transparency.cz/doc/Evropske_fondy_2013_Michal_Fiala_NSZ.pdf

Table 6: Number of criminal cases related to EU funds



Recommendation:

- Make full use of the knowledge obtained during the investigation of EU funds. Knowledge of the modus operandi of perpetrators of crimes against financial interests of EU represents an important tool for establishing better regulation and better control of the EU funds implementation;
- Proper investigation of corruption, fraud and misuse of European funds needs high level of specialization. Development of this specialization among police officers and state prosecutors should be further supported.

Conclusions

Is there any set of general conclusions and recommendations? To answer this question is extremely hard. The EU funds represent such divers system and such complicated structure even in one country that detailed technical recommendation on best practice in preventing fraud and corruption are almost not possible.

The experience gathered not only during 9 months of the duration of the project but also through years in fight against fraud and corruption can lead to following general recommendations:

- Fraud and corruption prevention should be given the sufficient attention in everyday political guidance and professional managerial work. When the main objective of the whole implementation structure is spent all funds which were allocated, than it is not surprising that fraud and corruption is neglected (in fact it increase the spending);
- Fraud and corruption, “3 E” approach and result orientation is interconnected. Fraud and corruption can flourish where there is no clear idea what should be obtained from EU funds

and where issue of efficiency is neglected. National culture in public administration is a key also to administration of EU funds.

- Preventive role of programming period is underestimated since no money is spent yet. Nevertheless high quality preparation, well chosen targets and expected results and clear monitoring indicators significantly narrow the scope for fraud and corruption.
- Lessons are only seldom learned from previous mistakes. There are numerous changes in staff so there is low institutional (or program memory), there is no sufficient capacity for analysis of past mistakes, frauds and irregularities and transforming them into recommendation. Experience from one operational programme is usually not transferred into others.

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